COURT OF SESSION.

Wednesday, November 30.

FIRST DIVISION.

[Sheriff-Substitute of Hamilton.

ROBINSON *v.* JOHN WATSON, LIMITED.

Reparation—Master and Servant—Plant—Responsibility of Coalmaster for Condition of Railway Company's Waggons Used by Him—Employers Liability Act 1880 (43 *and* 44 *Vict. c.* 42), *sec.* 1, *sub-sec.* 1.

A waggoner in the employment of a coal company was injured owing to the defective condition of a waggon which he was taking from the colliery lye to the pithead. The waggon belonged to a railway company who contracted with the coal company for the carriage of their coal. In the execution of this contract the railway company brought empty waggons to the colliery, and took away waggons which had been loaded. The work of taking the empty waggons from the lye to the pithead and loading them was performed by the servants of the coal company.

In an action by the waggoner against the coal company, the Court *assoilzied* the defenders, *holding* (1) that the defective waggon was not part of their plant; and (2) that they were not bound to inspect the railway company's waggons, but were entitled to rely on the railway company supplying efficient waggons for the carriage of the coal.

This action was raised in the Sheriff Court at Hamilton by Robert Robinson against John Watson, Limited, coalmasters, in respect of injuries sustained in their service.

The pursuer had been a waggoner in the employment of the defenders at Earnock Colliery, and had been run over while taking some waggons from the defenders' lye to the pithead. He averred, *inter alia*, that the accident had been caused by the defective condition of the brakes of the waggons, and was due to "the fault and negligence of the defenders or of the pitheadman, . . . or some other person in the employment of the defenders, who was entrusted by them to superintend, and see that the plant was in proper working order."

The defenders denied that the brakes of the waggons were defective, and further averred that the whole of the waggons were the property of the North British Railway Company, and that if the brakes were defective, the fault was the railway company's, who had brought the waggons to the lye that they might be loaded by the defenders' servants.

On 3rd March 1892 the Sheriff-Substitute (DAVIDSON) found that the pursuer's averments did not disclose a relevant case at common law, and as regarded the question of the defenders' liability under the Employers Liability Act, allowed a proof before answer.

The material results of the proof were as follows:—The defenders' coals were carried by the North British and Caledonian Railway Companies, who under their contract with the defenders brought empty waggons to the defenders' lye, and after they had been loaded picked up and despatched the waggons to their different destinations. The work of taking the empty waggons to the scree or pithead and loading them was performed by the defenders' servants. The pursuer's duty as waggoner was to take the empty waggons from the lye to the pithead down an incline of about 1 in 65, the distance being about 200 yards. On the evening of 9th July 1891 the pursuer, with an assistant, started four waggons belonging to the North British Railway Company from the lye with the intention of taking them to the pithead. After starting the waggons the pursuer applied the brakes of the two foremost, and finding that the speed of the waggons was not sufficiently checked, he attempted to apply the brake of the third waggon also. While endeavouring to force the lever of the brake downwards he got his brake-stick entangled in the spokes of one of the wheels of the waggon, with the result that he was thrown down in front of the fourth waggon, which passed over his legs, inflicting serious injuries. Evidence was led to show that the brake was not in proper order, but that the lever jammed on the grease-box.

There was no one at the colliery who was entrusted with the duty of inspecting the waggons brought to the lye. The defenders' position as regarded these waggons was thus explained by the manager—"The North British Railway Company have a large marshalling yard at Bothwell, from which we get colliery waggons. The Caledonian Railway Company have one at Strathaven Junction, from which we also get waggons. They have inspectors at both places. The result is, that knowing as we do that the railway companies have inspectors whose duty it is to examine the waggons, we trust to them coming to our colliery in a safe state to be handled properly, and that our servants will be able to bring them down safely to be loaded. One of the reasons why we do not inspect the waggons is that they are not our property. As regards such waggons, the defenders have no lease of them. They are solely the property of the railway company . . . We do not execute repairs on either company's waggons. If we damage them, they repair them and charge us." This evidence was uncontradicted.

There was a considerable body of evidence to the effect that it was not the practice for coalmasters (except in very special circumstances) to inspect the waggons sent by railway companies for the removal of their coal.

On 6th June 1892 the Sheriff-Substitute pronounced this interlocutor—"Finds (1) that the pursuer was injured while in the employment of the defenders, when endeavouring to apply the brake to a waggon which he was managing at the time; (2) that in consequence of the insufficiency

of the brake, he was obliged to endeavour to make it work in a manner dangerous to himself, and in doing so was injured: (3) that the said waggon did not belong to the defenders, but was part of the plant or machinery used by them in their business; (4) that although the said waggon was sent to the defenders by its owners as guaranteed after inspection, the defect which was the primary cause of the accident to the pursuer was easily ascertainable, and ought to have been ascertained by them: Therefore finds the defenders liable to the pursuer in the sum of £171, 12s.

"*Note.*—This is an important case, and one which raises a nice question of the interpretation of the Employers Liability Act. . . .

"This action is badly laid under sub-sections 2 and 3 of section 1 of the Act, because the pursuer has not identified any person in fault who had superintendence entrusted to him, or whose orders to the pursuer were the cause of the accident. There remains therefore for him the first sub-section of section 1, qualified as it is by sub-sections 1 and 3 of section 2.

"The last-named of these may be dismissed at once. No evidence has been adduced to show that the pursuer knew of this particular defect in the waggon. There therefore remain the questions—(1) Is the waggon such an article as is comprised by section 1, sub-section 1? (2) Does section 2, sub-section 1, apply?

"The first question clearly must be answered in the affirmative. It was plausibly argued that the business of the defenders is that of producing coals, not of carrying them, and that therefore the waggons used in conveying the coals are not used 'in the business of the employer.' In an economic estimate of the cost of production and distribution this argument would be extremely pertinent, but as applied to the legal aspect of this case, the fallacy involved is this—So long as the defenders, whether as producers or distributors of commodities, have complete control, the business is their business. The North British Railway Company (the carriers and ultimate distributors) had no power whatever over these waggons at the time of the accident. The moment the defenders' servants handed them over to their servants the responsibility changed hands, but up till then the waggons were employed in the defenders' business, and the responsibility was theirs.

"The second question, which I also answer in the affirmative, is a far more difficult one. In a previous interlocutor I held that the action was badly laid at common law, inasmuch as the employers were not alleged to have had knowledge of the defect specified, and were not alleged to have failed to employ competent persons to examine the plant and machinery used. What I now hold is, that under the Act either the defenders were guilty of negligence themselves in not having ascertained the inefficiency which caused the accident, or the persons to whom they delegated the supervision of the machinery, however competent (if the supervision was delegated to anyone), failed to discover that inefficiency. The point is, that there was fault in the waggon which ought to have been discovered. I think from the evidence that it is clear that the fault in the brake was the primary cause of the accident. Whether or no the waggons unchecked by a brake would have caused damage, there is no doubt that it was the pursuer's duty to apply the brake. It is equally certain that in his endeavour to perform this duty he was injured, and that he would not have been injured had the brake been in proper order. The defenders contend that having got the waggon from the railway company with a guarantee that it had been inspected in the yard at Bothwell, they were entitled to hold it as sound. They have led evidence to show that it is the all but universal custom of coalmasters to take railway waggons in the same manner. Now, the case of *Kettlewell* v. *Paterson & Company*, 24 S.L.R. 95, is instructive on this point. There it was held that a foreman was not bound to examine minutely a scaffolding which had come from a competent builder, and that his principals were not responsible for an accident which happened through its insufficiency. But in that case everything depended on the degree to which the scaffolding was imperfect. To discover the imperfection it would have taken a careful investigation. Here the inefficiency of the brake might have been discovered without the smallest difficulty, and in a very short space of time. Not only so, but it is proved by more than one witness that the waggons supplied by this particular railway company were well-known to be frequently inefficient in brakes notwithstanding the previous inspection. It will always be a question of circumstances how far an employer is liable under section 1, sub-section 1, for faults in plant sent to him by a third party. Here I am constrained to hold that the defenders could without difficulty have discovered the inefficiency, and that they are liable under section 2, sub-section 1, inasmuch as they failed to discover it."

The defenders appealed, and argued—1. It was not proved that the accident was caused by a defect in the brake of one of the waggons under the defenders' management. 2. Assuming that to be proved, the defenders were not responsible for the existence of such defect. The waggons were not their property, and no duty of inspection was laid upon them—*Allmarch* v. *Walker*, March 28, 1885, Rep. Times Newspaper, 391; *Nelson* v. *Scott Croall & Sons*, January 30, 1892, 29 S.L.R. 354. It was not usual for coalmasters to inspect the waggons they used belonging to railway companies, and so it could not be said that the defenders had neglected a usual precaution. 3. At anyrate, the pursuer was guilty of contributory negligence in not having examined the brakes before starting the waggons, for there was evidence to show that this was a usual precaution to take—*Martin* v. *Connatio Quay Alkali Company*, December 6, 1884, 33 W.R. 216.

Argued for the pursuer—1. The cause of

the accident was proved to have been the defective condition of the brake of one of the waggons which the pursuer was engaged in taking to the scree. 2. For this defect the defenders must be held responsible. The railway company's waggons were handed over entirely to the defenders while on their private line, and must be looked upon as forming part of their plant during this period. It was the defenders' duty to provide good plant, and see that it was properly inspected. It was not enough for them to say that they relied on the waggons supplied by the railway company being efficient for the work for which they were to be used. That work might be special in its nature, and it was the duty of the coalmaster to see that the waggons were suited to the special work to which he put them. 3. The pursuer had not been guilty of contributory negligence. No duty of trying the brakes before starting was laid upon him by his superiors or by the nature of his employment.

At advising—

LORD PRESIDENT—I think the judgment of the Sheriff-Substitute is wrong.

The first proposition on the facts which the pursuer has to make good is, that this accident was caused by some deficiency in the waggon in question. Now, on that question of fact I must own that I am with the pursuer. I think that the cause of the accident, so far as it can be accurately ascertained on the evidence before us, was that the brake was not in working order, and that in consequence of that this workman got involved, by means of the stick which he was quite properly using, with the wheels, and was seriously injured.

But then, having thus made up my mind as to the cause of the accident, there remains over the question of the liability of the defenders, and the first question we have to consider is, Was the waggon, which thus may be described as delinquent or insufficient, part of the plant of the defenders? Now, to that question there can be but one answer so far as the question of property is concerned—the waggon was the property of the North British Railway Company. But it is necessary to go a little further, and to ascertain what was the relation of the defenders to this waggon. Now, upon that we have the uncontradicted evidence of the manager of the Earnock Company, and his evidence is to be taken with the more confidence because there was no cross-examination upon this point, and nothing to displace the full effect of what he says. It is well to observe that the fullest notice was given by the defenders of the position which they assumed on this subject. In their third plea they said—"If the brakes or appliances were or remained defective and caused the accident to pursuer, this arose from the fault of the North British Railway Company alone, and the defenders should therefore be assoilzied." Now, the facts appear to be these—As the manager of the defenders' colliery says, the waggons were solely the property of the railway company. The defenders had no lease of them. "We," that is, the defenders, "do not execute repairs on either company's waggons"—that is, the North British Railway's or the Caledonian Railway's—"if we damage them, they repair them, and charge us," and so on. Now, on that state of facts this much is clear—that there is a contract between the defenders and this carrying company by which the waggons are supplied for the conveyance of coal from the Earnock Colliery. Now, the pursuer's counsel endeavoured to make out that the use which was being made of the waggons was something outside of the contract between the defenders and the North British Railway Company, but I may say in a word that I think in that he failed. It appears to me that the question whether the process of loading the waggons is longer or shorter in point of time or space is really immaterial. The question seems to be substantially the same as if the accident had occurred during the loading of the waggon, the waggon being stationary all the time, and I do not think, therefore, that the specialities which have been so ingeniously worked upon really alter or obscure the question.

Now, that being so, it appears to me that the pursuer has failed to make out in any sense at all that these waggons were the plant of the defenders. But he endeavours to suggest that there was a duty of inspection upon the defenders, and this seems to me to involve very much the same question over again, namely, what is the relation of the defenders to these waggons? Is it nothing more than the relation of a coal merchant who has an agreement with a carrier that he sends his waggons, or it might be carts, to be loaded? The merchant loads them, and sends them off. During the process of loading one of the waggons injures another person owing to an inherent defect of its own. Is that the fault of the merchant or of the carrier? I say it is the fault of the carrier, and not of the merchant. Now, when this suggestion of a duty of inspection is probed, it really turns out that the only way of inspecting would be the experiment of doing what was done in this case, because the defective working of the brake would apparently only be ascertained when the waggon was in motion. The conclusion to which I come is, that there was no duty on the defenders in relation to this waggon, that they were entitled to assume, as they did, that it was in effective order, and therefore that the pursuer has no claim against them on this head. I should perhaps add that the question of right under the Employers Liability Act does not seem to me very sharply to arise, and for the reason stated in the case of *Thomas* v. *Quartermaine*, March 21, 1887, L.R., 17 Q.B.D. 685, *per* Bowen, L.J., 693—the case I referred to in the course of the argument. The view which has been adopted with high authority in regard to the Employers Liability Act is, that the Act "has placed a workman in a position as advantageous as, but no better than, that of the rest of the world

who use the master's premises at his invitation on business." Now, the precise position of the question about the Employers Liability Act seems to be this—At common law this pursuer would have a good action against his master if he could bring home to him personally a failure to inspect machinery which was used in the course of business. The Act merely enables the same case to be laid against a person charged with superintendence as would have availed against the master. But then, to my thinking, in this case—in a case of the master as in a case of the superintendent—the case breaks down on the ground that there is no duty to inspect placed, on these facts, on the defenders or their representatives. And therefore I think it unnecessary to consider the questions on which apparently the Sheriff's views have scarcely been in accordance with a sound construction of the Act of Parliament.

I am therefore for recalling the Sheriff's interlocutor and assoilzieing the defenders.

LORD ADAM—I have some little doubt whether it be sufficiently proved that the defect of the waggon was the cause of the accident, but I do not differ on that point from your Lordship. Assuming that to be established, I do not see how the pursuer can succeed unless he establish both of the following propositions; in the first place, that the defective waggon was part of the defenders' plant, and in the second, that there was negligence on the part of the defenders in not having had the waggon properly inspected.

As to the first of these questions, I am of opinion, with your Lordship, that the defective waggon was not part of the defenders' plant in the sense of section 1 of the Employers Liability Act. There is no doubt that the waggon was the property of the North British Railway Company, and it was at the defenders' works under a contract between the defenders and the railway company, by which the latter were bound to send waggons to remove the coal from the defenders' colliery. If that be so, I do not see how this waggon can be considered part of the defenders' plant. No doubt, I admit, there may be circumstances in which a waggon or other machine, although it is not the property of the merchant or colliery-owner, may become part of his plant nevertheless, but I do not see any such circumstances here. It does not appear to me to make any difference in this case that for the purpose of being loaded the waggons are taken by the defenders within their own lye or to wherever the coal is raised, and there loaded. I think, therefore, it is not made out that the defective waggon was part of the defenders' plant.

In my view this is enough for the decision of the case, but a second point was raised by Mr Ure, who argued that there was a duty of inspection laid upon the defenders. If the waggon is not the plant of the defenders, I do not think the question of the duty to inspect arises. I cannot see that there is a duty of inspection at all. I think the defenders were entitled to rely on an inspection being made by the owners of the waggons themselves, and the evidence certainly shows that it is quite in conformity with the practice of collieries all over Scotland for a colliery-owner not to make any inspection of the waggons sent to take away his coal. The defenders therefore, in not making an inspection, were neglecting no known duty or precaution for securing the safety of their workmen.

LORD M'LAREN—The casualty arose, or may be assumed for the purposes of the case to have arisen, by reason of the defective condition of the waggon which the pursuer was engaged in taking to the pithead. My view is that the primary cause of the casualty was the defective condition of the brake, and that it is not a good answer to say that there is a difficulty in tracing the precise relation between the insufficiency of the brake and the fact of the stick having caught in the wheel and knocked down the workman below one of the other waggons.

I think there is great force in the view that the waggon with the defective condition which I assume to be the cause of the accident, was no part of the works, machinery, or plant of the defenders. This waggon was supplied by the railway company under a contract of carriage, one of the terms of which, as I understand it, is that the coalmaster should undertake the loading of the waggons, and I can hardly doubt that it is, if not a written, then an unwritten term of the contract, that the waggons supplied shall be fit for the purpose to which they are to be applied during the whole course of the journey, including the loading and unloading of the coal, although these operations are not carried out by the company which supplies them. Now, supposing that at this stage—during the loading of the waggons for the purpose of transit—an accident had occurred which could be clearly traced to the fault of someone in the employment of the defenders, it is by no means clear to my mind, that that person would have been in the position of a fellow-workman in the sense of the decisions, because when the waggons were being loaded it rather appears to me they were altogether outside the contract of employment under which the pursuer was engaged, and that this was in the execution of a quite different contract—that regulating the carriage of the goods from the pit to their destination—a contract in which other persons than the coalmasters were interested —I mean the railway company, and possibly the consignee of the coal. All that tends to throw considerable doubt upon the foundation of the argument for the pursuer, that this is to be treated as an accident resulting from a defect in the machinery or plant of the defenders. But assuming, for the sake of the argument that this waggon during the time that it was temporarily under the control

of the defenders, is to be regarded as part of their plant or system, then I concur with your Lordships that the pursuer has wholly failed to establish a duty of inspection attaching to the defenders. These waggons were ordered from one of the leading railway companies of the country, and the defenders, I think, were entitled to assume that the company would fulfil its contract by supplying efficient waggons. This was not a case where the dangers arising from inefficiency were of such a serious kind as to raise a special duty of inspection. I think one must look at the matter reasonably, and, with our knowledge of the requirements of the business, it would seem to most minds rather a superfluous precaution that at every pithead there should be a man appointed with nothing to do but to look after the waggons brought there, and to see that they were in proper order. If there had been a complaint by the waggoners that the railway company were in the habit of supplying inefficient waggons, and exposing them to danger in their work, a different question might have arisen. But that does not appear to have been the case, or rather the evidence is that no accident had occurred in connection with this siding through defects in the waggons supplied. Now, unless the case can be brought within the provisions of the Employers Liability Act — that is, unless it can be shown that there were defects in the works, machinery, or plant, and that the accident arose by reason of the neglect of the employers, or some one entrusted by them with the duty of inspection, before use, of the plant, I can see no ground on which the pursuer can succeed. In an action directed against a person through whose fault this waggon was in bad order, I should have very great sympathy with the pursuer's case, because undoubtedly he has sustained a most serious injury, possibly disabling him for life, and it is hard that men should be exposed to these risks through the practice of sending out waggons which are not provided with a proper equipment for enabling them to be safely worked. But I cannot hold that responsibility for that fault is to be laid on these defenders.

LORD KINNEAR — I am of the same opinion. There is some uncertainty, I think, on the evidence as to the precise manner in which this unfortunate accident occurred. But I agree in thinking it proved that the pursuer came to hurt in consequence of a defect in the brake by the insufficient working of the brake of the railway waggon. But then, I also agree with all your Lordships in thinking that the defenders are not responsible for the inefficient condition of the waggon. The evidence shows that they had a contract with the North British Railway Company, under which the North British Railway Company sent its own waggons to the railway lye within the defenders' ground, in order that the waggons might there be loaded by the defenders, and the coal carried away. Now, on that contract, I think the waggons were not the plant of the defenders—the colliery-owners—but that they were the plant of the railway company, and used in their business as common carriers. If that be so, I do not think that the defenders can be chargeable with negligence. because they assumed that the North British Railway Company had performed their work in supplying efficient and reasonably safe waggons for the purposes of the contract. And if they were entitled to assume that that duty would be performed, then there is no ground whatever for charging them with negligence, in failing to direct a special inspection of the railway company's waggons. I think that is clearly an unmaintainable proposition. If it could be said that the traders had applied the railway company's waggons to some special use which the railway company could not have anticipated, as being beyond their contract, then I should have assented to the argument for the pursuer that in these circumstances the railway company were not responsible, and the traders had become responsible. But it appears to me that the traders made use of the waggons in the very manner in which the terms of the contract contemplated they should be used, for the contract of the railway company was to send waggons to the defenders' lye to be loaded with coal by the defenders on their own premises, and that was just what was done. I agree with what your Lordship has said, that the evidence of the defenders' manager in this case puts the question of the defenders' obligation to make a special inspection a little beyond the region of the railway company's implied contract to supply efficient waggons, for it shows that the knowledge of the railway company's undertaking on which the defenders proceeded entitled them to act on the assumption that the railway company were supplying efficient waggons. Accordingly, I concur with your Lordships.

The Court pronounced this interlocutor:—

"Find that pursuer was injured in his person by reason of a defect in the condition of a waggon, the brake being out of working order; that the said waggon was the property of the North British Railway Company, and was at the time of the accident at the defenders' colliery, on a contract of carriage of coals, for which purpose the waggon was, when the accident occurred, being taken by the defenders' servants from the lye within the defenders' premises, to which it had been brought by the North British Railway Company's servants to the pithead; that the defenders had not undertaken to the North British Railway Company any duty of repairing or inspecting the waggons sent to their colliery for coals, and did not inspect or repair such waggons, and that such waggons were inspected and repaired by the North British Railway Company: Find in law that the defenders

are not liable for the said defect in the condition of the waggon in question: Therefore sustain the appeal: Recal the interlocutor of the Sheriff-Substitute dated 3rd March 1892, and subsequent interlocutor: Assoilzie the defenders from the conclusions of the action, and decern: Find the defenders entitled to expenses in both Courts," &c.

Counsel for the Pursuer—Ure—Younger. Agents—Simpson & Marwick, W.S.

Counsel for the Defenders—Lees—W. Campbell. Agents—Gill & Pringle, W.S.

Wednesday, November 30.

FIRST DIVISION.

[Lord Low, Ordinary.

CLELAND *v.* BROWNLIE, WATSON, & BECKETT, AND OTHERS.

Agent and Client—Reparation—Duty of Agent in Recommending Investments—Double Agency.

L. purchased an unfinished tenement in Glasgow in October 1877 for £12,800, payable at the next term of Martinmas. He took over the first bonds affecting it, which amounted to £10,500, and paid the balance in part with the proceeds of a promissory-note falling due at Whitsunday 1878. All the arrangements were carried through by W, his law-agent. W was also agent for C, who had a loan of £500 at 5 per cent. over another property belonging to L. On the day before the Whitsunday term 1878 W asked an interview with C, at which he informed him that the £500 loan would be paid up at the term, recommended him to invest £1200 (offering to advance any part of the difference that might be required) at 5 per cent. on the security of a postponed bond over the property recently purchased by L, and told him all he knew as to its value. C agreed to the proposal on the spot without inquiry, and without obtaining an independent valuation. The property thereafter fell in value so much that the security became worthless, the interest ceased to be paid in 1880, and L died insolvent.

In 1891 C brought an action of reparation against W for £1200 with interest in name of damages, on the ground that W had induced him by fraudulent misrepresentations and concealment to accept a bad security, or alternatively that W, as his agent, had been guilty of negligence and failure of duty in acting as agent for both borrower and lender, and recommending an insufficient security to the latter in the interests of the former. The Lord Ordinary (Low) sustained the latter ground of action. The defender reclaimed, and was *assoilzied*.

Observations (*per* Lord President and Lord M'Laren) as to the circumstances in which an agent will be held liable for introducing an investment to a client, and for expressing a favourable opinion regarding it.

This was an action by Alexander Cleland, grocer, Main Street, Anderston, Glasgow, against Brownlie, Watson, & Beckett, law-agents and conveyancers, 225 West George Street, Glasgow, and the individual partners of that firm, for payment of £1200 in name of damages for alleged fraud, or alternatively for breach of professional duty.

The pursuer stated that the defenders (to one of whom he was related by marriage) had for many years acted as his agents, and had made various investments for him. Shortly before the term of Whitsunday 1878 Mr Watson recommended to him as an eligible and desirable investment a loan of £1200 to Mr Lochrane, another client of his, on the security of certain tenements in Matilda Terrace, Strathbungo, recently purchased by him, to rank after five prior bonds, the amount of which was represented by Mr Watson to be £10,000, but was afterwards ascertained by the pursuer to be £10,500. The pursuer averred that Mr Watson strongly pressed and urged him to lend the said sum on the said security, assuring him that the investment was a perfectly safe and particularly eligible one, and that relying implicitly upon Mr Watson's representations, which were in point of fact false and fraudulent, as to the excellent character of the investment, he agreed to the proposal without inspecting the property, or making inquiries as to its condition or the rental derivable from it, and without obtaining any valuation; that the interest was paid down to Whitsunday 1880, but no interest was paid since that date; that Mr Lochrane died in 1878, and that his estate turned out insolvent, and that he (pursuer) only recently became acquainted with the whole facts above stated, and on learning these he called upon the defenders to make good to him the said sum of £1200 with arrears of interest.

The pursuer pleaded, *inter alia*—"(2) The pursuer having been induced by the defenders to invest his money on a security which was, and which was known to them to be, grossly inadequate, decree ought to be pronounced as concluded for. (3) The pursuer having been induced to make said investment by the false and fraudulent misrepresentations of the defenders, ought to have decree in terms of the conclusions of the summons. (4) The defenders having acted as agents for both borrower and lender in the said transaction, and having grossly neglected the interests of the pursuer, are liable to him in payment."

The defenders denied that Mr Watson understated the amount of the five prior bonds, and explained that the pursuer, having full information as to all the facts about the property, considered the desirability of the loan for himself, and agreed to give the loan on condition of his getting 5 per cent. interest. They averred that the pursuer had considerable experience as to