alterations in the rate of discount allowed to customers. It is impossible to imagine that so high a rate of discount as 35 per cent. could be allowed merely in consideration of prompt payment. The figures are altogether disproportionate to such an arrangement, and there is nothing incredible or indeed improbable in the defender's evidence that he was promised 35 per cent discount irrespective of the time of payment of his current account. The only contrary evidence is contained in the terms of the invoice, but I have always understood that a collateral document such as this can only be referred to as modifying a contract in so far as the contract refers to it. Here, according to all the evidence before us, that of the pursuers' agent and of the defender, the verbal contract was in no way subject to the conditions in the invoices which were afterwards sent to the defender to inform him of the quantity and price of the barrels sent, and of the dates at which he was to receive the consignments. I know of no legal principle requiring the defender to be bound by conditions appearing in a printed paper such as this invoice, which bears no relation to the contract of sale, which was not sent to the purchaser as a proposal for an alteration of the contract previously made, and to which his attention was not specially called.

LORD KINNEAR and LORD ADAM concurred.

The Court recalled the judgment of the Sheriff and assoilzied the defender.

Counsel for the Pursuers—Chree. Agents—John C. Brodie & Sons, W.S.

Counsel for the Defender—Salvesen—Clyde. Agents—Gill & Pringle, W.S.

Wednesday, December 11.

FIRST DIVISION.

MACKAY *v.* THURSO HARBOUR TRUSTEES.

Process—Expenses—Minute of Abandonment—Judicature Act 1825 (6 *Geo. IV. cap.* 120), *section* 10.

By section 10 of the Judicature Act it is provided that a pursuer has the right to abandon an action "on paying full expenses to the defender."

Held that where the defender in an action does not consent to absolvitor being pronounced, a minute of abandonment by the pursuer, which does not bear to be under the statute, and in reference to which there is no tender of expenses, is incompetent.

In an action at the instance of John Mackay, contractor, and Roderick Scott, trustee on his sequestrated estate, against the Thurso River Harbour Trustees, the pursuers reclaimed against the judgment of the Lord Ordinary. Subsequently Mr Scott lodged a minute in which he stated that "the minuter had now ascertained that he was unable to verify the cause of action as set out in the summons, and that the estate under his charge would not yield funds to pay the costs of litigation, that he had been recommended by the creditors to abandon further proceedings, and craved leave for himself to abandon the action." No tender of expenses was made in the minute or by the minuter's counsel.

Section 10 of the Judicature Act provides that a pursuer has the power "to abandon the cause on paying full expenses or costs to the defender, and to bring a new action if otherwise competent."

The respondents argued that it was incompetent to abandon the action except on payment of expenses, in accordance with the provisions of the Judicature Act and relative Act of Sederunt—A. of S., July 16, 1828, sec. 115.

At advising—

LORD PRESIDENT—If this minute of abandonment had been presented in accordance with the Judicature Act, our course would would have been clear; the defenders' account of expenses is remitted to the auditor, and, on the taxed expenses being paid the action is then dismissed. But this minute does not purport to be under the statute, and it has been admitted at the bar that it was of distinct intention that it was not presented under the statute. Now, we have no mode of dealing with such a minute, and, accordingly, I am of opinion that we must refuse it. The pursuer will then be in a position to consider what steps he should take next.

LORD ADAM—I am of the same opinion. The minuter craves leave for certain reasons to abandon the action unconditionally, to get clear of it free of all expense. Now, apart from the consent of the defenders, we could not grant such a motion. A minute of abandonment under the Act of Sederunt is presented under special conditions, viz., payment by the minuter of all expenses, which must be performed before the motion can be granted, but there is no method of dealing with such a minute as this, and accordingly I agree that we must refuse it

LORD M'LAREN—I concur. I think it is perfectly plain that the pursuer can only abandon the action under the condition of paying the defenders' expenses. Although he does not offer to do so in the minute which he has lodged, still, if his counsel had stated that he was willing to pay these expenses, I have no doubt that your Lordships would have remitted the defenders' account to the auditor, with the view of the necessary qualification being inserted in the interlocutor. But when it appears that the pursuer is not willing to pay the defenders' expenses, I think that our only course is to refuse the minute.

LORD KINNEAR concurred.

The Court refused the minute.

Counsel for the Minuter—A. Jameson—Chree. Agents—J. K. & W. P. Lindsay, W.S.

Counsel for the Respondents—Guthrie. Agents—J. C. Brodie & Sons, W.S.

Wednesday, December 11.

SECOND DIVISION.

THE ALBANY SHIPPING COMPANY, LIMITED, PETITIONERS.

Company — Process — Companies Act 1877 (40 *and* 41 *Vict. cap.* 26) *sec.* 4 (2)—*Addition of Words "and Reduced" to Name of Company.*

On the presentation of a petition for confirmation of a special resolution for the reduction of the capital of a company under the provisions of the Companies Acts 1867 and 1877, the Company moved the Court, in virtue of the power conferred upon it by sec. 4, sub-sec. 2 of the Act of 1877, to dispense with the addition of the words "and reduced" to the name of the company pending the disposal of the petition.

The Court *granted* the motion.

By section 10 of the Companies Act 1867, it is enacted "The Company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the Company within the meaning of the principal Act."

By section 4 of the Companies Act 1877, it is enacted—"The provisions of the Companies Act 1867, as amended by this Act, shall apply to any company reducing its capital in pursuance of this Act and of the Companies Act 1867, as amended by this Act: Provided that where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital—(1) The creditors of the Company shall not, unless the Court otherwise direct, be entitled to object or required to consent to the reduction; and (2) it shall not be necessary before the presentation of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words 'and reduced,' as mentioned in the Companies Act 1867.

At an extraordinary meeting of the Albany Shipping Company, Limited, held on 3rd October 1895, and confirmed at a subsequent extraordinary general meeting held on 22nd October 1895, a special resolution was passed that the capital of the Company should be reduced from £250,000, divided into 25,000 shares of £10 each to £125,000 divided into 25,000 of £5 each. The reduction of capital resolved upon by the Company was a reduction of paid-up capital which was lost, or was unrepresented by available assets, and did not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, and did not in any way affect the rights of creditors of the Company.

Thereafter, on 10th December 1895, the Company presented a petition to the Second Division to pronounce an order confirming the proposed reduction of capital.

On moving for intimation and advertisement counsel for petitioners moved the Court for leave to dispense with the addition of the words "and reduced" to the name of the Company from the date of the presentation of the petition till the disposal thereof. He referred to the English cases of *Langdale Chemical Manure Company, Limited*, 1878, 26 W.R. 434, and *River Plate Fresh Meat Company*, 1885, W.N. 14.

The Court (LORD RUTHERFURD CLARK absent) granted the dispensation craved.

Counsel for the Petitioners — Lorimer. Agents—Boyd, Jameson, & Kelly, W.S.

Wednesday, December 11.

FIRST DIVISION.

[Lord Kincairney Ordinary.

MOWAT *v.* CALEDONIAN BANKING COMPANY.

Contract—Rei interventus—Unilateral Deed —Improbative Offer for Sale of Heritage.

An improbative offer for the sale of heritage does not become binding on the offerer, *rei interventu*, in consequence of the person to whom the offer is made, before he has accepted it, incurring personal trouble and expense in determining whether it is his interest to accept the offer.

This was an action at the instance of Peter Mowat, builder, Edinburgh, against the Caledonian Banking Company, concluding for implement of missives of sale of Gerston Distillery, Caithness, embodied in the two following documents:—

"*Caledonian Banking Co., Limited, Inverness, 28th November* /94.

"Peter Mowat, Esq.

"Dear Sir,—*Gerston Distillery.*—I am favoured with your letter of yesterday, and have to thank you for the reference which you give. I hereby make you definite offer of the above distillery at the figure you name, viz., £11,500 for two months from this date, and hope that you will let us have your acceptance as soon as you conveniently can within that time. Should you think of visiting the distillery, we shall be glad to give you every facility for inspection.—Yours, &c., E. H. MACMILLAN, *Manager.*"