the appellants are wrong. This property was acquired by the wife in exchange for part of the Sea Park property, which belonged to her and her son, and was expressly excluded from the settlement. The exchange was the result of a family arrangement to which her son was a party, and in my opinion the terms of this arrangement were such as to exclude any claim by the son to this Glen of Rothes property.

There remains the claim of the son to legitim, *i.e.*, half of his mother's unsettled personal property. His claim is based upon the fact that he acquired this right under a statute passed after the settlement was made, viz., 44 and 45 Vict. c. 21. But the settlement contains a clause to the effect that the provision made by it for the children of the marriage shall be in full satisfaction of all "bairns' part of gear, executry, and everything else which they could respectively claim or demand by and through the decease of their mother on any ground whatever." These words are so wide as, in my opinion, to exclude the children of the marriage from all claims foreseen and unforeseen to any share of their mother's personalty except under the settlement.

In my opinion the decision appealed from was correct on all points, and the appeal ought to be dismissed with costs.

Their Lordships dismissed the appeal.

Counsel for the Appellants—The Solicitor-General (Salvesen, K.C.) — Constable. Agents—Thomas Henderson, W.S., Edinburgh—Martin & Leslie, Westminster.

Counsel for the Respondents—Haldane, K.C.—Guthrie, K.C.—Moncrieff. Agents—Stuart & Stuart, W.S., Edinburgh—Gellatly & Son, London.

Friday, April 14.

(Before the Lord Chancellor (Halsbury), Lord Davey, and Lord Robertson.)

CHR. SALVESEN & COMPANY *v.* REDERI AKTIEBOLAGET NORDSTJERNAN.

(*Ante*, January 16, 1903, 40 S.L.R. 305.)

Agent and Principal—Agent's Responsibilities to Principal—Misrepresentation by Agent to Principal that Contract Concluded—Damages—Measure of Damages.

A foreign shipowner employed a Leith shipbroker to find freight for a vessel. The shipbroker entered into negotiations with third parties and reported to his principal that he had "fixed" the ship on certain terms. As a matter of fact no bargain was concluded between the shipbroker and the third parties. *Held* (1) that the shipbroker was liable to the shipowner for loss incurred by the latter by reason of his relying on the former's incorrect statement; (2) that in the absence of evidence that the shipowner sustained any loss of profit by his reliance on the incorrect statement, no damages fell to be awarded him in respect of loss of profit, but that a sum fell to be paid him as compensation and solatium in respect of outlays on telegrams and trouble.

This case is reported *ante ut supra.*

Salvesen & Company appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—The proposition of law laid down by the Exchequer Chamber in *Collin* v. *Wright* must, I think, notwithstanding the protest made by Chief-Justice Cockburn, be held to be the law. But one must see what that proposition is, and how far it is applicable to the case before your Lordships. The proposition is this—that a person who induces another to contract with him as the agent of a third party by an unqualified assertion of his being authorised to act as such agent is answerable to the person who so contracts for any damage which he may sustain by reason of the assertion of authority being untrue. This is the authority upon which the Court below have given damages, but it really has no application to the facts in proof here.

A firm applies to a shipbroker in Scotland to obtain freights for a vessel of theirs. The shipbroker in consequence opens a negotiation with Messrs Ireland, who state certain terms which they will accept, one of which is what the appellants' principals will not agree to. The appellants, nevertheless, untruly report that the bargain is complete, whereas the bargain in fact went off altogether. Now, I quite agree that if in consequence of their misstatement the respondents changed their position and suffered damage, the appellants would be liable for any actual damage arising from the acting on that erroneous statement, and it is no answer to say that the appellants *bona fide* expected to get over the one outstanding term by which the bargain went off, but it appears to me there is an absolute failure to make out any such damages as are claimed, though I think £30 has been justly suggested as enough to cover all actual damage sustained, and for that the respondents ought to sustain their judgment.

But I think in applying the doctrine of *Collin* v. *Wright*, and treating the appellants as having held themselves out as the agents of Messrs Ireland, and clothed with their authority to make a contract, they seek to get, and the Court below have given them as damages, the profits they would have made if Messrs Ireland had in fact authorised the appellants to act as their agents, and had in truth made the bargain. But in fact they did nothing of the sort; they were endeavouring to get a bargain from Messrs Ireland, and having failed to overcome Messrs Ireland's objections, they are in the position of not having got the bargain they represented they had.

There is no evidence of any loss sus-

tained by reason of relying on the untrue statement, and I think the original judgment cannot be supported.

I therefore move that the judgment be reduced to £30, and the appellants ought to get the costs of this appeal.

LORD DAVEY—It is not necessary for the purpose of this decision to have recourse to the doctrine of *Collin* v. *Wright*. The appellants, the shipbrokers, were undoubtedly agents of the respondents for the purpose of finding a charter for their ship. But I am not satisfied on the evidence that the appellants were employed by Messrs Ireland & Son to find a ship for their requirements. It appears to me that the negotiations were carried on between the appellants as agents for the respondents with Irelands as principals acting on their own behalf. No doubt the appellants were intermediaries between the two firms, but that always is so where the agent of one party is negotiating with the other party. Wherever a person misrepresents a fact relative to a third party, he in a sense impliedly represents that he is authorised to make the statement. But I do not think that he is thereby asserting that he is clothed with an authority or fills a particular character within the meaning of the doctrine of *Collin* v. *Wright* as explained in subsequent cases, including the recent case of *Starkie* v. *Bank of England* in this House, or that the doctrine ought to be extended to such a case as that now before your Lordships.

But the appellants were guilty of a breach of their duty to the respondents, their principals, in giving them incorrect information as to their business and are liable in damages for such breach of duty. The measure of damages in such a case has recently been discussed in the Court of Appeal in England in the case of *Cassaboglou* v. *Gibb* (11 Q.B.D. 797). It was there determined that the measure of damages was the loss actually sustained by the principal in consequence of the misrepresentation, and that it did not include the anticipated profit which he might have made if the representation had been true. I am of opinion that the proper measure of damages in the present case is the same as in the case I have referred to. There is no evidence that the respondents lost any opportunity of profitably employing their ship owing to their belief that a charter had been arranged with Ireland & Son, and I am of opinion that they cannot therefore recover anything in respect of the profits which they might have derived if their belief had been well founded. With regard to the expenses of the abortive action against Ireland & Son, the question is whether they were reasonably incurred. On this point the letters which passed between the respondents' solicitors and the appellants on February 27th and 28th and March 1st are important; and I think the respondents are entitled to recover these expenses subject to taxation. The only other head of damage claimed is a general charge for telegrams and trouble and inconvenience. I think the sum of £30 will be an ample compensation and *solatium* to the respondents on this head.

I am therefore of opinion that the interlocutor of the Lord Ordinary should be varied by the substitution of the sum of £30 for the sum of £450, and *quoad ultra* it should be affirmed. I understand that the appellants denied any liability in the Inner House as well as before the Lord Ordinary, and in fact their case in this appeal also contains a denial of any liability. I am therefore of opinion that no alteration should be made as regards the expenses in the Courts below, and there should be no costs of this appeal.

LORD ROBERTSON—In the view which I take of it, this case is one of great simplicity both in fact and in law.

A foreign shipowner (the respondents' firm) employs a Leith shipbroker (the appellants) on the usual terms of remuneration to find freight for a steamship. The appellants take the business in hand and report that they have concluded a bargain. In fact no bargain had been concluded; differences which the appellants, too sanguine, had hoped to get rid of, existed and proved invincible; and three days after the news of the bargain the respondents learned that the thing was off.

That the appellants by making this misstatement acted in violation of their duty as agents for the respondents admits of no doubt; and the respondents have a good claim of damages for whatever loss has been caused them. If, for example, acting on the faith of the alleged contract, the respondents had incurred expense; or if, misled into inaction, they had missed other chances for the ship, these and the like would be heads of damage.

The facts in the present case are not of this kind. The respondents, in furtherance of their theory of their case, have been at pains to prove that at this particular time no other advantageous freights were to be had, and when informed that the bargain was off they made no efforts to look for them. They found employment for the steamer in a quarter where it was easily to be had (under a current contract), although at a low rate, 5s. per ton.

The claim of the respondents is for the difference between this rate and 8s. per ton, the rate in the bargain which was not concluded; and their theory is that they are entitled to take the appellants at their word and demand from them fulfilment of the charter or damages. To this the short answer is that the appellants (who dealt with Irelands at arm's length) did not in point of fact assume to act for the alleged charterers at all, and they purported to report the agreement of the charterers as matter of fact. The central and crucial fact in the case is that the appellants did not represent to the respondents that they acted for Irelands. The case is therefore not within the scope of *Collin* v. *Wright*.

The practical result is that in my opinion the main part of the claim of damages is untenable. But I think that the respon-

dents are entitled to something for certain damage which they have proved, to wit, trouble, outlays on telegrams, and the like; and in the Court of Session this has been fixed at £33, 1s. 3d. They have been also held entitled to the expenses incurred by them in the action against Messrs Irelands down to the closing of the record, and I think that they are entitled to this; but this limitation of those expenses to the period before closing the record is not specified in the interlocutor of the Lord Ordinary although it is in his judgment, and it should perhaps, therefore, be now declared.

Ordered that the interlocutor of the Lord Ordinary should be varied by the substitution of the sum of £33, 1s. 3d., and *quoad ultra* it should be affirmed, and that the respondents should pay the costs of this appeal.

Counsel for the Appellants—The Lord Advocate — The Solicitor-General (Salvesen, K.C.)—Murray. Agents—Beveridge, Sutherland, & Smith, S.S.C., Leith — Botterell & Roche, London.

Counsel for the Respondents—Scrutton, K.C.—Spens. Agents — Maclay, Murray, & Spens, Glasgow — J. & J. Ross, W.S., Edinburgh — Hollmes, Sons, Coward, & Hawksley, London.

COURT OF SESSION.

Tuesday, May 23.

FIRST DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

RIDLEY *v.* KIMBALL & MORTON, LIMITED.

Expenses—Modification—Appeal for Jury Trial—Small Amount Awarded by Jury—Employers' Liability Act 1880 (43 *and* 44 *Vict. c.* 42), *sec.* 6—*Sheriff Courts (Scotland) Act* 1877 (40 *and* 41 *Vict. c.* 50), *sec.* 9—*Court of Session Act* 1868 (31 *and* 32 *Vict. c.* 100), *sec.* 73.

In an action of damages for personal injuries brought in a Sheriff Court and appealed for jury trial under the Judicature Act the jury awarded £35. *Held* that, while the Court has power to deal with expenses according to its discretion in each particular case, the ordinary rule that a successful pursuer is entitled to his expenses should not be departed from, the case being one which in its nature was quite appropriate for jury trial.

William Ridley, metal polisher, 91 Glebe Street, Glasgow, raised an action in the Sheriff Court of Lanarkshire at Glasgow against Kimball & Morton, Limited, machine makers, 11 Bothwell Circus, Glasgow, in which he sought to recover reparation for injuries received while in their employment, and claimed the sum of £500 at common law, or alternatively £249 under the Employers' Liability Act 1880.

He averred that while in the defenders' employment and working in conformity with the orders of their foreman at a large buff (*i.e.*, a wooden wheel covered round the circumference with leather) which was driven by machinery and revolving at great speed, he was injured by the leather on the buff coming loose and hitting him on the head. He also averred that the machinery plant, viz., the buff, was defective, and that this was known to the defenders' managing partner. He further averred—"(Cond. 6) By the force of the blow the pursuer was rendered unconscious. The buff continued revolving while the pursuer's head was in contact with it. While still unconscious the pursuer was carried to the Western Infirmary, Glasgow, where he was seen by Sir William MacEwan, who pronounced him suffering from a large concussion of the brain. He remained as a patient there until 26th June 1903. He did not recover consciousness until the afternoon of the day following the accident. He has in consequence of the accident sustained severe injuries. His head has been severely cut and bruised, and the disfigurement thus caused will be permanent. He is troubled with nervousness and sleeplessness, due, it is believed, to concussion of the brain caused by the accident. His vital energy has been greatly reduced, and he has not since the accident been able to follow any employment. After he left the Infirmary he was treated as an out-patient for some time. The injuries sustained have left his health permanently impaired."

The Sheriff-Substitute (BOYD) on 21st April 1904 allowed a proof before answer. The pursuer appealed for jury trial.

The cause was tried on March 29, 1905, before Lord Kyllachy and a jury. The jury gave an award of £35.

On the pursuer's moving to apply the verdict and for expenses the defenders moved that the expenses should be modified.

Argued for the defenders and respondents — Expenses should be modified. Though the pursuer was successful, the sum awarded as damages was a mere fraction of that claimed, and was under £40, and the action would have been more properly retained and dealt with in the Sheriff Court. The defenders should not have been subjected to the greatly increased expenses of jury trial when an equally appropriate and much cheaper course was available. The case was stronger for modification of expenses than many previous cases — *Jamieson* v. *Hartil*, February 5, 1898, 25 R. 551, 35 S.L.R. 450; *Shearer* v. *Malcolm*, February 16, 1899, 1 F. 574, 36 S.L.R. 419; *Brennan* v. *Dundee and Arbroath Joint Railway*, May 26, 1903, 5 F. 811, 40 S.L.R. 383, 622, following *Shearer, ut supra*, and distinguishing *Fraser* v. *Caledonian Railway Company*, February 20, 1903, 5 F. 476, 40 S.L.R. 43, 373; *Lafferty* v. *Watson, Gow, & Company, Limited*, June 3, 1903, 5 F. 885, 40 S.L.R. 622.