that the defenders must be liable because they have been unable to account for the accident, and show what its precise cause was. It was suggested as not being quite clear whether the Lord Ordinary may not have proceeded upon some such ground of liability as this; but if he did, I must own my inability to concur with him. Nor can I hold that it is sufficient to subject the defenders in liability that possibly there was something deficient in the carriage which was broken to pieces, and that this may have been the cause of the accident. I cannot adopt any such ground in the face of the proof, which shows that the defenders used all necessary and proper precautions to ensure that nothing was defective or wrong.

The result, according to my opinion, is, that the Lord Ordinary's interlocutor falls to be affirmed in regard to the pursuer's first, and recalled in regard to his second, claim of damages.

Lords NEAVES and GIFFORD concurred.

The Court pronounced the following interlocutor —

"The Lords having heard counsel on the reclaiming note for the North British Railway Company against Lord Young's interlocutor of 25th November 1874, Adhere to the said interlocutor as regards the first claim of the pursuer, and of new decern against the defenders therefor, amounting to £28 sterling, with interest at the rate of 5 per cent., from 8th October 1872 till payment, in terms of the conclusion of the summons; alter the said interlocutor as regards the second claim of the pursuer, and assoilzie the defenders from the conclusions of the summons relative thereto, and decern: Find the pursuer entitled to one-half of his taxed expenses, and remit to the Auditor to tax the expenses, and to report."

Counsel for Railway Company—Dean of Faculty (Clark), Q.C., and Moncreiff. Agents—Dalmahoy & Cowan, W.S.

Counsel for Anderson—Guthrie-Smith and Reid. Agents—Renton & Gray, S.S.C.

Friday, February 19.

FIRST DIVISION.

JANE TAYLOR OR YOUNG *v.* THOS. BROWN.

Appeal—Failure to print Note of Appeal along with Record, &c.—Act of Sederunt, 10th March 1870.

Held that it is within the discretion of the Court to relax the provision of the Act of Sederunt as to printing on cause shown.

This was an appeal from the Sheriff-Court of Lanarkshire under the Court of Session Act, 1868. The process and note of appeal were received by the Clerk on 9th January 1875, and duly marked by him of that date. The appellant on 22d January timeously printed, boxed, and lodged with the Clerk a print of the record, proof, and interlocutors, and on the following day the case was in the Single Bills, and, no objections being stated by the respondent, was sent to the roll. It was afterwards discovered that the appellant in his print omitted to include the note of appeal itself, which is a separate paper, and *not* on the interlocutor sheet, the 66th section of the Court of Session Act, 1868, permitting the appeal to be minuted in either way. The appellant, on 16th February 1875, printed, boxed, and afterwards lodged an appendix containing the note of appeal. To-day a note for the respondent was moved in the Single Bills praying that, in respect the appellant had failed to print the note of appeal in terms of the Act of Sederunt of 10th March 1870, section 3 (sub-section 1), the appeal should either be dismissed or the Clerk instructed to retransmit the process to the Sheriff-Clerk, with the necessary certificate of abandonment, in terms of the 3d section (sub-section 5) of the said Act of Sederunt. After hearing counsel for both parties, the Court unanimously held, that as the present omission to print the note of appeal is not an infringement of any of the provisions of the statute itself, it was within the discretion of the Court to relax the provisions of the Act of Sederunt on cause shown that the omission to print some part of the papers required to be printed was an oversight—the Lord President stating that the present objection was a very narrow and critical one. The Court pronounced the following interlocutor:—

"The Lords having considered the note for respondent, No. 20 of process, and heard counsel for both parties, refuse the prayer of said note; hold the omission to print, box, and lodge the note of appeal obviated by the print appendix of 16th February current, now lodged, containing the note of appeal; but find the appellant liable in the expenses of the said note, No. 20 of process, and the discussion thereon, which modify to £3, 3s., and for which decern against the appellant for payment to the respondent."

Counsel for Appellant—Campion. Agent—R. A. Veitch, S.S.C.

Counsel for Respondent—Alison. Agent—John Gill, L.A.

M., Clerk.

Tuesday, March 2.

SECOND DIVISION.

PATERSON *v.* MACFARLANE & HUTTON.

Joint Stock Companies—Companies Acts 1862, 25 *and* 26 *Vict. cap.* 89*—Voluntary Liquidation—Contributory—Call—Paid up Shareholder.*

A holder of fully paid up shares is a "contributory" in the sense of the statute; therefore *held* that in a voluntary winding up after the payment of all debts and expenses the liquidator was bound, in order to "adjust the rights of contributories among themselves," to make a call upon the ordinary unpaid up shareholders, to equalise the payments of the ordinary sharholders with the nominal advances of shareholders who had taken fully paid up shares in exchange for property sold to the Company.

This was a petition presented by Robert Paterson of 5 Radnor Terrace, Dumbarton Road, Glasgow, against George Macfarlane and James Hutton, chartered accountants, as liquidators of Hamilton & Paterson's Patent Cask Company (Limited).