the note of suspension related: Finds that, after the note of suspension was served upon the defender, Mr Emslie was specially authorised by him to oppose the suspension on the part of the defender, and to employ an agent in Edinburgh on his behalf: Finds that, with this view, the service copy of the note was left with Mr Emslie, who was at the same time furnished by the defender with the information necessary to enable him to answer the suspension, and that the said service copy of the note, and relative information, were duly forwarded to the pursuer: Finds that, after the note of suspension had been passed by the Lord Ordinary and a reclaiming note presented, the defender was informed by Mr Emslie, in answer to inquiries made by him as to the progress of the litigation, that the decision of the Lord Ordinary had been adverse to the defender, and that it had been resolved to reclaim: Finds that the defender did not then, nor until the month of January 1867, make any attempt to repudiate these proceedings, or the employment of an agent in Edinburgh on his behalf: Finds, in these circumstances—in point of law—that the defender is liable to the pursuer in payment of the taxed amount of the account thus incurred: Repels the defences, and remits the said account to the Auditor to tax and report: Finds the defender liable in expenses in this and the Inferior Court, of which appoints an account to be given in, and remits the same, when lodged, to the Auditor to tax and report.

"*Note.*—The grounds on which the Lord Ordinary has proceeded in disposing of this case, are embodied in the preceding findings: He thinks it clear, upon the evidence, that the defender authorised Mr Emslie to employ an agent in Edinburgh to defend the suspension, and that he was throughout aware that proceedings were going on in Edinburgh, under that employment, in regard to the interdict process, in which he was materially interested. It may be that the defender was not at first aware who the Edinburgh agent was. But that, in the view the Lord Ordinary takes of the case, cannot affect the pursuer's right to recover his account, incurred on the employment of a duly authorised agent in the country. And whatever may have been the defender's knowledge, in the above respect, at the commencement of the litigation, the Lord Ordinary thinks that it is satisfactorily established that, at the date of the meeting with Mr Emslie at Lagg, in December 1866, the defender was quite aware that the pursuer was the agent engaged in his behalf, and he certainly did not at that time repudiate the employment, but, on the contrary, appears to have sanctioned its continuance.

"At the discussion before the Lord Ordinary a distinction was attempted to be made in regard to the defender's liability for the portion of the account subsequent to July 1866, after which time it was said that, regard being had to the views entertained of the case by the pursuer and the counsel employed, no farther expense should have been incurred without renewed authority from the defender. The Lord Ordinary was at first disposed to think that there was some foundation for this distinction; and it certainly does appear strange that no steps were taken to have a meeting with the defender to explain the very unfavourable position of the case, and to get his instructions with a view to a settlement of it, between the month of July and the middle of December. But for this the Lord Ordinary does not think the pursuer was to blame, and as he had no instructions to abandon the proceedings, he could not well avoid incurring the expense of continuing the appearance in Court until such time as a settlement was effected, in order to prevent the suspender obtaining a decree."

The advocator reclaimed.

SCOTT for him.

FRASER and BURNET in reply.

At advising—

LORD NEAVES—I am of opinion that the interlocutor should be adhered to. The question is, Whether the pursuer, an Edinburgh agent, was employed in the suspension in question by a country agent, who had anthority from the defender so to employ him? I think that is fully proved. If so, it is of no relevancy to allege that Emslie had mismanaged the diligence which gave rise to the suspension. That may entitle the defender to bring an action of damages or relief against Emslie, so as to throw upon him ultimately the whole loss and expense that was incurred. But Thomson had nothing to do with that, and nothing that is here done will prejudice the defender's rights in that respect. We may have some sympathy with the defender, as an ignorant or a stupid man. But a man who draws bills and seeks to enforce them must be held to know the consequences that attach to such matters, and the rules which are incident to them. I see nothing that Thomson was bound to do that he did not do, nor can I see that he continued to carry on the proceedings too long. He explained his views fairly and honestly to his correspondent as he went along, and no blame attaches to him in any respect.

The other judges concurred.

Agent for Advocator—David Manson, S.S.C.

Agent for Respondent—Party.

Tuesday, October 20.

COURT OF LORDS ORDINARY.

(Lords Jerviswoode, Ormidale, Barcaple, and Mure

CRANSTOUN *v.* BROCK.

Master and Servant—Dismissal for Misconduct—Farm Overseer. Held, on a proof, that a farm overseer had not been guilty of such misconduct as to justify his master in dismissing him.

This was an advocation from the Sheriff-Court of Lanarkshire. The respondent Brock, who had for some years acted as farm-overseer in the service of the advocator, was dismissed from service on account of alleged misconduct. He then sued the advocator for damages.

The Sheriff-Substitute (DYCE) held that the dismissal of Brock was justifiable by reason of his repeated misconduct, and assoilzied his employer.

The Sheriff (H. G. BELL) altered, and gave judgment for Brock.

Cranstoun advocated.

YOUNG and Balfour for advocator.

GIFFORD and A. MONCRIEFF for respondent.

The Court adhered.

Agent for Advocator—W. Mitchell, S.S.C.

Agents for Respondent—Maconochie and Hare, W.S.

Wednesday, October 21.

M'DOUALL *v.* BROWN.

Sale—Factor—Authority to Receive Money—Bona

fide *Payment.* A dealer in farm produce was in the habit for many years of purchasing from the proprietor's factor or factor's clerk, and paying the price to them. The factor was dismissed, the dismissal being intimated to the dealer. The proprietor sueing the dealer for a balance of price of cheese, dealer assoilzied as having *bona fide* paid the money to the clerk before intimation of the dismissal.

Colonel M'Douall of Logan brought this action in the Sheriff-Court of Wigtownshire against Alexander Brown, dealer in dairy produce, for a sum of £55, as the balance of the price of cheese sold by the pursuer to the defender in October 1861. The principal questions were (1) whether a certain sum of £50 had been paid by the defender to Davidson, clerk to M'Culloch, the pursuer's factor; and (2) whether that was a good payment as against the pursuer.

The Sheriff (HECTOR), adhering in substance to the interlocutor of his substitute (RHIND), held it proved that for many years prior to 1861 the pursuer had M'Culloch in his service as factor, and Davidson as factor's head-clerk, and had under their management a home farm on his estate; that the factor and Davidson had power and were in use to sell the farm produce and receive the price, and had frequent dealings in that way with the defender; that in December 1861 the pursuer wrote to the defender intimating that he had parted with his factor, M'Culloch, and asking direct remittances on account of any cheese that might be purchased; that some time prior to that date, viz., in October 1861, and while the factor and his clerk were still acting for the pursuer, the defender purchased directly from Davidson two parcels of cheese; that on 8th October the defender admittedly paid £50 to account; that on 8th November 1861 the £50 in dispute was paid to Davidson by the defender in respect of said sale, and that the sale having been made by Davidson, and the defender having in *bona fide* made the payment of 8th November in respect thereof, the payment was effectual in a question between the pursuer and the defender.

The pursuer advocated.

CLARK and MACDONALD for advocator.

WATSON and GUTHRIE for respondent.

The first question was not disputed; on the second question the Court adhered, holding that as Davidson had sold the cheese in question, and had for many years been in the habit of buying and selling for M'Douall, the justice of the case required that if the money had not been accounted for by Davidson, and if M'Douall had not received the money (which was not proved), the loss must fall, not on Brown, but on the pursuer, who had not publicly disowned the factor's acting on his behalf.

Agents for Advocator—Tods, Murray, & Jamieson, W.S.

Agent for Respondents—D. J. Macbrair, S.S.C.

Saturday, October 24.

FIRST DIVISION.

DAVIDSON (WOOD'S TRUSTEE) *v.* BOYD.

Bankrupt—Landlord and Tenant—Urban Tenement—Rent—Forehand Payment—Bona fides. A party being sequestrated on 9th November 1867, the trustee on his estate claimed payment from the tenant of a house belonging to the bankrupt of the half-year's rent due at Martinmas 1867 for the preceding half-year. The tenant had admittedly and *bona fide* prepaid the said rent to the proprietor on 29th October previous. Claim *repelled*, and *held* that the trustee's claim was measured by the claim of the bankrupt, who in a question with the tenant was bound by the admitted payment.

Andrew Davidson, trustee on the sequestrated estate of James Wood, brick manufacturer in Perth, who was sequestrated on 9th November 1867, sued Mrs Boyd for the rent of a dwelling-house belonging to the pursuer, for the half-year from Whitsunday to Martinmas 1867.

The defence was that, on 29th October 1867, the defender paid to Wood the rent and feu.

The pursuer admitted the payment, but answered that, Wood's estate having been sequestrated on 9th November, the payment, being a prepayment before the term, was bad in law, and could not prevent his claim as trustee for the creditors.

The Sheriff-substitute (BARCLAY) pronounced this interlocutor:—"Finds that the said rent became due and payable at the term of Martinmas last, being the 11th day of November 1867; and that the defender paid Wood, the proprietor and landlord, the said rent on 29th October previous to that term: Finds that the estates of Wood were sequestrated under the Bankrupt Acts on 9th November thereafter, and thereby all his estate was carried to his creditors, now represented by the pursuer as trustee under the sequestration; and farther, the said sequestration operated as an arrestment of all sums then current, due and payable to the bankrupt: Therefore, and though there is every ground for holding the payment of rent as made in the best of faith, nevertheless the same, as a payment in anticipation of the term, is bad in law, and therefore the pursuer under his title is entitled to recover the rent becoming due and payable subsequent to the date of the sequestration of Wood, the landlord: Therefore decerns in terms of the summons, with the statutory amount of costs."

In his note the Sheriff-substitute referred to Stair 1, 18, 3; Bankton 1, 24–26; Erskine 3, 4, 4; *Wilson*, M., 10,022.

The Sheriff (TAIT) reversed, and assoilzied the defender, holding that the authorities relied on by the Sheriff-substitute applied only to tenants of land and not to tenants of houses.

The trustee reclaimed.

FRASER for reclaimer.

CLARK and ADAM for respondent.

At advising—

LORD KINLOCH—The question in this case relates to the half-year's rent (amounting to £43) due by the respondent, Mrs Waddell Boyd, as tenant of a dwelling-house in Perth. The rent was payable at Martinmas 1867. On 29th October previous she paid the amount, and it is not disputed, in good faith, to her landlord, Mr Wood. On the 9th November, two days before the rent fell due, the estates of Mr Wood were sequestrated under the bankrupt statute. Mr Davidson, the trustee in the sequestration, now claims payment from Mrs Boyd a second time, on the ground that the payment made by her anterior to the term of payment cannot avail to discharge the claim in a question with him as trustee in the sequestration.

The Sheriff-substitute, Mr Barclay, has given effect to this demand by the trustee, thinking him-