firmation. We have here a letter on the day of the note, said to form the complete contract, from the pursuers' brokers to the principal, asking confirmation of the sale. We have also a letter from the defenders' broker to them, saying they awaited confirmation. This seems conclusively to show that by the brokers the note was not looked on as finally constituting and completing the contract. They considered that it required confirmation. But that is not all. On the 15th of November the pursuers, through their brokers, proposed to make a change on the conditions of the contract. That proves that they did not consider the contract to be finally and conclusively settled and closed. This proposal for a change, and not an unimportant change, was made while the contract was awaiting confirmation, and made by the pursuers, who now allege that the contract was so completed as to exclude alteration. Still farther, the defenders' brokers having telegraphed to the pursuer's brokers, the following is the communication, by telegram, made by their brokers to the pursuer's:—"Harland Company have heard from their principals. Cannot agree seller's new stipulation, ancient bones. Will consider contract cancelled unless confirmed as originally made before four to-day. They propose to hand us bills of lading for bones when delivered to craft until payment is made as per contract. Contract asked to be returned if not accepted.

Now, a party who proposes an alteration on a contract made by his broker, and before him, for confirmation, cannot afterwards be permitted to plead that the contract was final and completed, not requiring confirmation nor susceptible of alteration. Such a plea by such a party is not correct in point of procedure, nor equitable on principle.

I do not think that the plea of mercantile usage or custom of trade is here applicable, nor is it stated on the record. The words "as usual" do not let in proof of general custom as affecting the construction of the contract, or the validity of it as made by the brokers. I rather think the words apply to the terms of discount.

I do not permit my opinion to be affected by the statement—I think the inaccurate statement—of the contract made by the pursuers on record. But on the sale note—the correspondence, and the ascertained facts, I have arrived at the same conclusion as your Lordship, and I think that the interlocutor complained of should be recalled.

LORD MURE—I concur in the views expressed by your Lordship. I have no difficulty in determining that whatever the ordinary rule of law as to the powers of brokers, one cannot read the correspondence and telegrams here without seeing that here they dealt on the footing of the contract requiring confirmation.

As early as 20th October, the pursuers write to their brokers—"We are in treaty with other buyers for the bones. We will not bind ourselves to accept £6, 10s., but if we were offered that figure we would entertain it." And then again, on 10th November, they write—"If we got a bid of £6, 10s., we should be disposed to sell"—not telling their brokers to sell. Then comes the letter from the brokers—"Please transmit warrants, at same time confirming the sale," distinctly showing that they held the sale was not good without confirmation. Instead of giving confirmation, the pursuers write on the 15th November proposing a change. I think it was quite in the power of the defenders to object to agree to this change.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming note for the British Agricultural Association (Limited) against Lord Young's interlocutor of 19th March 1875, Recal the interlocutor; assoilzie the defenders from the conclusions of the summons, and decern; find the pursuers liable in expenses, and remit to the Auditor to tax the account of said expenses, and report."

Counsel for Pursuers—Solicitor-General (Watson)—Gloag. Agent—George Burn, W.S.

Counsel for Defenders—Fraser—Black. Agent—D. Curror, S.S.C.

Friday, November 12.

SECOND DIVISION.

KIRK *v.* KIRK.

Expenses—Reclaiming Note—Divorce.

A woman was divorced from her husband on the ground of infidelity, and three co-defenders were found liable in the expenses of the action. Against the interlocutor granting decree of divorce the woman reclaimed, but the Court refused the note without calling on the respondents' counsel. *Held* that the woman was not entitled to her expenses in regard to the reclaiming note, the same having been utterly without ground.

Counsel for Pursuer—Campbell. Agents—White-Millar, Allardice, Robson, & Innes, W.S.

Counsel for Defender—Mair. Agent—R. Menzies, S.S.C.

Saturday, November 13.

SECOND DIVISION.

[Lord Curriehill.

JACKSON *v.* M'KECHNIE.

Bankruptcy—Trustee—Bankrupt, Estate of—Slander—Title to Sue—Damages.

An undischarged bankrupt obtained a verdict for £400 in an action of damages for slander uttered at a date subsequent to the sequestration, but at a time when no proceedings under that sequestration were being taken, and the trustee presented a petition seeking to attach this fund for behoof of the creditors. *Held* that the bankrupt having liquidated his personal claim for damages, the sum of money thus obtained vested in the trustee as a part of the bankrupt's estate, subject to any claim which he (the bankrupt) might have for trouble and expense in recovering the fund.

This was a petition presented by Thomas Jackson, the trustee on the sequestrated estate of Archibald M'Kechnie, who was sequestrated in 1870, when the petitioner was appointed trustee. After realising the estate the petitioner was discharged from the office of trustee in 1873. In 1875 the bankrupt, who had not obtained his discharge, raised an action of damages for slander against W. & J. Mutter, former employers of his, and on 18th March of that year he obtained a verdict of a jury awarding damages to the amount of £400. M'Kechnie's creditors thereupon presented a petition for the appointment of a new trustee, and the petitioner was re-elected on 15th June 1875.

This petition was accordingly brought to have it declared, that the £400 of damages obtained by M'Kechnie was transferred to and vested in the petitioner as trustee foresaid. The trustee's claim was opposed by M'Kechnie.

The Lord Ordinary pronounced the following interlocutor:—

"*9th July* 1875.—The Lord Ordinary having heard the counsel for the petitioner and for the bankrupt Archibald M'Kechnie, and considered the petition and whole proceedings, declares all right and interest in the sum of £400 sterling or thereby mentioned in the petition, to which the said Archibald M'Kechnie has become entitled under the verdict of a jury, returned and applied as set forth in the petition, to be vested in the petitioner as trustee on the sequestrated estate of the said Archibald M'Kechnie, as at the date when the said verdict was applied, in terms of the 'Bankruptcy (Scotland) Act, 1856,' and decerns. Finds no expenses due to or by either party.

"*Note.*—The estates of Archibald M'Kechnie were sequestrated in terms of the 'Bankruptcy (Scotland) Act, 1856,' on 17th December 1870, and the petitioner was elected and confirmed trustee on said sequestrated estates on 29th December 1870. The bankrupt has never been discharged, and the sequestration still subsists.

"It appears that the petitioner, as trustee, realised the bankrupt's estates so far as then known to him, and was discharged from the office of trustee on 2d May 1873. Certain of the creditors, however, having recently discovered the existence of funds which they believed to be available to the bankrupt's creditors, they, on 12th May 1875, presented a petition to the Court for the appointment of a new trustee, and, after opposition by the bankrupt and sundry procedure, the petitioner was, on 15th June 1875, re-elected to the office of trustee, and he was on the following day duly confirmed by the Sheriff of Lanarkshire.

"The funds which the creditors conceived to be available for the purposes of the sequestration consist mainly, if not entirely, of the sum of £400, which was awarded to the bankrupt by the verdict of a jury returned on 18th March 1875, in an action of damages for slander at his instance against Messrs W. & J. Mutter, distillers at Bowmore, in the Island of Isla, and in Glasgow. The verdict was applied by the Court on 2d June 1875, and the sum of £400 then became due and payable to the bankrupt.

"The petitioner, as trustee, has now applied, under the 103d section of the 'Bankruptcy (Scotland) Act, 1856,' for a vesting order as regards that sum. By that section of the Act—which is quoted at length in the petition—it is, *inter alia*, enacted, 'that if any estate, wherever situated, shall, after the date of the sequestration, and before the bankrupt has obtained his discharge, be acquired by him, or descend or revert or come to him, the same shall, *ipso jure*, fall under the sequestration, and the full right and interest accruing thereon to the bankrupt shall be held as transferred to and vested in the trustee as at the date of the acquisition thereof or succession for the purposes of this Act.'

"The petitioner claims the money as being estate acquired or coming to the bankrupt after the date of the sequestration, and before his discharge. The bankrupt, on the other hand, maintains that as the money has been awarded to him as *solatium* for defamation, his claim therefor against the defenders of the action was so entirely personal to himself as to exclude all claim upon the fund at the instance of the creditors of the bankrupt. And he relies in support of his contention partly upon a passing observation regarding actions of damages for defamation at the instance of a bankrupt under sequestration, made by the Lord Justice-Clerk (Hope) in deciding the case of *Thom* v. *Bridges and M'Queen*, 19 D. 721, but chiefly upon certain English cases, in which it seems to have been held that the assignee in bankruptcy is not entitled to institute in his own name an action for recovery of damages for injury to the character of the bankrupt.—See *Beckham* v. *Gray*, 26th July 1847, 2 Clark and Finally, p. 579, and *Roger* v. *Spens*, 15 L. J. Exch. p. 69. The principle, however, upon which all these cases was decided appears to be this, that as personal actions of the kind in question frequently involve matters of great delicacy, affecting the feelings, comfort, and reputation, not only of the bankrupt, but of his relatives and connections, it should be left very much to the bankrupt's own discretion whether any action should be raised for the vindication of his character. But that reason ceases to operate as soon as the bankrupt exercises that discretion by voluntarily raising the action, and still more, where, by insisting in the action until he obtains a verdict for damages, he shows his determination to make the whole matter public. It appears to me that a bankrupt who raises such an action before obtaining his discharge does so in the knowledge, if not with the expectation, that in the event of his obtaining a verdict clearing his character and awarding substantial damages, the pecuniary part of the award would be claimed by his creditors. I am unable to see on what intelligible principle money which has been awarded to a bankrupt by the verdict of a jury—no matter on what grounds—and for which he is in a position to charge the defenders against whom he has obtained the verdict to make immediate payment, should not be regarded as estate acquired by or coming to him within the sense and meaning of the statute.

"It was indeed admitted at the Bar by the counsel for the bankrupt that the money in the present case must be regarded as if it had been already actually paid to the bankrupt, and had been deposited in bank. But while making that admission, he maintained that the Court is entitled and bound to inquire from what source the money has come, and to refuse to make the vest-

ing order if, as in the present case, the money is ascertained to have been acquired as *solatium* for an injury so purely personal to the bankrupt as defamation. I can see no ground whatever for affirming that contention. The statute declares that the whole estate acquired by the bankrupt before his discharge shall be transferred to and vested in the trustee as at the date of acquisition. No part of the estate acquired is excepted, and acquisition by the bankrupt is declared to be acquisition for his creditors; and on that principle the case of *Thom* v. *Bridges and Macqueen* was decided. And farther, even assuming that the judgments in the English cases referred to would be followed as precedents in precisely similar cases in this country, I am of opinion, for the reasons already stated, that they are not applicable to cases in which an illiquid personal claim of damages, depending for its enforcement upon the bankrupt's voluntary exercise of a discretionary power, has been liquidated and converted into money, and recovered by the bankrupt in an action voluntarily raised by himself in the exercise of his discretion. In all such cases the money which he recovers must be regarded as estate acquired by or coming to him within the meaning of the statute. It may be his misfortune that he has not obtained his discharge, either in consequence of his own tardiness in applying for it, or from his inability to comply with the statutory requisites, but the facts that he is still an undischarged bankrupt, and that he has since his sequestration acquired the sum of £400, appear to me to make the claim of the petitioner for a transference of that sum to himself as trustee irresistible. I am therefore of opinion that the prayer of the petition should be granted. I do not think that this is a case for awarding expenses against the bankrupt."

The respondent M'Kechnie reclaimed, and argued — This was a claim to attach damages obtained in an action for slander raised by an undischarged bankrupt. The fact that he was undischarged made no difference, because if the slander had taken place before bankruptcy it might have injured the estate of the bankrupt and diminished the fund available for the creditors, for one ground of damages in such actions was always the injury done to the slandered person's estate. An illustration might be taken from injury to the person. A man might be able during his sequestration to support his wife and family, but if he met with an accident, could it be held that the trustee could take the sum he got in compensation and let him go to the poorhouse? The right of action was personal to the person injured. In this case he had prosecuted his claim without the aid either of trustee or creditors, and the proceeds of the claim when realised stood in its place, and were equally personal to the bankrupt. The trustee had no title to sue, the claim being personal. It had indeed been held (*Milne* v. *Gould*) that the husband had the sole right to sue in questions affecting his wife's character, but the trustee had not the same interest in the character of a bankrupt (*Neilson* v. *Rodger*). It was difficult to hold that if the trustee was not entitled to enforce the claim he was entitled to take the money. Assuming, however, that the trustee had a claim to this fund, it could only be on the condition of his indemnifying the bankrupt for any liabilities or expenses he might have incurred.

Argued for the respondents—(1) The question of whether the money passed to the trustee was apart from that of whether the trustee had a title to sue. The £400 was clearly "estate" within the meaning of the Act. Suppose the bankrupt had been slandered, and recovered this fund before sequestration, there could be no doubt that the money would have been vested in the trustee.

(2) The claim was one which the trustee could himself have insisted in. Under our law the person slandered had two courses open to him—1. To call for retractation; 2. To demand damages. The first might be personal, the second was not (*Auld* v. *Shairp*). The title to sue was not unalterably attached to the person, and might pass to the trustee under the provisions of the Bankruptcy Act. In England it was settled that the right to sue actions for bodily injury did pass.

Authorities cited—*Milne* v. *Gould*, Jan. 14, 1841, 3 D. 345; *Neilson* v. *Rodger*, Dec. 24, 1853, 16 D. 325; *Smith* v. *Stoddart*, July 5, 1850, 12 D. 1185; *Thoms* v. *Bridges*, Mar. 11, 1857, 19 D. 721; Bankruptcy (Scotland) Act, 1856; *Auld* v. *Shairp*, Dec. 16, 1874, 2 R. 191.

At advising—

Lord Justice-Clerk — This reclaiming note raises a question which I do not think has ever yet been decided, a question, moreover, of very considerable interest and importance.

The reclaimer M'Kechnie, after being sequestrated, and while yet undischarged, brought an action for slander, uttered at a date subsequent to his sequestration, but at a time when no proceedings under that sequestration were being taken. By the verdict of a jury the sum of £400 in name of damages was awarded to M'Kechnie, but that money has not yet been paid over to him, as it is claimed by the new trustee appointed by the creditors after the trial.

The questions which under this petition appear to arise for consideration are, firstly, how far the trustee in the sequestration acquired a right to this claim; and, secondly, whether, at all events, the title of the trustee is not sufficient to carry the fund in question. On the first point, it may be observed that a claim for reparation of the nature of the one made by the respondent is of a personal character, and is not transmissible to an executor or a testamentary trustee. I do not, however, think that this is a branch of the inquiry material to the present question. It is not difficult to figure a demand or claim so personal that it could not be attachable; but we have not to deal with a claim such as that in the present instance.

I think that this is simply a demand for the payment of money, and that M'Kechnie has no ground here for resisting the prayer of the petition. He has the money—the claim for damages is liquidated—and to the fund obtained by the prosecution of that claim I think the trustee has full right. I would, however, guard myself by remarking that I can conceive a case wherein creditors might be met by an implied assignation, but there is no such case here, and I am for sustaining the claim of the trustee and granting the prayer of this petition. I think, however, that it is but fair that M'Kechnie should be allowed to

put in any claim which he may have for trouble and expense in recovering this fund.

LORD ORMIDALE—The question to be determined in this case is one of novelty and importance; but in the view I take of it not attended with any serious difficulty. The subject of dispute consists of a sum of £400, which was awarded to the bankrupt Mr M'Kechnie on 18th March 1875 in an action of damages for slander at his instance, and the verdict for that sum having been applied by the Court on 2d June thereafter, the £400 then became due and payable. In December 1870, nearly three years prior to the institution of Mr M'Kechnie's action, and prior also to the utterance of the slander against him, his estates were sequestrated in terms of the Bankruptcy Act of 1856. The sequestration still subsists, and M'Kechnie has not been discharged. Previous, however, to the institution of his action, the trustee in the sequestration had been discharged, and there was then no acting trustee. After Mr M'Kechnie obtained his verdict, and got it applied, his creditors, on the assumption that the £400 thereby acquired, or coming to him, fell under the sequestration, re-elected the former trustee; and he then applied to the Lord Ordinary for a vesting order in terms of the 103d section of the Bankruptcy Act. Mr M'Kechnie disputed, as he continues to do, the trustee's right to such order, but the Lord Ordinary being of opinion that he was entitled to it, granted the order; and Mr M'Kechnie's reclaiming note against the Lord Ordinary's interlocutor has now, after a very full and able argument from the bar, to be disposed of by the Court.

The question for the decision of the Court is, whether in the circumstances now stated the sum of £400 referred to falls to be transferred to the trustee in the sequestration, or must remain with the bankrupt himself as belonging to him exclusive of his creditors and the trustee in the sequestration.

Now there can be no doubt that, according to the terms of the Bankruptcy Act, the sequestration comprehends not only all estate of every description belonging to the bankrupt at its date, 1870, but also every estate that might be acquired by, or that might come to him thereafter; and there can be as little doubt that in terms of the interpretation clause of the Act, the expression estate includes a fund such as that in question. It was argued, however, with great ingenuity and ability, that it could not have been intended by the Legislature, and cannot be held to be the true meaning of the statute, that a fund of the peculiar nature of that in question, and recovered by Mr M'Kechnie in an action of damages for defamation of character, raised and prosecuted to a conclusion at his own instance, should be taken from him by his creditors in a sequestration of his estates dated prior not only to the institution of the action but also the alleged slander. It was in particular forcibly urged that the trustee could not himself institute such an action, and consequently that he could not be permitted to reap the benefit resulting from it. But, without entering upon the question whether the trustee would or would not have been entitled to institute and carry out such an action, either at his own instance or in the name of the bankrupt, and without offering any opinion on such a question—deeming it unnecessary to do so—it appears to me that, independently of any such question, he is entitled to the damages recovered, in respect that after liquidation they assumed the tangible shape and substance of estate which, in the words of the statute, must be held to have been acquired by or to have come to the bankrupt during the subsistence of his sequestration. This being so, I can see no ground in reason or principle, and no authority was cited, for holding that it should not. The fund is certainly not inalienable, nor does it stand protected in any way from creditors. On the contrary, it appears to me to be beyond all question that the bankrupt might, if not debarred by the attachment of creditors, and supposing that the trustee in his sequestration is not entitled to it, transfer or assign it to whom he pleases, or that it might be attached and transferred by arrestment. And if I am right in this, it seems necessarily to follow that the fund must be held as carried and transferred to his trustee and creditors in the subsisting sequestration, for a sequestration is by the Bankruptcy Act expressly declared (section 168) to be equivalent to an arrestment. Nor do I think that, in considering whether the fund can be held to be so carried and transferred it would be of any relevancy to inquire into its origin or the circumstances attending its liquidation. The express provisions of the statute are too absolute and unqualified to require or to admit of any such proceeding.

On these grounds, therefore, I am of opinion that the Court has no alternative but to adhere to the Lord Ordinary's interlocutor. I concur, however, with your Lordship in thinking that before finally disposing of the case it may be proper to allow the bankrupt an opportunity, if he desires it, of putting in a state of any deductions he thinks he is entitled to make and retain from the fund before it is made over to the trustee.

LORD GIFFORD—I am of the same opinion, and agree entirely in the results at which your Lordships have arrived. It is not, I apprehend, necessary for the Court in the present case to decide in an abstract manner the question whether or not there may be in certain circumstances claims of so personal a nature as not to be competent to a trustee in a sequestration. But where a bankrupt or debtor liquidates such a claim by converting it into damages—into a sum of money,—then it stands in a totally different position. It is a fair test of the real position of matters to suppose there had not been here a sequestration at all, but only one or two creditors using diligence, for sequestration is but a use of diligence by all the creditors together instead of its being used by one or two of them separately. Suppose then, in the case I have put, that M'Kechnie were now to incur a debt of £400, could it be for a moment maintained that the creditor for the debt now contracted could not attach this fund? I do not think so; this £400 is a fund—a moveable fund—belonging to M'Kechnie, and I think it would be attachable by a creditor, and therefore attachable by a trustee under a sequestration which represents all the creditors at once. I entirely concur in the remarks of your Lordship in the chair as to the deductions which may

fall to be allowed to M'Kechnie for trouble in recovering this fund.

LORD NEAVES absent.

The Court pronounced the following interlocutor:—

"Before answer, allow the reclaimer to lodge in process a statement of any claim he may have for time, trouble, and expense in connection with the action of damages for slander at his instance against Messrs W. & J. Mutter."

Counsel for Petitioner (Respondent) — W. A. Brown. Agents—

Counsel for Respondent (Reclaimer)—Dean of Faculty (Watson). Agent—Ronald, Ritchie, & Ellis, W.S.

Tuesday, November 16.

FIRST DIVISION.

[Lord Craighill.

OYSTON *v.* TURNBULL.

Process—Agent and Client—Mandate.

In an action of reduction the preliminary defence was stated that the action had been raised and carried on without the authority of the pursuer, who was resident in England. A mandate was produced, signed by the pursuer and duly tested, appointing the agent conducting the case to be her law-agent in Scotland, with authority to raise such proceedings as he might think necessary. There was no averment of forgery nor of withdrawal of the mandate before the action was raised. The Court repelled the defence.

Process—Advocate—Implied Mandate.

The presumption of authority raised by the appearance of counsel for a party to a cause amounts almost to a *presumptio juris et de jure*, and can only be rebutted by a disclaimer.

This was an action of reduction at the instance of Mrs Beatrix Scott or Oyston, residing at 21 Carter Street, Sunderland, widow of John Oyston, sometime shoemaker in Sunderland, against Mrs Grace Dunsmure or Turnbull, residing at Buckenham Hall, Brandon, Norfolk, widow of William Barclay David Donald Turnbull, advocate and barrister-at-law, sometime residing at Stone Buildings, Lincoln's Inn, London. The pursuer sued for reduction of certain deeds which she alleged she had been induced to execute by fraud and circumvention, and when in a weak and facile state of mind. The defender denied the pursuer's averments and stated as a preliminary defence—"The present action has been instituted and is being carried on without the authority of Mrs Oyston, in whose name it has been raised. In fact it has been raised and is being carried on contrary to her express desire." The defender's first plea in law was—"The present action not being authorised by Mrs Oyston, it ought to be dismissed, and her pretended agents be found liable in expenses."

The pursuer produced (1) a letter of appointment to her agent as follows—"Sir, I, Mrs Beatrix Scott or Oyston, residing in Sunderland, widow of the late John Oyston, sometime Shoemaker in Sunderland, afterwards residing at No 1 Tarvit Street, Edinburgh, hereby nominate and appoint you my law-agent in Scotland, and authorise and empower you to raise such proceedings as you may deem advisable for the purpose of enforcing my claim to the succession of William Turnbull of Fenwick, Crailing, and Briery Yards, in the county of Roxburgh, who died on 20th December 1840, and of Thomas Turnbull his son, a lunatic, who died on 15th October last, and to reduce all deeds granted by me in prejudice of my rights to and in favour of Mrs Grace Dunsmure or Turnbull, and generally to institute and follow forth such proceedings as you may think necessary on my behalf. And I hereby revoke and recal all mandates and appointment of agents in Scotland prior to this date.—In witness whereof I have hereunto set my hand and seal, and subscribed this letter of authority, written by Lewis William Michie, clerk to T. & W. A. M'Laren, W.S., Edinburgh, at Sunderland, upon the 23d day of March 1875, before these witnesses, Francis Marshall Bowey, solicitor, and George Jackson, ship and insurance broker, both in Sunderland." And (2) a mandate to her agent, as follows—"Sir, I, Mrs Beatrix Scott or Oyston, sometime residing at No. 1 Tarvit Street, Edinbnrgh, now at No. 21 Carter Street, Sunderland, widow of John Oyston, sometime shoemaker in Sunderland, in the county of Durham, do hereby authorise and empower and appoint you, as my mandatory, to apply to and receive from James Lawson Hill, W.S., Edinburgh, or from any other person or persons in Scotland in whose possession the same may be, all letters, memoranda, deeds, documents, or other papers belonging to me, and if necessary to raise and follow through any suit or process at law you may consider expedient for the recovery thereof, and upon each recovery to grant receipts therefor, which shall be as valid and effectual to the granters thereof as if the same had been granted by myself.—In witness whereof I have hereunto set my hand and seal, and subscribed these presents, written by James Cran Innes, clerk to T. & W. A. M'Laren, law-agents and conveyancers in Edinburgh, at Sunderland, the 4th day of August 1875 years, before these witnesses, Francis Marshall Bowey, solicitor, Sunderland, and William Anderson, clerk to the said Francis Marshall Bowey."

The second of these documents was granted a considerable time after the action was raised.

The Lord Ordinary *in initio litis* granted a commission for the examination of the pursuer, and the commission having been executed, the report was ordered to lie *in retentis*.

After discussion of the defender's plea, the Lord Ordinary issued the following interlocutor:—"The Lord Ordinary having heard parties' procurators, repels the first plea in law for the defender, and finds her liable in two guineas for the expense of this day's discussion; and upon the motion of the defender, allows her to reclaim against this interlocutor."

The defender reclaimed, and argued—If the report of the commission were looked at, it would appear that the pursuer never authorised the action, and did not desire that it should be proceeded with. The letter of appointment was only an implied mandate, and was removed by the averment that the action was carried on without authority. If the pursuer did not authorise