then not merely the shareholders would be deprived of their dividend, but the most serious consequences might arise to the credit of the Company, and its position in the share market. If the law, indeed, imperatively demanded this interdict, such considerations would go for nothing. But so long as this remains even in doubt, they are considerations of the highest moment in the question of judicial discretion.

"The complainer asked that, if the Lord Ordinary's view was unfavourable to his demand, he should be enabled to take the opinion of the Inner-House, without any alteration taking place on the existing state of things. Considering that the Court now meets within three days, the Lord Ordinary viewed this as reasonable. Indeed he looks on it as for the interest of the Company itself that, in place of a constant appeal every half-year to the Lord Ordinary on the Bills, the case for one reason or another not getting further, the opinion of the Inner-House should at once be obtained."

The complainer reclaimed.

GIFFORD (LORD-ADVOCATE GORDON, CLARK, and LAMOND, with him) for reclaimer.

YOUNG, WATSON, and JOHNSTONE, for respondents, were not called on.

At advising—

The LORD PRESIDENT thought that in the present question of discretion they ought to adhere to the Lord Ordinary's interlocutor. A great many important questions were raised in this suspension, which it was impossible to determine at present. But plainly any interdict granted now must have an important effect upon the administration of the Company during the trial of these questions, and must be granted very much in the dark, both as to its grounds and effect. He could not say what disastrous effects it might not have on the Company; while, looking to the complainer's interest, that seemed in no such danger. He had been offered caution for any loss he might sustain, which offer he had not accepted, being satisfied evidently that the Company would indemnify him in case he was proved to be right. Plainly he could suffer no damage by delay, while the Company might be great losers if the interdict was granted.

LORD DEAS was of the same opinion. Nothing would induce him to grant the prayer of the complainer except convincing proof that he would suffer loss and damage by refusal, in the event of a final judgment in his favour. Now, the complainer was offered caution, so that his personal interest was protected, and he held no mandate from the public to protect their interest.

LORDS ARDMILLAN and KINLOCH concurred.

Agent for Complainer—W. Mitchell, S.S.C.

Agents for Respondents—Hope & Mackay, W.S.

Wednesday, October 21.

SECOND DIVISION.

MELROSE *v.* SPALDING.

Reference to Oath—Competency of Reference—Objection. Held that it was no objection to a reference to oath that the party referred to had been adduced as a witness in the cause and cross-examined by the party making the reference.

This was an advocation from the Sheriff-court of Roxburghshire, of an action in which a claim was made on account of plaster work done by the pursuer. The defence was a denial of employment. The case came before the Court last session, when a remit was made to the Sheriff to frame findings in facts, he having failed to do so in terms of the Act. These findings having been framed, the case returned to the Court of Session, and the Court adhering to the judgment of the Sheriff (RUTHERFURD) and Sheriff-substitute (RUSSELL) decerned against the defender. The defender thereupon referred the whole case to the pursuer's oath.

KEIR for the pursuer objected to the reference, on the ground that in the evidence led in the action in the Court below the pursuer had been adduced as a witness for himself and had been cross-examined by the defender.

J. C. SMITH for the defender was not called upon.

The Court sustained the reference.

The pursuer's deposition having been taken before the Lord Justice-Clerk, the Court to-day, after hearing Mr SMITH, held the oath to be negative of the reference.

Agent for Advocator—James Somerville, S.S.C.

Agent for Respondent—David Milne, S.S.C.

Wednesday, October 21.

HAMILTON *v.* THOMSON.

Agent and Client—Business Account—Employment. Circumstances in which *held* that employment was proved, and that a party was liable to a law agent in the amount of his business account.

John Thomson, S.S.C., Edinburgh, raised an action in the Sheriff-Court of Bute at Rothesay against James Hamilton, residing at Auchreoch in the island of Arran, for £42, 4s. 1d. sterling, "being the amount of an account for law business performed and disbursements made by the pursuer for and on the employment of the defender, commencing the 27th day of April 1866, and ending the 29th day of January 1867." &c. The defence stated was—(1) non-employment; (2) non-liability. The record having been closed in the Inferior Court, and the Sheriff having allowed a proof, the defender, in respect the claim exceeded £40, advocated in terms of the Act of Parliament, 6 Geo. IV. cap. 120, sec. 40. The advocator, in his reasons of advocation, made a long statement as to the history of an action of suspension in which the pursuer acted as agent, and the question in the case is one of fact, Whether the pursuer, who acted in that matter for the defender, had authority or not?

The Lord Ordinary (MURE) pronounced the following interlocutor and note:—"The Lord Ordinary, having heard parties' procurators, and considered the closed record, proof, productions, and whole process, advocates the cause: Finds, that in the month of April 1866 the pursuer was employed by Mr John Emslie, writer in Ardrossan, to enter appearance for the defender and oppose a note of suspension and interdict, which had been served upon the defender at the instance of Alexander M'Kinnon, farmer in Arran, in order to stop a sale under a poinding at the instance of the defender, and that the account now sued for was incurred on the said employment: Finds that, when the pursuer was so employed, Mr Emslie was acting as agent for the defender in the recovery of a bill for £13, due by M'Kinnon to the defender, to the proceedings following upon a protest on which bill

the note of suspension related: Finds that, after the note of suspension was served upon the defender, Mr Emslie was specially authorised by him to oppose the suspension on the part of the defender, and to employ an agent in Edinburgh on his behalf: Finds that, with this view, the service copy of the note was left with Mr Emslie, who was at the same time furnished by the defender with the information necessary to enable him to answer the suspension, and that the said service copy of the note, and relative information, were duly forwarded to the pursuer: Finds that, after the note of suspension had been passed by the Lord Ordinary and a reclaiming note presented, the defender was informed by Mr Emslie, in answer to inquiries made by him as to the progress of the litigation, that the decision of the Lord Ordinary had been adverse to the defender, and that it had been resolved to reclaim: Finds that the defender did not then, nor until the month of January 1867, make any attempt to repudiate these proceedings, or the employment of an agent in Edinburgh on his behalf: Finds, in these circumstances—in point of law—that the defender is liable to the pursuer in payment of the taxed amount of the account thus incurred: Repels the defences, and remits the said account to the Auditor to tax and report: Finds the defender liable in expenses in this and the Inferior Court, of which appoints an account to be given in, and remits the same, when lodged, to the Auditor to tax and report.

"*Note.*—The grounds on which the Lord Ordinary has proceeded in disposing of this case, are embodied in the preceding findings: He thinks it clear, upon the evidence, that the defender authorised Mr Emslie to employ an agent in Edinburgh to defend the suspension, and that he was throughout aware that proceedings were going on in Edinburgh, under that employment, in regard to the interdict process, in which he was materially interested. It may be that the defender was not at first aware who the Edinburgh agent was. But that, in the view the Lord Ordinary takes of the case, cannot affect the pursuer's right to recover his account, incurred on the employment of a duly authorised agent in the country. And whatever may have been the defender's knowledge, in the above respect, at the commencement of the litigation, the Lord Ordinary thinks that it is satisfactorily established that, at the date of the meeting with Mr Emslie at Lagg, in December 1866, the defender was quite aware that the pursuer was the agent engaged in his behalf, and he certainly did not at that time repudiate the employment, but, on the contrary, appears to have sanctioned its continuance.

"At the discussion before the Lord Ordinary a distinction was attempted to be made in regard to the defender's liability for the portion of the account subsequent to July 1866, after which time it was said that, regard being had to the views entertained of the case by the pursuer and the counsel employed, no farther expense should have been incurred without renewed authority from the defender. The Lord Ordinary was at first disposed to think that there was some foundation for this distinction; and it certainly does appear strange that no steps were taken to have a meeting with the defender to explain the very unfavourable position of the case, and to get his instructions with a view to a settlement of it, between the month of July and the middle of December. But for this the Lord Ordinary does not think the pursuer was to blame, and as he had no instructions to abandon the proceedings, he could not well avoid incurring the expense of continuing the appearance in Court until such time as a settlement was effected, in order to prevent the suspender obtaining a decree."

The advocator reclaimed.

SCOTT for him.

FRASER and BURNET in reply.

At advising—

LORD NEAVES—I am of opinion that the interlocutor should be adhered to. The question is, Whether the pursuer, an Edinburgh agent, was employed in the suspension in question by a country agent, who had anthority from the defender so to employ him? I think that is fully proved. If so, it is of no relevancy to allege that Emslie had mismanaged the diligence which gave rise to the suspension. That may entitle the defender to bring an action of damages or relief against Emslie, so as to throw upon him ultimately the whole loss and expense that was incurred. But Thomson had nothing to do with that, and nothing that is here done will prejudice the defender's rights in that respect. We may have some sympathy with the defender, as an ignorant or a stupid man. But a man who draws bills and seeks to enforce them must be held to know the consequences that attach to such matters, and the rules which are incident to them. I see nothing that Thomson was bound to do that he did not do, nor can I see that he continued to carry on the proceedings too long. He explained his views fairly and honestly to his correspondent as he went along, and no blame attaches to him in any respect.

The other judges concurred.

Agent for Advocator—David Manson, S.S.C.

Agent for Respondent—Party.

Tuesday, October 20.

COURT OF LORDS ORDINARY.

(Lords Jerviswoode, Ormidale, Barcaple, and Mure

CRANSTOUN *v.* BROCK.

Master and Servant—Dismissal for Misconduct—Farm Overseer. Held, on a proof, that a farm overseer had not been guilty of such misconduct as to justify his master in dismissing him.

This was an advocation from the Sheriff-Court of Lanarkshire. The respondent Brock, who had for some years acted as farm-overseer in the service of the advocator, was dismissed from service on account of alleged misconduct. He then sued the advocator for damages.

The Sheriff-Substitute (DYCE) held that the dismissal of Brock was justifiable by reason of his repeated misconduct, and assoilzied his employer.

The Sheriff (H. G. BELL) altered, and gave judgment for Brock.

Cranstoun advocated.

YOUNG and Balfour for advocator.

GIFFORD and A. MONCRIEFF for respondent.

The Court adhered.

Agent for Advocator—W. Mitchell, S.S.C.

Agents for Respondent—Maconochie and Hare, W.S.

Wednesday, October 21.

M'DOUALL *v.* BROWN.

Sale—Factor—Authority to Receive Money—Bona