

Mure's interlocutor dated 22d October 1873, Recal the said interlocutor; sustain the defences; assoilzie the defenders, and decern."

Counsel for the Pursuer—C. Smith, A. J. Young. Agent—Thomas Lawson, S.S.C.

Counsel for the Defenders—Fraser. Agent—John Galletly, S.S.C.

Friday, June 5.

FIRST DIVISION.

[Lord Gifford, Ordinary.]

MARION AITKEN BROCK v. ROBERT
WILLIAM RANKINE.

Lawburrows—Malice and Want of Probable Cause—Suspension—Oath.

In a case of suspension of a charge on letters of lawburrows, held (1) that in the face of the suspender's own letters a proof of malice and want of probable cause on the part of the charger was useless; (2) that the fact that, at the time of taking out the letters of lawburrows the suspender was undergoing a nearly expired sentence of imprisonment was no reason for allowing a proof of want of probable cause; (3) that the administration of the oath by a messenger at arms was according to law and common form.

The complainer Brock having used violent and repeated threats against the respondent, he applied for and obtained letters of law-burrows against her, and as she failed to find caution to keep the peace she was incarcerated for a considerable time. She accordingly presented a note of suspension and liberation.

The Lord Ordinary pronounced the following interlocutor.

"*Edinburgh, 10th February 1874.*—The Lord Ordinary having heard parties' procurators, and having considered the Closed Record, writs produced, minutes, and whole process, repels the reasons of suspension: Finds the charge orderly proceeded, and decerns: Finds, in respect that the suspender has found caution in terms of the interlocutor of the Lord Ordinary, dated 7th December 1872, affirmed by the First Division by interlocutor dated 21st December 1872, and has thereupon been liberated, farther procedure in this action is unnecessary, and decerns: Finds the suspender liable in expenses, and remits the account thereof when lodged to the Auditor of Court tax the same and to report.

"*Note.*—This case has been most anxiously argued on both sides, and raises questions of very great importance; for if the suspender's pleas are well founded, the practice in relation to letters of law-burrows, which has been observed admittedly for upwards of two centuries, is illegal, and must now be discontinued.

"A great deal was urged in argument as to the extremely anomalous nature of the procedure under letters of law-burrows. It was maintained that the whole procedure was unconstitutional—that it involved a violation of the most sacred rights of personal liberty; and it was said that the Court was bound to discourage and repress the practice by applying with malignant and vindictive severity the strictest rules regarding formalities, and to

avail itself of the slightest defect in the most trifling particular to quash the diligence altogether.

"It is certainly true that the procedure under letters of law-burrows, however well suited to the habits and manners of the fifteenth century, is not well adapted to those of the present day, and would certainly not be introduced in modern legislation. But so long as the old statutes and the old forms of procedure are not in desuetude, it is the duty of the Court to give effect thereto. It is the province of the Legislature and not of the Court to make alterations or changes in the existing law, and no considerations of supposed expediency will justify a judge or a Court in refusing to administer an existing law while it remains unrepealed or unaltered.

"Now it was fairly and candidly admitted by the counsel for the suspender that the old law regarding letters of law-burrows is not in desuetude. Indeed it may be said to be *in viridi observantia*, for many letters of law-burrows pass the Signet and are carried out every year and almost every month, and the reports of judicial decisions contain many instances of the procedure being recognised and sustained.

"Nor does it appear to the Lord Ordinary that the suspender takes much benefit by asking that strict rules shall be applied to the diligence or procedure. In all diligence formalities must be strictly observed, and it was not disputed by the respondent, that if he can be shewn to have omitted or neglected any usual or necessary solemnity, the diligence must be suspended and set aside.

"After carefully considering the whole objections stated by the suspender, the Lord Ordinary is of opinion that none of these objections are well founded, and he has therefore repelled the whole reasons of suspension, and found the charge orderly proceeded.

"The suspender's objections fall naturally under two classes, which must be separately dealt with. *First*, There are objections in point of form which arise *ex facie* upon the simple inspection of the letters of law-burrows, and of the executions and other recorded procedure following thereon, and then there are—*Second*, What may be called extrinsic objections which do not appear on the face of the procedure, but depend upon the statements or averments of the suspender. The Lord Ordinary will very shortly notice both classes of objections in their order, and it may be convenient to follow generally the order taken in the suspender's pleas in law.

"(1) It was not seriously disputed that letters of law-burrows issuing under the Signet are still competent, and that the letters of law-burrows in the present case were taken out and passed the Signet in the usual way. No doubt the procedure was commented upon as anomalous, and even unconstitutional, but it was not disputed that such letters are in themselves legal. Indeed, it could not be maintained in the face of existing practice, and in the face of numerous recorded decisions, that letters of law-burrows have been abolished.

"The suspender's counsel maintained that in point of principle no person should be deprived of personal liberty without the express and direct warrant of a judge, and he seemed inclined to maintain that in every case it was necessary that the mind of the judge himself should be applied

to the special circumstances stated or set forth by the party applying for the warrant. But this is stated much too broadly. Caption is issued every day by the clerks or other officials entrusted with the issuing of diligence, and although the old fiction was that he did so by the warrant of the judge,—for example in the Bill Chamber, “*Ex deliberatione Dominorum concilii*,”—yet this was a mere fiction, for the Judge's mind was not in general applied to the matter, and even this fiction is discontinued under the new forms introduced by the Personal Diligence Act and other Statutes.

“In point of fact, however, letters of law-burrows still pass upon a bill the prayer of which bears to be granted,—‘*Ex deliberatione Dominorum*,’ and this is not always a fiction, for wherever there is any peculiarity, it is the duty and the practice of the clerk to bring the matter under the direct cognisance of the Lord Ordinary on the Bills. As for example, where a husband applies for law-burrows against his wife, or a parent against his child.—See *Thomson v. Thomson*, 6th March 1815, F.C., where the Lord Ordinary on the Bills refused caption against a wife, though the wife did not appear, and the Court only granted the letters on cause shewn. See also *Taylor v. Taylor*, 25th June 1829, 7 S. 794. In truth, letters of law-burrows, like all Signet letters, run in name of the Sovereign, and it is really by Royal Warrant that they proceed.

“(2) Nor was it disputed that in the present case the letters of law-burrows are in the usual form,—a form which has been observed from time immemorial. They are addressed to messengers-at-arms, as sheriffs in that part, and it is to messengers-at-arms that their execution is intrusted. The style of letters of law-burrows as given in Dallas' *Styles*, p. 447, is substantially, indeed absolutely, identical with the style in every day use.—*Juridical Styles*, 2d edition, vol. iii., p. 768. And in the Lord Ordinary's opinion this style was lawfully used, and the letters lawfully issued in conformity therewith.

“(2) The suspender strenuously maintained, that notwithstanding the terms of the letters of law-burrows, the messenger-at-arms, not being a judge, and not having jurisdiction, could not competently or legally administer the oath to the respondent.

“There are several answers to this objection which appear conclusive. The messenger-at-arms is expressly directed by the letters themselves, which issue by authority of the Sovereign, to take the oath of the party at whose instance the letters are issued. The messenger would be violating his duty if he refused or failed to take the oath. The Statute 1429, cap. 129, enacts, in reference to “sovertie asked be onie partie of uthers,” that when proof of menace, or of violent presumption, be made by the oath of the party, or that other sufficient proof, and the “schireffe do not that effeiris till his office in that case he sall be in fourtie pund to the King and assyth the partie.” This Statute really contains the first legislative recognition of procedure in law-burrows, for the earlier Act, 1424, cap. 2, merely enacts, that “sicker peace be keeped and halden” “amang all and sundrie lieges and subjectes.” It is true that the Act 1429 directs ‘Schireffes’ to do their office, but this must mean messengers as schireffs in that part, otherwise a penalty would be directed against a magistrate regarding a proper judicial function, of which there

is no example in the law. He who is invested with a proper judicial function, may either do or abstain from doing according to his judgment and discretion in the circumstances of each case. It is only where the duty is ministerial, as that of a messenger, that a penalty is or can be imposed. It is also a mistake to say that a messenger can never lawfully administer an oath. At common law there are many occasions on which it becomes the duty of a messenger to administer an oath; for example, in the execution of a poiding, where the goods are claimed by a third party as his property. The Lord Ordinary holds that the respondent's oath in the present case was legally and competently taken by the messenger. To hold otherwise would be to run counter, not only to the terms of the letters of law-burrows, but to the practice of three centuries.

“(4) The suspender seemed also to maintain that the terms of the oath, even if lawfully administered by the messenger, should be submitted to a judge who should thereupon determine whether the proof was sufficient, and whether the execution of the letters should proceed. There is no warrant whatever for this contention, and it would involve the absurdity of a Sheriff, or, it may be, any Justice of the Peace, considering whether the letters of law-burrows ought or ought not to have been issued under the Signet by authority of the Supreme Court. The true meaning of the letters of law-burrows is, that if the party at whose instance they proceed shall make oath to the messenger in the precise terms of the letters, and not otherwise, then the messenger shall proceed to charge. It would be plainly incompetent for a Sheriff or a Justice of the Peace to stop the messenger from doing what he has been ordered by the Crown to do, and what he must do under a penalty of ‘fourtie pund to the King.’

“(5) The suspender's next objection is, that ‘the oath emitted did not contain a relevant averment of an apprehension of violence.’ This objection has, in substance, been already answered. The letters themselves fix the relevancy of the oath. If the oath is sworn in the exact terms of the letters the messenger must do his office. Nor can there be any doubt about the relevancy. The words are, that ‘he dreads bodily harm, injury, and oppression from the said Marion Brock, and others foresaid.’ This was sworn by the present respondent. The suspender's objection confounds relevancy with sufficiency of detail, that is, with a statement of facts and circumstances justifying the apprehension of violence. But the distinction between relevancy and sufficiency of statement is obvious. Certainly the oath contains no detail at all, no statement of the grounds of apprehension. The oath could only be in terms of the letters, and the messenger had and could have no concern either with the statement of or with sufficiency of the grounds of the complainer's apprehension. The messenger could be no judge of such a matter, his duty was simply ministerial, to administer the oath in the precise terms of his warrant. It may be that the respondent's apprehension was unfounded, that the grounds of it were trivial, or utterly frivolous, but this is not an objection to relevancy in point of form, but an extrinsic objection which, in certain cases, the Lord Ordinary thinks may quite competently be gone into, and which he will notice immediately. He is considering at present objections which arise in point of form, or *ex facie* of the proceedings themselves.

"(6) At the date of the charge the present suspender was in prison under a criminal sentence, and she maintains that being so imprisoned it was illegal to charge her to find caution under the law-burrows. The Lord Ordinary is not aware of any authority in support of this objection, nor does he think it well founded in principle. No doubt, at the date of the charge the suspender was in prison, and while in prison she could not well assault the present respondent. But she might be liberated at any time, and if there was otherwise ground for law-burrows against her, it was right to take precautions against what might happen on her instant liberation. Her imprisonment did not prevent her from employing an agent or friend, or from procuring caution in the law-burrows. In point of fact, at the date of the charge the suspender had her liberation in her own hands. The criminal sentence against her was a sentence of forty days' imprisonment, and to find caution to keep the peace, or suffer twenty days' farther imprisonment. The forty days had expired, and it was only the twenty days farther that were running, so that the suspender had only to find caution to keep the peace in order to be at once discharged.

"The Lord Ordinary abstains from considering further the points adverted to by Lord Mackenzie in his interlocutor and note of 7th December 1872. In that note the present Lord Ordinary generally concurs. The suspender has failed to recognise that there is a different procedure when letters of law-burrows issue under the Signet from that which is observed when the proceedings commence by a petition for law-burrows presented to an Inferior Judge. See Barclay's Digest, article Law-burrows and Forms of Procedure before the Justices.

"The above seem to exhaust what may be called the formal objections of the suspender, or those which arise *ex facie* of the proceedings themselves. The suspender's extrinsic objections may be taken together, and they all resolve into this—

"(7) That the respondent in taking out and executing letters of law-burrows against the suspender acted oppressively, maliciously, and without probable cause; that he was under no apprehension of violence, or under no reasonable apprehension of violence, that his oath sworn before the messenger was false, and that the whole proceedings were adopted merely to gratify the respondent's feelings of malice, hatred, and ill-will.

"The Lord Ordinary has no doubt as to the general competency and relevancy of this part of the suspender's case. He thinks that wherever it can be shewn that letters of law-burrows have been resorted to without any apprehension of violence, but merely to gratify the applicant's malice and ill-will, on this being established by competent proof the letters and procedure will be suspended. This seems to have been assumed in several of the reported cases, but the only direct authority of which the Lord Ordinary is aware, or to which he was referred, is the case of *Gadois v. Baird*, June 1856, reported only in 28 Jurist, 682. In this case Lord Ardmillan's judgment was acquiesced in, and the Lord Ordinary entirely concurs in the views expressed in his Lordship's note. He thinks it may be laid down as a general principle that wherever it is clearly shewn that the diligence or machinery of the law has been used or called into play, not for any fair or legitimate purpose, without any real and without any probable grounds, without any real or honest belief in the party invoking

the law, but merely to gratify his private malice and ill-will, in all such cases the sufferer has his remedy.

"Holding these views, the natural result is, in the ordinary case, that a proof should be allowed of the suspender's averments in point of fact, and in the great majority of such cases the Lord Ordinary thinks the proof should be at once granted.

"The present case, however, is a very peculiar—and, the Lord Ordinary ventures to think, a very exceptional—one, and he has come to the conclusion, though not without some natural hesitation, that there is enough of evidence in the process and in the suspender's own averments, not only to justify the letters of law-burrows and the procedure following thereon, but to exclude the suspender from any general proof of her averments of malice and want of probable cause.

"Before adverting to what is admitted on record, or proved in the case, it is proper to make one preliminary observation, and that is, that in the Lord Ordinary's view the suspender must not only prove malice, but also want of probable cause. If there was probable cause, then it is of no consequence although the respondent was also actuated by malicious motives, for the present case seems to fall entirely within that class of cases where both these elements must co-exist.

"Now, the Lord Ordinary is of opinion that, even assuming, contrary to every probability, that the respondent was actuated throughout by malice, still there is abundant proof that he had probable grounds to apprehend personal violence from the suspender, directed against himself or his family, and the suspender, by her own conduct, has barred herself from attempting to shew that no probable grounds of apprehension really existed.

"The suspender admits on record that her feelings were incensed against the respondent, and she justifies those feelings by a detailed statement of the respondent's alleged conduct; and she admits that her mother, who was also 'greatly irritated' against the respondent, attempted to inflict on him personal injury.

"On 10th January 1868 the suspender was tried and convicted of having assaulted the respondent, and for this offence she suffered imprisonment for sixty days. No doubt she says that she was unjustly convicted, but when the question is not whether there were real grounds for apprehending an assault, but only whether there were probable grounds, the fact of a conviction, followed by suffering the penalty, goes a long way to establish probability of reasonable fear.

"But what has weighed most with the Lord Ordinary, as conclusive against the present suspender, are the letters written by the suspender herself. There is a long series of these letters in process, and the suspender, by minute No. 47 of process, has admitted that they were all written by her, and that those addressed to the respondent were sent by her to him.

"It is impossible to read the suspender's own letters without feeling that were there nothing else in the case, the use of law-burrows by the respondent was most amply justified. Indeed, hardly any preventive measure would be too stringent or too severe towards the writer of these letters. They are filled with the most appalling threats, couched in the most violent, in the coarsest, and the most offensive language. But laying out of view altogether the offensive indecency of the language, and

making every possible allowance for the suspender's position, it is impossible to resist the conclusion that the respondent had the gravest reason in the world to dread that some tragedy would result from the suspender's violence. Even granting or supposing the truth of all that the suspender says, and that she had the strongest grounds for hating and detesting the respondent, this does not mend the suspender's case, but on the contrary destroys it, for it would only shew that the respondent had all the more reason to dread the execution of the suspender's threats, and whatever were the real feelings of the writer of those letters, she can hardly be heard herself to say that they afford no probable grounds for dreading violence at her hands.

"The perusal of these letters so strongly impressed the Lord Ordinary that he thought it right before deciding the case to allow her an opportunity of offering some explanation if she chose to do so. She might have made such explanation on Adjustment of the Record, for there was a special adjournment before closing; but some of the letters were only produced after the Record was closed. The suspender has now lodged a Minute of Explanation, No. 51 of process, but in the Lord Ordinary's opinion it contains no sufficient ground for allowing a general proof of malice and want of probable cause. The suspender states that the letters were caused by her having 'brooded morbidly over the wrong' done her, and that they were written in 'moments of irritation.' But this, so far from rendering it unlikely that she would execute her threats, only makes the execution of these threats the more probable. It is generally just through 'morbid brooding' over real or supposed wrongs that acts of the most dreadful violence have been perpetrated, and when it is steadily kept in view that the question is not whether the suspender herself really intended to execute her threats, but whether the respondent might not reasonably fear the possibility that she would do so, the conclusion seems inevitable that nothing which she can say, and no explanation which she can give, will destroy the effect of these letters. The suspender's Minute confines her explanation to the letters which she wrote subsequent to her imprisonment under the law-burrows; but Nos. 49 and 50 were written prior to that date, and shew that her morbid broodings, and her moments of irritation, were not caused by the present letters of law-burrows.

"On the whole, and on both branches of the cause, the Lord Ordinary feels himself compelled to repel the Reasons of Suspension."

The complainer reclaimed, and pleaded—"1. The acts and warrants, and the whole proceedings complained of, ought to be suspended, in respect—(1) A messenger-at-arms could not competently, under letters of law-burrows, administer the oath to the respondent; (2) The oath emitted did not contain a relevant averment of an apprehension of violence; (3) It was illegal to charge the complainer to find caution, she being in prison at the date of charge, and during the running of the days thereof; (4) The said charge was illegal, unwarrantable, and oppressive. 2. The said acts and warrants, and whole proceedings should be suspended, in respect the warrant on which the complainer was imprisoned does not specify a term when the complainer should be liberated. 3. It was illegal for the respondent to maintain and en-

force the said warrant against the complainer for an indefinite period, his proper remedy being to sue the complainer in an action of contravention of law-burrows. 4. The said acts and warrants, and whole proceedings following thereon, should be suspended, in respect the statements and *ex parte* evidence on which they were taken were untrue, and were made by the respondent maliciously and without probable cause. 5. The complainer is entitled to decree of suspension as craved, in respect the whole proceedings were unnecessary and oppressive. 6. The whole proceedings having been *ab initio* inept, null, and void, decree of suspension should be pronounced as craved. 7. The proceedings should be suspended, in respect the complainer was illegally and oppressively charged to find an excessive amount of caution. 8. The complainer is entitled to expenses."

Authorities—9 Geo. IV., cap. 29, sec. 21; *Aitchison v. Thorburn*, 26th June 1869, 6 Scot. Law Rep., 604; *Johnston v. Randall*, 19th March 1867, 3 Scot. Law Rep., 322.

The respondent pleaded—"1. No relevant grounds of suspension are set forth. 2. The complainer having threatened violence against the respondent, his wife and family, and having been incarcerated in terms of law, and all the proceedings having been formal and regular, she is not entitled to suspension as craved. 3. The statements of the complainer being groundless in fact and unfounded in law, the suspension should be refused, with expenses."

Authorities—*Smith*, M. 8043; *Barbour v. Hogg*, 11th March 1825, 3 S. 647, ed. 1, 453, ed. 2; *Hume Comm.*, 1 368; *Baxter v. Ewart*, 16th June 1827, 5 S. 752, ed. 2, 813, ed. 1; *Brodie v. Young*, 19th February 1851, 13 D. 737; *Henning v. Hewetson*, 12th February 1852, 14 D. 487; *Hallam v. Gye*, 22d December 1835, 14 S. 199; *Wolthecker v. Northern Agricultural Co.*, 20th December 1862, 1 Macph. 211; *Watt v. Thomson*, 24th May 1870, 8 Macph. 80.

At advising—

LORD PRESIDENT—My Lords, I cannot see that the objection taken to this oath is sustainable, as it was in ordinary form, and it would not have been competent for the messenger to administer it in any other shape. Again, the circumstance that the complainer was in prison at the time when the respondent obtained these letters of law-burrows has been strongly founded on as showing on his part a want of probable cause. That is a contention with which I have no sympathy. The woman was in prison on a conviction for assault committed on the respondent, but her term of imprisonment was nearly at an end, and by what she has herself said she has shown most clearly that the event of her liberation would have been attended by the greatest risk to the respondent. The feeling which she had displayed towards him would have made her most dangerous, and so it seems to me that his application for law-burrows on the eve of her liberation was most reasonable and natural, and I cannot see the slightest ground for the objection which has been taken to it.

The only other ground which has been urged for this suspension is that the whole of the respondent's proceedings have been malicious and without probable cause. I am not disposed to say that malice and want of probable cause are not a sufficient ground if relevantly averred. I should be

sorry at present to give any opinion to the contrary. I am rather disposed to agree with the Lord Ordinary, and with the view expressed by Lord Ardmillan in the case of *Gadois*. But it is not necessary to decide that at present, for at least it is certain that such an allegation must be made in very precise terms. It must be alleged, first, that there was no reasonable ground for fear, and secondly, that there was malice; in the present case it is impossible to look at the letters and the history of this woman without seeing that it is utterly impossible to prove want of probable cause of apprehension. I agree with the Lord Ordinary, and am for adhering to his interlocutor.

LORD DEAS—There is no doubt that it remains a part of the law and practice of this country that a party who apprehends danger from his neighbour is entitled to the protection of law-burrows. As Lord Stair explains, lawburrows are "caution found to do nothing but by order of law; for a borrow or burgh in our ancient language is a cautioner, and lawborrows is caution to keep the law." If the party finding caution keep the law, no harm comes to him or anyone else. The Act 1449, cap. 13, remains as it did when passed. "And attour, gif ony person dreads ane uther, that he passe to the Schireffe or to the officiares that it effeir to and make that knawin or swear that he dreads him, and they sall take borrowes of peace, after the actes maid thereupon of before." Though that Act was introduced a long time ago, and may perhaps have been more necessary in a barbarous society than it is at the present day, it has never been repealed, and it is by no means useless. Cases of this kind occur every year, and if we wanted an example of the necessity of such a provision we could not have a clearer one than the present case. The case is that this woman had a serious grievance against this man, and its effect on her seems to have been to throw her into a state very little short of insanity. Being in that state she writes all these letters which have been produced in process, and which I have read, and which are one more violent than another. That they were written with serious purpose is placed beyond all doubt by the fact that her father was quite willing to find caution for her if she would only have given an assurance that she would keep the peace. This, however, she entirely declined to do; she preferred remaining five years in prison. It is only quite recently that any arrangement has been made at all to the extent of finding caution for £5, and it is of that very small amount that she is now trying to get rid of. I do not go into the question as to the form of the oath, except as to this—whether it is requisite in point of form to allow a proof. When we look at all the circumstances, the facts and the admissions on record, it is clear to me that to grant a proof would be merely putting parties to useless expense, in pursuit of a mere shadow.

The other Judges concurred.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming note for the complainer Marion Aitken Brock against Lord Gifford's interlocutor, dated 10th February 1874, Adhere to the said interlocutor, and refuse the reclaiming-note; find the complainer liable in additional expenses; allow an account thereof to be

given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Complainer—W. A. Brown. Agent—T. Lawson, S.S.C.

Counsel for Respondent—Dean of Faculty (Clark), Q.C., and W. Orr Paterson. Agents—J. & A. Peddie, W. S.

Thursday, June 11.

SECOND DIVISION.

[Sheriff of Midlothian and Haddington.

APPEAL—R. & A. SCOTT.

Bill of Exchange.

Circumstances in which the rule of law that non-onerosity on the part of an endorsee to a bill of exchange can only be proved by his writ or oath—held to apply.

This suit arose on a petition to the Sheriff of Midlothian at the instance of Thomas Wilson, Edinburgh, with consent of William Wight, accountant, Edinburgh, for his interest, against Robert and Andrew Scott, provision merchants, Leith, and A. D. Murphy, solicitor, Leith, for delivery of a bill of exchange for forty-five pounds. The bill in question was dated 24th October 1873, and was drawn by the petitioner Thomas Wilson upon and accepted by J. Jenkinson, farmer near Haddington, and was payable three months after date, and it was endorsed by the petitioner and William Wight. The statement of the petitioners was that the bill was received "from the said William Wight by the said Andrew Scott on the 28th October 1873, for the special purpose of procuring the same discounted at the bank (chiefly for behoof of the petitioner, to enable him to carry on his business), five pounds meantime of the proceeds thereof being retained by the said Andrew Scott and placed to the credit of the petitioner in account with the said firm of Robert & Andrew Scott, and the balance of forty pounds, less discount, to be handed over to the said William Wight for behoof of the petitioner, and which bill, if not so discounted, was to be returned to the said William Wight the day following, namely, 29th October 1873: That, notwithstanding said arrangement, the said Andrew Scott, or his said firm, have parted with the said bill to the said A

D Murphy, and they, and each and all of them, refuse to restore the said bill to the petitioner or the said William Wight."

On the other hand, the respondents stated that in September 1873 they employed Murphy to raise an action against Wilson for £52 due to them by him. This action was not prosecuted in consequence of the following agreement made by the petitioner with them:—

"25th September 1873.—Sirs,—I herely offer you £5 stg. cash down, £5 within a fortnight, and £5 per month after that date until your account be discharged. This without prejudice any way to me, and subject to deductions from the account. You at once withdraw the arrestments used on my funds.—Yours truly, per THOMAS WILSON, W. WIGHT.

"Leith, 26th September 1873.—Dear Sir,—Messrs R. & A. Scott have handed me the offer made by you on behalf of Mr Wilson, as to the liquidation of their account. I understand my clients have