is proper that the documents Nos. 7 and 8 of process, being neither holograph nor tested, should be supported by parole testimony, not only as to the circumstances in which they were signed and handed to defenders, but also as to the real arrangement and compromises come to. He entertains no doubt of the competency of proving by parole such a compromise of a claim; and, while he does not consider that the documents as they stand are in themselves sufficient to bar the pursuer's claim, he is of opinion that they may prove to be important adminicles of evidence, along with the proof which may be led. The proof allowed at present is only as to the preliminary defence, for if that be true, there is a manifest expediency, both as regards time and expense, in not entering on the larger and costlier proof which would be required to ascertain the truth on the merits of the case."

On appeal, the Sheriff (FRASER) adhered, and remitted the case to the Sheriff-Substitute to be further proceeded with. The proof was taken, and the pursuer deponed that neither of the receipts were read over to him, and that he had not understood that they were in full of all claims against the defenders. The manager and the doctor stated, however, that it was distinctly understood that £6 was in full of all demands, and that the documents had been read to the pursuer before signing.

The Sheriff-Substitute pronounced the following interlocutor:—

"*Paisley, 6th February* 1872.—Having heard parties' procurators, and considered the closed record and proof adduced as to the preliminary defences stated, finds that the pursuer did, on or about 2d December 1870, deliberately and voluntarily agree to accept the sum of £6 from defenders in full satisfaction of all claim against them, and that upon the day following he was paid the said sum, and received it in full satisfaction of his claim; therefore sustains the preliminary plea stated on the part of the defenders; assoilzies the defenders from the whole conclusions of the action, and decerns; finds no expenses due to or by either party.

"*Note.*—The Sheriff-Substitute is quite satisfied not only that pursuer accepted the £6 in full satisfaction of his claim, but that he did so with his eyes quite open to the whole circumstances of the case. It might, perhaps, have been better for him if, instead of pressing for a settlement before the manager left, he had taken the legal advice on which he has more recently been acting. But that consideration cannot affect or detract from the concluded settlement of the claim which he deliberately made with the defenders."

The pursuer appealed to the Court of Session.

MAIR, for him, argued that the discharge was only of claims for such injuries as the pursuer thought he had sustained at that date, but that since then the injuries had assumed a more serious aspect, and the pursuer was permanently disabled. That the discharge was at all events ambiguous, and a proof at large should be allowed, or the action sisted, so as to enable the pursuer to bring a reduction of the discharge on the ground of error —*Dickson* v. *Halbert*, Feb. 17, 1854, 16 D. 586.

BALFOUR, for the defender, argued that the discharge was clearly a full discharge of all the pursuer's claims against the defenders.

At advising—

LORD PRESIDENT—The plea for the defenders in this case is, that the whole affair is discharged. I do not give much weight to the words of this discharge, viz., that the payment received was in full of all demands at the date, and if there was any ambiguity in the matter, I think that it was quite competent to bring evidence of what actually passed at the time. Now, looking at the proof which has been led, I think that there is no doubt as to what occurred, for from that proof it appears that the pursuer was very anxious to get his claim settled, and that after some dispute he took £6 as full payment of the claim which he had against the defenders. So, under these circumstances, I cannot doubt that the Sheriff-Substitute is right, and I am therefore of opinion that the appeal should be dismissed.

LORD DEAS concurred.

LORD ARDMILLAN—We have here two documents—first, an agreement by the pursuer to accept £6 as in full of all demands, and second, a receipt for the six pounds. Now, there would have been no occasion for parole evidence here, unless the pursuer had said that he could not read, and that the documents had not been read to him before signing. But evidence having been led, it has been proved that the agreement was read over to the pursuer before he signed, and also that the receipt was read in his presence, and it has also been sworn that the affair was understood by both parties to be an out and out settlement of the whole matter. So I cannot see any ground for reducing this settlement, and I entirely agree with your Lordship in the chair.

LORD KINLOCH—I agree with your Lordships. I think the proof makes it clear that the settlement was a final one. It may be that there was a miscalculation as to the extent of the injuries, and this may be a reason why Addie & Sons should consider whether they should not give the pursuer something in addition to the £6. But, of course, that is a topic which we cannot take into judicial consideration.

Agent for Pursuer—William Officer, S.S.C.
Agents for Defenders—Gibson-Craig, Dalziel, & Brodies, W.S.

Tuesday, July 2.

THOMAS LOCKERBY *v.* THE CITY OF GLASGOW IMPROVEMENT TRUSTEES.

Arbitration—Lands Clauses Acts—Decree-Arbitral —Reduction—Proof.

Circumstances in which, in an action of reduction of a decree-arbitral issued by arbiters appointed to assess compensation for land taken under the Lands Clauses Acts, the Court allowed the pursuer a proof of his averments that the arbiters had decided questions of law in their award, instead of merely fixing the value of the subject contained in the statutory notice.

The question raised in this case is as to the functions of arbiters appointed to assess compensation for land taken under the Lands Clauses Acts. The pursuer is a gasalier manufacturer, having premises in Buchan Street, Gorbals, Glasgow, held under a lease having about six years to run. A statutory notice was served upon him by the defenders on 7th June 1871, setting forth, in the usual form, that they required to pur-

chase and take the premises in execution of the Glasgow Improvements Act 1866, and that they were willing to treat for the purchase thereof, and the compensation to be paid therefor. The pursuer accordingly sent in his claim for compensation, amounting to £3769, whereupon he received a letter, dated 6th July 1871, from the defenders' secretary, withdrawing the notice, on the ground that the compensation claimed was so far beyond their estimate that they had resolved to abandon that part of their plan. The pursuer's agents immediately replied, pointing out that it was beyond the power of the defenders to withdraw the notice, which had created an irrevocable contract of purchase and sale between them and the pursuer. He accordingly insisted that arbiters should be named, and this was done by nominations of arbiters, dated 2d and 11th September 1871, each naming a writer in Glasgow; the defenders at the same time, by a separate document, protesting that no claim of compensation had arisen, because the notice of June had been withdrawn by the letter of July. The amount claimed consisted of the value of the unexpired lease, together with loss and damage to trade-fixtures, stock, &c., and loss of trade profits, consequent on removal; but the defenders maintained that as the pursuer had not been disturbed in his possession, and as he would not be removed at the instance of the defenders, no compensation was due. The pursuer, on the other hand, maintained that the arbiters had nothing to do with the question of right or title to compensation, but merely with the value of the subjects contained in the notice, on the footing that the notice would be acted on. A proof having been taken before the arbiters, which the pursuer maintained fully proved the amount of his claim, and no contradictory evidence having been adduced by the defenders, the parties were heard before the arbiters, who issued an interlocutor, dated 4th December 1871, finding that the pursuer had "failed to establish the claim for compensation as made by him against the promoters (Trustees), under and in terms of the Lands Clauses Consolidation (Scotland) Act, 1845." No reasons were assigned, and no notes of proposed findings had previously been issued. The statutory period of three months for the arbitration being about to expire, the arbiters, on 7th December, issued a formal decree-arbitral in the terms of the above interlocutor, and on 8th December placed it on record. The award was issued and recorded without the knowledge of the pursuer.

The present action was now raised by the pursuer, in order to reduce the decree-arbitral, on the grounds that it was *ultra vires* of the arbiters to determine, as they had done, the legal question of the pursuer's legal right or title in the circumstances to compensation, and the validity of the letter of withdrawal. The pursuer averred that he had ascertained from the arbiters that, in arriving at the conclusions embodied in the award, they proceeded on the footing that, as there had not and would not be any removal of the pursuer from the premises at the instance of the defenders, no damages were due. Reduction was also sought on the grounds that the arbiters were guilty of legal corruption by issuing and recording the award without communicating with the pursuer, and without letting it appear in the award whether they decided on fact or law; and that if they professed to decide as a matter of fact that the pursuer's interest was of no value, they were also guilty of legal corruption by wilfully deciding against the only evidence in the case. There were also conclusions to have it declared that the pursuer is in law entitled to compensation, and to ordain the arbiters to proceed with the arbitration, and to assess the amount of compensation, on the ground that there was, at the date of the award, a short period of the statutory duration of the arbitration unexpired, and that the issuing of the award had the effect of suspending further proceedings. The pursuer also concluded, alternatively for damages at common law, and, in support of that conclusion, stated in the 20th and other Articles of the Condescendence, that on the same day on which he received the defenders' statutory notice he had received an offer for the purchase and transfer of the whole business and premises to a third party, which he was prevented by the service of the notice from accepting, and that the offer would not be renewed. At the discussion of the case before the Lord Ordinary (Lord GIFFORD) the pursuer asked a proof, in order to show, from the arbitration proceedings and the evidence of the arbiters themselves, that they had dealt with the questions of law as above mentioned, and that their award was therefore invalid. The defenders maintained that the action was irrelevant. There was nothing on the face of the award or arbitration proceedings to show that the arbiters had adjudicated on any question of law. The award merely found that the pursuer had not established his claim as made by him, leaving the pursuer to make any other competent claim; and the award did not necessarily proceed on the letter of withdrawal; besides, it was quite possible that the lease of premises might be of no value, and even entail a positive loss.

The Lord Ordinary issued the following interlocutor and note:—

"The Lord Ordinary having heard parties' procurators, before answer, Allows the pursuer a proof of his averments in the Condescendence of the Closed Record, with the exception of what is contained in Article 20, and the defenders a conjunct probation thereanent, under the "Evidence (Scotland) Act, 1866," on Saturday the 6th day of July next, at half-past ten o'clock forenoon, and grants diligence for citing witnesses and havers.

"*Note.*—The Lord Ordinary is of opinion that arbiters appointed under the provisions of the Lands Clauses Act are appointed merely for the purposes of valuation, that is, of fixing the value of the subject contained in the statutory notice, and that they have no power to decide any question of law, or any question of title, or to determine whether the amount of their valuation is to be paid at all, or the parties to whom it is to be paid. In particular, the Lord Ordinary thinks that the arbiters in the present case had no power to decide whether the Glasgow Improvement Trustees had or had not power to withdraw the notice of 7th June 1871. That was a question of law for the decision of the Court, and not for the decision of the valuators. Now, if the arbiters did in one form or another decide this question of law, and if their decision thereof affected their valuation so as to lead them to award no compensation, the Lord Ordinary thinks their award cannot stand. The pursuer's averments appear to be relevant, and the Lord Ordinary does not doubt the competency of getting behind the mere terms of the award so as to reach

which the arbiters may have committed. But the terms of the award in this case are ambiguous. The award seems rather to negative the pursuer's claim for payment than to find that the subject for which he claimed compensation was of no value. As a matter of expediency, the Lord Ordinary has thought it right to allow a general proof before answer of the whole averments, excepting only those in the 20th Article. He has made the proof before answer so as to keep all questions open as to the competency or relevancy of any special evidence that may be tendered. Many of the averments will be proved by the recovery and production of the proceedings in the submission."

The defenders reclaimed.

SOLICITOR-GENERAL and MR BALFOUR for them.

SHAND and J. C. LORIMER, for pursuer, were not called upon.

The following cases were referred to in the discussion:—*Queen* v. *The London and North-Western Railway Company*, 15th Feb. 1854, 23 L. J. (Q.B.) 185; *Read* v. *Victoria Station, &c. Company*, 14th Feb. 1863, 32 L. J. (Exch.), 167; *Dare Valley Railway Company*, 9th July 1868, L. R., 6 Equity, 429; *Penny* v. *South-Eastern Railway Company*, 7th May 1857, 26 L. J. (Q.B.) 225; *Alexander* v. *Bridge of Allan Water Commissioners*, 5th Feb. 1869, 7 Macph., 492; *Duke of Buccleuch* v. *Metropolitan Board of Works*, 3 L. R., Exch., 306, and 5 Exch., 221; and in H. L., 30th April 1872.

At advising—

The LORD PRESIDENT observed that he had no doubt whatever as to the propriety of sending the case to proof. The averments were undoubtedly relevant, and he would have been disposed not to qualify the proof as one "before answer." His Lordship referred to the case of *Sir James Alexander* v. *The Bridge of Allan Water Commissioners*, in 1869, where a similar course of examining an arbiter, whose award was challenged as *ultra vires*, had been pursued.

The other Judges concurred—Lord DEAS observing that the present was a clearer case than Sir James Alexander's; and Lord KINLOCH reserving his opinion on the relevancy till the proof was taken.

Agent for the Pursuer—D. J. Macbrair, S.S.C.

Agents for the Defenders—J. &. R. D. Ross, W.S.

Tuesday, July 3.

MATTHEW STEEL *v.* SAMUEL BRIDGE JUNIOR.

Bill of Exchange—Proof—Parole.

Where it was alleged that A, a partner of a sequestrated firm (who had been himself sequestrated), had, after the sequestration, signed the firm name to a blank bill, and handed it to B as confidential associate, without value, for private purposes of their own, and that B, being himself a sequestrated bankrupt, had endorsed it without value to C, who was cognisant of all the circumstances regarding the bill, but who thereupon charged A as an individual partner of the firm whose name the bill bore.—*Held* that the averments on record were sufficiently suspicious to let in a proof *prout de jure* before answer in a suspension of the charge.

Held farther, on proof being led, that the complainer had failed to instruct either that the charger acquired the bill charged on in *male fide*, or that the charger did not give value therefor.

The complainer Matthew Steel, grocer, Buchanan Street, Glasgow, some time a partner of the firm of Steel & Henderson, grocers there, had been charged, at the instance of Samuel Bridge junior, fruit merchant, Sauchiehall Street, Glasgow, to make payment to him of the sum of £47, being the sum contained in a bill, dated 4th March 1871, purporting to be drawn by J. R. Swan, upon and accepted by the said Steel & Henderson, and payable four months after date, and to be endorsed to the said Samuel Bridge junior, charger and respondent. Steel suspended, and the Lord Ordinary (GIFFORD) passed the note on juratory caution. The following is the statement of facts for the suspender:—No such firm of Steel & Henderson existed at the date of said bill, viz., 4th March 1871, and the said bill was not and could not be accepted by said firm of Steel & Henderson. The complainer was a partner of the said firm of Steel & Henderson for a period of about twelve months prior to 3d September 1870, at which date, as a partner of said firm, and as an individual, he was sequestrated under the Bankrupt Acts. John M'Lean, accountant in Glasgow, was, on or about the 13th September 1870, elected, and on or about 11th October same year, confirmed, trustee in the sequestration. By said sequestration the said firm of Steel & Henderson was dissolved, and was never afterwards reconstituted. In order to wind up said dissolved firm of Steel & Henderson, the said firm was also sequestrated on or about the 10th December 1870, and the said John M'Lean was also, on or about the 20th, elected, and on 28th December 1870, confirmed, trustee on said estates. After various steps of procedure in said sequestrations, the complainer made offer of a composition on the company debts, and on his own individual debts, which offer was, at a general meeting of the creditors, held on the 20th February 1871, unanimously accepted, and the complainer was discharged on or about 12th August current (1871). The business of said dissolved firm of Steel & Henderson was thus finally wound up. Some months prior to the said sequestrations, Adam Henderson, the other partner of the said firm, had left Glasgow and gone forth of Scotland. In these circumstances the sequestration of the complainer was obtained on his own petition, and the sequestration of the firm on the petition of certain of the creditors, to enable them to get possession of the company estates. It was by advice of the said J. R. Swan that the complainer applied for sequestration, and the said J. R. Swan, in order if possible to command the trusteeship, induced the complainer, on or about October 1870, to sign the blank paper on which the bill charged on is now written. Neither the complainer nor the said dissolved firm were indebted to the said J. R. Swan in any sum whatever at the date of said alleged bill, and no value of any kind was given for it by the said J. R. Swan, or the charger, to said firm. The said J. R. Swan is an undischarged bankrupt, and endorsed said bill after his sequestration, as the charger well knew. The charger Samuel Bridge junior, was also bankrupt, and was only discharged in April 1870. The said J. R. Swan and the charger have been for a considerable time,