

original business, subordinate branches of business which are usually associated with accident business, and conducted by accident insurance companies, and which are in no way foreign to the objects of the original company or of a speculative nature."

Upon 30th June 1893 the Court pronounced this interlocutor;—

"Approve of said report, confirm the special resolution for the extension of the objects of the company duly passed and confirmed at two extraordinary general meetings of the company respectively held on the 23rd day of February 1893 and on the 21st day of March 1893, and decern."

Counsel for Petitioners—Dean Leslie.
Agents—Simpson & Marwick, W.S.

Friday, July 14.

SECOND DIVISION.

[Sheriff of Aberdeenshire.

CAMERON v. FRENCH.

Cautioner—Discharge of Cautioner—Concealment by Creditor of Material Facts.

A servant on two occasions failed to account to his employer for his intromissions, and was deficient in his cash account to the extent of about £70. His employer having agreed to retain his services on condition that he found security for his present indebtedness and future dealings, he informed certain friends falsely that he was about to obtain promotion in his employer's business, and that the security he asked for was required in connection with his advancement. He thereby obtained from three persons a letter of guarantee by which they agreed to become his cautioners "to the extent of £50 for his intromissions." The employer was not aware of the misrepresentations; he did not inform the cautioners of the conduct of his servant, or the circumstances in which he had required the guarantee, and they asked for no information from him. The servant was again guilty of deficiencies in his cash account, and his employer dismissed him and sued the cautioners for the amount in the letter of guarantee.

Held (diss. Lord Young) that he was not entitled to decree against the defenders, to whom he had failed to disclose the circumstances in which the guarantee was desired.

In June 1892 Robert French, hardware merchant, Glasgow, brought an action in the Aberdeen Sheriff Court against David Cameron, brewer, Alexander Baird, labourer, and Thomas Jamieson, railway surfaceman, all residing in Laurencekirk, Kincardineshire, for payment of £50.

The action was brought on the ground that the defenders had entered into a guarantee to secure the pursuer from defalcations by John T. Jamieson, son of the defender Jamieson, who at one time was the pursuer's commercial traveller. The letter of guarantee was in these terms—"Laurencekirk, 23rd March 1891.—We, the undersigned, have agreed to become cautioners for John T. Jamieson to the extent of £50 for his intromissions with Robert French."

In October 1890 John T. Jamieson, commercial traveller, Glasgow, entered the employment of the pursuer, and soon thereafter he was sent on a journey to Ireland to canvass for orders and collect accounts, his duty requiring him to remit the moneys so collected after deduction of his allowance for expenses. Having contracted irregular habits, Jamieson fell behind with his cash, the result of inquiries at the end of his first journey being that he was found short to the extent of £32, 12s. 6d. The pursuer agreed to give Jamieson another chance, but then took from him an undertaking to reduce his indebtedness by weekly payments of 10s. out of his wages. Jamieson continued his irregular habits, and at the end of his second journey in March 1891 he was again short in his cash £30, 15s. 6d. By the weekly payments above mentioned Jamieson had reduced his indebtedness to £57, 18s., for which he granted an I O U to the pursuer. Yielding to much solicitation and entreaty on the part of Jamieson, the pursuer once more consented to retain him in his service, but required him to find security for his intromissions, and obtained from him the letter of guarantee of 23rd March 1891. The pursuer and Jamieson had several communings as to the persons to be offered as cautioners, and the latter with the pursuer's approval and at his request proceeded from Glasgow to Laurencekirk to see what security he could obtain among his relatives and friends. Jamieson falsely and fraudulently represented to the defenders Cameron and Baird that he was about to obtain promotion in the pursuer's service, and that the security was required in connection with his advancement, while the pursuer himself failed to communicate to the said defenders Cameron and Baird, and did not instruct Jamieson to communicate, the previous conduct of the latter while in the pursuer's service, and in particular that he had fallen into irregular habits, and was untrustworthy, and had on two occasions incurred the deficiency above mentioned. It was also held by the Judges of the Inner House, on a consideration of the evidence, that the defender Jamieson was also ignorant of his son's irregularities and deficiencies. Thereafter the pursuer sent Jamieson to Ireland on a third journey, advancing him a sum of £5 for immediate expenses, for which he took from him an I O U. Jamieson incurred further arrears on his third journey, and was in consequence dismissed in July 1891, his total indebted-

ness to the pursuer, after deduction of the payments made under his undertaking of December 1890, amounting to £79, 10s. 3d.

The pursuer raised this action.

He averred—“(Cond. 2) He became dissatisfied with Mr Jamieson’s conduct and services, and demanded from him a guarantee or security for whatever sum should be found owing by him on an accounting, and for his future intromissions on behalf of the pursuer.”

He pleaded—“(1) The defenders having, in terms of their joint obligation, agreed to become cautioners to the pursuer for Mr Jamieson’s intromissions, to the extent of £50, and having failed to make payment thereof, they ought to be found jointly and severally liable for the sum concluded for, with interest. (6) The statements in defence of alleged undue concealment, deception, and fraud, being false and unfounded on fact, and untenable in law, the defences should be repelled, and decree pronounced as craved, with expenses.”

The defenders Cameron and Baird pleaded—“(3) The pursuer having accepted and acted on said cautionary obligation in the knowledge that the defenders Cameron and Baird had been induced to sign said obligation by means of undue concealment and deception, he is not entitled to found thereon against said defenders, and the action, so far as directed against them, should therefore be dismissed, with expenses. (4) The pursuer, as the creditor under said cautionary obligation, was bound to disclose to the cautioners Jamieson’s former misconduct and defalcations, and having failed to inform the defenders Cameron and Baird thereof, he is not entitled to found upon said obligation, and the action, so far as directed against said defenders, should therefore be dismissed, with expenses.”

The defender Jamieson pleaded—“(3) The said alleged guarantee is inoperative, illegal, and invalid, in respect—2nd, It was procured from this defender by fraud, deceit, and undue concealment of material facts known to the pursuer, and which, if known to this defender, would have prevented him from undertaking the same.”

The Sheriff-Substitute (BROWN) after a proof found as follows—“(a) That on a sound construction of said cautionary obligation, and of the proof led under the interlocutor of 18th July last, the defenders did not come under any obligation in regard to the deficiency of the said John T. Jamieson prior to its being granted; (b) that the payments made to account by the said John T. Jamieson out of his wages do not fail to be imputed to said cautionary obligation, but to the prior indebtedness; (c) that in respect of the false and fraudulent representations of the said John T. Jamieson, and of the pursuer’s failure to communicate to them, or cause to be communicated to them, the circumstances in which the said cautionary obligation was entered into, the defenders Cameron and Baird are liberated from liability under it, but that the defender Jamieson being

in the knowledge of said circumstances, is not entitled to plead any bar to the said cautionary obligation being made effectual against him; and (d) that the defenders Cameron and Baird did not homologate or adopt the said cautionary obligation: Therefore finds the defender Thomas Jamieson liable under said cautionary obligation to the extent of £18, 17s. 3d., being the said sum of £33, 17s. 3d., under deduction of £15 paid to account, for which sum decerns against the said Thomas Jamieson, with interest, as concluded for: Assolziez the defenders David Cameron and Alexander Baird from the conclusions of the action.

“*Note.*—On the facts detailed in the preceding interlocutor it seems to me that three questions arise, and that a judgment on these will suffice to dispose of the case—(1) What is the true construction of the cautionary obligation founded on, as that is assisted by the proof before answer which the Sheriff-Substitute allowed, and what is the extent of the defender’s liability under it? (2) are the cautioners released by the false and fraudulent representations of the debtor on the one hand, and by concealment on the part of the pursuer on the other, of the circumstances within their knowledge under which it was granted? and (3) if the cautioners are otherwise liberated, is the obligation reared up against them by homologation and adoption? 1. My opinion on the first of these points is that the cautionary obligation in question was not intended, and is not effectual as cover for past indebtedness. I found that primarily on the terms of the document itself, which seems to imply that a provision was being made for something which was to follow after its date, and that more express words would be required to give it a retrospective scope, especially as cover for intromissions which had actually taken shape of defalcations. . . . The second question in the case is, whether the defenders or any of them are liberated by the circumstances under which the cautionary obligation in question was founded on? Here, in my opinion, a distinction must be drawn between the defender Jamieson on the one hand, and the defenders Baird and Cameron on the other. It cannot be doubted that the former was aware of his son’s defalcations—indeed he practically admits he was—and the obligation No. 19 of process cannot be construed otherwise than as implying such knowledge as regards him; therefore it cannot be contended that the pursuer had a duty of communication in which he failed. But the other defenders are in a different position, for I hold it to be proved that a false and fraudulent statement was made by the debtor to them to induce them to concur in the cautionary obligation; and further, that the pursuer, by failure, which is admitted, to disclose to them the circumstances under which he was calling on his agent and debtor to find security for his intromissions, is barred from insisting in the obligation to which, through such false representation and concealment, they be-

came parties. An attempt was made in the course of the trial to involve the pursuer in a conspiracy with the debtor to deceive the cautioners. The latter distinctly accepts the charge, but he is not corroborated. The cautioners, however, may stop very far short of that and yet operate their release, because I take it to be settled in the leading cases decided in the House of Lords of *Smith v. The Bank of Scotland*, June 9, 1813, 1 Dow's App. 272, and *Railton v. Matthews and Leonard*, June 14, 1844, 3 Bell's App. 56, that simple concealment of essential facts by a principal seeking to protect himself against the intrusions of his agent, or to eliminate the moral element altogether, the failure to communicate through inadvertence, or any other cause, what it was reasonable that the cautioner should know before placing himself under obligation will be effectual to release him. The pursuer says it had not occurred to him that that was any part of his duty, and there is no difficulty in taking him at his word, but the law surrounds a cautioner with such protection, and indeed it seems to me that a stronger case could not be figured than the present for pleading the rights and equities of a cautioner, for this was the case of a man who had proved himself in the highest degree untrustworthy, and whose continued employment reached almost to the point of rashness, and to send him down to his relatives and friends without a hint as to his previous conduct, or the changed circumstances in which security was demanded from him was, to say the least, placing him in a position in which it was very difficult for him to play an honest part. Mr Bell in his lectures, vol. i. 172, deals with this subject, and places such circumstances as arise here within a category of very rigid duty. 3. I do not see that it is possible to relieve the defender Jamieson from liability under the cautionary obligation according to the scope in which I have interpreted it, and towards which he has made a payment of £15. It is not, I think, in evidence that when he paid this sum in Glasgow the position of his son was explained to him, but I cannot doubt that he was fully cognisant of his son's situation, at least from the time he undertook the obligation contained in the writing No. 19 of process. It is therefore unnecessary in his case to deal with the pursuer's plea of homologation or adoption. As regards the defenders Cameron and Baird, I have a very clear opinion that they are not touched by it at all. Baird had by no means, and Cameron's explanation that he helped Jamieson to raise £10 out of the £15 he paid to the pursuer is not traversed. The result of my view of the case is, that the defender Jamieson is the only person bound under cautionary obligation. The cautioners are not in terms bound jointly and severally, but looking to the character of the obligation, I think the liability is *in solidum* and not *pro rata*."

Upon appeal the Sheriff (GUTHRIE SMITH) pronounced this judgment on 25th February 1893—"Affirms the said interlocutor, so far

as regards the findings in fact, and the two first findings in law; *quoad ultra* recalls the same; finds further that the defenders are not released from the obligation to the pursuer by the misrepresentations of the said John T. Jamieson, and that there being no evidence of misrepresentation or concealment, amounting to misrepresentation on the part of the pursuer, the defenders are liable, jointly and severally, in the loss sustained by him through the debtor, subsequent to the date of the guarantee, under deduction of the sum of £15 paid to account."

The respondents appealed, and argued—They were not liable, because the guarantee had been obtained by Jamieson's misrepresentation, and the pursuer had not made known to them the circumstances in which the guarantee was desired. There was therefore "undue concealment" on his part—*Railton v. Matthews*, Jan. 27, 1844, 3 D. 536—*rev.* June 14, 1844, 3 Bell's App. 56; *Smith v. Bank of Scotland*, June 9, 1813, 1 Dow's App. 272. These cases were not displaced by *Hamilton v. Watson*, December 8, 1842, 5 D. 280—*aff.* March 11, 1854, 4 Bell's App. 67. Here the pursuer could not suppose that Jamieson had informed the sureties of the true state of the case and could not take advantage of his fraud, for he had held him out to the sureties as a trustworthy person by keeping him on in his service.

The respondent argued—To vitiate the guarantee concealment must amount to moral fraud. In *Smith's* case there was a false representation by the bank of certain alleged facts. All that was decided in *Railton's* case was that the direction of the presiding judge to the jury was wrong, but that did not do away with the necessity of showing fraudulent concealment for his own benefit on the part of the person for whose protection the guarantee was obtained—*Young v. Clydesdale Bank, Limited*, December 6, 1889, 17 R. 231. There was no duty upon him to make voluntary representations to the guarantors, he had a right to assume that Jamieson would tell them the truth, or at least that they would take the ordinary means of satisfying themselves before they risked their money—*Roper v. Cox*, April 27, 1882, 10 Irish Law Reports, C.P. Div. 200. There was no duty upon the employer of a man seeking a guarantee to disclose all the facts known to him whether he thought they would affect the guarantors mind or not, as in the case of assurances upon ships and lives—*North British Insurance Company v. Lloyd*, November 25, 1854, 10 Ex. 523.

At advising—

LORD JUSTICE-CLERK—The pursuer in this case desires to recover from cautioners the amount contained in a security granted by them to the extent of £50 for Jamieson's intrusions with the pursuer. The circumstances under which the security was given are peculiar. Jamieson had, after his first journey, proved to be £33, 12s. 6d. short in his cash account, and his explana-

tion was that his pocket had been picked at a Parnell procession in Cork. This excuse seems to have been accepted, and an arrangement was made for retention off wages to make up the sum. He then left for a second journey. At first he sent the proper returns, but he fell off from this on the latter part of the journey, and had to be frequently written to in remonstrance. On his return he was £30, 15s. 6d. short, and admitted that he had been "drinking and misbehaving himself." He begged forgiveness. The pursuer consented to give him another chance out of sympathy for his wife and family, but only on condition that he should obtain security for his deficiency and for future intromissions. It is true that the pursuer says that nothing was said about the future, but I prefer Mr Lang's evidence. Accordingly Jamieson succeeded in getting the defenders to sign a cautionary obligation for £50 for his intromissions. Thereafter Jamieson again misconducted himself and was dismissed, and the pursuer raised this action against the cautioners for the amount which Jamieson was due.

It appears to me that the first question to be considered is, whether the cautionary obligation is binding on the defenders, having regard to the circumstances in which it was obtained from them, and the failure of the pursuer to inform them of the facts within his knowledge as to Jamieson's conduct and character? For if on this ground it be not binding, then the other questions raised in defence do not require to be considered. Now, upon that matter I have formed a very clear opinion. The pursuer, knowing well that once and again his servant Jamieson had been guilty of conduct which made it impossible that he could be looked upon as trustworthy in his position, decided that for that reason he would not keep him in his employment unless he himself received security for Jamieson's intromissions. He sends Jamieson off upon an expedition in search of cautioners. Jamieson says that he did so with instructions not to tell any intending cautioner that he was in arrear with his cash, and the pursuer denies this. But whatever be the truth on this matter, the pursuer was in the position undoubtedly that he was in the knowledge of facts most essential to be known by persons whose caution might be sought or offered at his desire. Can it be said that he was entitled to accept their obligation while withholding from them the knowledge of these facts? Was he entitled to treat them on the ordinary footing of cautioners for an employee whom the employer had good reason to keep in his employment at the time, and for whom he was only asking caution as in the ordinary course of business? Was that according to the rights and equities of a cautioner, who in such a case as this—that of an employer accepting caution for his employee who has already been for some time in his employment—is entitled to have communicated to him such facts as are in the knowledge of the person demanding the caution, as may be of import-

ance in considering whether the obligation should be undertaken? Here the employee was in such a position that the employer would beyond doubt have been justified not only in dismissing him at once from his service, but in invoking the criminal law for his punishment. I do not mean to say that Jamieson might not have been able to show that his conduct had been only discreditable and not criminal; all I say is that no one could have blamed the pursuer had he put the matter in the hands of the criminal authorities for investigation and trial. Jamieson was in the position of a suppliant for another chance, that he might redeem a discreditable and *prima facie* criminal past. The pursuer's own statement is—"He appealed to me to give him another chance, and simply on his wife's account I did so." That plainly means that he was prepared to keep in his employment a servant in whom he had no confidence whatever, if he could secure himself against the loss he might incur by doing so. But as regards those who might be proposed as cautioners, he by indicating that he was willing to keep Jamieson in his employment was truly holding him out as being a respectable servant. Now, if a man says practically, "I am willing to retain A B in my employment if he finds caution for his intromissions," and conceals the fact that the cause of the demand for caution is the special one that A B has been detected in grave irregularities which would justify his dismissal as for fault, I hold that he is concealing what he is bound to disclose as a condition of his guarantee being effectual. The facts were essential, and were such as the cautioners were entitled to expect would not be withheld from them by the party taking the guarantee from them. I hold that in such circumstances as we have here, the law laid down in *Smith v. The Bank of Scotland* applies, viz., that if facts are not communicated to the surety which were known to the person taking the security, and which it was material to the surety should be communicated to him, the surety will not be bound, and that the motive for withholding the information is altogether immaterial. The Judge in the case of *Railton* had laid down that the concealment must be wilful and intentional. But this ruling was distinctly repudiated. I do not think that the effect of these cases is at all taken away by the case of *Hamilton*, referred to by the Sheriff. That case was one quite different from this, and, as pointed out by Lord Campbell, it was one to which the cases of *Smith* and *Railton* could have no application, not being the case of caution for an agent. I am therefore of opinion that the pursuer here is not entitled to a decree against cautioners to whom the knowledge of the true state of matters was not brought home.

It is, however, alleged—and effect has been given to the allegation in the Court below by the Sheriff-Substitute—that in the case of Jamieson's father the plea of non-disclosure does not apply, as the father knew of the defalcations. On a study of

the evidence I am not satisfied of this—indeed I see no ground for holding it to be the fact. I do not find that it is specifically put to the father whether he knew that there were blamable defalcations before the cautionary obligations by him were granted, and in cross-examination the statement is brought out of him that he never knew of old debts due by his son before the caution was granted, nor until 1st July after the dismissal. It seems to have been assumed that Jamieson on going to his father would make a clean breast of it and tell him everything. Jamieson denies that he did tell his father of his conduct, and there is no evidence that he did. I do not think it is likely that he would, for his course of procedure was to represent that he was being promoted in his master's business, and either he stated this to his father, who repeated it to the other persons asked to be cautioners, or he and the father must have entered into a plot to make that false statement. No question is put to the father upon this matter, and I see no ground for holding that any such plot was entered into. I think that as regards information Jamieson senior was in the same position as the other cautioners.

I am therefore in favour of recalling the interlocutors of the Sheriff and Sheriff-Substitute, and of granting absolvitor to all the defenders.

LORD YOUNG—I agree in thinking there is no difference in liability among the defenders. The father of Jamieson is in the same position as the others.

On the other question, whether all the defenders are entitled to be freed from the liability sought to be put upon them, that arises under the 4th and 5th pleas-in-law for Cameron and Baird, and the second sub-section of the 3rd plea-in-law for Jamieson.

Now, the Sheriff-Substitute has sustained all these pleas-in-law except as regards Jamieson. The Sheriff-Depute, differing from him, is of opinion that there is not sufficient ground for sustaining them, and I am disposed to agree with him.

It is a simple case of a commercial traveller having fallen into arrear with the accounts for which he is bound to account to his employer. I am not prepared to say just now that the circumstances we have here disclose *prima facie* anything to ground a criminal charge; that must always be a matter for consideration; he was simply in arrear with his accounts. His employer, however, was so far favourable to him that he was willing to continue him in his service if he could get his friends to come forward as caution for him. I see nothing reprehensible so far in the pursuer's conduct; I think it was a kindly action on his part. Well, Jamieson got some of his friends to come forward as cautioners, but I see nothing in the case to suggest that the pursuer was in anyway an applicant to these persons. He did not go to them to get caution for his servant. The bond of

caution was brought to him. The cautioners had no communication with him, and sought none. Now, a case may be conceived—I confess I have never met with it, nor is it an easy case to figure—of a party to whom a bond of caution has been offered thinking it right to call the cautioners to him and point out the difficulties and dangers of the course they are taking. But this is not such a case. There was nothing here that I see to make it incumbent upon the pursuer to communicate with all or any of these cautioners, who had had no communication, and sought none. But it is because it was his duty to do what no one ever did before that we are asked to sustain this defence. I cannot reach that result, at least not so clearly as to say that the Sheriff was so far wrong that we must reverse his judgment.

LORD RUTHERFURD CLARK—The pursuer took the guarantee in order that it might cover the past defalcations of a dishonest servant as well as to make provision for his security in the future. He did so without communicating the dishonesty of his servant to the cautioners. I hold that in taking the guarantee the pursuer acted fraudulently, and in so holding I think that I am acting in conformity with the opinion of Lord Eldon in the case of the *Bank of Scotland v. Smith*, as that opinion is reported in 7 S.

I make no distinction among the defenders, for I think that it is not proved that the defender Jamieson knew of the misconduct of his son.

LORD TRAYNER—The pursuer in this case, on account of the irregularities of his servant Jamieson, desired him, as a condition of retaining him in his service, to find caution for his intromissions. At that time the pursuer was aware that the irregularities I have referred to had resulted in Jamieson having become his debtor for a considerable sum, and the cautionary obligation he desired to obtain was, according to his own averment (Cond. 2), "a guarantee or security for whatever sum should be found owing by him on an accounting, and for his future intromissions"—that is, caution for a present indebtedness as well as for future intromissions. The Sheriff-Substitute has held (and the Sheriff is so far with him) that the cautionary obligation given to the pursuer, and now founded on, did not on a sound construction thereof cover any indebtedness by Jamieson incurred prior to its date. It remains beyond dispute, however, that the guarantee which the pursuer sought, and has even maintained that he had obtained, was a guarantee for both past and future liabilities on the part of Jamieson. In these circumstances I regard this case as ruled by the case of *Smith v. Bank of Scotland*. The opinion of Lord Eldon in that case, quoted in the report of the same case at a subsequent stage (7 S. 248), and also by Lord Cockburn in the case of *Railton v. Matthew*, which is fuller than the report of the same opinion given in Dow,

292, appears to me to apply in terms to the case before us. But for that decision I should have had great difficulty in reaching the conclusion on the facts here presented, that the defenders were entitled to absolver, for the reason, among others, that the whole duty of protecting the interests of the cautioners seems thereby to be laid upon the persons receiving the guarantee by requiring them ultroneously to give information as to the character of the person guaranteed, and of the circumstances under which the guarantee has been asked, to cautioners who have intervened at the request and in the interest of the debtor only, while the cautioners are freed from any duty whatever of protecting themselves by making inquiry as to these points in which they appear to me to be at least as much interested as the receiver of the guarantee.

The only material point on which I differ from the Sheriff-Substitute is the distinction he draws between the position of the defender Jamieson and the other defenders. I think it is not proved that at the date of the guarantee Jamieson knew anything more about his son's indebtedness to the pursuer, or the circumstances under which that indebtedness was incurred, than his co-cautioners. I therefore think the whole defenders should be assoilzied.

The Court pronounced this judgment:—

“Find in fact that the defenders were induced to execute the cautionary obligation founded on, on the faith of the representations made by the said John T. Jamieson, and in ignorance of his previous conduct while in the pursuer's service: Find in law that in respect of the false and fraudulent representations of the said John T. Jamieson, and of the pursuer's failure to communicate to the defenders, or cause to be communicated to them, the circumstances in which the said cautionary obligation was granted, the defenders are not bound by the same: Find it unnecessary to deal with the separate pleas-in-law for the defender Jamieson: Therefore assoilzie the defenders from the conclusions of the action, and decern,” &c.

Counsel for the Appellants Cameron and Others—Ure—Wilson. Agent—W. Gordon, Solicitor.

Counsel for the Appellant Jamieson—Hunter. Agents—Dove & Lockhart, S.S.C.

Counsel for the Respondent—C. S. Dickson—Deas. Agent—L. M'Intosh, S.S.C.

Friday, July 14.

SECOND DIVISION.

[Sheriff of Aberdeenshire.

COCKER AND OTHERS v. CROMBIE
AND OTHERS.

Voluntary Association—Rules—Action to Compel Directors to Observe Rules—Jurisdiction—Competency.

The rules of a horticultural society—a voluntary association—provided that the subscriptions of intending exhibitors at a flower show, to be held on August 18th 1892, must be paid by August 1st. A member of the society tendered his subscription some days late, and this, along with his exhibit, were declined. He sued the directors in the Sheriff Court to have them ordained to receive his exhibit, and the Sheriff-Substitute having on August 15 dismissed the action, the pursuer appealed to the Sheriff, who in March 1883 recalled the interlocutor. On appeal the Court *dismissed* the action as incompetent, as specific performance was impossible, and the pursuer's proper remedy was to sue for damages.

This was an action in the Sheriff Court of Aberdeen by James Cocker senior and others, members of the firm of James Cocker & Sons, nurserymen and seedsmen, Aberdeen, against John Crombie, C.A., Aberdeen, and others, the directors and officials of the Royal Horticultural Society, Aberdeen, as representing the society.

The prayer of the petition was to “ordain the defenders to receive the following articles intended for competition at the Grand Floral Fête to be held by the said Royal Horticultural Society of Aberdeen in the Central Park, Kittybrewster, on 18th, 19th, and 20th August 1892.” A list of the plants to be exhibited followed, and the prayer proceeded—“And to submit the same to the judges of the exhibits at said Floral Fête in order that the pursuers may receive in respect thereof such of the money prizes as may be awarded by the said judges to them,” &c.

The general rules of the association contained the following:—“3. *Members.*—The society shall consist of three classes of members, viz., honorary, ordinary, and working-class. The minimum annual payment to the funds of the society shall be as follows:—Honorary member, 10s. 6d.; ordinary member, including professional gardener, nurseryman, and amateur, 5s.; and working-class member, 2s. 6d.; which subscription must be paid on or before the 1st of August in each year. 10. *Arrears.*—No tickets will be issued to any person whose subscription is one year in arrear; and if any member shall allow his subscription to remain unpaid for two successive years his name shall be erased from the books of the society.”

The special rules for competition at the fête in question included—“2. All competi-