works? and I think that is a question which is attended with considerable difficulty.

There is no doubt that the defender has a very material interest in restricting the supply which he is bound to make under this contract, and he had so at the time when the contract was entered into. It was therefore in his power, if he thought fit, to express this condition, that he was not to be bound to supply the pursuers with coal for any other purpose than for the works. There is no such condition expressed, and the question is, Is it implied? There is a good deal of difficulty in construing the agreement. The leading provision is, that the coal shall be supplied as the pursuers require it—the coal, when supplied, becoming the property of the pursuers, which in ordinary circumstances they may dispose of as they think fit. But, on the whole matter, I agree with the majority of your Lordships. My opinion is that the condition is implied, and that because of three portions of the contract. In the first place, that which relates to the coal-tripping. In the second place, the third article of the contract, regulating the delivery of coals and coal-tripping. And, in the third place, the sixth article. I attach the greatest importance to the first of these. The obligation on the parties is that the defender is to supply, and the company is to receive, any quantity of coal-tripping which the said company may require—I omit the parenthesis at present—at the prices and subject to the stipulations hereinafter declared. That contract for the giving and taking delivery of coal-tripping is as much a substantive part of the agreement as the contract for giving and taking delivery of cannel coal. No doubt coal-tripping would not have been in the contract if the coal had not been there; but, being there, it is a substantive part of the contract. But then the measure of this demand and supply is more clearly seen when you read the parenthesis, for it is there stated to be agreed that the Company shall take from Swann the whole coal-tripping which they may require at their works for distilling or working the coal taken from Swann. Now, how is the measure of that coal-tripping to be ascertained if the cannel coal is not to be used at the works? It does not imply that so much coal-tripping is to be taken as corresponds to the cannel coal, but all the coal-tripping which is in fact necessary to distil the cannel coal; and that quantity cannot be ascertained unless the company distil the cannel coal; so that the contract cannot be wrought out unless the cannel coal is distilled. That is a strong indication that the cannel coal is not to be used except for the purpose of distillation. Taking this and the other clause I have mentioned together, I think it is sufficiently clearly implied that coal was only to be delivered for the purpose of manufacture in the pursuers' works. Therefore the pursuers are not entitled to decree of declarator in terms of the first conclusion of their summons, which refers to future time. And I cannot give them decree to the extent of a mere fraction of their declaratory conclusion for saving any rights as to coal now in their possession. That question is not properly raised in this summons. The proper question is that raised by the conclusions and the first plea for the defender, which seems to afford a perfectly good and sufficient defence to meet the whole conclusions of the summons. That plea is [*reads plea*]. If at this moment, when the pursuers have given up using cannel coal, they have on hand unused any quantity of coal supplied by the defender, the question may remain whether they may not dispose of that otherwise than by distilling it. But that question is not raised here, and I only give my opinion on the general effect of the agreement.

Agents for Pursuers—Hill, Reid, & Drummond, W.S.

Agent for Defender—John Gillespie, W.S.

Wednesday, May 27.

SECOND DIVISION.

WALKER AND ANOTHER (SALMON'S TRUSTEES), PETITIONERS.

Trust—Removal of Trustees—Failure to act—Intimation. Four trustees accepted a trust, a majority being a quorum. Two of them, A. and B., having been sequestrated in 1855, ceased thereafter to reside in Scotland, and made no answer to applications regarding the management of the trust. On a petition by the other two trustees, concurred in by the beneficiaries, alleging that a certain beneficial act of management could not be performed owing to the position of the trust, and praying for removal of A. and B, the Court ordered intimation, through the post-office, to A. and B., and also intimation to their last known agents, with certification, and thereafter they *removed.*

Salmon died in 1847, leaving a trust-disposition and settlement whereby Merrilees, Walker, Scott, and Salmon's two sons, John Salmon and Peter Salmon, were nominated trustees, the quorum to consist of a majority of the trustees accepting and surviving. All the parties named, except Merrilees, accepted the trust. In 1855 John Salmon and Peter Salmon were sequestrated, and Mackenzie was appointed trustee on their estates. The remaining trustees, Walker and Scott, now presented a petition for removal of John and Peter Salmon from office. They alleged that it would be greatly for the interest of the trust-estate to sell a certain property under powers contained in a bond and disposition in security, narrated in the petition, "but in the present position of the trust the petitioners have no power to act. The said John and Peter Salmon left Scotland shortly after their bankruptcy as above set forth. The petitioners believe them to be at present resident in England, but are not aware of their present address. The petitioners frequently communicated with them on the subject of this trust after they left Scotland, urging them either to co-operate with them in the management of the trust, or to resign, but they have persistently abstained from making any answer to these applications. Mr and Mrs Aiken, the sole beneficiaries under the deed, have made similar applications, and with the same result. The petitioners have also communicated with Mr William Mathieson, writer in Glasgow, who acted as the agent for the Messrs Salmon, with a view of ascertaining what they proposed to do in this matter, but Mr Mathieson has not been enabled to give any reply on their behalf."

The petitioner prayed the Court, after intimation and service, "to remove the said John Salmon and Peter Salmon from the office of trustee under the said deed; or, without removing the said John Salmon and Peter Salmon, to authorise the petitioners to act in the said trust with as full powers as if they were a majority of the said trustees; or

otherwise, to nominate and appoint a judicial factor upon the trust-estate of the said John Salmon."

The truster's daughter, Mrs Aitken, and her husband, and the trustee on John and Peter Salmon's sequestrated estates, being the sole beneficiaries under the deed, concurred in the application.

LANCASTER, for petitioners, cited *Smith*, 20 March 1862, 24 D. 838; *Watt*, 13 June 1854, 16 D. 941; *M'Aslan*, 17 July 1841, 3 D. 1263; *Glasgow*, 7 Dec. 1844, 7 D. 178; *Miller*, 19 Jan. 1854, 16 D. 358; *Fraser*, 1 March 1837, 15 S. 692.

The Court pronounced the following interlocutor:—

"*Edinburgh*, 13*th May* 1868.—The Lords having heard counsel for the petitioners, and no appearance having been made for any other party, appoint this petition to be intimated to John Salmon and Peter Salmon, therein designed, and that by sending through the post-office a copy of the said petition and of this interlocutor to each of them, addressed to their place or places of abode last known to the petitioners; further appoint this petition to be intimated to William Mathieson, therein designed, the last known agent of the said John Salmon and Peter Salmon, and appoint the said John Salmon and Peter Salmon to state, and that within ten days from the signing of this interlocutor, whether they or either of them will or will not act under the trust mentioned, and with certification that if they fail to do so the Lords will proceed to remove them from the said office." (Signed 15th May.)

A minute was lodged by the agents, stating that intimation had been made as directed. No reply was made by the absent trustees.

Thereafter this interlocutor was pronounced:—

"27*th May*.—The Lords having resumed consideration of the petition, with the intimation and the minute No. 9 of process, remove John Salmon and Peter Salmon from the office of trustees under the trust-disposition and settlement of the deceased John Salmon, as prayed, and decern."

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

Wednesday, May 27.

HENDRY *v.* GRANT AND ANOTHER.

Agent and Client—Funds received—Specific purpose—Advocation. Law agents received from a client a sum of money for the purpose of getting the opinion of counsel as to the competency of an advocation, and of advocating the cause if so advised, or raising some other action. Nothing else was done than to take the opinion, which was adverse to advocation. The auditor having reported that the sum received was more than was required for that purpose,—*Held* that, the money being given for a specific purpose, the agents must return the balance whatever counter claim they had against their client.

The pursuer in this case, a farm grieve, pursued the defenders, a legal firm, for damages, and for the recovery of certain specific sums, upon two grounds—(1) that they failed to obey his express instructions in regard to raising an action at his instance against his master (by whom he said he had been improperly dismissed) in respect that while he ordered an action to be brought for a sum of about £28, including his yearly wages and allowances, the defenders only brought the action for half that amount, being the pursuer's claim for half yearly wages. The action for £14, 4s. having been raised, the Sheriff-substitute decerned for the pursuer. The Sheriff altered this judgment; and the ground of action in this case was that, through the failure of the defenders to obey his express instructions, the pursuer had lost his remedy of advocation, whereby he could have got his rights against his master redressed; (2) the second ground of action was, that, after the final judgment of the Sheriff, the defenders had encouraged the pursuer in the idea that the process in the Inferior Court was capable of being advocated, and had taken from him £10, the purpose of which was expressed in the following receipt which they gave to him:—

"*Elgin*, 3*d July* 1866.—Received from Mr Wm. Hendry the sum of ten pounds sterling, for the purpose of getting counsel's opinion, and for advocating *Hendry* v. *Grant*, and raising such other action as may be necessary."

(Signed) "GRANT & JAMESON."

The pursuer said that the defenders were guilty of a want of professional skill in supposing, and leading him to believe, that the process could be advocated.

The Court allowed a proof, and heard parties upon it.

W. A. BROWN for pursuer.

GIFFORD and LANCASTER for defenders.

The Court held (1) that the pursuer had failed to prove that he gave such instructions as he represented; (2) without affirming that the defenders had shown any want of professional skill in taking the opinion of counsel on the point, that advocation of the process was clearly incompetent; but (3) that the sum of £10, having been given for a specific purpose, must be so used, and being too large sum for taking the opinion of counsel, which was all the defenders did with it, they have to return the balance after deducting a lawful charge for agency and counsel's opinion.

The Court having remitted to the Auditor to tax the account, he reported that £4, 6s. was a lawful charge for that purpose, The Court accordingly decerned for the pursuer for the balance of £5, 14s; but assoilzied the defenders from all the other conclusions of the action.

Agent for Pursuer—James Bell, S.S.C.

Agents for Defenders—H. & A. Inglis, W.S.

Thursday, May 28.

FIRST DIVISION.

HENRY & CO. *v.* FOWLER.

Agreement—Remuneration for Work done. Circumstances in which *held* that a party sueing for remuneration for work done had failed to prove that the work was done on the employment of the defender.

This was an action for payment of certain sums of money alleged to be due by the defender to the pursuers for work done in the way of pulling down old houses and making excavations in ground belonging to the defender.

The Lord Ordinary (KINLOCH), after a proof, pronounced this interlocutor:—"Finds that, on or about the month of August 1856, the defender William Fowler entered into a contract with Robert Paterson, designing himself mason, 140 Renfield