

are not liable for the said defect in the condition of the waggon in question: Therefore sustain the appeal: Recal the interlocutor of the Sheriff-Substitute dated 3rd March 1892, and subsequent interlocutor: Assoilzie the defenders from the conclusions of the action, and decern: Find the defenders entitled to expenses in both Courts," &c.

Counsel for the Pursuer—Ure—Younger. Agents—Simpson & Marwick, W.S.

Counsel for the Defenders—Lees—W. Campbell. Agents—Gill & Pringle, W.S.

Wednesday, November 30.

## FIRST DIVISION.

[Lord Low, Ordinary.]

### CLELAND v. BROWNLIE, WATSON, & BECKETT, AND OTHERS.

*Agent and Client—Reparation—Duty of Agent in Recommending Investments—Double Agency.*

L. purchased an unfinished tenement in Glasgow in October 1877 for £12,800, payable at the next term of Martinmas. He took over the first bonds affecting it, which amounted to £10,500, and paid the balance in part with the proceeds of a promissory-note falling due at Whitsunday 1878. All the arrangements were carried through by W, his law-agent. W was also agent for C, who had a loan of £500 at 5 per cent. over another property belonging to L. On the day before the Whitsunday term 1878 W asked an interview with C, at which he informed him that the £500 loan would be paid up at the term, recommended him to invest £1200 (offering to advance any part of the difference that might be required) at 5 per cent. on the security of a postponed bond over the property recently purchased by L, and told him all he knew as to its value. C agreed to the proposal on the spot without inquiry, and without obtaining an independent valuation. The property thereafter fell in value so much that the security became worthless, the interest ceased to be paid in 1880, and L died insolvent.

In 1891 C brought an action of reparation against W for £1200 with interest in name of damages, on the ground that W had induced him by fraudulent misrepresentations and concealment to accept a bad security, or alternatively that W, as his agent, had been guilty of negligence and failure of duty in acting as agent for both borrower and lender, and recommending an insufficient security to the latter in the interests of the former. The Lord Ordinary (Low) sustained the latter ground of action. The defender reclaimed, and was *assoilzied*.

*Observations* (per Lord President and

Lord M'Laren) as to the circumstances in which an agent will be held liable for introducing an investment to a client, and for expressing a favourable opinion regarding it.

This was an action by Alexander Cleland, grocer, Main Street, Anderston, Glasgow, against Brownlie, Watson, & Beckett, law-agents and conveyancers, 225 West George Street, Glasgow, and the individual partners of that firm, for payment of £1200 in name of damages for alleged fraud, or alternatively for breach of professional duty.

The pursuer stated that the defenders (to one of whom he was related by marriage) had for many years acted as his agents, and had made various investments for him. Shortly before the term of Whitsunday 1878 Mr Watson recommended to him as an eligible and desirable investment a loan of £1200 to Mr Lochrane, another client of his, on the security of certain tenements in Matilda Terrace, Strathbungo, recently purchased by him, to rank after five prior bonds, the amount of which was represented by Mr Watson to be £10,000, but was afterwards ascertained by the pursuer to be £10,500. The pursuer averred that Mr Watson strongly pressed and urged him to lend the said sum on the said security, assuring him that the investment was a perfectly safe and particularly eligible one, and that relying implicitly upon Mr Watson's representations, which were in point of fact false and fraudulent, as to the excellent character of the investment, he agreed to the proposal without inspecting the property, or making inquiries as to its condition or the rental derivable from it, and without obtaining any valuation; that the interest was paid down to Whitsunday 1880, but no interest was paid since that date; that Mr Lochrane died in 1878, and that his estate turned out insolvent, and that he (pursuer) only recently became acquainted with the whole facts above stated, and on learning these he called upon the defenders to make good to him the said sum of £1200 with arrears of interest.

The pursuer pleaded, *inter alia*—“(2) The pursuer having been induced by the defenders to invest his money on a security which was, and which was known to them to be, grossly inadequate, decree ought to be pronounced as concluded for. (3) The pursuer having been induced to make said investment by the false and fraudulent misrepresentations of the defenders, ought to have decree in terms of the conclusions of the summons. (4) The defenders having acted as agents for both borrower and lender in the said transaction, and having grossly neglected the interests of the pursuer, are liable to him in payment.”

The defenders denied that Mr Watson understated the amount of the five prior bonds, and explained that the pursuer, having full information as to all the facts about the property, considered the desirability of the loan for himself, and agreed to give the loan on condition of his getting 5 per cent. interest. They averred that the pursuer had considerable experience as to

investments in heritable property in and about Glasgow; that the value of the property in 1878 was over £14,000; that the pursuer was aware of the position of the security in 1880, and expressed himself as fully satisfied regarding the same, and since that time he had dealt with the loan as one made by himself in the exercise of his own discretion, and as to which the defenders were under no liability, and that no claim was made on them until June 1891.

The defender pleaded—“(1) The pursuer’s averments are irrelevant. (2) The pursuer’s material averments being unfounded in fact, the defenders should be assoilzied. (3) In respect of the pursuer’s delay in making any claim, and of his dealings with the loan since 1880, the defenders should be assoilzied.”

Proof was taken before Lord Low on 4th and 5th February 1892, and its import sufficiently appears from the opinions of the Lord Ordinary and the Lord President.

On 18th March 1892 the Lord Ordinary (Low) found “that in 1878 the defender Joseph Watson while acting as agent both for the pursuer and for the deceased William Lochrane, and in violation of his duty as the pursuer’s law-agent induced the pursuer to lend £1200 to the said William Lochrane upon the security of a postponed bond over house property belonging to the said William Lochrane in Matilda Terrace, Strathbungo; that the said security has proved to be altogether worthless, and that the said Joseph Watson and his firm of Brownlie, Watson, & Beckett are liable to make reparation to the pursuer; that the defenders are bound to make payment to the pursuer of the said sum of £1200, with interest at the rate of 4 per cent. per annum from Whitsunday 1880 until payment upon receiving from the pursuer an assignation of his whole right and interest in and to the said bond, and to the subjects thereby conveyed in security, &c.

“*Opinion.*—The statements made in the condescendence, and by the pursuer in the witness-box, undoubtedly amount to a charge of gross fraud against the defender Mr Watson. The latter was the agent of a Mr Lochrane, who had purchased a property in Matilda Terrace, Strathbungo, at the price of £12,800. The property was burdened with five bonds for sums amounting to £10,500. Mr Lochrane was desirous of borrowing an additional sum of £1200 upon the security of a postponed bond upon the property. Mr Watson was also the pursuer’s agent, and he sent for the pursuer and proposed that he should lend the £1200 to Mr Lochrane upon the security offered. It is admitted that Mr Watson knew the price which Mr Lochrane paid for the property, and the amount with which it was already burdened, and that he had not obtained or seen any valuation of the property. The pursuer, however, says that Mr Watson told him that the prior bonds amounted only to £10,000; that he concealed the price which Mr Loch-

rane had paid, and assured the pursuer that the property was value for £14,000 or £15,000. If this account is true, Mr Watson must have been guilty of wilful and fraudulent misrepresentation and concealment.

“I think that it is clear that the alleged misrepresentation and concealment are not proved, and further, I do not believe that Mr Watson was guilty of the misrepresentation and concealment which I am now considering.

“The only evidence against Mr Watson is that of the pursuer. I do not think that the pursuer wilfully gave untrue evidence, but he was speaking from recollection of a conversation which occurred in 1878, and his impression as to what passed might quite well be inaccurate.

“Further, I think that the pursuer reposed great confidence in Mr Watson, and in agreeing to the investment was guided more by Mr Watson’s opinion than by his own independent consideration of the particulars laid before him. If this was the case, the pursuer is the more likely to be inaccurate in his impression of what passed at the meeting.

“The only other piece of evidence, apart from that of the pursuer and Mr Watson, is a letter which Mr Watson wrote to the pursuer on the 14th of May 1878 asking him to call about the loan. In that letter he said—‘I will submit the particulars of the security to you that you may consider if you can take it up.’ If when he wrote that letter, Mr Watson intended to give the pursuer the particulars which he had, the probability is that he actually did so. If, on the other hand, Mr Watson, when he wrote the letter, did not intend to give the pursuer the particulars, but to make false statements to him, then he had deliberately made up his mind to perpetrate a very gross fraud. Such a case could only be established by the very clearest evidence.

“The pursuer argued alternatively that apart altogether from the alleged misrepresentation and concealment, he is entitled to succeed on the ground that Mr Watson as his agent was guilty of negligence and failure of duty.

“The case from this point of view appears to me to be a very serious one, and I shall therefore state in detail the material facts of the case.

“On 24th October 1877 Mr Lochrane called for Mr Watson in regard to the purchase of the property in Matilda Terrace. The houses had been built as a speculation by Messrs Howie, who were builders who had the reputation of making good substantial buildings, but who were in money difficulties. Mr Lochrane had on that day received an offer on behalf of the Messrs Howie to sell to him the property at the price of £12,800, the offer to be open until five o’clock of the same day. Mr Lochrane had been advised by Mr Christie, builder (who accompanied him to the defenders’ office), that the purchase would be a good one, and I think that he had practically made up his mind to buy the property be-

fore he saw Mr Watson. His chief object in consulting Mr Watson was to ascertain whether and by what means he could raise the price. Mr Watson told him that as the purchase seemed to be a good one he thought that it could be financed if his father-in-law Mr Murphy, and his brother Mr Francis Lochrane, would help him as they had done on a previous occasion. Mr Lochrane accordingly accepted the offer. There is no doubt that both Mr Lochrane and Mr Christie told Mr Watson that they thought that the purchase was a good one. I should mention that although the structure of the houses was finished, the internal arrangements were not completed at the time of Mr Lochrane's purchase.

"The price of the property was payable at Martinmas, and the manner in which it was paid was this:—Mr Lochrane took over the bonds then affecting the property, and amounting to £10,500, he supplied £500 in cash, and obtained the remaining £1800 by discounting a promissory-note granted, I understand, by his father-in-law and his brother. The granting of the promissory-note was only a temporary arrangement to raise the money required at Martinmas, it being intended to obtain the money afterwards upon a more permanent footing by borrowing an additional sum upon the security of the Matilda Terrace property, and also upon the security of a property in Paxton Terrace which belonged to Mr Lochrane.

"The way in which this was ultimately arranged was as follows:—The Paxton Terrace property was burdened to the extent of £3500, of which the pursuer had lent £500, postponed to the £3000. It was arranged to pay off the £3500 at Whitsunday 1878, and to borrow a fresh sum of £3600 upon a first bond over the property, and £500 upon a postponed bond. This transaction supplied Mr Lochrane with £600 of the £1800 which he required, the remaining £1200 being lent by the pursuer upon the security of a bond over the Matilda Terrace property postponed to the bonds for £10,500. The £1200 lent by the pursuer was, to the extent of £500, made up by the repayment to him of the sum which he had lent over the Paxton Terrace property. In other words, he transferred £500 which he had lent over the Paxton Terrace property to the Matilda Terrace property, and as £600 more was borrowed over the Paxton Terrace property than the sum with which it had been previously burdened, the pursuer presumably lost a good security over Paxton Terrace whatever may be said as to the value of the security which he received over Matilda Terrace.

"All these arrangements and transactions were conceived and carried through by Mr Watson as Mr Lochrane's agent, and as he was also the pursuer's agent, it is obvious that he put himself into a very delicate position in which his duty to one of his clients was not unlikely to conflict with his duty to the other.

"The first time that the pursuer heard of the proposed loan of £1200 over the Matilda Terrace property was when he received Mr

Watson's letter of 14th May 1878. That letter is in the following terms:—'I will be glad if you will give me a call when you are in the city to-morrow forenoon. Mr William Lochrane, on security of whose property at Paxton Terrace you have a loan of £500, has been purchasing additional property, and writes us to make him a further loan, and I will submit the particulars of the security to you that you may consider if you can take it up.'

"On 16th May the pursuer called for Mr Watson in response to this letter, and he then agreed to lend the £1200 upon the security of the Matilda Terrace property. Let us consider what was the position of matters at this date. Mr Watson, the agent of both the borrower and the lender, had arranged that the £500 which the pursuer had lent over the Paxton Terrace property should be paid up at Whitsunday. He had not, however, given the pursuer any notice of the payment, and the first time that the pursuer knew that the investment was to be disturbed was at the meeting with Mr Watson on the 16th May. I think that it is clear that the reason why Mr Watson had not told the pursuer that the money was to be repaid was that he had from the first made up his mind that the pursuer was to be the person who was to lend the £1200 upon the security of the Matilda Terrace property. Mr Watson does not, I think, deny that that was the case. He says that it was the kind of investment—a 5 per cent. investment—which the pursuer liked, and that although he did not expect the pursuer to have £1200 available, he thought he might have £700, which with the £500 to be repaid, would make up the required amount.

"The position of matters therefore was this: Mr Watson was the agent for both Lochrane and the pursuer, and he was engaged in raising money for Lochrane by somewhat complicated arrangements, and by burdening his property to the fullest extent possible. In these circumstances he made up his mind without consulting the pursuer that the latter should lend £1200 upon the security of the Matilda Terrace property, acting as Lochrane's agent, and in his interest he arranged that the £500 which the pursuer had lent to Lochrane upon the good security of the Paxton Terrace property should be repaid. Mr Watson, however, did not disclose to the pursuer that he had made this arrangement. Then on the day before the term at which the £1200 was required Mr Watson wrote to the pursuer inviting him to call and consider 'a further loan' which was wanted by 'Mr William Lochrane on security of whose property in Paxton Terrace you have a loan of £500.' There is not a word in the letter in regard to the £500 being repaid. On the contrary, the loan is spoken of as an existing one, and the pursuer is invited by his own agent to consider a further loan from the person from whom he had already obtained good security and 5 per cent. interest.

"So far it seems to me that Mr Watson had disregarded the pursuer's interests,

and his own duty as the pursuer's agent, and had looked upon the pursuer as a person to be taken into his own hands, and whose investments he might arrange in such a way as would be most for the benefit of Mr Lochrane. In such circumstances I think that Mr Watson cannot make it very clear that at the interview on the 16th of May he put the pursuer in possession of the whole circumstances, and left him absolutely free to judge for himself what course he would take. It was urged that the presumption always is that an agent does his duty, and that the *onus* is upon the pursuer to prove negligence or failure of duty. No doubt the *onus* of proof is in the first instance upon the party making the allegation, but the *onus* may shift, and it may not take very much to shift the *onus* if the agent has put himself in the position of acting for persons with adverse interests. Prior to the interview of 16th May Mr Watson had in my opinion acted contrary to his duty to the pursuer, and therefore I think that the burden is upon him to show that he put matters right by then making a full disclosure to the pursuer.

"Now, I have already said that at the interview I think that Mr Watson told the pursuer all that he himself knew as to the value of the property. That, however, was not very much. It was that the price was £12,800; that both Lochrane and Christie believed that the former had made a good bargain; that the prior bonds amounted to £10,500, and that Lochrane had furnished a rental showing that out of an estimated rental showing something over £1000, premises had been let to the amount of £812. I do not think that that was information upon which an ordinarily prudent man would have agreed to the investment. *Prima facie* it was not a safe investment, especially when the fact (which was known to Mr Watson) is taken into consideration that the buildings were in a new locality, and that their success was to a considerable extent a speculation. If Mr Watson had not been Mr Lochrane's agent, and if the pursuer consulted him whether upon the information furnished it would be prudent for him to make the investment, I can hardly doubt that Mr Watson would have advised him not to invest so large a sum of money upon such a security without at all events further investigation, and probably a valuation by a neutral man of skill. Instead of suggesting anything of the sort, Mr Watson, who had no reason to suppose that the pursuer had money which he wished to invest in such a way, invited the pursuer to come to see him about the matter, thereby, I think, suggesting that in his opinion it was a favourable opportunity for the pursuer to make a profitable investment. Then at the interview he admits that he recommended the pursuer to lend the money. The pursuer says that he pressed him to do so. I think that this is probably the case, because if the pursuer had not lent the money Lochrane and probably Mr Watson would have been in an awkward position. But whatever Mr

Watson may have said, I think that his, Mr Watson's, actings amounted to putting pressure upon the pursuer. When the proposal of loan was put before the pursuer, he said that he had not got £1200 to lend. He had only between £300 and £400 at his credit in his bank account, and he required some of that for his business. Then Mr Watson told him that the £500 had been repaid, and was available, and offered himself to advance any balance that was required.

"It seems to me that for Mr Watson to volunteer to lend the pursuer the balance was equivalent to saying that in his opinion the investment was a very desirable one, and should not be missed. The £1200 was ultimately raised in this way. The pursuer gave a cheque for £345, 3s.; Mr Watson had received interest due to the pursuer to the amount of £54, 17s.; there was the sum of £500 previously lent on the Paxton Terrace property; and finally Mr Watson lent the balance of £300 upon a promissory-note. I cannot imagine that the pursuer would, if he had simply had the facts put before him, and been left to judge for himself, have taken the trouble to scrape together £1200 in this way in order that he might invest it upon a second bond over a heavily burdened property of which he knew almost nothing.

"The pursuer says that he had confidence in Mr Watson, and relied greatly upon his opinion. I have no doubt that this was the case, and further, I think that Mr Watson knew that the pursuer had confidence in him, and counted upon that confidence, otherwise I do not see how he could have made up his mind long prior to the 16th of May that the pursuer was to be the person who was to lend Lochrane the £1200. Now, an agent in whom confidence of this sort is reposed does not require to say much in order to induce his client to follow a particular course. The facts that Mr Watson invited the pursuer to come to his office and consider the matter, that at the interview he expressed his opinion that the investment was a sound one, and that he offered to lend him the sum required to make up the amount of the loan, were in my opinion amply sufficient to induce the pursuer to agree to the transaction, not as the natural result of his own consideration of the matter, but because he thought that he was quite safe in following the advice of the legal adviser.

"There are one or two other elements in the case which tend in the same direction. £1200 was a large sum for a person in the pursuer's position to invest upon one security, and if Mr Watson had had a single eye to the pursuer's interests he would at all events have given the pursuer an opportunity of deliberately considering the matter, and would not have rushed him into it upon a single conversation of some half-hour's duration. Then, it was not fair to spring upon the pursuer for the first time at that interview the fact that the £500 was to be repaid. The pursuer, when he heard that one investment which he believed to be good and continuing, had been brought

to an end, would be the more ready to entertain a proposal for another investment under which interest at the same rate as formerly would be continued.

"It was contended that a law-agent has no duty to advise his client as to the sufficiency of a security unless he specially undertakes to do so, and reference was made to the *dicta* of Lord Mure and Lord Shand in the case of *Rae v. Meek*, 15 R. 1033. I accept the general statement of the law which these learned Judges made in that case, but I do not think that it has any application here. This is not the case of a person employing a law-agent merely to carry through an investment upon which he had resolved, or to look out for an investment and submit the particulars to him, in order that he might judge for himself whether or not he should put his money into it. It was, if I am right in the view which I have already expressed, the case of a law-agent who had arranged without any instructions, or even communication, that one client should lend a large sum of money to another client, and who induced the first-named client to consent to the transaction without knowing the whole circumstances under which he was asked to make the loan, without sufficient time for deliberation and without such particulars of the security as a prudent man would have required. In such a case I am of opinion that the law-agent is responsible for the sufficiency of the security, and is personally liable if the security is insufficient.

"The defenders further maintain that in no view have they incurred liability, because although the security has turned out to be worthless, it was a perfectly good security at the time, and the fall in the value of the property which rendered the security worthless was due to causes which could not have been foreseen. Now, I do not think that even assuming that the security was sufficient at the time, that forms a good defence to this action. No doubt the fact that a security was sufficient at the time when the investment was made forms a good answer to a claim of damages by a client against his agent for having negligently invested his money upon insufficient security. That is clear enough where the client has instructed his agent to find an investment for him; because, *ex hypothesi*, the result would have been the same if the agent had not been negligent. But the peculiarity of this case is that the pursuer did not instruct Mr Watson to get an investment for him. He was not thinking of an investment, and would not have invested at all if Mr Watson had not sent for him and induced him to lend his money to Lochrane. Therefore, in my opinion, the question whether at the time the security was or was not sufficient is of no importance, because Mr Watson's failure of duty, through which the pursuer has lost his money, was not that he took an insufficient security, but that contrary to his duty he induced the pursuer to enter into the transaction.

"I am, however, further of opinion that the defenders have failed to prove that at the time the security was sufficient. By the word 'sufficient' I understand to be meant that it was a security upon which a man of ordinary prudence would have invested £1200.

"The defenders relied mainly upon the evidence of Mr Binnie, who had actually valued the buildings in question prior to the date of the pursuer's loan. Mr Binnie's valuations were made in October and November 1876 and in January 1877. The first valuation of the westmost house in the property was made on the instructions of Messrs Moncrieff & Company, writers, Glasgow. The other valuations were made on the instructions of Messrs Howie, the builders, but Mr Binnie was told to send them to Messrs Moncrieff. Mr Binnie says that he assumed that the valuations were to be used in connection with a loan, and the circumstances under which they were made suggest that they were obtained by the builders for the purpose of being shown to a proposing lender. According to Mr Binnie's valuation the total value of the buildings was £14,946. At the time when Mr Binnie made his valuations the buildings were only in course of construction, and therefore he had to make his valuation without the aid of actual rental. I think that Mr Binnie's valuation is obviously a high one. He admits that it represents an unusual number of years' purchase, and the other witnesses for the defenders value the property at £1000 less than Mr Binnie. The pursuer's witnesses on the other hand say that the price paid by Lochrane was beyond the value of the property, and certainly the actual result is in favour of that view.

"Upon the evidence I have come to the conclusion that Mr Lochrane paid a fair, not I think an excessive price for the property. Take, then, £12,800 as the capital value of the property, £812 as the actual rental, and £10,500 as the amount of the prior burdens, and take also into consideration that the locality was a new one, and that the buildings might or might not turn out a success. Was that a security upon which a prudent man would have lent £1200, even with the inducement of interest at the rate of 5 per cent.? I do not think that it was. The property was already burdened to the extent of nearly five-sixths of its value, and the actual rental after deducting the interest of the prior bonds and a reasonable sum for landlord's taxes, repairs, and expenses of management, left a very slender margin to meet interest at 5 per cent. upon £1200. I think, therefore, that a prudent man would have regarded the investment as risky. No doubt if a lender desires to get interest at a high rate he must take some risk. Five per cent., however, appears to have been only one  $\frac{1}{2}$  per cent. above the current rate of interest at the time upon first securities over house property, and I do not think that a prudent man would have regarded an additional one  $\frac{1}{2}$  per cent. of interest as a sufficient inducement to run the risk of the investment.

"The defenders also founded upon the long delay which there has been in bringing this action. That, however, cannot be pleaded as a bar to the action, but only as an element to be taken into consideration, and I saw no reason to doubt the truth of the pursuer's explanation of the delay. He said that he had no idea that he could have any claim against Mr Watson until he recently left Mr Watson and employed another agent, who advised him as to his rights. That appears to me to be a natural and sufficient explanation.

"I am therefore of opinion that the pursuer is entitled to judgment, and the only remaining question is as to the amount for which decree must be given.

"The claim is one of damages, and the only way in which the precise loss suffered by the pursuer could be ascertained would be by having the subjects of the security realised. Neither party, however, desires that to be done, and the action is framed upon the principle of claiming as for a total loss of the money, and offering to assign the security to the defenders. It is not disputed that this is a convenient method of dealing with the matter, and that in the view which I take of the case, decree falls to be given for £1200. The defenders, however, contend that no interest on that sum should be allowed, or at all events that it should be at a lower rate than the 5 per cent. concluded for. Now the pursuer has received no interest on his money since Whitsunday 1880, and the loss of interest during the period which has elapsed since that date is part of the damage which he has sustained. I do not think, however, that he is entitled to a higher rate of interest than the money would have yielded if prudently and safely invested. That rate may, I think, be reasonably fixed at 4 per cent., and I shall therefore give decree for £1200, with interest at that rate, but I shall supersede extract until an assignation is granted.

"In regard to expenses, I do not think that there is any sufficient ground for not following the usual course, and awarding them to the successful litigant."

The defenders reclaimed, and argued—The pursuer had, according to the Lord Ordinary, disproved the case of fraud and misrepresentation averred, and no other case should be admitted. The ground of judgment taken by the Lord Ordinary that the defender Watson having come under obligation to finance Lochrane through the Matilda property transaction, and wanting money for that purpose at Whitsunday term 1878, hustled the pursuer into taking up the investment, was not suggested on record nor in the pursuer's evidence. Besides, the Lord Ordinary's view was contradicted by the evidence, which showed that the security was perfectly sufficient according to the current value of property in Glasgow at the time, and that the investment was laid before the pursuer with full information as to its character, &c., not as a thing which he must take, but as a thing available if he was satisfied of its desirability; it was proved that in fact he

had used his judgment as to its sufficiency. A law-agent was not a valuator, and his only duty to his client was to give skilled advice as to the titles, &c., and to lay before him all the information he had. All the cases where the agent was held liable for anything beyond that depended on a special arrangement or undertaking. The following cases were referred to—*Rae v. Meek*, July 20, 1888, 15 R. 1033, 16 R. (H. of L.) 31; *Knox v. M'Kinnon*, November 2, 1886, 14 R. 22, and August 7, 1888, 15 R. (H. of L.) 83; *Dobie v. Watson*, 39 Ch. Div. 178; *Ronaldson v. Drummond & Reid*, June 7, 1881, 8 R. 767; *M'Lean v. Soady's Trustees*, June 19, 1888, 15 R. 966; *Stirling v. M'Kenzie, Gordon, & Alexander*, December 7, 1886, 14 R. 170; *Craig v. Watson*, 8 Bevan 427. The delay from 1880 till July 1891 was prejudicial to the defenders, who had now to deal with transactions of fifteen years ago, and was unjustifiable, because the pursuer had been in knowledge of all the facts. If the Lord Ordinary were sustained expenses should not be allowed, the case having broken down on the serious charges of fraud and misrepresentation.

The pursuer argued—The defender Watson, as the pursuer's agent, admittedly accepted the duty of advising his client as to the sufficiency of the security, and it was proved that he recommended the loan. An agent who accepted such an employment, and made such a recommendation, was guilty of a breach of contract duty if, as here, he gave bad advice on too scanty information. Again, there was a failure of duty on the part of the agent if he put himself in an adverse position to his client. This was a case of double agency. Watson induced the pursuer by overpressure to take up a bad security, being constrained thereto by his obligation to finance his other client (the borrower). If the advice admittedly given to the pursuer to lend was not given exclusively in his interest, it was difficult to see that such a breach of duty did not come up to fraud, but failure of duty, which was also alleged as a ground of action in the record, was sufficient for the pursuer's case. There was not much in legal principal between the parties. The *dicta* in *Rae v. Meek*, and *Stirling*, quoted *supra*, were sound—*Donaldson v. Haldane*, 1 Rob. 226, and *Oastler v. Dill, Smillie, & Wilson*, October 29, 1886, 14 R. 12, were also referred to. The delay in bringing the action was justified by the pursuer's ignorance that he had a claim against the defenders; there had been no intentional abandonment, and mere lapse of time was not enough to cut off a claim founded on contract. Moreover, the delay had operated quite as much against the pursuer as against the defender.

At advising—

LORD PRESIDENT—The pursuer in this action seeks redress against his law-agent for loss arising from an investment made so long ago as 1878, and ascertained to be bad in 1880. The case made on record was that the defender Joseph Watson hav-

ing to find £1200 for another client on what he knew to be a bad security, cheated the pursuer into lending the money by concealing what he knew against the investment, and making certain specific false statements in its favour. The same set of facts were characterised as constituting a breach of professional duty.

The Lord Ordinary has held that the case of fraud has failed; that Mr Watson misrepresented nothing and concealed nothing, and where the pursuer is contradicted in evidence by Mr Watson his Lordship has believed Mr Watson.

The Lord Ordinary, however, has decided the case against the defenders, and the ground of judgment requires careful attention. The interlocutor finds that in violation of his duty as the pursuer's law-agent, Mr Watson induced the pursuer to lend the money on the security in question. Now, one cannot help feeling that there is a certain incompleteness in this finding as it stands. For a law-agent to induce a client to make an investment which turns out bad cannot of itself be said to be a violation of duty, and the vice must lie in the means by which the client was induced. For the Lord Ordinary's mind on this subject one has to turn to the opinion, but I am not sure that in the sequel it will not be found that the interlocutor accurately enough represents his Lordship's view of the case.

Briefly stated the facts are these—

In October 1877 Mr Lochrane, a client of Mr Watson's, bought some house property in Glasgow, which was then nearly finished but unoccupied. Lochrane was at the time a flourishing spirit merchant, with money invested in other house properties. As some of the money for this Matilda Terrace purchase had been raised on promissory-note, it was thought well, some months later, viz., in May 1878, to borrow the money on a more permanent and economical footing, and the occasion was taken to re-arrange for the same end the other loans affecting the properties in Matilda Terrace and Paxton Terrace. Among the smaller loans which it was proposed to consolidate was one of £500 by the pursuer over the Paxton Terrace property, and this accordingly was to be paid off. The result of this re-arrangement was that a new loan of £1200 was proposed to be obtained on a second security at 5 per cent.

Mr Watson, who was conducting these arrangements for Mr Lochrane, sent for the pursuer, told him what was proposed, and suggested that he should take up the £1200 loan. Mr Watson told the pursuer the price which had been paid to Mr Lochrane under circumstances which were supposed to have made the bargain a favourable one for the purchasers, and he also stated the amount of the prior bonds. The pursuer asked Mr Watson his opinion of the investment, which Mr Watson gave, and the opinion expressed was favourable, although no more enthusiastic than was appropriate to a 5 per cent. investment on heritable security. The pursuer told Mr Watson he had not at the time at call all

the money required, and Mr Watson offered to find means of raising the balance. The pursuer then agreed to lend the £1200. This was carried out; the investment yielded interest until 1880, when the security was swamped in the universal subsidence of value which ensued in the failure of the City of Glasgow Bank.

Now, out of these facts the Lord Ordinary has evolved a theory, which seems to depend more on what his Lordship thinks that Mr Watson had a motive to do, than on what he believes that Mr Watson actually did. I think that the Lord Ordinary overrates the antecedent probabilities of wrongdoing, and then allows those probabilities to override the proved facts. His Lordship thinks, on what I consider insufficient grounds, that Mr Watson was resolved beforehand to force the £1200 loan on the pursuer *per fas aut nefas*, and in this view less attention is given to the question whether what he actually did when the time came was *fas* or *nefas*.

Now, first of all, I do not see adequate ground for holding that Mr Watson was under any compelling motive to get the pursuer to go into this investment. There is no evidence, unless what arises from the nature of the investment (of which I shall presently speak) to show that Mr Watson would have been in any strait or difficulty, or thought he would be in any strait or difficulty had the pursuer declined to entertain the proposal. It is true that part of Mr Watson's plan for Mr Lochrane was that the pursuer's £500 should be repaid. But no serious inconvenience would have resulted to Mr Lochrane or to Mr Watson had the pursuer declined to make the £1200 loan and refused to take payment (without premonition) of the £500, for it would either have been allowed to lie or paid into bank with 5 per cent. interest; and it is only conjecture which rears up any difficulty in the way of that being done. I may add that I do not find evidence of Mr Watson having pledged either credit or reputation to Mr Lochrane on his success in raising this £1200. Nor do I think that in what he had done with Mr Lochrane before he saw the pursuer he had given the pursuer's interests away.

But now I come to the question whether in bringing this investment under the notice of the pursuer, and in expressing a favourable opinion of it, Mr Watson has made himself liable, for that is all that the Lord Ordinary finds it proved that he did. For an agent to bring an investment under the notice of a client is of course to a certain extent a recommendation—that is to say, it is the expression of the opinion that the investment is worthy of consideration. If besides thus introducing an investment an agent expresses a favourable opinion of it, he will be liable if his opinion was either not honest or given when he had no adequate information entitling him to give an opinion at all. But then it is necessary to bear in mind that all this has to be considered in relation to the client in question, and to the kind of investment which he is known to desire. Now, we are in this case

very far away from the case of an agent advising a trustee; and no doubt it would have been improper for Mr Watson to have suggested this loan to a trustee. The pursuer was not limited and was not accustomed to limit himself to first-rate securities. He had dabbled in the Stock Exchange, and when he invested on heritable securities he liked them at 5 per cent., a kind of security which has always a flavour of speculation. Accordingly it was on this footing that the investment was introduced to the pursuer's notice; and it was in full recognition of the defects of its qualities that it received the moderate approbation of Mr Watson. It seems, indeed, to have been neither better nor worse than many other second-rate securities which found favour in Glasgow in 1878. It was supported by the tangible fact of a recent sale at a figure which, deducting the first bonds, left a passable margin; it had let well; the estimated rental was fairly corroborated by the actual rental; and the personal security, which in a second bond was subject for consideration, was reputed to be excellent.

On these facts I think that Mr Watson did no wrong in introducing this loan to the pursuer's notice, and the opinion which he expressed when asked seems to me to have been honest and formed on adequate grounds.

There remains the question whether the pursuer was unfairly treated at the interview with Mr Watson? and what I have already said greatly narrows the scope of the inquiry. The Lord Ordinary thinks that the pursuer did not get enough time, and that he was under pressure. Now, many important questions have been considered and determined in half-an-hour, and this was not a very complicated matter. That the pursuer did consider the merits of the investment is incidentally proved by his own deposition, and if the evidence is somewhat oblique in its bearing, that is his own fault. "If I had known," he says, "that the prior bonds on this property amounted to £10,500 it would have made a difference in my conduct, because there would not have been sufficient margin left to cover my loan." Agreeing with the Lord Ordinary, I think that the pursuer was told that the loans amounted to £10,500, and the passage proves that he considered the sufficiency of the margin. The pursuer's own evidence in another passage seems to have an important bearing on the theory of the Lord Ordinary. The question whether the pursuer was driven into a corner by the £500 being paid up, and was thus led to agree to the £1200 loan, is really one of fact. Now, in his account of the interview with Mr Watson he mentions that he was told of the £500, and he never himself hints or suggests that this brought stress upon him, or affected his consideration, or in any way influenced his decision. His case in the witness-box, as on record, was that he had been deceived as to the amount of the bonds, a contention which, although present to his mind in 1881, did not stimulate him to action until 1891, and which the

Lord Ordinary holds to be disproved.

Where a law-agent, in any matter in which interests may conflict and where advice may differ, takes upon him to advise both borrower and lender, it is right, as Lord M'Laren has remarked, that his actions should be closely scrutinised. I do not think that the law goes further, and the argument of the pursuer that Mr Watson failed in duty inasmuch as while he owed to the pursuer an undivided attention to his interests, he was already pledged to the interests of Mr Lochrane, proves too much. The double capacity in which Mr Watson acted exposed him to risks, but it does not absolve us from the duty of ascertaining whether the facts establish the case of the pursuer. My opinion is that they do not, and that the defenders are entitled to absolvitor.

LORD M'LAREN—In order to make good a case of liability in such circumstances as the present, it appears to me that the pursuer must establish three points. He must show, first, that the agent in the transaction undertook to act not as a conveyancer but as a valuator and adviser as to the sufficiency of the investment; second, that he gave bad advice, either intentionally or without any sufficient reason for giving the advice; and third, that the information given by the agent was not in fact true information. On all these points it appears to me that the case of the pursuer breaks down.

There was something to be said on the first point, because Mr Watson gave his opinion on the security offered; but it does not appear that he undertook any responsibility beyond that of a conveyancer—he expressed his opinion, and left his client to judge for himself. On the second point the Lord Ordinary has absolved Mr Watson from anything like fraud or dishonesty, but attributes to him some indirect motive; but there is nothing to indicate that he gave any other opinion than he actually entertained. Lastly, it appears to me that according to the best information obtainable at the time, the property was a good security for a postponed bond at 5 per cent.

I agree in the analysis of the evidence, and in the conclusion to which your Lordship came.

LORD KINNEAR — I agree, and have nothing to add.

The Court accordingly recalled the interlocutor of the Lord Ordinary reclaimed against and assoilzied the defenders with expenses.

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