ces, namely, starboarded his helm so as to put his ship as nearly as might be on a course parallel to that of the "Strathfillan," and thereby modify the directness of the impact.

There is one other consideration which seems to me to be of some importance. In the defences pointed averments of fault on the part of the "Irmgard" are made, and the pursuers were entitled to expect that evidence would be led in support of these averments. That, however, was not done, and the result was that not a single person who was on board the "Strathfillan" was put into the witness-box. The consequence is that we only know what I might call one side of the story, and it seems to me that what actually happened on board the "Strathfillan" might have had a material bearing upon the question whether the "Irmgard" was in fault. For example, suppose (what there is some reason to believe actually occurred) that the master, or whoever was in charge of the "Strathfillan," suddenly realising that if he held on he would run into the "Irmgard," had lost his head, and had put the helm to starboard instead of to port, and had thereby steered right into the "Irmgard" instead of passing under her stern, that would obviously have been a very material fact in considering whether the "Irmgard" was in fault. That is merely an example, and other circumstances equally pregnant might have been disclosed had the crew of the "Strathfillan" been examined. It therefore seems to me that the pursuer was prejudiced, or may have been prejudiced, by the defenders abandoning the defence which they had stated, and that, in my judgment, is an additional reason for giving the "Irmgard" the benefit of every reasonable doubt.

The conclusion, therefore, at which I arrive is, that although the mate of the "Irmgard" may have committed an error of judgment (which I am not prepared to say that he did), he cannot be held to have been guilty of fault or negligence which makes the "Irmgard" equally with the "Strathfillan" responsible for the collision.

In regard to damages, although I am not prepared to assent to all the views expressed by the Lord Ordinary, I substantially agree with the line of argument upon which he proceeds, and I think that the sum (£325, 16s.) at which he has assessed the damages due to the pursuer is fair and reasonable.

LORD ARDWALL concurred with the LORD JUSTICE-CLERK.

LORD DUNDAS concurred.

The Court pronounced this interlocutor—

"Recal the . . . interlocutor reclaimed against: Find that the collision between the pursuer's steam trawler 'Irmgard' and the defenders' steam trawler 'Strathfillan,' which took place on February 19, 1908, was due to the fault of those in charge of the 'Strathfillan': Find that the damage sustained by the 'Irmgard' amounted to the sum of £325, 16s.: Therefore ordain the defenders to make payment to the pursuer of the said sum of £325, 16s., with interest thereon as craved, and decern," &c.

Counsel for the Pursuer (Reclaimer)—Hunter, K.C.—Sandeman, K.C.—F. C. Thomson. Agents—Boyd, Jameson, & Young, W.S.

Counsel for the Defenders (Respondents)—Dean of Faculty (Dickson, K.C.)—Horne. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Thursday, March 17.

FIRST DIVISION.

[Sheriff Court at Kilmarnock.

MIDDLEMAS *v.* GIBSON AND OTHERS.

Compensation—Specific Appropriation—Failure of Purpose for which Moneys Appropriated—Right to Retain.

A handed a sum of money to B (his law agent) wherewith to effect a composition settlement with his (A's) creditors. The composition having fallen through, B claimed right to retain from the sum so handed to him the amount of certain business accounts due to him by A.

Held that as the money had been placed in B's hands for a specific purpose which had failed, he was not entitled to plead either compensation or retention, but was bound to return it.

William Middlemas, writer, Kilmarnock, pursuer and real raiser, brought a multiplepoinding against (1) John Gibson, writer, Kilmarnock, as trustee on the sequestrated estates of Stephen Haddow, butcher, Newmilns, and (2) John M'Gaan, retired innkeeper, Newmilns, and others, creditors of Haddow, defenders, in which he sought decree of exoneration as holder of a sum of £63 odd held by him for behoof of Haddow and which was claimed by his creditors.

From the averments of parties it appeared that in April 1908 Haddow, whose affairs had become embarrassed, handed to Middlemas, his law agent, a sum of £100 with a view to his arranging a composition settlement with his (Haddow's) creditors. The composition having fallen through, Middlemas claimed the right to deduct the amount of certain business accounts due to him by Haddow, and he accordingly brought the present action for exoneration *quoad* the balance. His right to make these deductions was disputed by certain of the defenders, who averred that they had advanced to Haddow the said sum of £100 on the understanding that if the composition were not accepted the amount advanced was to be returned to them.

The pursuer pleaded—"The sum of £100 having been paid to the pursuer as afore-

said, he is entitled to deduct therefrom his business accounts against the said Stephen Haddow, and the disbursements made on his behalf."

The defenders pleaded—"(1) The said sum of £100 having been provided and handed to pursuer for a specific purpose, which has fallen through, pursuer is now bound to account for the whole sum so received by him. (2) The said sum of £100 having been handed to pursuer for a specific purpose, pursuer is not entitled to compensate or set off against said sum debts which may be due by the said Stephen Haddow to him."

On 17th November 1909 the Sheriff-Substitute found that the amount of the fund *in medio* was £100.

The pursuer appealed, and argued—The appellant was entitled to plead compensation. *Esto* that specific appropriation barred compensation, that rule only applied where the mandate for the appropriation was still capable of fulfilment. Here the mandate had fallen owing to the mandant's sequestration, and a new relationship—viz., that of debtor and creditor—had arisen. That being so, compensation was pleadable—Bell's Com., vol. ii, 123; *Murray's Creditors* v. *Chalmer*, (1744) M. 2626. The cases of *Stewart* v. *Bisset*, (1770) M. *voce* Compensation App. No. 2, and *Campbell* v. *Little*, November 13, 1823, 2 S. 484, relied on by the respondents, were distinguishable, for there the mandate had not lapsed.

Argued for respondents—The mandate here had not fallen, and therefore the case of *Murray's Creditors* (*cit. supra*) did not apply. The sum in question had admittedly been given for a specific purpose, and that being so compensation was not pleadable—*Stewart* (*cit. supra*); *Campbell* (*cit. supra*). If the purpose failed the donee was bound to restore it, otherwise he would be guilty of breach of trust—*Scot* v. *Scot*, (1697) M. 2628; *Campbell* v. *Campbell*, (1781) M. 2580; *M'Gregor* v. *Alley and M'Lellan*, March 4, 1887, 14 R. 535.

At advising—

LORD KINNEAR—The question in this case is a very simple one. The action appears to be a novel and unscientific form of multiplepoinding, The pursuer makes no statement of double distress, but it is possible, however, to infer from the statements of the defenders that there may be a competition on the fund *in medio*, and at all events no objection has been taken to the competency of the action, and therefore I think we may go on to consider the only question which has yet been raised.

The fund *in medio* is a sum of money which was paid to the pursuer by the defender Stephen Haddow. The averments are very meagre, but there is enough, I think, to enable us to dispose of the case. The substance of these averments is that Haddow's affairs having become embarrassed he consulted the pursuer, who endeavoured to arrange a composition settlement, and with a view to carrying through a settlement Haddow paid a sum of £100 to the pursuer. It is not stated on record that the pursuer failed to procure a settlement for his client, but since it appears that Haddow's estates have been sequestrated it may be inferred from the fact that his creditors refused to accept a compromise.

This being so, and the money having been placed in the pursuer's hands for a specific purpose, which has failed, it is clear that he is bound to return it. The pursuer, however, claims to deduct from the £100 the sum of £42, 4s. 3d., the amount of two business accounts due to him by Haddow.

The Sheriff has repelled this claim, and I am of opinion that he was right. I agree with the Sheriff that this is not a case of a law agent's lien, for that lien, while it extends to deeds and documents put into the agent's hands in the course of his employment, does not apply to moneys in his hands, whether these are advances or cash balances. The Sheriff goes on to observe that the question here is one of compensation. Now I am not quite satisfied that this is so, because we have no evidence before us to instruct a liquid debt. But there may be a right of retention for an illiquid debt, and I will assume that the pursuer might have a good plea either of compensation or of retention if Haddow or his trustee were suing him for payment of an ordinary debt. But then it is well-settled law that specific appropriation is an absolute bar both to the plea of compensation and to the plea of retention, and here it is perfectly clear that the money was put into the pursuer's hands for a specific purpose and that that purpose has failed. I am therefore of opinion that the obligation on the pursuer to return the money is absolute, and that his claim for a deduction cannot be allowed.

LORD JOHNSTON—A sum of £100 was advanced by the claimants to the bankrupt, and by him was handed to his agent for the express purpose of meeting the composition which he had offered to his creditors. As between him and his agent the money was his. He was mandant and his agent his mandatory. The composition was refused, and so *ipso facto* the mandate fell and the money was returnable as it would have been if the mandate had been recalled. I cannot distinguish this case from *Macgregor* (14 R. 535). There only a part of the money deposited was required and the balance fell to be returned. Here it happens, as there it might have happened, that none of the money was required and so the whole falls to be returned. As retention to compensate the debt of the mandant to the mandatory was incompetent in that case, so it follows it is in the present. In so deciding I assume that the debt proposed to be compensated is a general law agent's account incurred by the bankrupt mandant, and not an account incurred in relation to the subject of the mandate as in negotiating with creditors, for then I admit a different principle would apply.

As regards the case of *Murray's Creditors* (1744, M. 2626) chiefly relied on by the

appellant, I doubt its soundness. I cannot appreciate the distinction avowedly drawn and necessarily accepted as the ground of judgment between the falling of a mandate by the death of the mandant and its recall by him during his life.

I think therefore that the Sheriff-Substitute has reached a sound conclusion.

LORD KINNEAR stated that the LORD PRESIDENT, who was absent at the advising, concurred.

LORD GUTHRIE gave no opinion, not having heard the case.

LORD M'LAREN was absent.

The Court affirmed the Sheriff-Substitute's interlocutor.

Counsel for Pursuer (Appellant)—Mair. Agents—Macpherson & Mackay, S.S.C.

Counsel for Defenders (Respondents)—Chree. Agents—Bruce, Kerr, & Burns, W.S.

Friday, March 18.

SECOND DIVISION.

[Lord Cullen, Ordinary.

LAWRENCE AND ANOTHER *v.* COMPTROLLER-GENERAL OF PATENTS AND OTHERS.

Patent—Petition for Extension—Reclaiming-Note against Refusal by Lord Ordinary—Competency—Patents and Designs Act 1907 (7 *Edw. VII, cap.* 29), *secs.* 18, 92 (1) *and* (2), 94 (4) *and* (5).

L. and K. having presented a petition to the Court for extension of letters-patent under the provisions of the Patents and Designs Act 1907, the Lord Ordinary (Cullen) refused the prayer of the petition. The petitioners reclaimed.

Held that the decision of the Lord Ordinary was final, and that a reclaiming-note was incompetent.

The Patents and Designs Act 1907 (7 Edw. VII, cap. 29) enacts—Section 18 (1)—"A patentee may . . . present a petition to the Court praying that his patent may be extended for a further term. . . ." Section 92 (1)—"In this Act, unless the context otherwise requires, 'the Court' means, subject to the provisions as to Scotland, England, and the Isle of Man, the High Court in England. (2) Where by virtue of this Act a decision of the Comptroller is subject to an appeal to the Court, or a petition may be referred or presented to the Court, the appeal shall . . . be made and the petition referred or presented to such judge of the High Court as the Lord Chancellor may select for the purpose, and the decision of that judge shall be final. . . ." Section 94—"In the application of this Act to Scotland . . . (4) The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any Court in Scotland in any proceedings relating to patents or designs; and with reference to any such proceedings, the term 'the Court' shall mean any Lord Ordinary of the Court of Session, and the term 'Court of Appeal' shall mean either Division of that Court. (5) Notwithstanding anything in this Act, the expression 'the Court' shall, as respects petitions for compulsory licences on revocation, which are referred by the Board of Trade to the Court in Scotland, mean any Lord Ordinary of the Court of Session, and shall, in reference to proceedings in Scotland for the extension of the time of a patent, mean such Lord Ordinary."

William Henry Lawrence, residing at 35 Melville Street, Pollokshields, Glasgow, and Robert Kennedy, residing at 3 Springhill Avenue, grantees of letters-patent 6129 of 1896, presented a petition to the Court under the Patents and Designs Act 1907 (7 Edw. VII, cap. 29) for extension of the said letters-patent. Answers were lodged for the Comptroller-General of Patents, Designs, and Trade-Marks, and for the Board of Trade.

On 8th February 1910 the Lord Ordinary (CULLEN) refused the prayer of the petition.

The petitioners having reclaimed, the respondents maintained that the reclaiming-note was incompetent.

Argued for the respondents—The right to come to the Court of Session for the extension of letters-patent was conferred for the first time by section 18 of the Patents Act 1907 (7 Edw. VII, cap. 29) (*sup. cit.*). Prior to that statute such applications went to the Privy Council—Patents Act 1883 (46 and 47 Vict. cap. 57), sec. 25. Accordingly there was no encroachment on the existing jurisdiction of the Court of Session. On the contrary, a new jurisdiction had been given to the Lord Ordinary by the said Patents Act 1907. The right to reclaim to the Inner House, and finally to appeal to the House of Lords, was not implied. When a new and special jurisdiction was given to any Court, the exercise of it fell to be regulated entirely by the conditions of the statute under which it was conferred—*Magistrates of Portobello* v. *Magistrates of Edinburgh*, November 9, 1882, 10 R. 130 (*per* Lord Justice-Clerk Moncreiff at 137), 20 S.L.R. 92. Furthermore, the judge of first instance was final in England—Sec. 19 (2) of the 1907 Act (*sup. cit.*). It would be anomalous to have different arrangements in Scotland.

Argued for reclaimers—The reclaiming-note was competent. The difficulty would not have arisen but for the clause of finality in the provision applying to England. So far as the sections applying to Scotland were concerned there was no express clause of finality. Where a well-known jurisdiction was invoked by the Legislature for a new purpose the presumption was that the ordinary form of procedure was applicable, and that the usual appeal was competent except when