tor's duty is to observe those rules. But the law as to tender depends on considerations of substantial justice. The tender in this case was silent as to expenses. Accordingly, both on principle and on authority, it must be read as if it had expressly stated that the tenderer did not admit liability for expenses, but, on the contrary, left the question of expenses to be decided by the arbitrator according to his discretion but without a proof.

The question therefore is whether that was a tender which the workman was bound to accept under the penalty of being found liable to the employers in the expenses subsequently incurred. I think that even if there had been no question on the merits between the parties the pursuer would have been entitled to say that he objected to the question whether he was to get his expenses down to the date of the tender being decided by the arbitrator upon a partial view of the facts and without inquiry, and that the pursuer's solicitor would have acted according to his duty if he had said that he rejected the tender, and insisted on examining his client in Court for the purpose of showing that he was entitled to the thing which the defenders denied him, namely, expenses up to the date of the tender.

What has the arbitrator done? On the 29th July, after a proof had been led which made it clear among other things that the workman was entitled to his expenses down to the date of tender, and that the employers were wrong in disputing his right to those expenses, the arbitrator found the workman liable in the subsequent expenses for the following reason as explained in the note to his award—"If the workman had accepted it, he would of necessity have been allowed expenses down to the date of tender." No such necessity existed. *Prima facie*, no doubt, the workman would have been entitled to an award of expenses from the arbitrator up to the date when the employers judicially admitted their liability to pay compensation; but if the workman had accepted the tender it would have been open to the employers to ask the arbitrator to award no expenses in respect of some unreasonable conduct on the part of the workman—for example, in refusing an extrajudicial offer which he ought to have accepted. If the employers desired their tender to be construed as necessarily entitling the workman to expenses down to its date, they ought in fairness to the workman to have stated this in their tender, and not to have reserved to themselves the right to maintain the very opposite in the event of the tender being accepted.

The Court answered the question of law in the affirmative.

Counsel for the Appellant—Crabb Watt, K.C.—Cooper. Agent—E. Rolland M'Nab, S.S.C.

Counsel for the Respondents—Horne, K.C. —Walker. Agents—W. & J. Burness, W.S.

Tuesday, December 7.

SECOND DIVISION.

(SINGLE BILLS.)

[Sheriff Court at Glasgow.

RALSTON *v.* DENNISTOUN SAUSAGE WORKS.

Expenses—Printing—Motion to Dispense with Printing.

A litigant who is ultimately successful and gets a decree for expenses is not entitled to recover from his opponent the expense of a motion to dispense with printing.

Robert Ralston, auctioneer's porter, Glasgow, *pursuer*, brought an action in the Sheriff Court at Glasgow against the Dennistoun Sausage Works, Glasgow, *defenders*, to recover damages for personal injury. The Sheriff-Substitute (CRAIGIE) having assoilzied the defenders, and the Sheriff (MILLAR) on appeal having adhered, the pursuer appealed to the Court of Session and applied for and obtained leave to dispense with printing. The pursuer was ultimately successful and the Auditor at the taxation of his account allowed certain items in connection with the motion to dispense with printing. The defenders presented a note of objections to the allowance of these items.

At the calling of the case in Single Bills, counsel for the pursuer cited the case of *Barron* v. *Black*, 1908, 16 S.L.T. 180.

LORD JUSTICE-CLERK—This is admittedly a point which has not been disposed of before. There is no precedent for taking the course which the Auditor has taken, and in my view we should not make a precedent. If a litigant finds himself in such circumstances as to apply to the Court for the indulgence of being excused from printing, he must make the motion at his own cost and charges and must not debit his opponent with them. Therefore this objection should be sustained.

LORD DUNDAS—I agree. I think these expenses represent a step which was not truly a necessity but was of the nature of a privilege, and I do not think the other side should bear the expense.

LORD SALVESEN—I am of the same opinion.

LORD GUTHRIE—So am I.

The Court sustained the objection.

Counsel for the Pursuer — Dunbar. Agents—Ross & Ross, S.S.C.

Counsel for the Defenders — Lippe. Agents — Martin, Milligan, & Macdonald, W.S.

Tuesday, November 9.

SECOND DIVISION.

[Lord Hunter, Ordinary.

ROBINSON *v.* NATIONAL BANK OF SCOTLAND, LIMITED.

Fraud—Caution—Bank—Liability of Bank for Representations as to Customer's Credit.

An insurance company made to a borrower a loan which was guaranteed by three persons. The principal debtor and two of the cautioners having become bankrupt the insurance company obtained payment from the remaining cautioner. He thereupon brought against a bank an action of damages, on the ground that he had been induced to become surety for the loan on the faith of two reports which were sent by the bank to persons making inquiries, and afterwards communicated by these persons to the pursuer, and which, as he averred, contained false and fraudulent representations regarding the financial position of the co-cautioners, or at any rate which failed to disclose facts regarding their financial position which it was the duty of the bank to disclose.

Circumstances in which the Court (*diss.* Lord Salvesen) *assoilzied* the defenders, *holding* (1) that the representations were not false or fraudulent, (2) that the representations were confidential communications not intended for the use of the pursuer, and (3) that the bank were under no duty to disclose the financial position of the co-cautioners.

Tom Robinson, stockbroker, London, *pursuer*, who with Quentin Inglis, 16 Winton Drive, Glasgow, and John Francis Inglis junior, of Messrs A. & J. Inglis, Limited, Glasgow, was, in an indenture of agreement of 10th October 1910, surety for the repayment to the Royal Exchange Assurance, London, (*a*) of the principal sum of £2500 lent to a Major Harley on the security of two policies of insurance on Major Harley's life, (*b*) for the interest on the loan at 6 per cent. per annum, (*c*) for the renewal premia, £75 each, of the life policies, and (*d*) for any costs incurred by the Royal Exchange Assurance, brought an action against the National Bank of Scotland and Donald John Alexander M'Arthur, their agent in Partick, *defenders*, in which he sought to recover £3155, 12s. paid by him to the Royal Exchange Assurance under the indenture of agreement owing to the bankruptcy of Major Harley and the sequestration of the estates of the Messrs Inglis, and to make provision for the payment of the premia of the life policies.

The pursuer pleaded — "(1) The pursuer having been induced to become surety for the said loan on the faith of false and fraudulent representations made by the defenders in their report as condescended on, the defenders are liable to him in damages in respect of the loss and damage thereby sustained. (2) The defenders having made the said report without disclosing the insolvency of the said Quentin Inglis and John Francis Inglis junior, and other material facts within their knowledge and with respect to which there was a duty of disclosure, are liable to the pursuer in respect of the loss and damage thereby sustained by him. (3) The pursuer having sustained loss and damage through the fraudulent actings of the defenders is entitled to decree in terms of the conclusions of the summons. (4) In any event, the defenders are liable to the pursuer in so far as *lucrati* by the said transactions."

The defenders, who in the course of the cause accepted responsibility for the actings of their agent, pleaded — "(4) The alleged representations to the pursuer having been made expressly on the footing that no responsibility was to be incurred therefor, the defenders should be assoilzied. (5) The pursuer not having relied, *et separatim* not having been entitled to rely, upon the alleged representations contained in said letter, the defenders are entitled to absolvitor. (6) The representations complained of having been made in *bona fide*, the defenders should be assoilzied. (7) The said representations being true in fact, the defenders are entitled to absolvitor."

The *representations* (*report*) sued on were contained in the following correspondence: —On 27th July 1910 the London and South-Western Bank wrote to the Partick branch of the National Bank of Scotland — (1) "*Confidential*—I shall feel greatly obliged by the favour of your opinion, in confidence, of the respectability and standing of Mr John Francis Inglis, and by your stating whether he may be considered trustworthy in the way of business to the extent of £5000 as a guarantor;" and (2)—"*Confidential*—I shall feel greatly obliged by the favour of your opinion, in confidence, of the respectability and standing of Mr Quentin Inglis, and by your stating whether he may be considered trustworthy in the way of business to the extent of £5000 as a guarantor." They received, dated 28th July 1910, a reply —"*Private*—Gentlemen—Yours of yesterday's date to hand. The young men enquired about are sons of Dr John Inglis of Pointhouse Shipbuilding & Engineering Co., Ltd., one of the best equipped yards on the upper reaches of the Clyde. They hold positions in the yard and are shareholders to a considerable extent. The interest warrants which they collect through us, usually in railway and other kindred concerns, represent a capital greater than your figures. The future prospects of the young men are very bright. At present, however, I would consider £5000 each too much for them as cautioners. D. J. A. M'ARTHUR, *Agent. N.B.—The above information is to be considered strictly confidential, and is given on the express understanding that we incur no responsibility whatever in furnishing it.*" On 28th September 1910 Messrs Robarts, Lubbock, & Company, London, wrote to the Partick branch of the National Bank — "Dear Sirs—We shall esteem it a favour if you will kindly report, in confidence, as to the standing and responsibility of Quentin Inglis, 16 Winton Drive, Glasgow, ship-