been done may fail to be followed by any good or practical result. I am asked to reduce proceedings which have been regular so far as they went.

Nor am I clear that the acts done may not be to some effect useful or beneficial. It may be that there may be a power resident in the Court to direct that a meeting be called to remedy the error by fixing the number now. I see formidable objections to this course, but I see some plausible grounds on which such an exercise of our prætorian power might be vindicated. I think it a question on which different views might well be entertained, to be solved by discussion on such an application, in the event of such an application being made. It may be that the public Act may be so amended as to enable the course to be followed out; it may be that a private Act may be obtained proceeding upon the fact as ascertained by a judgment not reduced. It may be that in new proceedings before the Sheriff what has been already done may save a repetition of some, at all events, of the things well done under this application. It is enough for me to say that the Acts seem by the Statute separate and distinct, and that up to the failure to follow up what had been well done, we have nothing irregular or contrary to the Act. Whether the distinction prove in its results material or immaterial, I think we must deal with the case according to ordinary legal principles. The result of my view is, that the interlocutor should be substantially adhered to in so far as relates to proceedings subsequent to the 30th May 1866, but that the reductive and declaratory findings should be, as to the former proceedings, refused.

Agent for Pursuer—James Steuart, W.S.

Agents for Defenders—Millar, Allardice & Robson, W.S.

Tuesday, November 10.

COURT OF LORDS ORDINARY.

TAYLOR *v.* SHARP.

Sale—Inferior quality—Breach of contract—Consequential damage—Reparation. A seedsman *held* liable in damages for loss occasioned by his furnishing seed of an inferior quality and different from the kind agreed on betwixt him and the purchaser. Claim of consequential damage disallowed.

Sharp, farmer at Lindifferon, brought an action in the Sheriff-court of Fifeshire against William Taylor, seedsman, Cupar-Fife, for a sum of £157, being loss on a field of turnips by reason of the defender having wrongfully furnished a quantity of turnip seed of inferior quality, and different from the kind ordered and purchased by the pursuer. The account annexed to the summons included a sum of £40, as "loss sustained because of not having sound turnips to fatten" the pursuer's stock. After a proof, the Sheriff-substitute (TAYLOR) pronounced this interlocutor:—"Finds, in point of fact, that the defender, who is a dealer in seeds, on a verbal order by the pursuer for fifty pounds weight of Aberdeen green-top turnip seed, sold and delivered that quantity of turnip seed to the pursuer on the 29th May 1866, which seed so furnished the defender put into a bag with a ticket or label marked 'Aberdeen yellow selected stock, crop 1865,' and the defender also invoiced the same as 'Aberdeen yellow turnip,' the price being £1, 13s. 4d., which the pursuer paid on 18th June thereafter:—Finds that no express warranty of the quality of the said seed was asked or given, but that the defender at the time of the sale represented it to be 'pure seed' of Aberdeen yellow turnip, from selected bulbs of his own growing:' Finds that the pursuer, relying on said seed being pure Aberdeen yellow turnip seed as contracted for, sowed it in the course of a week or two thereafter in portions of his farms of Lindifferon and Fernie: Finds that these sowings produced a fair average crop of turnips in point of quantity:—Finds that 'Aberdeen yellow turnip' is a well known distinct kind of turnip, different from and more hardy and valuable than the hybrid varieties of turnip, and especially has the property of not being so readily injured by frost: Finds that on that account the bulk of pursuer's crop grown from the said seed sold by the defender as Aberdeen yellow turnip was intended by the pursuer for consumption on the ground by his stock in the spring, and was with that view accordingly left in the ground, with the exception of about three quarters of an acre at Fernie, and an acre and a quarter or so at Lindifferon, which had been drawn and carried away in December: Finds that in January 1867, after a severe frost, the pursuer seeing that the said turnips were much injured by the frost, began to suspect that the turnips so grown from the seed supplied by the defender as Aberdeen yellow were not of that description, but a different and softer kind, and he intimated so to the defender on 12th February, requesting him to go and inspect the crop; and he afterwards suggested a settlement of the matter by mutual valuation of the damage, which was not agreed to: Finds it proved that the turnips in question were not Aberdeen yellow turnips but a turnip of a different and softer description, and that they consequently yielded to the power of the frost that prevailed for some weeks in January 1867; and finds that, as compared with a corresponding crop of Aberdeen yellow turnips, the turnips in question became unfit for use and valueless as food for the pursuer's stock in the spring to the amount specified in the first branch of the account sued for, viz., £117, 6s. 11d. sterling; Finds that the pursuer thus sustained a direct loss to that amount through the fault of the defender, and that the defender is liable in reparation to the pursuer for said loss, and decerns against him therefor accordingly: Sustains the defender's sixth plea in law, so far as it relates to the pursuer's claim for £40, forming the second branch of the account sued for:—Finds the defender liable in expenses," &c.

The claim of £40 was disallowed as being of the nature of consequential damage.

The Sheriff (MACKENZIE) substantially adhered, but reduced the sum of damages to £73.

The defender advocated.

MONRO and RHIND for advocator.

YOUNG and BALFOUR for respondent.

The Court adhered.

Agents for Advocator—Murdoch, Boyd, & Co., S.S.C.

Agents for Respondent—Jardine, Stodart & Frasers, W.S.

Thursday, November 12.

WRIGHT *v.* BAIRD.

Broker—Commission Agent—Bankrupt—Failure by Agent to give full information to Principal. A

broker, who was employed by a merchant to find purchasers and make offers to them, and communicate the same to his principal, to whose approval the sales were subject, *held* liable for loss on a sale, because he had failed to inform his principal of a material part of his communing with the purchaser, the communication of which would probably have induced the principal to decline the transaction.

This was an advocation from the Sheriff-court of Glasgow. The respondent Baird, corn-factor in Glasgow, acted for some time as agent and broker in Glasgow for Wright, a grain merchant at Boston, in England, and sold for him large quantities of grain. In 1864 Baird brought an action against Wright for £123 of commission. Wright defended, and raised a counter action against Baird for £1272 as loss sustained by reason of culpable negligence and breach of instructions on Baird's part in carrying through a certain sale to Bedgar, Neilson, & Co., who had failed shortly after the sale, and who, Wright alleged, were previously known to Baird to be of notoriously bad credit, and on the eve of bankruptcy.

After a proof, the Sheriff-substitute (MURRAY) held that Baird ought to have communicated to Wright certain material circumstances of which he was aware unfavourable to the credit of Bedgar, Neilson, & Co., and, not having done so, had committed a breach of his duty as agent, and was liable for the sum sued for by Wright, under deduction of the amount of the charges sued for by Baird, as to which there was substantially no dispute.

The Sheriff (BELL) reversed, and found in favour of Baird.

Wright advocated.

Lord Advocate (GORDON) and SCOTT for advocator.

MACKENZIE and CRICHTON for respondent.

At advising—

LORD BARCAPLE thought, with others of the Court, that this case ought to have been sent to a jury. He then, after narrating the facts of the agency and sale, said that the course of business between Baird and his employer was peculiar. It was not left to the broker in the present case to carry through the sales in the usual way; for Baird's duty was to find purchasers, and make an offer, and inform Wright of the offer, the sale being subject to Wright's approval. Looking to the general course of transactions, there was no evidence that Bedgar, Neilson, & Co. were in such bad repute as to prevent a broker from dealing with them. Baird was certainly not liable simply because he dealt with Bedgar, Neilson, & Co. The action against him was rested on various other grounds, on some of which Wright had been quite unsuccessful. It was said that Baird had entered into a corrupt and collusive contract with Bedgar, Neilson, & Co. There was no evidence of that at all, nor was there any ground for holding that Baird had been guilty of negligence in looking to the credit of persons with whom he dealt. He knew very well, perhaps better than most persons, the true position of Bedgar, Neilson, & Co. That position did not put them out of the market, although no doubt they were not a strong or wealthy house. But Baird, in his correspondence, rather stepped out of his province to inform Wright that Bedgar, Neilson, & Co. were a first-class house, paying ready money. Now, there were two classes of people who paid ready money—one class who had so great a command of capital that they declined to accept credit, and another class who found cash the only terms upon which they could deal in the market; and Bedgar, Neilson, & Co. seemed rather to be of the latter class. In that state of matters Baird undertook a responsibility he was not called on to undertake. If he made a representation calculated to produce in Wright a confidence in Bedgar, Neilson, & Co. for which there was not ground, then he did what took him out of that protection which belonged to a broker acting under a *del credere* commission. But the great point to look to was what took place in reference to the last transaction. It came to this, that when he had created this confidence in Bedgar, Neilson, & Co., he intimated to Wright, on 21st March 1864, that Bedgar, Neilson, & Co. had made an offer for 600 quarters of wheat—cash at fourteen days. Wright accepted by telegram, and plainly did so on the footing that he had got a full and sufficient account of what passed. A broker must not withhold anything that passes, if his constituent is to judge of the transaction. Now, Mr Neilson's evidence is that he told Mr Baird at this time that his firm could not pay at the same time that they were paying some bills granted to Wright for previous transactions, and that he fully expected from what Mr Baird said to get additional credit beyond the fourteen days, otherwise he would not have made the bargain. Now that was very important. And that being a material part of the communing, and not communicated to the principal, the broker thereby made himself responsible. The case might have been different if nothing had previously been said as to the house. No doubt Wright had before taken bills of this house, but in this new transaction he was entitled to know the whole facts. It was plain that he was at this time a little more scrupulous in his transactions than usual, as the times were bad, and probably he would not have assented to the transaction if he had been informed that additional time was required besides the fourteen days.

The other Judges substantially concurred.

The judgment of the Sheriff was therefore recalled.

Agents for Advocator — M'Gregor & Barclay, S.S.C.

Agents for Respondent—D. Crawford & J. Y. Guthrie, S.S.C.

Saturday, November 14.

FIRST DIVISION.

M'LAY *v.* THORNTON AND OTHERS.

Parent and Child—Guardian—Nearest Male Agnate —Poor. A grandfather *held* entitled to the custody of his grandchildren, both of whose parents were dead, although he was in poor circumstances, and might not be able to maintain the children without parochial assistance.

John M'Lay, weaver at Kirkfieldbank, in the parish of Lesmahagow and county of Lanark, presented this petition to the Court, asking for the custody of his four grandchildren in the following circumstances:—The petitioner's son, Wm. M'Lay, weaver, died in 1863, leaving a widow, Mary Cunningham or M'Lay, and four children, all of whom, the petitioner alleged, were still under puberty William M'Lay did not appoint any guardian to