injury occurred." This is the diligence prestable in the contract of location, and it is the diligence incumbent on shipowners, apart from special stipulation, by which it may be modified. In every case which has occurred with which I am acquainted, the primary object of the shipowner has been to show that due care was taken by him of the goods. This being established, and nothing more appearing in the proof, he will still be liable for the loss, unless he prove the cause of the damage, where no additional protecting clause is to be found in the bill of lading. But when that clause occurs, as in this bill of lading, the shipowner will be free from liability, although the cause of the damage be left unexplained. To that extent he is protected; but I hesitate to hold that the protection thus secured by the shipowner can be carried farther, and frees him from the *onus* of establishing that the goods were properly shipped, stowed, and cared for on the voyage. In giving over his goods to be carried in the ship the owner of them is entitled to rely on this obligation by the shipowner being fully implemented. He has parted with his goods on that footing, and when thrown on his hands at the port of delivery in a damaged state,—although he must be held to have consented to dispense with the shipowner's obligation to prove the cause of damage, —it does not follow that he is to be held to have dispensed with the obligation on the shipowner to prove due care and diligence in the shipment and stowage of the goods. To give that large effect to the clause would be to render valueless the primary obligation in the bill of lading,—to deliver the goods in good order and condition. But in giving it the limited interpretation,—to which it ought to be subjected, as I think—the primary obligation to care for the goods and to carry them safely, remains,—although on due care being shown, the shipowner is by the contract free from liability for damage the cause of which cannot be traced.

Holding these views to be well founded, the question arises, whether the fact of the shipowners having used due care and diligence being left untouched by the terms of the special verdict,—the defenders can claim the benefit of the protecting clause in the bill of lading? Could it be assumed, without any finding to that effect, that the due care incumbent on the shipowners and their master and crew was taken the defenders would be entitled to prevail, in conformity with the principles I have stated But I cannot make that assumption. The verdict contains the whole facts to which the law has to be applied in the construction of the bill of lading. We are not entitled to add any finding, or to assume anything in fact, which is not set forth in the special verdict. And it must therefore, I think, be held that the defenders have failed to establish a matter of fact which it lay with them to establish, and from the *onus* of proving which the protecting clause relied on does not free them. The benefit to the shipowner from that clause only arises and can only be pleaded, after he has satisfied the *onus* incumbent on him—to prove that in the shipment, stowage, and care of the goods during the voyage, all diligence was shown.

Entertaining these views, I come, but not without some hesitation, to the conclusion that the verdict must be entered for the pursuers.

Lords Curriehill, Benholme, and Neaves concurred with the Lord President.

Lords Deas and Ardmillan concurred with Lord Cowan.

In accordance with the opinion of the majority verdict entered up for the defenders.

Agents for Pursuers—Wilson, Burn, & Gloag, W.S

Agent for Defenders—P. S. Beveridge, W.S.

Saturday, July 6.

DOW AND MANDATORY *v.* JAMIESON.

(*Ante*, p. 107.)

Process—Advocation. Advocation dismissed in respect of non-appearance of advocator.

The respondent, in accordance with the suggestion of the Court, printed the note of advocation (with interlocutors advocated), and the interlocutors of the Lord Ordinary of 26th February and 5th June 1867. The case appeared in the Single Bills, and was sent to the Summar Roll. When the case was put out in the Summar Roll,

M'Kie, for the respondent, moved the Court, in respect of the advocator's failure to print, to dismiss the advocation.

No appearance was made for the advocator.

The Court, in respect of no appearance for the advocator, dismissed the advocation, and remitted to the Sheriff, finding the respondent entitled to expenses.

Agents for Respondent—Paterson & Romanes, W.S.

Saturday, July 6.

SECOND DIVISION.

ORR *v.* MEIKLE & SMITH.

Agent and Client—Authority to Compromise Action—Reduction. Circumstances in which held that an agent had authority from his client to compromise an action which he had received express instructions to defend.

This was a question as to the authority of a law agent to compromise a case, and resolved itself, according to the view taken of it by the Court, into one of fact. Orr had employed Meikle and Smith, writers in Kilmarnock, to borrow some money for him, which he says they failed to do; they, on the contrary, asserting that they had done all that they could and proposed. A loan of £150 was admittedly procured. Meikle and Smith, who had advanced this sum, and in security thereof taken both a bill from Orr and a bond over some heritable property in security of the loan, afterwards rendered to him an account of upwards of £21, for business done on his account in the transaction. Orr refused to pay, and instructed Mr May, writer in Largs, to defend the action. May was not entitled to practice in the Sheriff Court of Kilmarnock, where the action was brought, and he instructed Mr Andrews, writer, Kilmarnock, to attend to the case, and gave him a note of the defence to be stated. Andrews was of opinion that there was no good defence to the action, and wrote so to May, suggesting either a remit to the auditor or acceptance of an offer of compromise made by the pursuers. A long correspondence ensued between Andrews and May, from the early part of which it was clear that Orr would neither do the one thing or the other. In the latter part of the correspondence, May, in one of his letters, used the expres-

sion, "You must just go on, and do the best you can." No communication had ever taken place between Orr and Andrews, and it was not proved that May had communicated any of the letters written by Andrews to Orr, except one that the latter admitted having seen. He also admitted two conversations in the street on the subject. May died in 1866, and none of his business books have been recovered, but it was proved that he was on very intimate terms and almost in daily intercourse with Orr.

After a long correspondence, Andrews, without putting in defences to the action, joined with the defenders in a remit of the account to the Auditor, and consented that decree should pass against Orr for the sum taxed. Orr then brought a reduction of this remit and of the proceedings that followed thereon.

The Lord Ordinary (KINLOCH) reported the case to the Court on the pursuer's issue, expressing an opinion that the pursuer was entitled to an issue, on the ground that without authority an agent has no power by the law of Scotland to compromise an action. After some discussion, the issue was superseded, and the Court remitted to the Lord Ordinary to take proof of the parties' averments, under the Evidence Act. The case came before the Court on the reported proof.

GIFFORD and W. A. BROWN for pursuers.

CLARK and GEBBIE in answer.

The Court held (1) that Andrews rightly considered that he had authority from May to settle, and that May's letters were susceptible of that construction; and (2) that it must be assumed, from the intimate relation between the parties, that Orr knew what May was writing, and that Andrews' letters were communicated to him by May. LORD NEAVES took occasion expressly to compliment Mr Andrews for the desire to avoid litigation which he had manifested throughout the proceedings, and he hoped a similar spirit was not uncommon among the procurators in the Inferior Court.

Agent for Pursuer—A. Morison, S.S.C.

Agents for Defenders—Macgregor & Barclay, S.S.C.

Tuesday, July 9.

FIRST DIVISION.

PURVES *v.* BROCK.

Advocation—Competency—16 *and* 17 *Vict. c.* 80, § 22. A petitioner in a Sheriff-Court craved a warrant upon the respondent to deliver up to him a sheep which the petitioner alleged he had bought from a third party for £3, 5s., and which had been delivered to the respondent by mistake. Held that an advocation of the process was competent, and that the statement of the petitioner as to the price he had paid for the sheep was not conclusive as to the value of the cause.

James Purves, farmer, Lochend, presented a petition in the Sheriff-Court of Caithness against George Brock, farmer, West Greenland, stating that at a sale of farm stocking at the farm of Stainland, on 18th May 1865, he purchased a tup marked in a specified way, for £3, 5s.; that when he sent next day for the tup, the wrong tup was given him; that on finding this, and that the tup which he had bought was in the possession of the respondent, he sent for it to the respondent, but the respondent refused to give it up. He accordingly asked the Sheriff to ordain the respondent to deliver up the tup to him. It appeared that the respondent had purchased another tup at the price of £3, 3s. He got the petitioner's tup sent him by mistake. The Sheriff-Substitute held that the petitioner was entitled to vindicate his property in the way sought, and granted warrant against the respondent as craved. The Sheriff (on appeal) reversed, and dismissed the petition, holding that the petitioner never had any right of property in the tup, and that if there was any mistake in the matter, the action should have been laid against the seller and not against the respondent.

Purves advocated.

SOLICITOR-GENERAL (MILLAR), and M'LENNAN, for the respondent, took an objection to the competency of the advocation, on the ground that the value of the cause was under £25.

BLACK for advocator.

The Court unanimously repelled the objection.

LORD PRESIDENT—An objection was taken here to the competency of the advocation on the ground that the cause was not within the meaning of the Act 1853—that is to say, was not of the value of £25.

The petition in which the proceedings commenced prayed for a delivery of one tup which had been taken possession of by the respondent in the circumstances therein stated. The petitioner set forth the circumstances in which he acquired the tup—viz., by purchase at the sale of farm stock. Now, if nothing but that had been stated, it would plainly have been impossible for the Court to have ascertained the value of the cause, because the tup might have been of various values, for it is a matter of notoriety and everyday experience that while a tup may sell for the mere value of a fat sheep, others sell at the very highest prices; and therefore it is impossible to sustain the objection to the competency if the petition had been in that position. But then the petitioner, in stating the circumstances under which he acquired the tup, also mentions the price which he paid for it. He says he purchased it at the price of £3, 5s.; and that statement has produced the only difficulty, such as it is, which we have experienced. My opinion is, that that statement does not ascertain the value of the cause. The price that is paid for an article sought to be recovered cannot exclusively fix the value of it. It may be of much greater value. It may be of much greater value to the possessor, because its value to him may be enhanced by circumstances which do not affect others, and therefore the mention of the price paid for the tup does not prove that the cause is under the value of £25. It is incumbent on a party objecting that a cause is under that value, to prove that it is so, and that it is so from the pleadings themselves. I don't go the length of saying that the value of a cause is, under all circumstances, to be measured by the conclusions of the action, or the prayer of the petition, for I think it is to be gathered from the whole of the record as well. I cannot say that here the party stating the objection to the competency has discharged the *onus* of proving that the value of the cause is below £24.

The other judges concurred.

The case was then heard on the merits, when the Court unanimously recalled the judgment of the Sheriff, and reverted to that of the Sheriff-Substitute. The Lord President in giving judgment,