

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, & Glog, 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'KIM, 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-