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-

builder and marine engineer; J. F. Inglis junior, Messrs A. & J. Inglis, Ltd., Glasgow, shipbuilder and engineer, whether you consider each of above undoubted for £5000." And they received in reply — "*Private* — Gentlemen—The young men enquired about in your letter of 28th are highly respectable; they are sons of Dr John Inglis, head of the firm you name. The interest warrants and dividends which they get cashed here represent a capital in excess of your figures. I have had a conversation to-day with both of them, and they state that they do not know the reason of this enquiry. Kindly let me know. 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.*"

The *contentions* of the pursuer were contained in the following averments (referred to in the opinions): — "(Cond. 8) When Major Harley first approached the pursuer in July 1910 and requested him to become surety for the loan he informed the pursuer that the Royal Exchange Assurance were to make inquiries regarding the financial position of the said Quentin Inglis and John Francis Inglis junior, but that the Royal Exchange Assurance had informed him that their rule in such transactions required two independent sureties and, as the said Quentin Inglis and John Francis Inglis junior were associated in the same business, that rule was not complied with, and it would be necessary, as matter of form, for Major Harley to offer another surety, and he requested the pursuer to act in that capacity. The pursuer agreed to act, provided Major Harley obtained on his behalf a satisfactory banker's report on the financial position of the said Quentin Inglis and John Francis Inglis junior. Major Harley undertook to procure on the pursuer's behalf a banker's report accordingly. (Cond. 9) In pursuance of the said arrangement Major Harley instructed the London and South-Western Bank, Limited, Shoreditch Branch, London, to obtain on behalf of the pursuer a report on the financial position of the said Quentin Inglis and John Francis Inglis junior, and in fulfilment of these instructions the said Bank on 27th July 1910 communicated with the defenders, from whom they received the following report, viz. — '. . . [*v. sup. for correspondence letter of 28th July* 1910]. . . .' (Cond. 10) The said report was untrue and misleading, not only in respect of the statements it contained, but also as regards the omission therefrom of material facts known to the defenders, and with respect to which there was a duty of disclosure. At the time the report was made the said Quentin Inglis and John Francis Inglis junior were both hopelessly insolvent, and this was well known to the defenders. In making said report the defenders knew that it was untrue and misleading, and did not disclose the true state of affairs. At the date of its issue the Bank were creditors of both the said Quentin Inglis and John Francis Inglis junior in respect of large overdrafts on accounts kept at their Partick branch, and for some time prior thereto they had been pressing for payment, and had put the matter into the hands of their law agents, by whom proceedings had been intimated. For several months previous to the issue of said report the Bank had repeatedly directed their agent Mr M'Arthur that he should take steps to have the said overdrafts paid up or reduced so far as possible on account of the insolvent condition in which the said Quentin Inglis and John Francis Inglis at that time were. In pursuance of said instructions the defender Mr M'Arthur was making constant applications to the said Quentin and John Francis Inglis and to their law agents for payments to account of their indebtedness to the Bank. About this time the defender Mr M'Arthur had several meetings with the said Quentin and John Francis Inglis at which the possibilities of their raising funds to liquidate their liabilities to the Bank were discussed. The defenders were aware that the said Quentin and John Francis Inglis had no securities of any kind upon which a loan might be effected, and that their only means of raising money and paying off said overdrafts was by the Bank giving favourable reports as to their credit on the faith of which advances might be made. The defenders were further aware that the said Quentin and John Francis Inglis were indebted in large sums to other banks and to various moneylenders, and that there was no prospect of their being in a position to meet their liabilities either then or in the future. Prior to the issue of said report, and in particular between April and July 1910, several cheques for small sums drawn by the said Quentin and John Francis Inglis had been returned dishonoured by the defenders. At or about this time Dr John Inglis, father of the said Quentin Inglis and John Francis Inglis junior, made an offer to the Bank whereby the Bank were to receive a small composition in discharge of their claims. Notwithstanding these facts the defenders issued the report complained of. . . . In connection with the said loan a report [*v. sup. correspondence*] was made by the defenders to Messrs Robarts, Lubbock, & Company, bankers, London, on behalf of the Royal Exchange Assurance, who informed the pursuer thereof. At or about the same period the defenders made a great many reports—seventeen of which are within the knowledge of the pursuer—in substantially the same terms to various parties who inquired as to the financial status of the said Quentin Inglis and John Francis Inglis junior. The defenders were aware that the inquiries in response to which said reports were furnished were made on behalf of third parties, and that said reports would be used, and were in fact being used, for the purpose of enabling the said Quentin Inglis and John Francis Inglis to obtain loans or other financial accommodation, and thereby liquidate their liabilities to the Bank. In particular, the defender Mr M'Arthur was aware that the inquiries from the London and South-Western Bank

and Messrs Robarts, Lubbock, & Company were made on behalf of the pursuer in relation to the said transaction with the Royal Exchange, and that the reports would be used for the purpose of inducing the pursuer to become a party to the said indenture of agreement. The pursuer believes and avers that the defender Mr M'Arthur was aware that the said Quentin and John Francis Inglis were really principals in the matter of said loan. In making said report the defender Mr M'Arthur was acting on the authority and within the powers conferred upon him by the Bank. It is the practice of the Bank in the conduct of their business to issue reports as to the financial status of their customers, and for this purpose they authorise their agents at their various branches to issue such reports on behalf of the Bank. Similar reports are also issued from the head office. In issuing the report complained of in the present action the defender Mr M'Arthur acted on the authority of, and within the powers conferred on him by, the Bank, and the reports were made by him on its behalf. The Bank were *lucrati* by the said transaction. At least one-third of the sum advanced to the said Major Harley was paid over to the said Quentin Inglis and John Francis Inglis, and the pursuer believes and avers that part thereof amounting to several hundred pounds was paid to the Bank by the said Quentin Inglis and John Francis Inglis in reduction of the amount of their overdrafts. . . . (Cond. 11) Further, the said reports made by the defenders for the use of the pursuer were in terms untrue in respect (*a*) the said Quentin Inglis and John Francis Inglis junior were not, nor was either of them, shareholders in A. & J. Inglis, Limited, Pointhouse; (*b*) they were not, nor was either of them, holders of debentures, share, or stock of railway or other kindred concerns; (*c*) as regards the statements therein that they held positions in the yard and that their future prospects were very bright, the defenders were aware of their insolvency and of the fact that their father Dr Inglis, who had the controlling interest in A. & J. Inglis, Limited, had, in consequence of their transactions with moneylenders and speculations on the stock exchange and of their reckless extravagance and mode of living, dismissed them from their former positions and given them subordinate positions in the company; and (*d*) any rights they had in their grandfather's estate were contingent and of no present value. The defenders were aware that the reports were untrue and misleading in the matters libelled. . . . . (Cond. 12) The pursuer was induced to become surety for repayment of the said loan and undertook the other obligations contained in the said indenture of agreement in consequence of the false and fraudulent representations made to him by the defenders in regard to the financial status of the said Quentin Inglis and John Francis Inglis junior, as condescended on, and the defenders are liable to the pursuer for the loss and damage he has sustained in consequence thereof. . . ."

The *evidence* is reviewed in the opinions (*infra*).

On 21st October 1914 the Lord Ordinary (HUNTER) allowed a proof.

Opinion.—". . . The defenders plead, in the first place, that as the letter is marked confidential and is not addressed to the pursuer he cannot found upon it. In support of this proposition they found upon the case of *Salton & Company* v. *Clydesdale Bank, Limited*, 1 F. 110, where it was held that a confidential representation as to a trader's credit is personal to the individual to whom it is made, and will not found an action of damages by another person relying upon it. The pursuer, however, has made an averment in this case that the defender Mr M'Arthur was aware that the inquiry from the London & South-Western Bank, Limited, was made on behalf of the pursuer in relation to the transaction with the Royal Exchange, and that the report would be used for the purpose of inducing the pursuer to become a party to the said indenture of agreement. There was no such averment in *Salton's* case. If this averment is satisfactorily established, I think the pursuer is entitled to prosecute the action. In *Peek* v. *Gurney*, L.R., 6 (H.L.), at p. 413, Lord Cairns cites, apparently with approval, a statement made by Lord Hatherley that 'Every man must be held responsible for the consequences of a false representation made by him to another upon which a third party acts, and so acting is injured or damnified, provided it appear that such false representation was made with the intent that it should be acted upon by such third person in the manner that occasions the injury or loss.'

"The defenders also maintain that the action is irrelevant. If, however, the pursuer establishes a right to found upon the terms of the letter, I think that he has clearly stated a relevant case against the individual defender. I do not think that I can at this stage throw out the action on account of the length of time which elapsed between the representation and the advance.

"The Bank are in a different position from the individual defender. In *Hockey* v. *Clydesdale Bank, Limited*, 1 F. 119, an action very similar to the present was thrown out against the bank because the pursuer had not relevantly averred that the agent's letter had been written with the authority of the bank, or that the bank had taken benefit through the discounting of the bills. If, however, the agent acted within the scope of his agency the fact that the principal has not benefited does not appear to be good ground for exonerating him. In considering the effect of the judgment in the well-known case of *Barwick* v. *English Joint Stock Bank*, L.R., 2 Ex. 259, Lord Macnaghten in *Lloyd* v. *Grace Smith & Company*, L.R., 1912, A.C. at p. 731, said —'I think it follows from the decision, and the ground on which it is based, that in the opinion of the Court a principal must be liable for the fraud of his agent committed in the course of his agent's employment, and not beyond the scope of his agency,

whether the fraud be committed for the principal's benefit or not.' Looking to the averments made by the pursuer in condescendence 10, I do not think that I can satisfactorily dispose of this case without enquiry. I do not propose at this stage to repel any of the pleas of parties, but simply to allow a proof before answer."

On 27th January 1915 the Lord Ordinary repelled the pursuer's pleas-in-law and assoilzied the defenders.

Opinion.—". . . . At the discussion in the procedure roll the defenders strongly founded upon the case of *Salton & Co.* v. *Clydesdale Bank, Limited*, 1898, 1 F. 110, where it was held that a confidential communication as to a trader's credit is personal to the individual to whom it is made, and will not found an action of damages by another person relying upon it. The only reason why I allowed a proof notwithstanding this decision which is binding upon me was that the pursuer averred and undertook to prove that the report to the London and South-Western Bank, Limited, was got for him, and that the defender Mr M'Arthur was aware that the enquiry by the London and South-Western Bank, Limited, was made upon his behalf in connection with the proposed transaction, and that his report would be used for the purpose of inducing the pursuer to become a party to the indenture of agreement to which I referred in my former opinion.

"No attempt whatever was made by the pursuer to prove the latter part of this averment. It is clearly contrary to fact, for Mr M'Arthur knew nothing about the pursuer or that he was proposing to become cautioner for any loan. As regards the first part of the averment, the pursuer's evidence appeared to me to be extremely unsatisfactory. Mr Cole, the manager of the London and South-Western Bank, Limited, Shoreditch branch, made the enquiry because he was asked to do so by Major Harley and a Mr Blustin. He had no knowledge of the pursuer or that the enquiry was being made on his behalf. The pursuer says that in July 1910 Major Harley approached him with a request that he should become cocautioner along with the Messrs Inglis for an advance which he (Major Harley) was trying to arrange, and that he (the pursuer) requested an independent reference as to the Messrs Inglis' financial standing before he made up his mind. He adds that Major Harley afterwards informed him that the London and South-Western Bank, Limited, got the reference from the defenders; that he was informed of certain statements in the defenders' report, and that he then authorised Major Harley to use his name. The transaction he explains was only completed in October; but he alleges that he relied upon the defenders' report. Major Harley, who was examined on commission, substantially supports the pursuer's evidence. He gives, however, as his reason for asking the pursuer to become surety that Major Darbishire of the Royal Exchange Assurance, with whom he was negotiating for an advance, informed him that he would have to get another security as well as the Messrs Inglis, because they were brothers. Major Darbishire, who was examined before me, explains that his meeting with Major Harley took place in September. I had no difficulty in accepting Major Darbishire's statement about the date as correct, and the reasons which he gives in cross-examination appear to me convincing. The pursuer himself, in an affidavit which he signed in connection with proceedings against him by the Royal Exchange Assurance, states—'About September 1910, one Harry Kellett Harley, a friend of mine, asked me whether I would be prepared to let myself be put forward as a third surety to guarantee the repayment by him of a loan of £2500.' In the condescendence annexed to the summons as brought in the present case the pursuer gives the same statement as to the date and makes no suggestion that the defenders' report was procured on his behalf.

"In my opinion the defenders' report to the London and South-Western Bank, Limited, was not obtained on behalf of the pursuer, and the case of *Salton & Co.* is therefore a direct authority in favour of the defenders.

"The pursuer sets forth on record the statements of fact in the defender Mr M'Arthur's letter which he alleges were false and fraudulent. His case is that he was deceived by them. In his evidence he says—'He (*i.e.* Major Harley) told me that they (*i.e.* the London and South-Western Bank) had made application to the National Bank of Scotland, Partick, and that the reply was very satisfactory. He told me that he had not actually seen the reference, but that the Bank manager had told him that he had received dividend warrants which were equal in capital to the amount that he required.' Major Harley substantially supports the pursuer. He says that Mr Cole did not show him the report but told him what it was. On the other hand, Mr Cole says that he did not communicate to Major Harley any statement of fact contained in the communication he had received from the defenders. He explains that it is contrary to his custom to make such a communication. Mr Blustin, who appears to have been along with Major Harley when Mr Cole informed them that he had received a reply from the defenders in answer to the enquiry made by him, supports Mr Cole, whose evidence I accept. I think therefore that the pursuer has failed to show that he relied, as alleged on record, on any statements made by the defenders.

"As regards the statements made in the report it is inaccurate to say, as is there done, that the interest warrants which the Messrs Inglis collect, usually through the bank, in railway and other kindred concerns, represent a capital greater than the figures you quote, *i.e.* about £10,000. I am satisfied, however, that Mr M'Arthur, who appeared to me to be an honest witness, considered the statement to be in accordance with fact on account of the information which he had received from the former agent of the bank and from the Messrs Inglis. In the case of *Derry* v. *Peek*, 1889, 14 A.C. 337, it was said by Lord Herschell—

'First, in order to sustain an action of deceit there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false.' On the evidence led before me it appeared to me impossible to say that fraud in any of these senses was imputable to Mr M'Arthur.

"The report makes no reference to the circumstance that the accounts of the Messrs Inglis were largely overdrawn, that the Bank had made frequent requests for payment to their customers, and had consulted law agents about the position of the accounts. A full report should have contained a reference to these facts. Mr M'Arthur, however, was satisfied in his own mind that the prospects of the Messrs Inglis were good, and at the time believed that they had securities, the scrip for which they had told him was in their father's hands, more than sufficient to cover the indebtedness to the Bank. I do not think that it would be fair to say that he fraudulently concealed the facts as to the state of the Messrs Inglis' account. The averments made by the pursuer that the defenders knew that the Messrs Inglis were insolvent and that they were indebted in large sums to other banks and to various money-lenders, are, in my opinion, without foundation. I shall therefore repel the pursuer's pleas and assoilzie the defenders."

The pursuer reclaimed, and argued—The defenders were liable for the fraud of their agent—*Lloyd* v. *Grace, Smith, & Company*, [1912] A.C. 716. The evidence showed that the representations contained in the letters of 28th July and 1st October were false and fraudulent, and that the defenders intended them to be acted on by the pursuer, or at anyrate by a class of persons to which class the pursuer belonged. It was immaterial that the letters had not actually been addressed by the defenders to the pursuer. The defenders were therefore liable in damages to the pursuer—*Andrews* v. *Mockford*, [1896] 1 Q.B. 372, *per* Lord Esher, M.R., at 377, and Rigby, L.J., at 384; *Derry* v. *Peek*, (1889) L.R., 14 A.C. 337, *per* Lord Herschell at 369, 374, and 375; *Peek* v. *Gurney*, (1873) L.R., 6 (H.L.) 377, *per* Lord Cairns at 412 and 413; *Swift* v. *Winterbotham*, (1873) L.R., 8 Q.B. 244, *per* Quain, J., at 253; *Bedford* v. *Bagshaw*, 1859, 29 L.J., Ex. 59, *per* Bramwell, B., at 64, and Pollock, C.B., at 65; *Scott* v. *Dixon*, 29 L.J. Ex. 62, *n.*; *Gerhard* v. *Bates*, (1853) 2 E. & B. 476, *per* Lord Campbell, C.J., at 488 and 491; *Park* v. *Gould & Company*, (1851), 13 D. 1049, *per* Lord President (Boyle) at 1053, and Lord Fullarton at 1054; *Langridge* v. *Levy*, 1837, 6 L.J., Ex. 137, *per* Parke, B., at 139, 7 L.J., Ex. 387, *per* Denman, C.J., at 388; *Balfour, Junor, & Company* v. *Russell*, March 8, 1815, F.C. The letter was a "machination or contrivance to deceive," and therefore it was fraudulent—Bell's Prin. (10th ed.), sec. 13. The defenders had a duty to disclose the true state of affairs—*Nocton* v. *Ashburton*, [1914] A.C. 932, *per* Lord Haldane, L.C., at 947, 948, and 955, and Lord Shaw at 970. Even if they were not bound to give the information, if they did give it they were bound to speak the truth. They were not entitled to give a garbled answer—*Park* v. *Gould*, *per* Lord Fullarton (*cit.*). The Mercantile Law (Scotland) Amendment Act 1856 (19 and 20 Vict. cap. 60), sec. 6, did not absolve the defenders from liability, because, although the representations were not communicated to the pursuer in writing, they were issued by the defenders in writing.

Argued for the respondents—The evidence showed that the statements were not false or fraudulent, and in any event that they were not intended for the pursuer or for any particular class of persons, but were confidential statements intended solely for the persons to whom they were addressed. Accordingly the defenders were not liable—*Nocton* v. *Ashburton* (*Lord*) (*cit.*), *per* Lord Haldane, L.C., at 947, 951, and 952; *Parsons* v. *Barclay & Company, Limited, and Goddard*, (1910), 103 L.T. 196, 26 T.L.R. 628; *Salton & Company* v. *Clydesdale Bank, Limited*, (1898), 1 F. 110, *per* Lord Trayner at 118, 36 S.L.R. 119, at 127; *Hockey* v. *Clydesdale Bank, Limited*, (1898), 1 F. 119, 36 S.L.R. 119; *Derry* v. *Peek* (*cit.*), *per* Lord Herschell at 360, 361, 369, and 376; *Peek* v. *Gurney* (*cit.*); *Philip* v. *Melville*, February 21, 1809, F.C.; Bell's Comm. (7th ed.), vol. i, p. 392. There might be liability where there was a fiduciary relation—*Nocton* v. *Ashburton* (*Lord*), [1914] A.C. 932, *per* Lord Haldane, L.C., at 947, 951, and 952—but there was no fiduciary relation between the defenders and the pursuer here. In any event the Mercantile Law (Scotland) Amendment Act 1856, sec. 6, absolved the defenders from liability—*Clydesdale Bank, Limited* v. *Paton*, (1896), 23 R. (H.L.) 22, *per* Lord Watson at 26, 33 S.L.R. 533, at 536.

At advising—

LORD JUSTICE-CLERK— . . . . . The first point raised is as to the date when the pursuer became interested in this matter. The Lord Ordinary is of opinion that the pursuer was first approached in September 1910. In a case of this kind a Court of review would naturally attach very great importance to the opinion of the Judge who saw the witnesses and heard them give their evidence, and in this case not only because of the weight I attach to the Lord Ordinary's opinion but also from a very careful examination of the evidence I am of opinion that the Lord Ordinary has arrived at a right conclusion on this special part of the case.

In regard to the letter of 28th July 1910 the first important point to notice is the terms in which it is couched, particularly with reference to the letter to which it was a reply. The London and South-Western Bank write on behalf of Major Harley, and the reason for Major Harley's inquiry as to the sufficiency of the Messrs Inglis is quite plain, because it was arranged from the very first that while Major Harley was to be the principal obligant of the Royal Exchange Assurance and the insurance policies were to be on his life, he was only

to get two-thirds of the loan, while the Messrs Inglis were to get the remaining one-third. Accordingly Major Harley had a clear interest to obtain an account of the financial position of the Messrs Inglis, and therefore his going to his bankers, the London and South-Western, and asking them to make inquiries is intelligible. That bank wrote to the Partick Branch of the National Bank on the 27th July 1910 —". . . [*v. sup.*] . . ."—and on the same date a letter in precisely similar terms was sent as to Mr John Francis Inglis.

There are three points in that letter—The Partick Bank is asked as to the respectability and standing of the Messrs Inglis. I do not know the exact signification of "respectability" and "standing," but the third point is raised quite clearly—"and by your stating whether he may be considered trustworthy in the way of business to the extent of £5000 as a guarantor." Mr M'Arthur in his evidence explained that while the word "guarantor" was used, and while in answer he used the word "cautioner," that did not prevent him from taking the view that the Messrs Inglis were receiving the loan themselves, because in banking language the transaction while referring to the Messrs Inglis as guarantors was quite consistent with the view that they were the principal obligants. Mr M'Arthur's letter in reply is in these terms—"Yours of yesterday's date to hand. The young men inquired about are sons of Dr John Inglis of Pointhouse Shipbuilding and Engineering Company, 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." That might be taken as an answer to the question of respectability and standing, but the most important question which was put, viz., whether they were each good for £5000, is answered thus—"The future prospects of the young men are very bright. At present, however, I would consider £5000 each too much for them as cautioners." Accordingly his answer to the money part of the question is negative. There is a note appended to the letter—"*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.*" I think Mr M'Arthur, who wrote and despatched that letter, was entitled to say, "This London Bank asked if each of these gentlemen were good for £5000, and I have answered that, in my opinion, neither is." The history of the letter after that is not difficult to explain. Mr Cole, the manager of the London and South-Western Bank, having received the letter gave a gloss of it to Major Harley, and Major Harley gave a further gloss to the pursuer. It is quite clear that the statement that the Messrs Inglis were not good for £5000 was not communicated either to Major Harley by Mr Cole, or by Major Harley to the pursuer. On the other hand, Major Harley and the pursuer both say that the information they proceeded upon was that the Messrs Inglis were good for £10,000. Mr Cole, however, says that he said nothing to Major Harley except that he thinks he would give a general statement that there was a fair report, but he repudiates the idea that he had said it was a satisfactory report, because he says that he did not think it was. He says—"I should not describe the report as highly satisfactory. I should call it a fair report;" and he says that in accordance with his practice and with the practice of banks in general it would not be usual to give any details regarding the report but merely a general statement. On that evidence I am of opinion that Mr M'Arthur's letter of 28th July 1910 was not in substance communicated either to Major Harley or the pursuer, and that accordingly even if it had been got for the pursuer he is not entitled to rely upon it to the effect of making the Bank and Mr M'Arthur responsible for misleading him. Mr M'Arthur was entitled to say, in view of the question that was asked of him, "I gave an answer that they were not good for the sum mentioned, and I did not believe that anyone who saw my answer to the letter would allow the transaction to go on." I am quite aware that in the cases of *Swift* v. *Winterbotham*, L.R., 8 Q.B. 244, and *Swift* v. *Jewsbury*, L.R., 9 Q.B. 301, the person who wanted the guarantee only supplied goods to the extent of between £2000 and £3000, although the information requested was whether the debtor was good for £50,000, and the reply the enquirer got was that the debtor was good for that amount. The learned Judges in that case stated that it was no answer in the mouth of the bank that they were asked as to a credit for £50,000 in respect of a transaction not exceeding £3000. The case is materially altered, however, when the bank is asked about a guarantee of £10,000, and states that the proposed sureties are not good for that amount.

The matter does not, however, rest there. The pursuer says that the first report was made to him, and seems to suggest that even the second report was also made to him. Neither was made to him, and he was never told the terms of either of the letters, and only got them at third hand. First Mr Cole gives a gloss on the report to Major Harley, and then Major Harley states to the pursuer as much as he remembers with regard to it, and the important point in the July letter that the guarantors are not in the opinion of the Bank good for £10,000 is not disclosed, while the pursuer gathers the very reverse, namely, that they were good for that sum.

One other topic that was discussed was that Mr M'Arthur's letter of 28th July contained these words—"The interest warrants which they collect through us, usually in railway and other kindred concerns, represent a capital greater than the figures you quote." That was relied upon as meaning that the bank account was still an open one, as the interest was collected

"through us." But when one looks at the evidence the curious thing is that neither Major Harley nor the pursuer says that this point was reported to him. I do not know that either is asked about this, but they state what was told to them, and on no occasion does either say that the interest warrants of the Messrs Inglis were collected through the Bank, and it is accordingly impossible for the pursuer to rest upon that to any extent at all. The result accordingly is that in my judgment it has been proved that this letter of 28th July 1910 was not got for the pursuer, that he never saw it, and that it was never communicated to him at all. It is clear that unless Mr Cole told Major Harley, that gentleman had no information about it. The Lord Ordinary has accepted Major Darbishire's account, and I agree with him, and I think it puts the pursuer out of Court as a party to whom the letter of 28th July was communicated, or for whose behoof it was got. I think the pursuer admits that in material respects the substance of the report was not communicated to him, or material misrepresentations were made about it.

The Lord Ordinary refers to the Scotch case of *Salton*, 1 F. 110, and I agree with the view he takes of that case. He allowed a proof because of the special averments on record, and he holds that these averments are disproved. I consider *Salton's* case is binding upon us, and I think it is good law. Certain cases were specially founded on in addition to the case of *Nocton* v. *Lord Ashburton*, [1914] A.C. 932, which relates to the second plea for the pursuer.

In *Swift's* case I notice that in the Court of first instance, consisting of Chief-Justice Cockburn and Justice Quain, the latter of whom delivered the judgment, it is stated at p. 253—"It is now well established that in order to enable a person injured by a false representation to sue for damages it is not necessary that the representation should be made to the plaintiff directly; it is sufficient that the representation is made to a third person to be communicated to the plaintiff, or to be communicated to a class of persons of whom the plaintiff is one, or even if it is made to the public generally with a view to its being acted on, and the plaintiff as one of the public acts on it and suffers damage thereby. We think that the law on this subject is correctly stated by Pollock, C.B., in *Bedford* v. *Bagshaw*, 29 L.J. (Ex.), 59, at 65, as follows—'Generally a false and fraudulent statement must be made with a view to deceive the party who makes the complaint, or at all events to deceive the class to whom he may be supposed to belong, although he may not be individually and particularly intended. There must always be evidence that the person charged with the false statement and the fraudulent conduct had in his contemplation the individual making the complaint, or at all events that the individual making the complaint must have been one of those whom he ought to have been aware he was injuring or might injure by what he was doing.'" I do not know how far that statement of the law is to be taken as entirely accurate in view of what was said in *Peek* v. *Gurney*, because the case there was expressly overrruled, and also I am not sure what the term "class of persons" refers to. *Bedford* was a company case, and one can see where a class of persons might come in there, but I am not sure that the same considerations apply to a bank guarantee, particularly in view of what Justice Quain goes on to say —"In the present case it has been proved to be the usage amongst bankers to make inquiries of this kind on behalf of their customers, and we think therefore that when Goddard wrote the letter of 9th November he must necessarily be considered to have known or contemplated that it would or might be communicated to the customer of the Sheffield Bank (if any), on whose behalf the information was sought, and we are therefore of opinion that in these circumstances the customers (though not individually known to Goddard)—the representation having been communicated to and acted upon by him, and he having been injured thereby—may sue upon it. It must, however, be understood that our judgment is confined to the case before us, namely, the case of the customer at whose request the inquiry was made, and that it is not intended to apply to any other customer to whom the Bank may have subsequently communicated the contents of the letter." That is not the judgment of the Court, but it shows how narrow the judgment was, and though the case went to the Court of Appeal it was on a separate branch, and accordingly that part of the judgment was not interfered with. In the Appeal Court Baron Bramwell says, on page 316—"In my opinion the effect of the statute is this, that a man should not be liable for a fraudulent representation as to any person's means unless he puts it down in writing and acknowledges his responsibility for it by his own signature. He is not to have the words proved by word of mouth, nor the authority given to an agent for whose act it is sought to make him responsible proved by word of mouth." The only proof we have here of any communication to the pursuer is, as I have stated, the evidence as to the gloss which Mr Cole gave to Major Harley, and the gloss which Major Harley passed on later to the pursuer. Of course, if the letter was not got for or on behalf of the pursuer his case goes, for I think if we were to hold that the transmission of part of the purport of a letter of guarantee, as is stated to have taken place here, would found a sufficient action in spite of section 6 of the Mercantile Law Amendment Act, we would be depriving that statute of all effect in such cases, and there is little question that there would be few bank guarantees or recommendations given.

In the case of *Peek* there are two passages to which I wish to refer. In the first place, Lord Chelmsford in his judgment at pages 396 and 397 disapproves of *Bedford's* case, and concludes his judgment thus—"The decisions and the grounds on which they pro-

ceed appear to me to be extraordinary, and I cannot bring my mind to agree with them." Accordingly *Bedford* is no longer of value as a decision. In the same case of *Peek*, Lord Cairns quotes with approval the Vice-Chancellor (Lord Hatherley) in the case of *Barry* v. *Croskey*—"Every man must be held responsible for the consequences of a false representation made by him to another upon which that other acts, and so acting is injured or damnified." Consequently "every man must be held responsible for the consequences of a false representation made by him to another upon which a third person acts and so acting is injured or damnified, provided it appear that such false representation was made with the intent that it should be acted upon by such third person in the manner that occasions injury or loss." Accepting that as the criterion, I do not think the facts in the present case bring that rule of law into operation. On the whole matter, so far as the letter of 28th July is concerned, in my opinion the pursuer has not sufficiently connected himself with that letter so as to give him a right to sue upon it, nor has he shown sufficiently clearly that any statements therein made were passed on to him, even if verbal passage were sufficient, which to say the least I consider doubtful.

As to the letter of 1st October 1910, that letter is only referred to incidentally on record, and in the argument before us no special stress was laid upon it. The great weight of argument was directed, and quite properly directed, to the letter of 28th July 1910. I think the pursuer has not made a separate case on record for the letter of 1st October, but, looking at the letter to which it was an answer, we find that this letter runs—"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, shipbuilder and marine engineer; John Inglis junior, Messrs A. & J. Inglis, Limited, Glasgow, shipbuilder and engineer; whether you consider each of above undoubted for £5000." The answer is to the following effect—"The young men inquired about in your letter of 28th are highly respectable. They are sons of Dr John Inglis, head of the firm you name. The interest warrants and dividends which they get cashed here represent a capital in excess of your figures. I have had a conversation to-day with both of them, and they state that they do not know the reason of this inquiry. Kindly let me know." Then there is the same note as was appended to the other letter. I think on the evidence that that letter cannot be held to have been obtained for the pursuer. Mr M'Arthur, before he answers the most important question "whether you consider each of above undoubted for £5000?" writes to the bankers in London, and in effect says, "My customers do not know about this inquiry. Tell me who you are acting for," and he gets no answer. In that state of the facts the pursuer in my opinion is not entitled to rely upon that letter as if it had been given to him. In the result I think that neither of the letters of July or October were got for the pursuer, that in the circumstances he was not entitled to rely upon them, that they were never communicated to him, that material parts of the letter of July were held back from him, and that neither the Bank nor Mr M'Arthur can be held responsible for the verbal information given to the pursuer regarding these letters.

Mr M'Arthur and the Bank were both charged with fraud, and the Lord Ordinary has acquitted them both of that charge. The Lord Ordinary believes Mr M'Arthur was an honest witness, and that there was no fraud on his part, and equally that there was no fraud on the part of the Bank. It was stated in the case of *Nocton* by Lord Chancellor Haldane that he thought in the circumstances of that case it was a rash proceeding on the part of the Court of Appeal to reverse the Judge of first instance who heard the evidence. I entirely agree with that view, and I cannot find fraud proved here. There may have been carelessness, but having read Mr M'Arthur's evidence very carefully more than once, and keeping in view the position in which he was placed; that the company of Messrs A. & J. Inglis, Limited, was one of the highest standing, that Mr M'Arthur had no liability at all in respect of the incurring of these overdraft accounts, because they were both incurred while Mr Mitchell, his predecessor, was in charge of the Bank, I consider that Mr M'Arthur relied honestly upon what Messrs Inglis told him and upon the information which he got from the former agent (Mr Mitchell). Accordingly I think there is not evidence sufficient to justify us in holding that the pursuer has established fraud.

A question was raised before us, but not before the Lord Ordinary, at the conclusion of the speech by the senior counsel for the reclaimer, founded upon the second plea—"The defenders having made the said reports without disclosing the insolvency of the said Quentin Inglis and John Francis Inglis, 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." In the first place, though it is plain that Quentin Inglis and John Francis Inglis junior were insolvent during the whole period, it is also clear that neither the head office of the Bank nor Mr M'Arthur knew that they were insolvent, and therefore that plea would, in a most material respect, fail on the facts. But I do not think that in the circumstances there was such a duty of disclosure as enabled the House of Lords in the case of *Nocton* to find that the defenders were liable on that separate ground, and apart from fraud. The only averment upon the record which expressly deals with this point of duty is where the pursuer says in condescendence 10—"The said report was untrue and misleading not only in respect of the statements it contained, but also as regards the omission therefrom of material facts known to the defenders, and with respect to which there was a duty of disclosure." It appears to me that there was no such duty of dis-

closure imposed upon Mr M'Arthur towards the pursuer, and accordingly that that plea cannot be sustained.

I therefore move your Lordships that the Lord Ordinary's judgment be affirmed.

LORD DUNDAS—I think the interlocutor reclaimed against is right. . . . I think the pursuer's case fails upon the facts.

The misrepresentations founded upon are mainly (if not wholly) contained in a letter dated 28th July 1910 written by Mr M'Arthur, the bank agent at Partick, to the London and South-Western Bank, Shoreditch, in reply to their two letters of the previous day. On record the pursuer's positive grounds of challenge are summarised in the condescendence under four heads, the first three of which are, I think, substantially disproved by the evidence, while the fourth is not supported by the terms of the letter itself. In the arguments at our Bar the pursuer's line of challenge was somewhat differently presented.

I do not think any exception could be taken to the statements of fact contained in the opening sentences of the letter. But the pursuer's counsel made a strong point upon the passage which says—"The interest warrants, which they collect through us usually, in railway and other kindred concerns, represent a capital greater than your figures," *i.e.*, than £10,000. It was urged that the statement about collection of interest warrants, &c., was false and fraudulent. It is, I think, rather unfortunately expressed and to some extent inaccurate, but I consider, for reasons to be explained, that it was not a material statement, and I cannot hold it to have been fraudulently made. Mr M'Arthur explains in his evidence, which the Lord Ordinary accepts as honest, his reasons for writing as he did. Before he became agent on 1st February 1910 he had been for many years teller in the branch bank, under the agency of the late Mr Mitchell. He refers to a note which Mr Mitchell had received in 1908 from the Messrs Inglis of their various investments, the certificates of which they informed him were in their father's possession. He says that Mr Mitchell "asked me at one time to send him any dividends which the Messrs Inglis cashed at our branch, and I did so." Of the nature and amount of dividends so cashed across the counter there is now no trace, nor is it clear whether these included dividends arising from the sons' holdings in A. & J. Inglis, Limited, some of which I gather they were in the habit of cashing in the yard; but Mr M'Arthur says that he "most assuredly" understood from Mr Mitchell that the sons' shares in the limited company were embraced in Mr Mitchell's intimation to him "that dividends on the whole holdings were noted in his book, and that he was satisfied that dividends were paid on them." Mr Mitchell then kept a note of all dividends cashed by the Messrs Inglis at the bank. It further appears that in regard to some of their railway and other investments the bank was in a position to collect the dividends direct from the companies, and the amounts of these, not very large, are stated by Mr Shiells, C.A., in his evidence. In these circumstances I do not see that there was any material inaccuracy in Mr M'Arthur's allusion to "the interest warrants, &c., which they collect through us usually"—not, be it observed, "which we collect for them"—"in railway and other kindred concerns," and I do not think that the words last quoted necessarily exclude dividends from A. & J. Inglis, Limited. Mr M'Arthur goes on to depone that Mr Mitchell, after he left the bank, informed him "that he was perfectly satisfied that every investment that was mentioned to him, and of which a copy had been sent to head office in some of his previous correspondence, was perfectly in order," and that he never had had the least anxiety as to the accounts of the Messrs Inglis being paid in full. Mr M'Arthur, when he became agent on 1st February 1910, went over and examined the accounts and talked and consulted with the retiring agent. He states in regard to what he wrote on 28th July about the interest warrants, &c., "that is what I understood to be thoroughly accurate from information which I received from my predecessor." I pause to observe that it seems clear that the list of Quentin Inglis' investments forwarded by Mr Mitchell to head office on 14th January 1908 was inaccurate as regards the "£5000 in shares of A. & J. Inglis, Ltd.," for at that date Quentin had no shares in the limited company, though in October 1906 he had owned fifty £100 shares, and afterwards in March 1908 he became possessed of ten shares. But I see no reason to doubt that both Mr Mitchell and Mr M'Arthur, who in regard to such matters were bound to rely to some extent upon the assurances of their own customer, honestly believed that Quentin Inglis throughout possessed his original fifty shares. I repeat therefore that what is said in the letter of 28th July 1910 about the "interest warrants which they collect through us usually" does not seem to me to be materially inaccurate. I have dealt at some length with this topic because of the insistence on it by the pursuer's counsel, but I confess that it becomes, in my opinion, quite immaterial if the statement, to which the words I have been dealing with are subordinate and introductory, be true, viz, that the interest warrants, &c., "represent a capital greater than your figures." Now the truth of that statement is, I think, well established. It appears that the securities belonging to Quentin Inglis as at 28th July 1910, including his ten shares in A. & J. Inglis, Limited, amounted to about £4600, and those belonging to John F. Inglis, including his fifty shares in the limited company, to about £5840—a total of £10,440, or more than £10,000; while if Mr M'Arthur's *bona fide* belief in Quentin Inglis' assurance to his predecessor had been justified the total would have been £14,400. I do not think that the letter of 28th July 1910 so far contains any false statement or misrepresentation. The last paragraph of the letter is as follows:—"The future prospects of the young men are very bright. At present, however, I would consider £5000 each too much for them as cautioners" I do

not think that it was untrue or unfair—still less that it was fraudulent—for Mr M'Arthur to characterise the Messrs Inglis' prospects as "very bright." His words obviously refer to what he had stated at the beginning of the letter. He knew these "young men" to be sons of a wealthy shipbuilder, holding positions in the yard and shares in the concern. But the pursuer contends that the last paragraph as a whole involved a suppression of facts known to the writer of so grave a nature as to render the whole tenor of the letter fraudulently false and misleading. The facts so "suppressed" were that the Messrs Inglis were indebted to the Bank in about £6000 by way of overdraft; that the Bank had during the preceding two or three years made repeated demands to have the growing amount of the overdraft extinguished or reduced; that these demands had been met by a series of more or less evasive and illusory promises on the part of the debtors; and that the Bank was in knowledge of and had sent replies in what the pursuer alleges to be unduly encouraging terms to numerous inquiries by banks and others in London with regard to the financial stability of the Messrs Inglis as prospective cautioners or borrowers. There is no evidence at all to show that the Bank or Mr M'Arthur was aware — although it turned out to be in fact true — that the Messrs Inglis had other bank accounts, or that they had any serious pecuniary liabilities other than the Bank's own overdraft. Mr M'Arthur denies any such knowledge and the Lord Ordinary believes him, nor is it shown that such knowledge could readily have been obtained by him. I think Mr M'Arthur's position in writing such a letter as that of 28th July 1910 was a difficult and delicate one. He had a duty to his London correspondents on the one hand, and to his customers the Messrs Inglis on the other. It would probably have been a breach of the latter duty if he had disclosed in full detail the condition of their accounts at his bank. The pursuer contends that Mr M'Arthur sacrificed the former duty with the deliberate expectation that the overdraft might as a result be wiped off. He argues that Mr M'Arthur was bound, knowing what he did, if he gave a reply at all to the inquiry of the Shoreditch bank, to make it a distinct and emphatic negative; and that the reply which he did give was not only false but intentionally and fraudulently so. I think that to adopt these contentions would be most unjust to Mr M'Arthur. I do not think that the terms of the letter were in any material respect inaccurate, and when I consider them in the light of the facts as Mr M'Arthur believed them to exist I see no reason to regard them as in any degree fraudulent. The question addressed to Mr M'Arthur was whether each of the Messrs Inglis "may be considered trustworthy in the way of business to the extent of £5000 as a guarantor." His answer, briefly put, was this, that though the prospects of the "young men" were bright, he would "at present" consider £5000 each too much for them as cautioners. I think his position was quite an intelligible and not an unreasonable one. He believed the two sons had securities to the extent of over £14,000, but an existing overdraft of £6000; he expected that that overdraft might shortly be wiped off by the application of money which he understood they were to borrow in London; he knew of no other liability on their part, and he considered that their prospects were "very bright." But his answer to the question put to him was distinctly "for the present" in the negative. It may be that Mr M'Arthur was overcredulous in believing all that the "young men" assured him, that he was over-ready to accept as accurate the information given him by his predecessor, or that a man of more alert intelligence would have been concerned by the numerous inquiries as to the financial stability of the Messrs Inglis, all of which Mr M'Arthur says he supposed to relate to the arrangement he understood to be afoot for a loan to liquidate their overdrafts. But such considerations are a long way removed from fraud. I do not find any statement made which was false to the knowledge of the writer, nor evidence of that recklessness which may amount to fraud. In a question of this sort I attach very great importance to the decision of the Lord Ordinary, who saw the witnesses. He accepts Mr M'Arthur as "an honest witness." If the views which Mr M'Arthur held were honestly entertained by him, which I see no reason to doubt, it is immaterial whether or not his grounds of belief were such as might have commended themselves to the mind of the shrewdest and most alert of business men. So far as the letter of 28th July 1910 is concerned I agree with the Lord Ordinary in holding that no case of fraudulent misrepresentation has been made out.

Of the letter dated 1st October 1910, written by Mr M'Arthur to Messrs Robarts, Lubbock, & Company, I propose to say very little. What has been said of the earlier letter applies in great part to the later. But the latter seems to me really to fall out of the case altogether. It is not alluded to by the Lord Ordinary, and it was not made much of in the argument at our bar. Its language seems to invite further correspondence, and does not contain any specific answer to the question put. It was obtained by the insurance company for their own information. The pursuer never saw it, and it is far from clear that he had even the import of it communicated to him. Major Darbishire (who never saw the letter itself) denies that he mentioned it to the pursuer at all. In any case there seems no ground for supposing that Robinson received any more encouraging impression from the letter of 1st October than that which he says he had already conceived from Major Harley's account of the import of the letter of 28th July.

If I am right in holding as I do that fraud has not been established, there is, I think, an end to the pursuer's case. I ought, however, to notice that at the very end of the reply by his senior counsel a view was mooted, not properly raised on the record though the pursuer's second plea-in-law seems to cover it, to the effect that even apart from

fraud the defenders would be liable in damages on the ground of non-disclosure of material facts within their knowledge and which it was their duty to disclose. Mr Sandeman, however, vouchsafed no argument upon this head beyond a bare citation to us of the case of *Nocton* v. *Lord Ashburton*, [1914] A.C. 932. I do not think that case supports in any way the view indicated. It was an English decision, in regard to which Lord Dunedin explained (p. 962) that no difficulty would arise "in any system in which law and equity were not separated." The action was one by a mortgagee against his solicitor for indemnification against loss sustained owing to the defendant having improperly advised and induced the plaintiff to release part of the security, by which release the mortgage had been rendered insufficient. The noble and learned Lords explained that the decision of their House in *Derry* v. *Peek*, 14 App. Cas. 337, does not narrow the scope of the remedy in actions within the exclusive jurisdiction of a court of equity, which though classed under the head of fraud do not necessarily involve the existence of a fraudulent intention, as, for example, an action for indemnity for loss arising from a misrepresentation made in breach of a special duty arising from the relationship of the parties. Our own books afford numerous examples of the liability of a solicitor to his client for erroneous (though not fraudulent) advice in regard to his affairs, and of similar liability in cases arising from a fiduciary relationship between the parties and the like. Such decisions seem to me to have no bearing on or application to the facts of the present case. I can see no good ground upon which the defender could be held liable in damages if fraud is, as I hold it is, out of the case, and I may point out that upon that hypothesis the italicised words at the end of the letter of 28th July would become important, which in a case of fraud they would not be.

It may be right that I should now deal shortly with the other points argued to us upon the assumption (contrary to my opinion) that Mr M'Arthur was guilty of fraudulent misrepresentation.

The defenders' counsel argued that, even assuming fraud, the pursuer was not entitled to sue upon the letter of 28th July 1910—I shall say nothing further about the letter of 1st October. The law of the matter is I think correctly laid down, and I understood both counsel to agree in this—by Pollock, C.B., in *Bedford* v. *Bagshaw* (1859), 29 L.J. (Exch.), at 65. The passage, which was cited with approval in the judgment of the Queen's Bench in *Swift*, L.R., 8 Q.B. at 253, is as follows:—"Generally a false and fraudulent statement must be made with a view to deceive the party who makes the complaint, or, at all events, to deceive the class to whom he may be supposed to belong, although he may not be individually and particularly intended. There must always be evidence that the person charged with the false statement and the fraudulent conduct had in his contemplation the individual making the complaint, or, at all events, that the individual making the complaint must have been one of those whom he ought to have been aware he was injuring or might injure by what he was doing."

The question then comes to be whether or not the pursuer can fairly be regarded as belonging to the "class" who must be deemed to have been within the scope and contemplation of the letter of 28th July 1910. If it be assumed that the letter of 28th July 1910 was in fact obtained through the Shoreditch bank on behalf of the pursuer, though his name and his very existence were unknown to the defenders, I should answer this question in the affirmative, looking specially to the frank answer given by Mr M'Arthur in the witness-box. Being asked, "Did you then send these reports to the various banks who asked for them, knowing they were to be used by persons other than the banks who asked for them?" Mr M'Arthur says—"They were asked for by the banks on behalf of other people. I was perfectly aware of that." But it was maintained for the defenders that the letter of 28th July 1910 was not in fact obtained for or on behalf of the pursuer. On the question of fact thus raised I should not lightly differ from the Lord Ordinary's decision, involving as it does his views on credibility, and upon a perusal of the evidence I agree with it. He held in fact that the pursuer was not in any way brought into or concerned in the loan transaction until September 1910, and he disbelieves the pursuer's averment and evidence to the effect that it was in July that he promised Major Harley to be surety conditionally upon his obtaining a good report as to the financial position of the Messrs Inglis. Major Darbishire (whom the Lord Ordinary believes) gives clear evidence; Major Harley does not seem to be a reliable witness, and the pursuer is contradicted by his own affidavit in the English proceedings, and by his averment as it stood in this action before the record was closed. If this be, as I think it is, the correct view of the evidence, it seems to me—though it is unnecessary to express a concluded opinion on the point—that the pursuer would not be entitled to sue for damages even if he was misled by the terms of the letter of 28th July, assuming them to have been false and fraudulent. I do not think he could, upon the Lord Ordinary's view of the facts, claim to be within the class of persons contemplated by the defenders, or whom they ought to have been aware that they were injuring or might injure by writing the letter. I am fortified in so thinking when I find that the learned Judges in the Queen's Bench in *Swift's* case expressly stated that their judgment was "confined to the case before us, namely, the case of the customer at whose request the inquiry was actually made, and that it is not intended to apply to any other customer to whom the bank may have subsequently communicated the contents of the letter"—(8 Q.B. 254, top).

On another point which was argued my opinion would be in the pursuer's favour,

if my view of the facts was such as to enable him to take advantage of it. An argument for the defenders was based upon section 6 of the Mercantile Law (Scotland) Amendment Act 1856, to the effect that any representation actually communicated to the pursuer was merely verbal, and therefore of no effect. But the Bank's original representation was in writing, and I do not think that the pursuer's right to found his action upon it, if otherwise made out, would be defeated merely by the fact that its tenor (assuming it to be fully and correctly reported) was made available to him in words only and not in writing.

There remains for consideration an aspect of the case which would, in my opinion, be by itself fatal to his success even on the assumptions that the letter of 28th July 1910 contained fraudulent misrepresentations, and that he was of the "class" of persons contemplated by or included in its issue. It is plain that, whatever may have been the tenor and import of the letter, the pursuer did not rely or act upon these, and could not have done so except in so far as they were made known to him. It is therefore of the utmost importance to ascertain so far as possible the measure of information supplied to the pursuer in consequence of the receipt of the letter by the Shoreditch bank. The pursuer's case on record that the letter was actually communicated to him has admittedly broken down. It appears that Mr Cole, the bank manager, verbally communicated to Major Harley and Mr Blustin in general terms what he considered to be the import of the letter. Naturally enough he cannot now recal exactly what he said, but his recollection is that he stated that it was "a fair report." That is also Mr Blustin's recollection. But according to Major Harley's evidence Mr Cole gave some amount of information beyond this general statement. He says Mr Cole "told me they were sons of Dr Inglis the head of a well-known shipbuiding firm on the Tyne or the Clyde, and that it was one of the best shipbuilding firms there. He said they were shareholders in the business, and that the dividends accruing from different securities amounted to more than the sum required. He led me to believe that the report was quite satisfactory. I went back and communicated the result to Mr Robinson, who said he was quite satisfied." Major Harley's evidence is, however, in parts confused and self contradictory. But one may, at all events, turn to the pursuer's own evidence as to what Major Harley told him, as a version of the matter which he (the pursuer) can scarcely repudiate. He says that Harley "told me that he had not actually seen the reference, but that the bank manager had told him that he had received dividend warrants which were equal in capital to the amount required. (Q) You mean represented capital?—(A) Yes; that satisfied me that it was good enough. I then authorised Major Harley to use my name." The "amount required" was, of course, £2500. The pursuer adds that Harley "did not say anything to me as to whether the Scottish bank had said whether they thought £5000 each too much for the Messrs Inglis as cautioners," and Major Harley says on that point—"Mr Cole did not say to me anything about £5000 each being considered too much for them as cautioners or as guarantors. I am quite clear about that." It seems plain enough, therefore, that Mr M'Arthur's actual reply to the question put to him by Mr Cole never reached the pursuer at all, but what did reach him was in effect that Messrs Inglis' dividend warrants represented a capital of more than £2500. On these facts it seems to me that the pursuer's case on misrepresentation breaks down altogether. On this ground alone, therefore, I should be against him, apart from what I have said about the letter of 28th July 1910, as it was framed and despatched by Mr M'Arthur.

For the reasons now stated I am for adhering to the interlocutor reclaimed against.

LORD SALVESEN—. . . On some matters to which I shall afterwards refer there is a great deal of controversy, but the main facts are not really in dispute. On 27th July 1910 the London and South-Western Bank Ltd., Shoreditch branch, London, wrote the following letter to the Partick branch of the defenders' bank—". . . [*v. sup.*] . . ." A similar letter expressed in precisely the same terms was on the same day written and despatched with regard to Mr John Francis Inglis. These enquiries elicited a prompt response from the agent of the defenders' bank in these terms—" . . . [*v. sup.*] . . ."

The proposed loan in connection with which the inquiry was made was one of £2500, and the purpose of the enquiry was to ascertain whether the names of the two Messrs Inglis would be such as to render them acceptable as guarantors to an insurance company or other lender from whom it was thought a loan might be obtained.

The report from a business point of view was regarded as entirely satisfactory, there never having been any contemplation that the Messrs Inglis should be asked to guarantee a loan of £10,000 but only a loan of £2500.

Major Harley, on whose direct instructions the enquiry had been made, says that he was not in immediate want of money and that accordingly the matter was not at once proceeded with. Early in September, however, he opened negotiations with a representative of the Royal Exchange Assurance for a loan of £2500, and on 19th September he signed an undertaking to pay the solicitors' costs in the investigation of the proposed transaction whether it went off or was carried out to a conclusion. In this undertaking he mentioned the names of Quentin Inglis, John F. Inglis, and Tom Robinson, the pursuer, as the persons on whose security the proposed loan was to be advanced. The name of the pursuer appears to have been deleted and then restored, but there is no evidence as to when this was done. In the absence of such

evidence it is difficult to attach importance to the deletion.

This letter of undertaking was followed by a proposal for loan dated 12th September, in which the two Messrs Inglis were named as the first and second sureties and the National Bank of Scotland, Limited (Partick Branch, Glasgow), as the bankers' reference. The Royal Exchange Assurance, before completing the transaction, on 28th September 1910 caused the following inquiry to be made through their own bankers, Robarts, Lubbock, & Company, of the Partick branch—". . . [*v. sup.*] . . ." The answer which they received dated 1st October is as follows—". . . [*v. sup.*] . . ." The same printed note is added to the letter. Messrs Robarts, Lubbock, & Company at once transmitted the information to their clients the Royal Exchange Assurance, and took no notice of the request contained in the last paragraph of the letter of 1st October. The Royal Exchange Assurance having taken similar means of satisfying themselves of the responsibility of the pursuer, thereafter advanced the sum of £2500 to Major Harley on an indenture of agreement signed by him as borrower and by the two Messrs Inglis and the pursuer as guarantors. Major Harley having failed in payment both of the first and second instalments of principal, the pursuer was compelled by action raised in the High Court of Justice to meet the full amount of the insurance company's claim. Major Harley became bankrupt and had no assets; and the two Messrs Inglis were also subsequently sequestrated. The pursuer claims in this action the sums which he has disbursed under deduction of certain dividends paid from the estates of the Messrs Inglis.

There can be no reasonable doubt that but for the reports furnished by the defenders, the pursuer would never have become a party as a co-cautioner with the Messrs Inglis for the sum borrowed from the Royal Exchange Assurance. If either of the answers to the enquiries before quoted had been unfavourable, the transaction could never have taken place. The defenders, however, are not responsible for the reports which they gave with regard to the financial responsibility of the Messrs Inglis, even although inaccurate, if they were honestly made. In the case of *Parsons* (1910, 103 L.T. 196) the duty of a banker in answering such enquiries as were here directed to the defenders was considered, and it was held that he is under no obligation to institute investigations on his own behalf and is free from any responsibility if he honestly states what he knows himself or has been credibly informed in the course of his business dealings with his customers. I accept that view, and shall now proceed to consider whether in the reports referred to the defenders discharged their duty.

The reports complained of are signed by the agent of the Partick branch, and although the Bank accept responsibility, it is his knowledge and not that of the Bank that is material. What then were the facts as known to Mr M'Arthur? In the first place, he knew that as at 28th July Mr Quentin Inglis was a debtor to the Bank on an overdrawn account for the sum of £3616, and that Mr John F. Inglis was indebted in the sum of £2482, both with interest from November 1909. At 14th January 1908 the debtor balances had been £1225 and £999; by August 1909 they had increased to £2933 and £2300 respectively. These overdrafts had for some time been the subject of correspondence between the head office and the Partick branch, and on 10th August 1909 the head office intimated to the Partick branch that they had decided to call upon the debtors to make arrangements forthwith either to place securities with the Bank or to repay the overdrafts. The views of the head office were communicated to Messrs Inglis, who promised repeatedly to make arrangements for reducing their overdrafts or repaying them. From this time onwards no further advances were made by the Bank, and a cheque of £40 which Mr Quentin Inglis drew on the Bank on 27th September was not honoured. Accordingly the credit of both gentlemen with the Bank was stopped, and no alteration was made on their indebtedness except that it was always increasing by the addition of interest. On 3rd February 1910 the Partick branch wrote both debtors, on the instructions of their head office, that, failing the liquidation of the balances due or the provision of approved securities, proceedings for recovery would be instituted. The head office continued to press the Partick branch to obtain a settlement, and in June 1910 matters went so far that the law agents were instructed to write and demand payment within seven days. This was accordingly done but without eliciting any satisfactory response. Further applications were made by the debtors for delay on the representation that they were in course of negotiating in London or elsewhere for a loan, the proceeds of which they proposed to apply in payment or reduction of the overdrafts. The reports of Mr M'Arthur were admittedly given in order to facilitate these negotiations, of which, if successful, the Bank expected to reap the benefit.

The explanation of the credit originally given by the Partick branch and of the forbearance of the Bank in not earlier enforcing their claim is as follows:—In January 1908 Mr Mitchell, the then agent of the Partick branch, was informed by Mr Quentin Inglis that he was the holder of £5000 in shares of A. & J. Inglis, Limited, and about £3700 in railway and similar stocks, and that John Inglis' investments were somewhat the same. He so informed the head office in his letter of 14th January. The statement was only partially true at the time, for Mr Quentin Inglis' holding in A. & J. Inglis, Limited, was at that date £1000 and not £5000, and Mr John Inglis, while he had a holding of £5000 in A. & J. Inglis, Limited, had only one or two comparatively small investments besides. There is no reason, however, to doubt Mr Mitchell's honesty in the matter; and the statement was partly borne out by the fact that in 1908 the Bank collected dividends on Mr Quentin Inglis'

investments to the amount of £107, 2s. 3d., and in 1909 to the amount of £103, 11s. 6d. The corresponding collection of dividends on behalf of Mr John Inglis in the two years represent £36, 11s. 11d. and £36, 9s. 7d. These investments were said to be in the safe of Dr John Inglis, and it was credibly represented to the Partick agent that it would be very much against the interests of his two sons if their father was informed of the extent to which they had incurred debt. The position was further complicated by the fact that the company of which Dr John Inglis was the main shareholder kept a valuable account with the Glasgow office of the same Bank which might be withdrawn if he was informed of the extent to which the defenders had accommodated his sons without his knowledge. So far as Mr M'Arthur or his predecessor knew, neither of the Messrs Inglis was engaged in business except as holding a salaried position in the employment of the limited company, and their whole income was derived from such salary and interest upon their investments. If they had no other liabilities except those to the Bank, and their statement of the securities which belonged to them but were in their father's possession was accurate, they were apparently in a position to pay the Bank in full. It required some credulity, however, on the part of the Partick agent to accept the view that two gentlemen whose total incomes according to his knowledge could not exceed £500 or £600 each per annum, but who had respectively increased their overdrafts on their accounts in a single year by £2400 and £1400 respectively, should have incurred no debts elsewhere; but I am willing to assume that this was Mr M'Arthur's honest belief.

All these facts being within the knowledge of Mr M'Arthur, I proceed now to consider whether the representations he made were true in fact or true to the best of his knowledge and belief. In this connection it is important to notice in the first instance that the Bank, and Mr M'Arthur as representing them, were by no means disinterested parties. The professed object of Messrs Inglis was to obtain money to repay their overdrafts to the Bank. Mr M'Arthur had no private interest to serve, but he appears to have been very anxious not merely that the Bank should have their demands satisfied, but that the two Messrs Inglis should be able to keep from their father the circumstance that they had incurred such large debts. He was aware from what they told him that Dr Inglis would regard their conduct with the gravest displeasure, and would in all probability reflect upon the agent of the Partick branch for having given them borrowing facilities which had so far enabled them to keep their extravagance from their father's knowledge. As, so far as he was aware, these gentlemen were not engaged in business on their own account, their large overdrafts must have been obtained in order to meet private expenditure far in excess of what their incomes warranted. It is further a matter of fair inference that Mr M'Arthur had agreed to act as a banker's reference in any negotiations for loans in London or elsewhere which they from time to time instituted. During the period from 11th March 1910 to 2nd October he answered no fewer than nineteen enquiries by as many different enquirers. He believed that all the references which he gave prior to 30th July had been fruitless of result in the way of enabling his customers to raise funds, for he can only justify his position at all on the footing that they had not incurred liabilities to others than his own Bank. In these circumstances there may be grave room for doubt whether he should ever have consented to give references vouching for the financial responsibility of the Messrs Inglis, for he thereby made himself a party to the attempts which they were from time to time making (as he was fully informed by them and solicitors on their behalf) with the object of raising money. In his evidence he admits that if the actual facts within his knowledge had been fairly stated no one would have lent money to the Messrs Inglis on such a representation of credit. I do not need to consider whether it was his duty to disclose the circumstances known to him, and in particular the indebtedness of the Messrs Inglis to the Bank, and the insistent demands the Bank had made that their accounts should be put right. But at all events it was his duty in these circumstances to state nothing that was not strictly true according to his knowledge and belief. The most important part of the first report complained of is the statement that "the interest warrants which they collect through us in railway and other kindred concerns represent a capital greater than the figures you quote." That statement would be understood by business men as meaning that the Bank were aware through their books that the Messrs Inglis had capital invested in liquid securities the interest warrants of which they were in the habit of passing through their bank account to an extent representing more than £10,000. All these statements were untrue to the knowledge of Mr M'Arthur. The largest amount of interests and dividends that the Bank had ever collected for the two Messrs Inglis was £143 in the year 1909, which if capitalised at twenty years' purchase, represented a capital of under £3000. It is vain for Mr M'Arthur to say that in the other "kindred concerns" he included in his own mind their holdings in A. & J. Inglis, Limited. These holdings had already been referred to in the letter as a separate ground of credit, and the Bank have adduced no evidence that they ever collected dividends on the shares of the Messrs Inglis in their father's business. There is indeed no evidence that the company ever paid dividends. It was not true that the interest warrants were collected through the Bank at all as at the date of the report. None had passed through the Bank books for nearly a year, and for the very good reason that the Bank had declined to honour further cheques by the Messrs Inglis. The misrepresentation in the last report is even more pointed, because it is thus expressed—"The interest warrants and dividends which they get cashed here represent

a capital in excess of your figures." If the truth had been told it cannot be doubted that the references would have been worthless. Mr M'Arthur ought to have said, "The interest warrants they collected through us until August 1909 in railway and other kindred concerns represent £3000," and might have added that in addition they had holdings in A. & J. Inglis, Limited. Such a statement would at once have put a lender on his guard, because he would have asked why the Messrs Inglis had ceased to collect their interest warrants through the Bank, even if he had not at once concluded that as they had only liquid assets to the value of £3000 they would be worthless as cautioners for £10,000. I cannot regard these misstatements as the result of carelessness, for on Mr M'Arthur's own evidence the reports he gave (which are in his own handwriting) were generally framed after consultation with his predecessor Mr Mitchell, who had incurred the Bank's censure for permitting the overdrafts. The crucial statement did not bear to be made on information received from the Messrs Inglis, but purported to be based on the knowledge acquired by the Bank in the course of their dealings with their customers. That statement was, as I have already pointed out, untrue to the knowledge of Mr M'Arthur. I acquit him of the intention of defrauding the insurance company or other lenders from whom money might be got on the faith of his reports. I assume that he thought that such an insurance company would ultimately recover the money lent, just as he believed the Bank ultimately would have done, but he did intend that anyone who lent on the faith of his reports should take the place of the Bank to the extent that the money lent was applied in reduction of the Bank's overdrafts. If a false representation is knowingly made for the purpose of inducing a loan which but for it the granter has reason to believe would not be made at all, such a representation constitutes a fraud even although the maker entertains the hope that his victim will not ultimately suffer. I have therefore no hesitation in reaching a result differing from the view of the Lord Ordinary (who has, I think, treated this matter in a somewhat perfunctory fashion), namely, that the reports with which we are here concerned were false and fraudulent according to the meaning of these words in our law, and in accordance with the opinions of the House of Lords in the well-known case of *Derry* v. *Peek*.

Having heard your Lordship's view on this matter I cannot refrain from expressing my regret that the Court should approve a lower standard of commercial morality than what the head office of the defenders' bank themselves entertained. In writing to Mr M'Arthur on 14th November 1910 they say — "Nor do we quite understand the object you had in view in adopting the terms employed in practically all the replies made, which we are obliged to remark are open to the criticism that they are not quite complete or even straightforward statements of the real position in which you had good reason to suppose the debtors stood." And again — "You were taking a mistaken view of your duty in couching your letters in terms calculated to further the negotiations in which the debtors were engaged." I agree with the writer of that letter in his view of Mr M'Arthur's conduct, and I am satisfied that if he had referred the matter to the head office the report would have been expressed in language which would not have tended to mislead to their hurt the persons who were thereby induced to finance the Messrs Inglis.

It is common ground that the reports were acted on by an advance of £2500 on the personal security of Messrs Inglis and the pursuer, and that the pursuer has in consequence suffered loss to an extent approaching the sum sued for.

The important question remains whether, as the references were addressed, not to the pursuer, but to bankers who were acting for undisclosed parties, the pursuer is entitled to found upon them; and also whether the representations in question were an inducing cause of the pursuer becoming a co-cautioner along with Messrs Inglis. I did not understand it to be ultimately disputed that if the pursuer has succeeded in establishing that the inquiry of 27th July addressed by the London and South-Western Bank, Limited, to the Partick branch was in fact obtained on his instruction or on his behalf the pursuer would be entitled to maintain the action. No other view is open, looking to the decisions in *Swift* v. *Winterbotham*, L.R., 8 Q.B. 244, and *Parsons*, already cited. Apart from the fact that it was found in *Swift's* case that "the usual way for customers of a bank to make inquiries of this description is through the bank, bankers uniformly refusing to answer inquiries made by private persons strangers to the banks from which the information is sought, and only answering those made by other bankers, while it is notorious amongst banks that such inquiries are constantly made on behalf of customers," we have the frank admission of Mr M'Arthur here substantially to the same effect. Being asked in cross-examination "Did you send out these reports in order that the Messrs Inglis might use them in order to raise money in London to pay off the bank?" he answered "That is so." Again, "(Q) Did you then send these reports to the various bankers who asked for them knowing that they were to be used by persons other than the bankers who asked for them?—(A) They were asked for by the banks on behalf of other people. I was perfectly aware of that." Mr M'Arthur could indeed hardly give any other answer, because he nowhere says that he expected that the banks that made the inquiries were themselves proposing to lend money to the Messrs Inglis or on their personal security. They were therefore in his knowledge merely agents for persons who had been approached to finance Mr M'Arthur's clients.

The case for the pursuer on this point is that the inquiry of 27th July was made on his behalf as well as on behalf of Major

Harley, who alone came in contact with the bank manager. The Lord Ordinary has held this not proved, and has expressed the opinion that the enquiry in July 1910 was made by Major Harley alone and without previous consultation with the pursuer. On the evidence I am constrained to differ from the Lord Ordinary, although in the end this matter may be of small importance. Both the pursuer and Major Harley deponed that it was arranged between them in July that the latter should make enquiries and report the result to the pursuer. Their evidence is not shaken on cross-examination, and is corroborated by Mr Blustin, who accompanied Major Harley to the Bank. Mr Cole's evidence does not in the least contradict this, because it is common ground that it was Major Harley and Mr Blustin with whom he dealt and that he was not told anything about the pursuer. The main ground on which the Lord Ordinary declines to accept the evidence of the three witnesses in question is that in an affidavit which the pursuer signed in connection with the action raised against him in the High Court of Justice it is stated that about September 1910 Harley asked the pursuer whether he would be prepared to allow himself to be put forward as a third surety. It is nowhere said that he did so for the first time, and for the purposes of the affidavit it was of no consequence whether a previous inquiry had been made in July, as nothing was done at that time, and the actual negotiations for the loan were not commenced until September. It is true that Major Darbishire contradicts Major Harley, who said that he had spoken to him on the subject of the proposed loan in July 1910, but after a lapse of some years it was quite likely, without attributing falsity to Major Harley's evidence, that Major Darbishire might have forgotten the conversation, which so far as he was concerned had no practical issue at the time. Major Harley says that he was a friend of Darbishire, and it seems to me extremely probable that he might be sounding him in July as to the terms on which the company were in the habit of advancing money. One thing is certain, that an enquiry was made on 27th July, and Major Harley and the pursuer, who can alone say why it was made, gave substantially the same account. It is right to notice that the Lord Ordinary's view of Major Harley's evidence might be affected by the fact that he made a consciously false statement in his application to the insurance company; but he has no interest whatever in this action, and the pursuer has the only possible corroboration of his own testimony in the evidence of Mr Blustin.

I am prepared to hold, therefore, that the London and South-Western Bank acted as the pursuer's agents in obtaining the report of 28th July, and that he is entitled to found upon it for the purposes of this case. But even if it were otherwise, I think on authority and on the evidence of Mr M'Arthur that the pursuer was one of the class whom the defenders contemplated might be influenced to lend money on the faith of it, and that he is accordingly entitled to maintain the action. In so holding I differ from some of the views expressed by the learned Judges who decided *Salton's* case, 1 F. 110, so far as it decides that "a confidential representation as to a trader's credit is personal to the individual to whom it is made and will not found an action of damages by another person relying on it." This view was not necessary for the decision of the case, the soundness of which on other grounds need not be questioned; but the views of three of the Judges who took part in the decision on the point on which I challenge it are directly opposed to the decision of the learned Judges who decided *Swift* v. *Winterbotham* and *Parson's* case already referred to. The only authority quoted in support of their view is a passage in 1 Bell's Commentaries, p. 392, and the passage itself is based on decisions which have no application to the present case, for they relate to claims based on guarantees or letters of credit in the strict sense and not to claims based on fraudulent representations. A Scottish authority which is in point, *Balfour, Junor, & Company*, 8th March 1815, F.C., is to the opposite effect, and appears not to have been cited in *Salton's* case. So also are the decisions in *Langridge*, 1837, 7 L.J. 387; *Scott* v. *Dickson*, 29 L.J. (Exch.) p. 62 *n.*; *Peek* v. *Gurney*, L.R., 6 H.L. 377. The circumstances of the present case bring it, in my opinion, within the rule approved of by Lord Cairns in *Peek* v. *Gurney* (at p. 413), which is thus expressed—"Every man must be held responsible for the consequences of a false representation made by him to another upon which a third person acts, and so acting is injured or damnified, provided it appear that such false representation was made with the intent that it should be acted upon by such third person in the manner that occasions the injury or loss." Here I think it cannot be doubted on the evidence of Mr M'Arthur, the only witness adduced by the defenders, that the representations made by him were intended to be acted on not merely by the actual lenders of the money but by any person who, on the faith of the representations as to the Messrs Inglis' credit, joined with them in guaranteeing payment of the loan. Indeed the inquiry which was made on 27th July expressly stated that the reference was required with regard to the responsibility of the Messrs Inglis as guarantors, and Mr M'Arthur's reply shows that notwithstanding what he said in answer to the Lord Ordinary he quite appreciated at the time the difference between a principal obligant and a cautioner. I hold on the evidence that neither would Mr Robinson have joined with the Messrs Inglis as guarantors to the insurance company, nor would the insurance company have accepted them in that capacity, unless they had by previous inquiry been satisfied as to their standing and responsibility. The loss which the pursuer sustained was therefore the direct and not a remote consequence of the false representations for which the defenders accept responsibility.

There are some minor matters which I ought to deal with, as they bulked somewhat largely in the argument. It was said that, assuming the representations made in the letter of 28th July were false and fraudulent, those that were actually communicated to the pursuer and on which he presumably relied were true in substance, and that the warning note which is found at the end of the letter was not communicated to him. All this criticism is based on the recollection of the pursuer himself, as deponed to in his evidence, of a letter which was never seen by or read to Major Harley, on whom the pursuer relied for his information. In this matter the pursuer is not supported but contradicted by Mr Cole, so far as the latter's recollection goes, for he deponed that he would merely report whether the answer to his inquiry had been satisfactory or not, and would decline to give any information as to the contents of the letter. Mr Cole's general practice seems to be in accordance with an understanding between bankers in general, the object of which, no doubt, is to protect them as far as possible from claims such as that made in the present action. It obviously increases enormously the difficulties of maintaining an action on fraudulent representations contained in a document when the banker to whom it is communicated refuses to allow his client to see it, and this I think goes far to excuse such discrepancies as there are between the record and the evidence in the present case; but while I have no doubt that bankers rigidly adhere to the rule of retaining in their own possession these so-called confidential communications, it is scarcely reasonable to imagine that they would not communicate the substance to the customer for whom they had made the inquiry. Mr Cole's evidence, which does not profess to proceed on recollection at all but merely on his general practice, is not really inconsistent with that of Major Harley, and I think it is certain that if he communicated the substance of Mr M'Arthur's letter he did so with substantial accuracy. I attach no importance to the fact (if it be one) that he omitted to state that Mr M'Arthur had said that he would not consider the Messrs Inglis good as cautioners for £5000 each. That would have been material if the transaction to which it was proposed they should become parties had represented anything like so large a sum, but as only one-fourth of the amount was involved, Mr M'Arthur's report might well be regarded as satisfactory. If two proposed cautioners have liquid assets between them invested in first-rate securities to an amount exceeding £10,000, the interest of which they are regularly collecting through their own bankers, any business man would regard them as excellent security for £2500, although he knew at the same time that they could scarcely be recommended as cautioners for an obligation of £10,000. The report therefore being satisfactory from a business point of view, the evidence is all to the effect that Mr Cole's opinion of it came to the knowledge of the pursuer and was acted on by him in this belief. Emphasis was laid on the fact that in the report of 1st October obtained by the insurance company Mr M'Arthur, after repeating the statement as to the capital possessed by the Messrs Inglis, added a sentence to the effect that they did not know the reason of the inquiry and asked to be informed, and founded on the fact that the insurance company did not pursue the correspondence. So far from that assisting the defenders' case, I draw the opposite conclusion. The insurance company, to whom it was of the greatest importance that the cautioners should be persons of financial standing, were so satisfied with the result of their inquiry that they did not pursue the correspondence further, and soon thereafter advanced £2500 to Major Harley. I am not surprised, for the information contained in the report of 1st October was just the very kind that would have inspired complete confidence.

Reference was made to the case of *Nocton* ([1914] A.C. 932), and the pursuer's counsel strongly maintained that the law laid down in the case of *Derry* v. *Peek* had suffered modification as the result of this latest decision of the House of Lords. I do not think so. It was there held that a solicitor may be responsible to his client for false or incomplete statements honestly made on which the client has acted to his detriment, but the ground of the decision is the familiar one that a solicitor owes a duty to his client when advising him as to a business transaction, which may render him responsible for a false statement which the solicitor could readily have ascertained to be false had he made the inquiry which his duty to his client imposed upon him. In other words, the judgment in *Nocton's* case appears to me to be just an application of the elementary rule that a solicitor is responsible for the loss occasioned to his client through negligent advice. The difficulty that the noble Lords appear to have had in the case was occasioned by a form of pleading which is foreign to our jurisprudence. To this extent I think it may be relied upon as an authority applicable to the present case, namely, that after there has been a full investigation of the facts a court of law will be slow to throw out an action because of the form of the pleadings when the facts disclose a good ground of action even although not properly averred.

The defenders' counsel founded on an observation of Viscount Haldane (L.C.) in *Nocton's* case that "to reverse the finding of the judge who tried the case and saw the appellant in the witness-box was in the circumstances of this case a rash proceeding on the part of the Court of Appeal," and he urged this as a warning against our reaching a different conclusion from the Lord Ordinary on the facts. Obviously the dictum is not meant to be one of general application, and it appears to me to have none here, where there is no question of conflicting evidence but merely one of sufficiency of proof. In *Watson, Laidlaw, & Company, Limited* (1914 S.C. (H.L.) 18, 51 S.L.R. 238), Lord Kinnear explains what

are the functions of the Inner House in a case coming before them from a Lord Ordinary's judgment, and this opinion I desire respectfully to adopt. We must examine the evidence for ourselves and see how far it supports or does not support the Lord Ordinary's view. There is no higher presumption that the judge of first instance has drawn correct conclusions of fact than that he has reached a sound conclusion in law. Most judges who have had wide experience of taking evidence will, I think, agree with me that there are many cases in which they have the greatest difficulty in deciding upon conflicting evidence where the truth lies, whereas there are relatively few where they do not reach a conclusion in law satisfactory to their own mind, whether it prove to be sound or not. Actions based upon fraud do not differ from others in which the facts are in dispute, and while the judge of first instance may consider himself able to form an opinion as to the credibility of witnesses from their demeanour or appearance, the value of such an opinion depends very much on the personality and knowledge of the world that the judge possesses, and is often in inverse ratio to the strength with which it is held. It is generally much safer to decide questions of fact if they depend on credibility by considering whether the evidence given is consistent with itself or with known extrinsic facts, or with the evidence of unbiased witnesses, than by reference to the appearance of the witness or the manner in which he gave his evidence. The most scrupulous witness sometimes appears hesitating and confused, the least scrupulous is always confident and positive. I make these observations independently of the present case, because all that the Lord Ordinary says with regard to the pursuer's evidence is that he regarded it as extremely unsatisfactory, and I have already dealt with the grounds on which he reached this conclusion. I would only add that actions based upon fraud are in no other category than any other actions which involve disputed questions of fact. The court of appeal before whom the case comes must apply its mind *de novo* to the facts as well as to the law, and while judges both in the Court of Session and in the House of Lords frequently comment adversely on an intermediate court of appeal having differed from the judge of first instance on a question of fact, it will be found that in these cases they had formed an independent judgment in favour of the view taken by the judge of first instance or did not see sufficient reason to differ from him. Where the opposite has been the case they have not hesitated to overturn the judge of first instance even if his view was in accordance with that of the intermediate appellate court. Two recent illustrations occur to me. In *Burrell & Son* v. *Russell & Company*, (1900), 2 F. (H.L.) 80, 37 S.L.R. 641, which was an action based upon fraud, the Lord Ordinary and the First Division both held fraud had not been proved. The decision was unanimously reversed. Again, in *Boyd & Forrest* v. *The Glasgow and South-Western Railway*, 1912 S.C. (H.L.) 93, 49 S.L.R. 735, the Lord Ordinary and this Division both held fraud proved. This decision also was unanimously reversed. I need not pursue the matter further, as I have sufficiently indicated my individual protest against the view which is constantly urged that the opinion of a single judge on a question of fact is to be regarded as if it had the same statutory sanction as the verdict of a jury.

For the reasons above expressed I am of opinion that the pursuer is entitled to decree in terms of the admitted amount of his claim.

LORD GUTHRIE—The pursuer's case on record, before as well as after amendment, was clearly relevant. For success it involved proof by him, first, that the defenders' statements on which he is alleged to have relied were fraudulent; second, that he was entitled to rely on them; and third, that he did so rely. The case now presented by the parties is cleared of several points stated on record and dealt with in the proof, and some of them argued before the Lord Ordinary.

The pursuer's case is set out in condescendences 10 and 11. In condescendence 10, among other statements, there are four crucial averments, none of which he has attempted to prove. These are—first, "the defenders were further aware that the said Quentin and John Francis Inglis were indebted in large sums to other banks and to various money-lenders;" second, "at or about this time" (between April and July 1910) "Dr John Inglis, father of the said Quentin Inglis and John Francis Inglis junior, made an offer to the Bank whereby the Bank was to receive a small composition in discharge of their claims;" third, "the defender Mr M'Arthur was aware that the enquiries from the London and South-Western Bank and Messrs Robarts, Lubbock, & Company were made on behalf of the pursuer in relation to the said transaction with the Royal Exchange, and that the reports would be used for the purpose of inducing the pursuer to become a party to the said indenture of agreement;" and fourth, "the defender Mr M'Arthur was aware that the said Quentin and John Francis Inglis were really principals in the matter of said loan." In condescendence 11 the defenders' representations alleged to have been made to the pursuer are stated to have been four in number. In regard to the fourth, dealing with the interests of Quentin and John Inglis in their grandfather's estate, it is admitted that this matter was not referred to in any representation on which the pursuer can found. The other three alleged mis-statements by the defenders are not now maintained by the pursuer to have been inconsistent with fact at the time they were made, except the statement that the defenders were aware of the insolvency of the Messrs Inglis, which statement, in my opinion, is not proved.

On the other hand the defenders, while adhering to the case on the facts which they have made from the first, have departed from their plea No. 3, founded on their

agent's want of authority to make the representations complained of. Further, under their fourth plea they do not maintain that, if the representations complained of were made to the pursuer or his agent, they would be protected by the note as to confidentiality appended to their letters.

I shall treat the case under two heads. First, on what representations, if any, made by the defenders, did the pursuer rely? Second, supposing it proved that he relied on the defenders' letter of the 28th July 1910, can he found on it? I shall treat the question of fraud under the second head.

First, on what representations, if any, made by the defenders, did the pursuer rely?

Two are alleged on record—those contained in the defenders' letter of 28th July 1910 to the London and South-Western Bank, Limited, and those contained in the defenders' letter of 1st October 1910 to Messrs Robarts, Lubbock, & Company. The first is said to have been communicated to the pursuer immediately upon its receipt; and about the second, he is said to have been informed by Messrs Robarts, Lubbock, & Company.

The pursuer's case founded on the letter of 1st October has disappeared. It is in the first place inconsistent with his averment in condescendence 11 that on the defenders' letter of 28th July being communicated to him he thereupon authorised Major Harley to put forward his name as a surety for the proposed loan. In the second place the pursuer does not say in his evidence that he relied on the defenders' letter of 1st October. And in the third place the terms of the defenders' letter of 1st October preclude any case of reliance. The question in the letter with which the defenders' agent was dealing was whether each of the Messrs Inglis was "undoubted for £5000." In the defenders' reply no answer is given to this query, but certain statements are made preliminary to an answer being subsequently given, which answer was never sent because the information which was to precede it was never communicated.

The pursuer's only case arises in connection with the defenders' agent's letter of 28th July 1910. It is not without importance that (apparently through a mistake of the defenders) the letter, as printed by the pursuer on record, contains a somewhat important statement in the last sentence which is not in the letter. The pursuer has made two inconsistent cases in regard to that letter. His affidavit, prepared by English lawyers, and the open record in this case prepared by Scottish lawyers, make consistent statements. In these not only is there no suggestion that the letter of 28th July was got for the pursuer, or was immediately communicated to him on its receipt, but it is not even referred to. The transaction between the pursuer and Major Harley is attributed to a meeting "about September 1910." Standing alone, misstatements or omissions in affidavits or open records may usually be referred to the incapacity or carelessness, or insufficient information, of the persons who prepared them. But in the circumstances of this case I cannot ignore such concurrent statements made by independent agents. The defenders' case on this point is supported by Major Darbishire's affidavit and by his evidence, and also by the real evidence on the face of the insurance form, from which it would appear that the pursuer's name was not known as the third surety, when that form was prepared on 12th September 1910. I agree with the Lord Ordinary in preferring that body of oral testimony and real evidence, corroborated as it is in important particulars by Mr Cole and Mr Blustin, to that of the pursuer, whose evidence appeared to the Lord Ordinary to be "extremely unsatisfactory," and to the evidence of Major Harley, whose general credibility is shown by the proof to be of a low standard.

The second question is, Supposing it is proved that the pursuer relied on the defenders' letter of 28th July 1910, is he entitled to found on it as in a question with the defenders?

I am of opinion that he is not—firstly, because the statements in it, however inaccurate, were not made fraudulently by Mr M'Arthur; secondly, because, even if they were, what the pursuer founds on as relied on by him is only a part of the representations made by the defenders, what I look upon as an essential part of the letter having admittedly not been communicated to the pursuer; and thirdly, because the letter of the defenders was not got by or for the pursuer, nor by anybody who was entitled to use it so as to enable the pursuer to found on it in a question with the defenders.

On the question of fraud the pursuer's case reduced itself, so far as omission was concerned, to the absence of any reference in the defenders' letter (1) to the overdrafts with the Bank; (2) to the Bank's repeated and unsuccessful efforts to have the overdrafts reduced or extinguished; (3) to their stoppage of any further payments to the debtors; and (4) to the debtors' unsuccessful efforts to raise money for the same purpose; and, so far as commission was concerned, to the sentence in the letter, "The interest warrants which they collect through us usually, in railway and other kindred concerns, represent a capital greater than the figures you quote." On the question of the omission of the overdrafts I think Mr M'Arthur was in fault. If he was to say so much as he did he should have said more, in accordance with the Bank's instructions to their agents. But I think the edge of this point, in the pursuer's favour, is removed when account is taken of the fact that Mr M'Arthur had good reason to believe that the debtors' inability to pay was not due to want of funds but to the evidents for these being temporarily detained by their father, and when due weight is given to the last sentence in the letter. Mr M'Arthur is asked a question, and he answered it in the negative. I do not think he was bound to anticipate that his letter, taken as a whole, would be read as meaning that although the Messrs Inglis were not respon-

sible as cautioners for £10,000 they would be (not might be) good either as principals or cautioners for £2500. Fraud must be proved. Mr M'Arthur had no personal motive to make a fraudulent statement. If the overdraft should not have been incurred, that was the fault of his predecessor Mr Mitchell. Nor, as sometimes happen in such cases, had Mr M'Arthur any personal or social relations with the Messrs Inglis which might have induced him to represent their financial position as better than it was, or might have enabled him to ascertain their alleged extravagant living, or the strained relations with their father which are said to have existed, or the speculations in which they are said to have been engaged. I see nothing blameworthy in Mr M'Arthur's letter beyond what may be accounted for by sanguineness and credulousness about the Messrs Inglis' present and future, not unnaturally entertained in view of the facts (1) that they were the sons of a reputedly rich shipbuilder, (2) that they held shares in the business founded by their father and uncle, (3) that they held apparently responsible positions in the business, (4) that they were so far as he knew living, without extravagance or speculation, reputable lives, (5) that they appeared to be on good terms with their father, and (6) that they had never deceived him on any previous occasion. In the peculiar circumstances I think Mr M'Arthur's proper course in the circumstances would have been either to have referred the matter to the head office, or to have confined his reply to the last sentence in the letter. I do not think he was bound, and I am not sure that he was entitled without the consent of the Messrs Inglis, to disclose the state of their bank account. As to the sentence itself which is founded on, the essential fact in it, namely, the possession by the Messrs Inglis of funds greater than the total sum in question, was in point of fact true. It is not proved that the Bank had ever collected dividends on the Messrs Inglis' shares in the shipbuilding company, and it appears that the proceeds of their other funds had not been collected during the latter part of 1909 or during 1910 by the Bank. But the letter does not say they had. The statement is that such proceeds were "usually" collected through the Bank. As to the expressions "interest warrants and kindred concerns," fraud cannot be established through the mere loose use of commercial expressions unless such are proved to have been used with the deliberate intention to mislead, which was not suggested in Mr M'Arthur's cross-examination. We are not construing a deed of entail but a business letter. A more acute man might have inferred that if Dr Inglis held his sons' share certificates in his safe it must have been because they owed him money; and a more careful man would have looked up the Bank books before making the statement Mr M'Arthur did about the collection of the moneys due to the Messrs Inglis. But again want of acuteness will not infer fraud, and I see no such want of care in this case as to make it necessary or even reasonable to conclude that Mr M'Arthur is to be disbelieved when he says he made the statements in question with an honest intention to state the facts accurately. On the principles laid down by Lord Herschell in *Derry* v. *Peek*, 14 A.C. 337, as these were explained in *Nocton* v. *Lord Ashburton*, [1914] A.C. 932, I cannot affirm that the defenders made any fraudulent representations in this case. Lastly, the Lord Ordinary, who heard all the evidence except that of Major Harley, thought M'Arthur an honest witness, and I see no sufficient ground to disagree with him. There is no evidence of what Mr Bell calls "a machination to deceive," and I am not astonished that Mr M'Arthur was not a match for Major Harley, who deceived the insurance company, or for the Messrs Inglis, who managed to conceal the true state of affairs not only from Mr M'Arthur and from Mr Mitchell, the former agent of the bank, but from their father, although the latter had been put on his enquiry by having had previously to pay the debts of one of them.

But even if the statements in the letter of 28th July were fraudulent, nobody was entitled to rely upon them who had not been made aware of all their essential parts. But the pursuer admits he did not see the letter, and that neither the last sentence nor the import of it was communicated to him, any more than it was communicated to Harley, his alleged agent. He does not even depone that had he known the statement in that sentence his reliance up to £2500 would not have been displaced or at least weakened. His counsel now makes that statement for him, but the conclusion does not seem to me to follow.

There remains the point, on which we had an interesting argument, namely, whether the defenders' letter of 28th July 1910 can be founded on by him either because it was got by his agent, or by someone whose use of it on the pursuer's behalf or in his interest enables the pursuer to found on it in a question with the defenders. In view of the opinion above expressed, I do not think it necessary to deal at length with this part of the case except to say that I am not convinced that the pursuer can bring himself under either category. Cole was agent for Harley, not for the pursuer, of whom he had never heard, and if the pursuer was the undisclosed principal he cannot found upon a report of the defenders' representation, which was defective in an essential particular, and which, moreover, it appears to me could not be fairly described as "satisfactory," and in point of fact, as I read the evidence, was not so described by Cole, although the pursuer and Major Harley say it was. Nor am I convinced that he can succeed as a member of a class. No doubt Mr M'Arthur knew that the information was wanted in connection with a loan from an insurance company to pay the Bank's debt. But the pursuer, who was going to be a cautioner to the insurance company, was not in any case entitled to rely on information got for them. Their interests were not identical with his. The less stable the Messrs Inglis were the greater was the insurance com-

pany's interest to get the pursuer's signature, while his interest was only to sign if the Messrs Inglis were good for their proportion of the amount lent. It does not follow that because, assuming fraud and right to rely, and actual reliance on, the defenders' representations, the Bank would certainly, and the insurance company would probably, have had a right against the defenders, that the pursuer should have such a right. The cases quoted to us arising in connection with company prospectuses and directors' reports addressed to the public have no application, and equally cases like *Langridge* v. *Levy* (6 L.J. (Exch.) 137) and *Nocton* are inapplicable, because in the first a direct, and in the second a fiduciary, relation existed, neither of which have any counterpart in the present case.

I therefore concur with the Lord Ordinary that the defenders are entitled to absolvitor.

The Court adhered.

Counsel for the Reclaimer (Pursuer) — Sandeman, K.C.—Gentles. Agent — E. J. Findlay, S.S.C.

Counsel for the Respondents (Defenders) — Blackburn, K.C. — Carmont. Agents — Mackenzie, Innes, & Logan, W.S.

Saturday, December 4.

COURT OF SEVEN JUDGES.

[Lord Ormidale, Ordinary.

BAKER *v.* GLASGOW CORPORATION.

Reparation—Local Authority—Limitation of Action—Public Health (Scotland) Act 1897 (60 *and* 61 *Vict., cap.* 38), *sec.* 166 —"*Any Action, Proceeding, or Operation under this Act*"—*Passenger in Public Street Injured by Passing Ambulance.*

The Public Health (Scotland) Act 1897, section 166, enacts—". . . and every action or prosecution against any person acting under this Act on account of any wrong done in, or by any action, proceeding, or operation under this Act, shall be commenced within two months after the cause of action shall have arisen."

On 5th December 1914 a passenger in a public street was knocked down and injured by a motor-car belonging to the defenders. He raised an action of damages against them on 12th February 1915. The defenders averred that they were the Local Authority under the Public Health (Scotland) Act 1897; that the driver of the car was employed by them as an ambulance driver attached to their fever hospital; that the car was being used in the ordinary course of its work as an ambulance van for the purpose of conveying a patient to hospital. *Held* that the defenders' averments were relevant to show that the action was barred, and proof of these averments allowed.

Expenses — Process — Reclaiming Note— Failure to Inform Lord Ordinary of Authoritative Decisions a Ground for Finding Successful Party Liable in the Expenses of a Reclaiming Note.

A Lord Ordinary dismissed a preliminary plea for defenders. On a reclaiming note the defenders quoted an unreported judgment of the Division in another action against themselves in which the circumstances were practically identical. This case had not been quoted to the Lord Ordinary. Under it he would have been bound to allow a proof of the averments on which the preliminary plea was based. A Court of Seven Judges allowed such a proof.

The Court *found* the successful reclaimers liable in the expenses of the reclaiming note.

Administration of Justice—House of Lords —Poor's Roll—Refusal by House of Lords of Leave to a Litigant to Appeal in forma pauperis on Ground of no Prima facie Case —Authority on Merits — Appeal (Forma Pauperis) Act 1893 (56 *and* 57 *Vict. cap.* 22), *sec.* 1.

The Appeal (Forma Pauperis) Act 1893, section 1, enacts—"Where in an appeal to the House of Lords a petition is presented for leave to sue *in forma pauperis*, and the House on the report of its Appeal Committee determines that there is no *prima facie* case for the appeal, the House may refuse the prayer of the petition."

Opinion per Lord Salvesen that such refusal was not a judgment of the House of Lords binding on the Court of Session as an authority on the merits.

The Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38), sec. 166, is quoted *supra* in first rubric.

On 15th February 1915 Benjamin Baker, tailor, 29 Crown Street, Glasgow, *pursuer*, raised an action against the Corporation of the City of Glasgow, *defenders*, to recover damages for personal injuries sustained by him on 5th December 1914, through being knocked down in one of the public streets of Glasgow by a motor car belonging to the defenders.

The defenders averred, *inter alia*—(Ans 1) ". . . Explained that the defenders are local authority under the Public Health (Scotland) Act 1897, and as such are charged with the duty of executing the provisions of the said statute in accordance with the terms thereof. Acting as such local authority, the defenders own and work motor cars used exclusively as ambulances in connection with the fever hospitals maintained by them under the Public Health (Scotland) Act 1897, including Shieldhall Fever Hospital, Glasgow." (Ans. 2) ". . . It is explained that the driver of the motor car in question was employed by the defenders, acting as local authority under the said Act, as an ambulance driver attached to Shieldhall Fever Hospital, Glasgow, one of the hospitals for infectious diseases maintained by them under the said Act. He was solely under the control of the