As the Lord Ordinary points out, the decision in *Neill*, 1902, 4 F. 625, 39 S.L.R. 412, does not conflict with the earlier cases, because the only ground of judgment of the Inner House was that the bill was presented for payment at the wrong place. This, as is pointed out by Lord Moncreiff, would have been fatal to summary diligence according to the practice before 1882.

I accordingly agree with the conclusion the Lord Ordinary has reached.

LORD SKERRINGTON—If I had regarded this question as an open one I should have been disposed to say that the procedure sanctioned by the Lord Ordinary was not warranted by the statutes relative to summary diligence; that it was contrary to principle; and that it was calculated to lead to injustice in certain cases. Unfortunately the question cannot be regarded as open. Our duty under section 98 of the Bills of Exchange Act of 1882 is to ascertain what was the law and practice in Scotland prior to that date in regard to summary diligence.

Upon that question there are five witnesses whose testimony seems to me to be conclusive. In the first place, there is Lord Wood in the case of *Bon*, 1846, 12 D. 1310, and his statement of the practice is none the less valuable because it was an *obiter dictum*. Then in the case of *Mackenzie*, 1854, 17 D. 164, we have a judgment by Lord Curriehill (the Lord Ordinary) upon this very point. Further, the two eminent counsel for the complainer did not think it worth their while attempting to challenge Lord Curriehill's judgment. These counsel were Mr Penney, afterwards Lord Kinloch, and Mr Gordon, afterwards Lord Gordon. In the Inner House, Lord President M'Neill said—"The first plea in defence is not now insisted in and is clearly not maintainable."

Accordingly it appears to me to be too late to innovate upon a practice so well established. In the latest Scottish book upon Bills of Exchange—Mr Hamilton's commentary upon the statute of 1882—the learned author says (p. 211)—"It has, however long been the opinion of the legal profession in Scotland that for this purpose"—that of summary diligence against an acceptor—"it is not necessary to present bills not payable on demand on the day on which they fall due. Accordingly it has till very recently been the practice to present bills for this purpose at any convenient time after they have fallen due, and to do diligence on protests framed in accordance with this presentment." That statement is in accordance with what I have always understood to be the law and practice in Scotland.

Accordingly I agree with the decision which your Lordships propose to pronounce.

The Court adhered.

Counsel for the Complainers (Reclaimers)—Christie, K.C.—Ingram. Agent—W. R. Mackersy, W.S.

Counsel for the Respondents—Anderson, K.C.—C. H. Brown. Agent—E. I. Findlay, S.S.C.

Friday, June 29.

FIRST DIVISION.

[Lord Dewar, Ordinary.

OAKBANK OIL COMPANY, LIMITED *v.* LOVE & STEWART, LIMITED.

Contract — Sale of Goods — Conditions — Red Ink Note at Head of Seller's Note-paper Importing Condition into Contract of Sale.

Shale oil manufacturers sent to timber merchants (1) a schedule of conditions, (2) attached thereto a list showing their requirements in timber for about a year, and (3) a form of tender. Condition IX stipulated that the conditions must be accepted by tenderers, and if not no tender should be made; and the form of tender provided that the offerers agreed to adhere to the conditions. The timber merchants filled in prices against some of the items in the list of requirements, signed the list and the form of tender, and returned these documents to the oil manufacturers together with a covering letter. The letter bore at the top of the paper a note, printed in red ink, that all offers over a period were subject to stoppages through strikes, lockouts, &c., and that the right to cancel was reserved in the event of any of the countries from which supplies were drawn becoming engaged in war. A correspondence followed as to certain items on the list the prices of which had not been filled in, and as to the prices charged by the timber merchants. All the timber merchants' letters contained the red ink note. Finally, after adjustment of the prices the oil manufacturers accepted the timber merchants' offer. Thereafter one of the countries from which the timber merchants drew their supplies became involved in war, and they cancelled their contract. In an action of damages for breach of contract raised by the oil manufacturers, *held* (*rev.* Lord Dewar, *dis.* Lord Johnston) that the head-note in red ink formed part of the correspondence, and was embodied in the contract of sale as a condition thereof, and that the timber merchants were entitled to cancel the contract, and defenders *assoilzied*.

Oakbank Oil Company, Limited, *pursuers*, brought an action against Love & Stewart, *defenders*, concluding for £1800 damages for breach of contract.

The *facts*, as given in the opinion of Lord Johnston, were—"The Oakbank Oil Company are large importers, *inter alia*, of pit props. From 1888 to 1914, a period of twenty-six years, with the single exception of one year, they had adopted a system of invitation for tenders for the various stores required by them, including pit props, which was the uniform basis of their subsequent contracts. This system was as follows—Their financial year closes

with 30th June, and in that month in each year, with a view to next year's requirements, they have been in use during this long period to send out to selected contractors—half-a-dozen I think in number—in the matter of pit props, three documents. First, a schedule of conditions on which the contract must proceed. In this schedule of conditions head IX bears 'the company's specifications, conditions, and form of tender must be strictly adhered to, and not altered in any way whatever. Parties not approving of the same should simply therefore decline to tender. Each specification to be signed before it is lodged.' Second, a form of tender in the following terms—'.....do hereby offer to supply Oakbank Oil Company, Limited, during the year ending 30th June.....with the articles specified in Class.....at the prices quoted in aforesaid specification, and should this tender be accepted hereby undertake faithfully to execute the contract, and to adhere to the foregoing stipulated conditions.' The form of tender bore in a postscript that tenders endorsed 'Tender for stores' were to be addressed to the managing director of pursuers' company, and to be lodged with him not later than 15th June..... And third, a specification applicable to the particular class of stores required, headed in the case of timber 'Class No. 12—Timber,' containing a list of the kinds, as, *e.g.*, 'pit props 3 in. by 6 ft.' with the quantity required, and with a column blank in the price for the intending offerer to fill in. The first and second of these documents, *i.e.*, the schedule of conditions and the draft contract, were different pages of the same sheet. The third was a separate paper.

"These forms had been sent yearly to the defenders' firm and had resulted in a long series of contracts. There was, however, an interlude of a year which should be mentioned. In the year 1912 the pursuers' company being of the opinion that the contractors' prices had been too high did not send out tenders to contractors for pit props but during that year imported their own timber. However on the invitation of the defenders' firm they reverted to their former practice, and in April 1913 again made a contract with the defenders, on which occasion, in order to get back into the rhythm, they made a contract for fourteen months instead of for a year, and in that one instance they appear to have issued no schedule, specification, or form of tender. In accordance with their former practice on 4th June 1914 the pursuers sent to the defenders, without any covering letter, copies of the three documents which I have described above. Receipt of these documents was acknowledged on 5th June by the defenders, who stated that they were giving the same their careful attention, and hoped in due course to put their best quotation before the pursuers, and trusted to be favoured with a good share of their valued order. This was followed on 15th June 1914 by a letter enclosing the defenders' offer for 'Class No. 12—Timber,' in the form required, viz., the form of offer filled in and signed with the schedule of conditions annexed, and the relative specification of quantities with their prices filled in, and also signed. In their covering letter they said—'We trust the prices quoted will enable you to place your order with us. We thank you for the pleasant business we have had with your firm for so many years past, and assuring you of our best attention, we are, &c. (Signed) for Love & Stewart, Limited, Robert Murray, director.'

"But the defenders in their copy of the specification of quantities *per incuriam* omitted to fill in prices for several of the classes of pit props, and the pursuers' managing director, who had in the end of June and the beginning of July been absent from business, on his return telephoned to the defenders drawing their attention to the omission. This resulted on 8th July in the defenders writing apologising for the omission and sending a list to be substituted, which was a copy of the specification so far as it related to pit props, with this time the whole items priced. The pursuers then intimated to the defenders that their tender was too high and gave them an opportunity of reconsidering their prices. This they did, and on 21st, and again on 29th July, submitted amended lists of prices, undertaking to supply all the pursuers' requirements in pit props 'in accordance with your schedule class No. 12.' By schedule, though it is not perfectly clear, I give the defenders the benefit of assuming that they meant specification. On the last date, 29th July, the pursuers wrote accepting the offer, and on 30th the defenders replied acknowledging the acceptance. While no exception had been taken to the schedule of conditions, and particularly head IX thereof, which formed the basis of the pursuers' contracts, the defenders' letter-paper contained at the top, above the address and date, and in no way connected with the writing which followed, these words printed in two closely-set lines in small type in red ink, 'All offers over a period are subject to stoppages through strikes, lock-outs, &c., and the right to cancel is reserved in the event of any of the countries from which our supplies are drawn becoming engaged in war.' It appears that they had adopted this form of notice about a year before, when there was apprehension of differences between Russia and Finland interrupting the course of the defenders' supplies, but it so happened that within a week of the contract in question being concluded the present European war broke out, and founding upon the red ink notice on their letter-paper the defenders after having made partial deliveries, cancelled the contract. The pursuers proceeded to buy in against them and are now suing for the difference in price."

The pursuers *pleaded*—"2. The pursuers having suffered loss and damage to the extent of the sum sued for in consequence of the defenders' breach of contract, decree should be granted in terms of the conclusions of the summons."

The defenders pleaded—"1. The defenders having cancelled their contract with pursuers in so far as unexecuted in virtue of a clause in the contract entitling them to do

so, they are not in any way in breach of contract, and are not liable in damages."

On 15th August 1916 the Lord Ordinary (DEWAR), after a proof, decerned against the defenders for the sum of £1633.

Opinion.—[*After narrating the facts of the case*]—"Parties have agreed on the amount which falls to be paid in the event of the defenders being found liable, and the only question which I have to determine is whether the note in red ink forms a condition of the contract. That is a question which largely depends upon the facts proved in evidence.

"After careful consideration of the whole circumstances I have reached the conclusion that the pursuers have established their case.

"It may be true, as the defenders say, that it is quite a common practice for tradesmen to intimate on their writing paper the terms and conditions on which they are prepared to do business. But it does not necessarily follow that the person with whom business is transacted will be bound by such conditions. That will depend upon circumstances. If he knew or ought to have known of the conditions, of course they will bind him. But if he has not in fact read them the tradesman must then show that he has done all that is reasonably possibly to bring them under his notice.

"So far as I am aware there is no authority directly in point. But the Court has frequently considered, both in Scotland and England, the question whether conditions printed on tickets issued to passengers on railways and steamboats are sufficient to limit the common law liability of carriers. The decisions are by no means uniform, but I think the later and more authoritative are to the effect that it is not always sufficient to print conditions on the ticket. It is possible that they may escape the passengers' notice; and it has therefore been held that if he has not read them and did not know of them they will not bind him unless the company can show that it did all that was reasonably sufficient to bring them to his notice—*Parker*, 2 C.P.D. 416; *Rowntree*, [1894] A.C. 217; *Williamson*, 53 S.L.R. 433.

"I see no reason why the same principles should not apply to a case of this kind.

"The pursuers, as I have said, had not read the note in red ink, and did not know that it had any relation to the contract; and the only question therefore is whether the defenders did all that was reasonably sufficient to bring it to their notice. I do not think they did.

"In considering what is reasonably sufficient the whole circumstances must be taken into account. It is, for example, obviously more difficult to direct attention to conditions on a railway ticket than in a letter. When one is adjusting the terms of contract by letter it is usual to state the conditions in that part of the letter which everyone reads—or must be presumed to have read, as Mr Macmillan put it—between the words 'Dears Sirs' and 'Yours truly.' That is the safe and simple course, and avoids all possibility of error. Mr Climie is asked why he did not do this, or at least direct attention to the note, and he replied that he thought the course he followed kept the defenders safe, and he did not consider anything else at all. I think that was a mistake. He should have considered the pursuers' position also. He should have remembered that it was possible that they might not read the note, thinking that it had no relation to the contract, that they might assume that all the conditions were contained in that part of the letter which was specially addressed to them, where all that is material is usually to be found. It would have been fair to the pursuers, and not less safe for the defenders, if he had stated in the letter, 'Please note the condition printed in red ink,' or used some such expression to direct attention to it.

"And there was special reason for care in this matter, because the defenders knew that the pursuers did not expect this or any other new condition imported into the contract. They had intimated that they would not consider tenders subject to any conditions other than those which they set forth in the schedule. Mr Climie stated in his evidence that in his view the schedule did not form part of the contract, but I think it did. That, indeed, is expressly admitted by the defenders in answers 2 and 3 of the record. But even if it did not the defenders had dealt with the pursuers for many years, and were familiar with the terms and conditions on which they purchased props, and if they intended to alter these conditions they should have done so in a much more direct manner. If they desired to import a general condition into this particular contract they ought in my opinion to have made reference to that condition.

"I do not think that failure to read the note in red ink was due to carelessness on the part of the pursuers. Mr Miller, who had charge of the contract, appeared to be a very competent business man, and his clerk Mr Thomson was an intelligent witness. Yet neither of them read it, and I am not surprised. They had a large correspondence to attend to, and would not naturally expect to find a condition of the contract placed where this note was placed. It was on that part of the paper where names and addresses, telephone numbers, trade advertisements, and the like are to be found. It was in red ink, but tradesmen sometimes print a change of address, or the fact that they have received prize medals, or a royal warrant, in red ink. The red ink did not suggest that it had any relation to this contract. And the type is smaller and occupies much less space than the other printed matter at the top of the paper. It would, I think, be unfortunate if it were to be held that business men must be assumed to have read all the printed matter which a tradesman may print upon his writing paper. It would impose a considerable burden without any corresponding advantage.

"A matter of this kind probably strikes different minds in different ways, but I confess that, like Mr Miller and Mr Thomson, it would not have occurred to me to read any of the printed matter in this letter. I

should have assumed that all that was material was contained in the written part. Other more careful people might take a different view. But, as was said in one of the cases to which I have referred, the defenders must 'take mankind as they find them,' and do 'what is sufficient to inform people in general.' I think they have failed to do that. And I accordingly find them liable, and grant decree for £1633, the sum which the parties have mutually agreed upon, with expenses."

The defenders reclaimed, and argued—When there was a signed mercantile contract, the contracting parties were bound by every term of it, and were held to be aware of all its terms unless one party had been misled by the other, and it was then for him to prove he had been misled—*Roe* v. *Naylor*, [1917] 1 K.B. 712. The ticket cases relied upon by the Lord Ordinary and the similar cases of *Grand Trunk Railway of Canada* v. *Robinson*, [1915] A.C. 740; *Hood* v. *The Anchor Line*, 1916 S.C. 547, 53 S.L.R. 429, were not in point—*Henderson* v. *Stevenson*, 1875, 2 R. (H.L.) 71, *per* Lord Chelmsford at 76 and Lord Hatherley at 77; *Watkins* v. *Rymill*, 1883, 10 Q.B.D. 178, *per* Stephen, J., at 184. The ticket was primarily a voucher handed over in circumstances in which there was no time to consider any conditions referred to; it was not signed nor were its terms assented to; the people to whom it was issued were the general public, who were not to be held to apply the ordinary business man's intelligence in the matter; and, in the ticket cases reported, the companies were by the conditions attempting to limit their common law obligations. In the present case the ordinary rules applying to contracts entered into by correspondence must be applied. The whole of the documents must be considered and all parts of them must be held to be included in the contract. Here the common case of documents partly printed and partly written arose. In such cases it could not be said that the printed matter was to be ignored. The case of a sale note was similar. The red ink clause was part of the printed elements in the contract; there was no question of concealment of that clause, nor could a reasonably careful man be misled with regard to it. In *Love & Stewart, Limited* v. *Instone & Company, Limited* (House of Lords, 18th May 1917), a similar headnote had been treated as part of the letter. The defenders should be assoilzied.

Argued for the pursuers (respondents)—The Lord Ordinary was right. The contract must be arrived at by a consideration of the whole correspondence, not by excerpting one or two letters from it and considering them without reference to what surrounded them—*Hussy* v. *Horn-Payne*, 1879, 4 A.C. 311. All the documents from 15th June onwards must be looked to. The letter of 29th July could not be taken in isolation, for it referred to the pursuers' schedule, and that was a reference to the schedule attached to the printed schedule of conditions, which the defenders filled up and returned to the pursuers with the covering letter of 15th June. At that date the covering letter was the only document before the pursuers containing the red ink clause. The offer made by the defenders by filling up the blank page attached to the schedule of conditions and signed by them did not contain any such clause, and the defenders must be held to have agreed to accept Condition IX. It was now said that Condition IX had been modified by the red ink clause. In such circumstances it was for the defenders to show that they had taken all reasonable steps to call the pursuer's attention thereto. The red ink clause was quite inappropriate to produce that result, it was likely to be overlooked being placed amongst what was usually advertising matter, and if it was meant to be part of the communication it should have appeared in what was communicated, *i.e.*, the letter itself, which an ordinary business man was entitled to assume was contained between the address and "yours truly," that was all that was authenticated by the signature. Further, the red ink clause did not interpret the actual writing but contradicted it. But even if the letter of 29th July were to be taken alone, the modification introduced by the red ink clause was very important, for it left the pursuers exposed to the changes of the market for the period of the contract, the very thing they desired to avoid as the defenders knew, and so material a term of the contract could not be fairly introduced in such a manner. The ticket cases were not strictly analogous for there was nothing to distinguish one or more of the conditions from the others; here there was the printed clause and the actual letter. The sale note was not analogous, for the parties were bound to read every line of it—*Roe's* case (*cit.*). In *Love & Stewart's* case (*cit.*) the question was whether there was a completed contract or not.

At advising—

LORD PRESIDENT—In my opinion this action fails on relevancy. The pursuers claim damages for breach of contract of sale which is expressed in certain letters and other documents specified in the second article of the condescendence. By these writings the pursuers aver that the defenders contracted to supply to the pursuers the estimated quantity of pit props required by them during the year ending 30th June 1915. It is alleged by the defenders, and is not disputed, that every letter emanating from the defenders connected with this contract bears a headnote to the effect that the right to cancel is reserved "in the event of any of the countries from which our supplies are drawn becoming engaged in war." Taking advantage of that clause the defenders in the end of August 1914 cancelled the contract. It is not disputed that they had the right to do so if and provided that the contents of the headnote formed part of the contract. The sole question in the case is whether the headnote forms part of the letters, and, consequently, part of the contract of sale. I am of opinion that the contents of the headnote do form part of the contract and are a condition of the sale.

The pursuers challenged the efficacy of the headnote to qualify or control the terms of the contract on two separate and distinct grounds which are set out on record. The first of these is that they did not observe and, consequently, did not read the headnote. That ground is plainly untenable and was not supported in argument before us. The second ground set forth on record is that "the defenders were not entitled to, and did not by means of the headnote of their office paper on which their correspondence was written, alter the terms and conditions of the tender and specification or introduce new conditions into the contract." It was explained to us in argument that the words I have just read are intended to mean that the headnote forms no part of the letter and therefore no part of the contract, that the letter commences with the address and terminates with the signature, and that the substance of the communication must be found between the address and the signature, that nothing save what appears there forms part of the letter, and therefore anything which does not appear there may safely be disregarded. I cannot accede to that view, for which no authority was cited, and indeed the House of Lords case, *Love & Stewart* v. *Instone & Company*, 18th May 1917, to which we were referred in the course of the argument, plainly proceeds upon the opposite assumption. To so propone would mean that the headnote, expressed in large and distinct letters and placed close down above the address, might safely be disregarded as part of the contract, and of course, whether read or unread, it would be entirely immaterial to consider. It is only fair to the pursuers' counsel to say that they did not carry their argument so far, but conceded that if the headnote had been read by the receiver of the letter it would then form part of the contract. That concession, which I do not think could have been withheld, is obviously destructive of the argument, for if the letter in so far as it forms part of the contract begins with the address and terminates with the signature, then whether the headnote was observed or was not observed was wholly immaterial, it could not in any way affect the contract.

The ground upon which the Lord Ordinary's judgment rests does not appear upon the record and was not supported in argument before us. I think it is plainly untenable.

For these reasons I am of opinion that we ought to recal the interlocutor of the Lord Ordinary and assoilzie the defenders from the conclusions of the summons.

LORD JOHNSTON—I think the interlocutor of the Lord Ordinary should be sustained and the reclaiming note refused, but I come to this conclusion on somewhat different grounds from those adopted by the Lord Ordinary in his judgment. In particular I do not accept the analogy on which the Lord Ordinary has largely founded of the series of railway ticket and contract-note cases which I do not think is applicable to the present.

From my point of view it is necessary to go back on the history of the relations between the pursuers and the defenders. [*His Lordship then gave the narrative of facts quoted supra.*]

The defenders' method of adjecting a condition to their bargains was in any view a most unsatisfactory one. The size of the printing, the position of the notice on the paper which placed it in collocation with certain items of a quasi-advertising order, and entirely severed it from the letter which it is now alleged to control, not only did not draw marked attention to it as forming part of the communication, but rather drew away attention from it. But there it was nevertheless, and had nothing preceded the actual letters of 29th and 30th July, which clinched the bargain, I am not prepared to hold, although I fully believe the pursuers' general manager and his chief clerk, who both say that they did not observe it, that it would not have been a controlling condition of the contract. Parties entering into a contract by letter must be assumed, as a general proposition, to have read all that fairly appears on the face of the paper. But in this case I think that there is an exception. The contractual documents passing between the parties are not confined to the letters of 29th and 30th July 1914. Those letters grew out of, and are based upon, the original tender of the defenders of 15th June 1914, consisting of the three documents which I described at the outset, by their unlimited signature to which the defenders undertook "to adhere to the foregoing stipulated conditions," as they had done for a score of years preceding, and knew well that if they did not so sign their offer would be discarded. One of these conditions was that the company's specifications, conditions, and form of tender were to be "strictly adhered to and not altered in any way," and that "parties not approving of the same should simply therefore decline to tender." And neither the schedule of conditions, form of contract, or specification, was altered in any way. Notwithstanding the tender was signed and lodged. In my opinion the original tender cannot be set aside as though there were a new departure at 29th July or any other intermediate date, and although the covering letter which accompanied it and subsequent correspondence contained the red ink printed passage at the top, I think that, *quoad* that tender and the contract which ensued thereon, the red letter passage, even if the defenders intended at the time that it should form a condition of their offer, which I take leave to doubt, must be taken as *pro non scripto*. If the defenders had intended to introduce that condition while signing a tender inconsistent with it, they were bound to give special notice, and had they done so they would not, as I think they probably knew, have obtained the contract. If confirmation was wanting I should find it in the tone and terms of the covering letter of 15th June, which would naturally confirm the recipient in the understanding which was certainly in his mind, that the pleasant business which the firms had conducted for

so many years *was proceeding on the accustomed footing.* It is for these reasons that I agree in the result which the Lord Ordinary has reached.

LORD MACKENZIE—The whole question in this case depends upon whether the war clause, printed in red ink at the top of the defenders' letter-paper, is part of the contract or not. If the clause had been so hidden away that a business man of ordinary intelligence could not be expected, with the exercise of reasonable care, to find it where it was placed, then it could not be held part of the contract. Nor would it be part of the contract if undecipherable, within the fair meaning of that word. In the present case there is this difficulty in the pursuers' way that this is not the case made by them either on record or in the evidence. It was, however, the question that was argued.

The first matter to be cleared up is in regard to the letters which have to be considered. The record is not in a satisfactory state as regards this. My view is that the important letter is that of the defenders dated 29th July 1914. No doubt the whole documents beginning with the form of tender sent by the pursuers on 4th June must be considered in order to find out the terms of the bargain. It is not necessary to express an opinion upon the question whether the defenders would have succeeded in this case if the contract had been concluded upon the offer of 15th June (with no war clause) enclosed in the letter of the same date (with the war clause). There was no agreement on the terms therein set out. The defenders' offer of 29th July is complete in itself, and there is in my opinion nothing in the preceding or subsequent correspondence to take off its effect. It contains the war clause in red ink at the top of the first page. The pursuers' contention was that the substance of the offer, which is the body of the letter, could not be withdrawn by a note at the top of the letter. I am unable to assent to this view. No doubt if the note had been placed on the back of the notepaper, and there had been no direction to turn over, then the note could not have been said to form part of the contract. The note, however, is on the front and not on the back, and I am unable to hold that nothing is part of the letter except what is between "Dear Sirs" and the signature. On a fair reading of the letter I am of opinion that the war clause was a part of it. To a certain extent the question here is of the same nature as that involved in the ticket cases to which reference was made. It is necessary to determine whether fair notice was given that there was a war clause attached to the offer. The circumstances, however, of the two classes of cases is quite different. In the case of the ticket there is no written and signed offer and acceptance. The ticket is the voucher for the money paid, and there is no opportunity for deliberate consideration. In the case of a contract embodied in correspondence there is. Accordingly I am of opinion that the pursuers must be held to have assented to the clause in red ink. If they are, then the stipulations in that clause do operate to qualify the conditions in the tender, particularly articles 5 and 9. The contention to the contrary, which is of the nature of a special defence, is contained in the concluding sentence of condescendence 3. In my opinion it is not well founded.

I am therefore of opinion that the defenders are entitled to be assoilzied.

LORD SKERRINGTON—The only question which the pleadings seem to me to raise is one of construction in the ordinary sense of that expression, viz., whether, notwithstanding a certain condition contained in the tender prepared by the pursuers and signed by the defenders, a red ink note, which the latter had caused to be printed at the top of their letter-paper, ought to be regarded as incorporated in the final agreement between the parties. That question I have no difficulty in answering in the affirmative. It was argued, however, though there is neither averment nor evidence to that effect, that the red ink headnote was placed in such a position and was printed in such a manner that a business man who read the letter with ordinary care might excusably fail to notice the headnote. I do not think that a mere inspection of the letters warrants such a conclusion. In the result the defenders are entitled to absolvitor.

The Court recalled the interlocutor of the Lord Ordinary and assoilzied the defenders.

Counsel for the Pursuers (Respondents)—Moncrieff, K.C.—C. H. Brown. Agents—Drummond & Reid, W.S.

Counsel for the Defenders (Reclaimers)—Lord Advocate (Clyde, K.C.)—A. M. Mackay. Agents—Dove, Lockhart, & Smart, S.S.C.

Friday, July 6.

SECOND DIVISION.

ANDERSON & SONS, PETITIONERS.

Process — Petition — Company — Winding-up—Objection to Proposed Liquidator—Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69).

In a petition by creditors of a company for a judicial winding-up under the Companies (Consolidation) Act 1908 an official liquidator was suggested. The directors of the company lodged answers for the purpose of suggesting another person as liquidator. *Held* that the proper method for respondents to object to a suggested liquidator was by a statement by counsel at the bar and not by means of answers.

Peter Anderson & Sons, plumbers, Dundee, *petitioners,* presented to the Court under the Companies (Consolidation) Act 1908 (8 Edw.