[18*th June* 1839.]

(Appeal from the Court of Session, Scotland.)

JOHN HART and WILLIAM HODGE, Appellants.[1] (No. 19.)

[*Sir William Follett—A. M'Neill.*]

JOHN FRAME and COMPANY, Respondents.

[*Dr. Lushington.*]

Agent and Client—Reparation.—A country agent was employed by a manufacturing company to prepare petitions, at their instance, to the justices of peace against two apprentices, for having deserted their work, and other misconduct. The agent accordingly prepared and presented petitions, founded on the 4th Geo. 4. c. 34., but libelling the third section, instead of the first which related to apprentices in the situation of those complained of; the apprentices were convicted and imprisoned, but subsequently liberated by the Court of Justiciary in respect of the wrong section having been founded on, and they thereafter sued the company for damages and expenses: Held (affirming the judgment of the Court of Session) that as the terms of the act were clear, the agent was liable in relief, although there was no established course of practice under the statute, and although neither the opposite agents in the inferior court nor the sheriff-substitute of the county considered the petitions to have been erroneously libelled.

2D DIVISION.

Lord Ordinary Jeffrey.

THE appellants are in partnership as writers in the town of Paisley, and the respondents are calico manufacturers in Glasgow and at Locherbank in the county of

[1] 14 D., B., & M., 914. 922; Fac. Coll. 9th June 1836.

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Renfrew, where their works are situated, having in their employment a great number of apprentices. By the first section of the 4th Geo. 4. c. 34., intituled "An act "to enlarge the power of justices in determining com- "plaints between masters and servants, and between "masters, apprentices, artificers, and others," it is enacted, "that it shall and may be lawful not only "for any master or mistress, but also for his or her "steward, manager, or agent, to make complaint upon oath against any apprentice within the meaning of the "said before recited acts (viz. 20 Geo. 2. c. 19. and "6 Geo. 3. c. 25.) to any justice of the peace of the "county or place where such apprentice shall be em- "ployed, of or for any misdemeanor, misconduct, or ill- "behaviour of any such apprentice; or if such appren- "tice shall have absconded, it shall be lawful for any "justice of the peace of the county or place where such "apprentice shall be found, or where such apprentice "shall have been employed, and any such justice is "hereby empowered, upon complaint thereof made "upon oath by such master, mistress, steward, manager, "or agent, which oath the said justice is hereby "empowered to administer, to issue his warrant for "appprehending every such apprentice; and further "that it shall be lawful for any such justice to hear and "determine the same complaint, and to punish the "offender by abating the whole or any part of his or "her wages, or otherwise by commitment to the house "of correction, there to remain and be held to hard "labour for a reasonable time not exceeding three "months."

By the third section of the statute it is enacted, "that if any servant in husbandry, or any artificer,

" calico printer, handicraftsman, miner, collier, keelman,
" pitman, glassman, potter, labourer, or other person,
" shall contract with any person or persons whomsoever,
" to serve him, her, or them for any time or times what-
" soever, or in any other manner, and shall not enter
" into or commence his or her service according to his
" or her contract (such contract being in writing, and
" signed by the contracting parties,) or having entered
" into such service, shall absent himself or herself from
" his or her service before the term of his or her con-
" tract, whether such contract shall be in writing or not
" in writing, shall be completed, or neglect to fulfil the
" same, or be guilty of any other misconduct or misde-
" meanor in the execution thereof, or otherwise respect-
" ing the same, then and in every such case it shall and
" may be lawful for any such justice of the peace of the
" county or place where such servant in husbandry,
" artificer, &c., or other person, shall have so contracted,
" or be employed, or be found; and such justice is hereby
" authorized and empowered, upon complaint thereof
" made upon oath to him by the person or persons, or
" any of them, with whom such servant in husbandry,
" artificer, &c., or other person, shall have so con-
" tracted, or by his, her, or their steward, manager, or
" agent, which oath such justice is hereby empowered
" to administer, to issue his warrant for the apprehend-
" ing every such servant in husbandry, artificer, &c.,
" or other person, and to examine into the nature of
" the complaint; and if it shall appear to such justice
" that any such servant in husbandry, artificer, &c.,
" or other person, shall not have fulfilled such contract,
" or hath been guilty of any other misconduct or mis-
" demeanor as aforesaid, it shall and may be lawful

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" for such justice to commit every such person to the " house of correction, there to remain and be held to " hard labour for a reasonable time, not exceeding " three months, and to abate a proportionable part of " his or her wages, for and during such period as he " or she shall be so confined in the house of correction, " or in lieu thereof, to punish the offender by abating " the whole or any part of his or her wages; or to " discharge such servant in husbandry, artificer, &c., " or other person, from his or her contract, service, or " employment, which discharge shall be given under " the hand and seal of such justice gratis."

The respondents having deemed it necessary, for the safety and protection of themselves and their business, to take proceedings against some of their apprentices, under the above act, employed the appellants to prepare petitions to the justices of the peace for Renfrewshire against two apprentices belonging to the manufactory, of the names of Houston and Crookshanks, for having deserted their work, and other misconduct.

These petitions were presented to the justices, and after certain procedure and proof Houston and Crookshanks were convicted, and committed to the house of correction.

Bills of suspension and liberation having been presented to the high court of justiciary by Houston and Crookshanks and two other apprentices named Hunter and Gilmour, who had been convicted and committed to the house of correction upon petitions, at the instance of the respondents, prepared by Mr. James Campbell, writer in Johnston, these convictions were quashed, and the prisoners ordered to be liberated. The petitions which had been prepared and presented by

Mr. Campbell specially libelled on the third section, and the appellants, seeing that a conviction had followed, prepared the petitions against Houston and Crookshanks in similar terms, specially libelling on the same section.

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In the course of the proceedings against Hunter and Gilmour, no objection to the petitions, as founded on a wrong section of the statute, had been taken by the agents who appeared on behalf of the apprentices; but in the case of petitions presented against Houston and Crookshanks, in answer to an objection taken, that the petition had been founded on the third section instead of upon the first, the sheriff substitute of Renfrew, acting as a justice of the peace, delivered the following decision:—"As to this objection I should not be disposed to sustain it, at any rate, considering that the provisions of the third section are of general application; but any doubt on that score seems removed by the subsequent statute 10 Geo. 4. c. 52., which has the effect of making all the provisions of the act founded on applicable to apprentices."

Houston and Crookshanks raised separate actions of damages against the respondents on account of the proceedings at their instance, which actions were duly intimated by the respondents to the appellants. After an arrangement the respondents agreed to pay to each of the parties, Houston and Crookshanks, 25*l.*, in the name of damages, and also to pay the taxed expenses of their actions, and these sums were accordingly paid by the respondents, who then brought actions of relief against the appellants.

A special case, comprising the above facts, having been agreed to, the Lord Ordinary, on the 1st of March

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1836, pronounced the following interlocutor and note: —"Finds, that the defenders are bound to relieve the "pursuers of the damages and expenses to which they "have been or may be subjected in consequence of "the illegal and incompetent proceedings which they "instituted and carried on in their names against the "apprentices named in the libel, the illegality and in-"competency of the said proceedings having been "wholly occasioned by the negligence or want of pro-"fessional skill of the said defenders while acting in "the employment of the pursuers, and repels the "defences, and decerns accordingly; but before answer "as to the specific sum for which decreet for execution "should pass against the said defenders, appoints the "cause to be enrolled, that the parties may be farther "heard."—"*Note.* The grounds of this judgment are "substantially the same as explained in a note[1] to an "interlocutor of this date, in the action by the same

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[1] *Note.*—"It is certainly with regret, and not without some hesitation, "that the Lord Ordinary gives this judgment. Where there is no sus-"picion of fraud, or reckless disregard of the client's interest, cases of this "kind are always distressing. But, on attending to the whole circum-"stances, he has not found it possible to come to any other conclusion. "In the first place, he must say, that he thinks the blunder, in libelling "on the third section of the statute, instead of the first, was a very pal-"pable and gross blunder. The one section dealt professedly with "apprentices, and with them only; the other with servants, and other "persons hired or engaged to work on special contracts; and being "almost identical with the former in the substance of its enactments, "could not be supposed also to relate to apprentices, without imputing to "the legislature the most absurd and preposterous repetition. But the "whole style and substance of the two sections points out the distinction "in the clearest and plainest manner. The section about apprentices "gives its remedies to the masters or mistresses of such apprentices, and "uses this and no other phrascology throughout. But the section about "servants and persons employed to work never once uses these expres-"sions, and gives its remedies only to 'the person or persons with whom "'such servant, &c. may have contracted, &c.;' and in the fourth section, "which contains regulations common to both classes, the distinction is

" parties against James Campbell. The only differ-
" ence between the cases is, that Campbell says he

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" still most anxiously and carefully preserved; that section setting forth,
" that as such masters, mistresses, or employers may sometimes reside at
" a distance, by which the said apprentices or servants, artificers, &c. may
" be put to inconvenience in recovering their wages, certain facilities
" should be provided, &c. But the very substance of the third section
" might have shown any attentive (even though unprofessional) reader,
" that it could not relate to apprentices, since it speaks exclusively of
" persons whose only contract with their employers is a contract to work
" for hire, and who are contemplated as persons sui juris, and completely
" capable of binding themselves by such a contract. Now, the contract
" with an apprentice, though it may include a contract to work for hire,
" is primarily a contract to teach and to learn a certain trade or handi-
" craft; and being generally entered into with persons under age, is
" almost invariably concluded, not only with them, but with their
" parents or other guardians, expressly taking burden for them, as is
" the case with the indentures referred to, and produced with the
" original petitions by the defender; and yet libelling only on the third
" section relating to independent contractors, not with a master or mis-
" tress, but with an employer for him. In these circumstances it is
" quite idle in the defender to say that the first section related only to
" apprentices of a particular description, and that he, conceiving that
" the third was intended to reach all descriptions, was therefore induced
" to select it as the safest for his purpose. In the first place, it is mani-
" fest that the apprentices excluded from the operation of the first section
" were not intended to be affected by the statute at all, as belonging,
" like apprentices to surgeons, attorneys, &c., to a higher class of per-
" sons, for whose misconduct it was not thought necessary to provide
" such summary remedies. But, second, whoever might be without
" the provisions of the first section, the defender could not possibly
" doubt that the persons he was to prosecute were within it. It ex-
" tended, in express terms, to all who had not paid an apprentice fee of
" 25*l.* or upwards. But, first, it is a matter of notoriety to every one
" in Paisley that no such fee was ever paid in the trade of calico
" printing, and, second, the defender had the indentures before him,
" which showed there was no such fee. But strong as this ground is,
" the Lord Ordinary would have had great difficulty in subjecting the
" defender on it alone, considering the apparent novelty of the pro-
" ceeding, the acquiescence not only of the justices, but of the legal
" advisers of the apprentices, and above all, the deliberate opinion of
" the respectable sheriff substitute (given, no doubt, after the defender
" was committed to the course he had taken) in favour of all that
" had been done. The sanction of still higher opinions proved insuffi-
" cient indeed to protect a law agent from the consequences of professional
" error, in the cases of Mathie, 17th May 1826, and Stevenson, 6th July
" 1827. But still the Lord Ordinary could not have perfectly satisfied

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" deliberately considered the statutes, and came to the " conclusion on which he acted, after using all possible

" himself with a judgment resting merely on his own conviction, that a " great, and, in his view, an inconceivable blunder had been committed. " He thinks it right to state, therefore, that he has proceeded chiefly on " a different view,—a view very nearly corresponding with that on which " Lord Lyndhurst appears to have placed his judgment, in affirming the " interlocutor of this Court in the case of Stevenson, (4 W. & S. App. 182.) " already referred to. He there said, that if the agent had been necessarily " constrained to grapple with a nice and difficult point of law or practice, " he might not have been answerable for the consequences; but that the " case was very different, when it appeared that he had a safe and plain course " before him, which he chose to desert, in order to embark on a doubtful " one; and that if he needlessly raised a nice question, when he might " have avoided it, he must answer the consequence of resolving it wrong. " Now, in this case, if the defender really was at a loss which of the two " sections to proceed on, was it not open to him to proceed upon both? " If he actually believed that apprentices (though not once mentioned) " were, or might be included in the third section, and that it was only a " repetition, in more comprehensive terms, of the first, why not make sure " of reaching the parties accused, by referring to both conjunctly, as merely " explicatory and supplementary of each other? Or, if he was aware that " both could not be intended for the same class of persons, and was " doubtful under which his parties were included, what was to hinder " him from founding upon both alternatively, and seeking a conviction " upon the same state of facts against them, as certainly comprehended " under the one or the other description? There is no doubt, it is humbly " conceived, that a libel, in either of these forms, would have been " perfectly relevant, and a conviction obtained under either, liable to no " objection. If the last or alternative form was adopted it would probably " have been necessary for the Court to decide under which section the " parties were to be held as arraigned; and if they, with both before " them, should have fallen into the alleged error of the defender, (which it " is not easy to imagine,) it is, no doubt, possible that the consequences " might have been the same to the pursuers. But the defender would, " at all events, have been saved from responsibility, and been entitled to " say, what he cannot now say, that in a matter of supposed difficulty he " had run upon no needless risks, but followed a course perfectly unex- " ceptionable, and safe for all parties. Nay, if this very plain statute had " appeared to him absolutely inextricable and obscure in all its sections, " there was still a plain and a safe way by which he might have escaped " all possible embarrassment. It is settled by the special case that he " had no instructions to proceed upon that statute at all. His employ- " ment was quite general, 'to prepare petitions to the justices against " 'certain apprentices who had deserted their work, and otherwise mis- " 'conducted themselves.' Now, by the original acts of 1617 and 1661, " as interpreted by immemorial usage, the justices had undoubted power

" diligence to be right; while the present defenders
" say they did not deliberate at all; but having been
" employed after Campbell's petition had been received
" and acted upon, merely followed that precedent, and
" judged of its propriety by its success. Of the two,
" the Lord Ordinary rather thinks this last defence
" the worst. Even communis error, and a long course
" of local irregularity, has been found to afford no
" protection to one qui spondet peritiam artis. But
" here there had been nothing like a course of prac-
" tice, or any series of precedents which had received
" the tacit sanction of the proper authorities. The
" defenders were in no way bound to submit their
" judgment to Campbell's, and had no right to deprive
" their employers of the benefit of their own skill and
" sagacity by leaning indolently on his example. If
" the blind will follow the blind they must both lie in
" the same ditch."

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The court (9th June 1836) having adhered to the above interlocutor, the present appeal was brought.

Judgment of Court, 9th June 1836.

" of enforcing all such contracts, without the aid of any recent enact-
" ment; and the defender might have discharged himself of the task he
" had undertaken without referring to the 4th of Geo. IV. at all. In
" this view it appears to the Lord Ordinary that he stands very much in
" the situation of Stevenson in the question with Rowand; and that, even
" supposing that there could have been any material difficulty in fixing
" upon the proper section, it was a difficulty which the defender created
" by his own act, and met, consequently, at his own peril, there being a
" plain and safe course open to him, by which, without injury to any one,
" all peril might have been avoided. No man of common judgment,
" professional or unprofessional, can be listened to, who would say, that
" after reading the statute, he thought there was no sort of risk or
" difficulty in entirely passing over, or neglecting the first section, — or
" if there was a plain or palpable difficulty, the defender must be
" answerable for the consequences of not taking a plain way to
" avoid it."

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Appellants Argument.

Appellants.—In the ground of action, as set forth in the special case, upon which the judgment of the Court of Session is founded, there are no facts stated by the respondents relevant to infer a liability against the appellants; it is not alleged that there was any professional negligence in conducting the proceedings, nor is it averred that the petitions were informal, or that there was any neglect, in matter of form, by the appellants, in doing their duty as practitioners before the court; on the contrary, except for the alleged error in law, the proceedings were regular and competent. Neither is it relevant to infer a liability by a law agent or attorney for a debt which he is instructed to recover, or a liability to pay damage arising out of proceedings which he has been instructed to institute, to say that he has been negligent, or has shown want of skill; it must be averred that there was crassa negligentia, that there was gross ignorance, or that there was gross want of skill; and in the present case there are no facts averred which amount to crassa negligentia or gross want of skill.[1]

Although the petitions recite particularly the third section of the statute referred to, yet the statute itself, which is a public statute, was also founded on, as appears from the conclusion of the petition, which bears,—"That in these circumstances it is clear that "the said Thomas Houston junior has contravened "the statute before narrated and founded on; and in "order that he may be brought to punishment for

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[1] Pitt v. Yalden, 4 Bur. Rep. 2060; Laidler v. Elliot, 3 Barn. and Cress. 738; Baikie v. Chandless, 3 Camp. 16; Godefroy v. Dalton, 4 Bingham 460; see also M'Lean v. Grant, 15th Nov. 1805, Mor. No. 2, App. voce Reparation.

" so doing, the present application is made to your " honours for the usual warrant in such cases."

The statute, therefore, is expressly founded on, and being a public statute, the judge was bound to take notice of and give effect to such of the provisions as, on considering the facts proved, he thought applicable; but in the judgment actually pronounced it does not appear that the Lord Ordinary placed his decision on any particular part of the act.

It is correctly stated in his lordship's note, "That " there had been nothing like a course of practice, or " any series of precedents, which had received the tacit " sanction of the proper authorities," and this principle ought to have led his Lordship to acquit the appellants, in place of deciding against them; for even in the more mechanical branch of the profession of a law agent, viz., that of conveyancing, it was laid down in the House of Lords[1],—" That a solicitor, called upon " to perform duties in his character as a solicitor, " is not to be held responsible for every mistake in " point of law which he may commit. Every person is " liable to mistakes in difficult and doubtful points of " law; and if the question had turned solely on the " construction of this instrument, I should be of " opinion that Mr. Stevenson was not liable. But, my " Lords, the true distinction is this:—In this particular " case it appears that Mr. Stevenson, without any suffi- " cient reason, departed from the ordinary and beaten " course, from the usual and established forms of con- " veyancing."

But the appellants had no such beaten track,—no

[1] Stevenson v. Rowand, 4 Wilson and Shaw's Rep. 182.

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guide to light their path in construing this recent and complex act. The Lord Ordinary, from the note of his opinion in the relative case of Campbell, seems himself to have been uncertain as to what would have been the safest road. He admits the competency of founding on the first section, but says it might have been founded on jointly with the third; or that the petitions and sections might have been founded on alternatively; or that the statute might have been avoided altogether, and the petition placed on the Scottish statutes 1617 and 1661. The Judges of the Inner House distinctly announced that they did not concur in these views. Indeed there can be no doubt, that if the appellants had followed any of the courses suggested by the Lord Ordinary, the proceedings must have been quashed for uncertainty and inapplicability.

The appellants are country practitioners, who have not immediate access to the best advice, and the offence committed by the apprentices being one requiring an immediate check, and the proceedings very summary in their nature, they are necessarily called on to exercise their judgment under the pressure of obtaining instant redress.

Both the judge to whom the execution of this act is entrusted and the sheriff substitute of the county, and other practitioners engaged in precisely similar cases, and the agents of the parties accused, either directly sanctioned the petitions as being correctly and accurately laid, or acted on the footing that they were so.

In such circumstances it is impossible to maintain that there was, on the part of the appellants, crassa negligentia, or gross ignorance and want of skill.

Respondents.—The appellants, as the paid agents of the respondents, were responsible for the skill and art necessary to accomplish safely the business which, as professional men, they undertook. The general rule as to the party employed in such cases is spondet peritiam artis, and imperitia culpæ annumeratur.

The nature and extent of their employment is distinctly set forth in the special case as follows, viz. that the appellants were employed by the respondents "to "prepare petitions to the justices of the peace for "Renfrewshire, at their instance, against two appren-"tices of the names of Houston and Crookshanks, "belonging to their manufactory, for having deserted "their work, and other misconduct."

As to the form of proceeding no instructions were given; but the respondents trusted entirely to the appellants, as their legal advisers, and it was to secure the benefit of such advice that they resorted to the appellants at all, but having so resorted to them, and paying, of course, the usual professional charges in the matter, they trusted themselves implicitly in the appellants hands. The object was, that their refractory apprentices should be brought back to a state of subordination, and the respondents knew that the law afforded means to this effect; but whether the remedy was a remedy at common law, or whether it was to be found in the statute book, and if so, in what part of the statute book, the respondents did not know, and gave themselves no concern.

The Lord Ordinary very justly observed, that there was, independently of that statute, "a plain and a safe "way by which they (the appellants) might have

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Respondents Argument.

"escaped all possible embarrassment. By the original "acts of 1617 and 1661, as interpreted by immemorial "usage, the justices had undoubted power of enforcing "all such contracts, without the aid of any recent "enactment, and the defender might have discharged "himself of the task he had undertaken without "referring to 4 Geo. 4. at all."

The jurisdiction and powers of the justices independently altogether of the stat. 4 Geo. 4. are undeniable.[1]

It is not doubted that the appellants acted with the most perfect bona fides. But the question here is, whether as between two parties, one of them a professional man, and taking money for his professional aid and assistance, and the other an unprofessional man, resorting to the first, and paying him his utmost charge for a piece of professional business to be performed, and the result having been that matters were not merely blundered to the extent of making the business performed inoperative, but blundered to such an extreme degree as to involve the client in penal damages, as having been guilty of the quasi delict of wrongous imprisonment,—is it the paid agent, or the employer who pays him, upon whom the loss is to fall? Surely it is not asking too much at the hands of a professional man, that he shall at least have sufficient skill not to bring his client into the disgrace and the dangers of a false

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[1] Anderson, 24th Jan. 1837, 15 D., B., & M., 412; M'Lellan, 9th July 1825, 4 Shaw and Dunlop, 165; Jack, 11th March 1837, 15 D., B., & M., 833; Dinwoodie, 22d Nov. 1748, Mor. 7638; Bisset, 15th May 1810; Raeburn, 4th June 1824, 3 S. & D. 69; Wright, 9th Feb. 1826, 4 S. & D. 440; Stewart, 21st June 1832 and 21st May 1833, 11 S., D., & B., 628; M'Dougall, 27th June 1833, 11 S., D., & B., 795; Stevenson v. Rowand, 4 W. & S. Appeal Cases, 177; see to the same effect, 2 W. & S. 563; Frame and Son v. Campbell, 14 S. & D. 914.

imprisonment; and if he have not such skill, surely where both are equally certantes de damno vitando, it is upon the former, and not upon the latter, that any loss which thence accrues shall be laid.

Ld. Chancellor's Speech.

LORD CHANCELLOR.—My Lords, this was an action in the Court of Session in Scotland by the respondents against the appellants, who are provincial writers or attornies, for damages sustained by the alleged negligence or want of skill of the appellants in the transaction in which they were employed by the respondents. The parties had the good sense to avoid the expense of going into evidence, by agreeing to a statement upon a special case; as to the facts, therefore, there is no question. It is to be observed, that this special case assumes the employment of the appellants by the respondents, and that their instructions were generally to prepare petitions to the justices of the peace against the two apprentices Houstoun and Crookshanks, no special instructions being stated; that these two apprentices and another, Hunter, who had been convicted upon a similar petition, having disputed the legality of the convictions by bills of suspension and liberation, the present appellants acted for the respondents in maintaining the legality of the conviction, but the conviction in Hunter's case having been held illegal, and he having consequently been liberated, no opposition was made to the application by Houston and Crookshanks, and that they were consequently liberated, and having afterwards brought actions for false imprisonment, the respondents, with the concurrence of the appellants, settled those actions by paying to each 25*l.* and their costs. This arrangement, it was agreed, should not prejudice the

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present action, but was to be considered as if the sums had been found due by the verdict of a jury or final judgment. No objection to the form of the proceeding was taken in Houstoun's case, but the objection was taken in Crookshank's case, and over-ruled. Although these proceedings may not be conclusive in this action of the illegality of the imprisonment of the apprentices, yet it is, I think, very difficult for the appellants, in the face of these admissions, to contend that the convictions were legal, and, consequently, that the adjudication of their illegality and the order for the discharge of the apprentices were not well founded, as they admit that it was by their advice, or that of the agent employed by them, that no opposition was made to this adjudication and order; but there is, I think, no doubt of the illegality of the proceedings against the apprentices.

The question, therefore, is reduced to this: Was there such a degree of negligence or ignorance in the conduct of the appellants, in conducting the proceedings against the apprentices, as to subject them to the liability of indemnifying their employers against the injury which has arisen from it? Their instructions were general,—to prepare petitions to the justices of the peace against the apprentices, for having deserted their work, and other misconduct.

It is, I think, unnecessary to inquire what course the appellants, acting under these instructions, ought to have adopted if any serious doubt or difficulty had existed as to the construction of the act of 4 Geo. 4. c. 34., because the recent statute was naturally the authority to be resorted to. It has, however, been well observed, that had the construction been thought doubtful, all danger

of miscarriage might have been avoided by founding upon the statutes generally, without specifying the particular section; but I cannot discover any ambiguity or doubt as to the construction of the act. It recites the 20 Geo. 2. c. 19., 6 Geo. 3. c. 25., and 4 Geo. 4. c. 29. In the two first of these statutes, the distinctions between servants and apprentices is very distinctly marked; the title of 6 Geo. 3. c. 25., indeed, is "An act for better "regulating apprentices and persons working under "contract," and the 4 Geo. 4. c. 29. extends the provisions of the two former acts to apprentices upon whose binding-out no larger sum than 25*l.* had been or should be paid. The 4 Geo. 4. c. 34., reciting this act, in which this distinction is so clearly marked, itself maintains it in the clearest possible terms: the first section provides for complaints by a master or mistress against any apprentice within the meaning of the said before-recited act; the second section also relates to apprentices, giving to them a summary remedy for their wages not exceeding 10*l.*; the third section takes up the case of servants working under contract, and describes them in this way, "That if any servant in "husbandry, or any artificer, calico printer," and then it enumerates a great variety of other trades, "or "other person shall contract with any person or persons "whomsoever to serve him, her, or them for any time "or times whatsoever, or in any other manner;" and then it gives summary jurisdiction to the magistrates to punish such servants breaking such contract, or being guilty of any misconduct in the execution thereof; the fourth section providing a remedy for wages unpaid, when the party to pay is absent, applies to both classes, and, therefore, in describing the parties to be paid,

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it repeats the description in the third section, but adds to it "and apprentices," and in describing the parties liable to pay it describes them as "masters, mistresses, "or employers;" the first evidently applying to the master of apprentices, and the latter to the employer of servants.

The appellants, however, receiving instructions to proceed against two apprentices, wholly neglected the first section, and founded the petition exclusively upon the third section, which they set out in the petition, and then stating the indentures of apprenticeship and that the apprentice had absented himself, and had neglected his service and duty as an apprentice and servant as aforesaid, concludes that he had contravened the statute before narrated and founded on, that is, section third, which did not relate to apprentices at all. From this error, in founding upon the third section instead of the first, the whole evil has arisen; and, as I have before observed, the appellants cannot now dispute that such evil has been the necessary and legal consequence of such error, and that the respondents have thereby been exposed to the damages and expenses which they have paid to the apprentices. Looking, therefore, to the case against the apprentices, which the appellants were directed to conduct, and to the act under which they proceeded, it appears to me to be a case of very great negligence, which term I think more applicable than ignorance; the appellants case being that they were led into the error by following the example of another professional agent of the respondent, who had adopted the same course, and thereby involved his employer in the same difficulty, and exposed himself to the same responsibility. It is obvious that this can be no defence.

It was the duty of the appellants to look with their own eyes, and judge with their own understanding; and if, instead of doing so, they have blindly followed the erroneous course of another they cannot complain at being made responsible for the consequences of the error into which their guide has led them. Their employer had a right to their diligence, their knowledge, and their skill; and whether they had not so much of these qualities as they were bound to have, or, having it, neglected to employ it, the law properly makes them liable for the loss which has arisen to their employer. Another ground of defence is, that the point having been raised in the case of Crookshanks, the justice who heard the case was of opinion that section third was the one applicable to the case. This circumstance, if there had been any real doubt upon the construction of the act, might possibly have induced the court to consider whether there was sufficient opening for the construction adopted to operate as an excuse for the appellants; but the case appears to me to be too clear for any such construction; besides, as was observed by some of the judges below, the cause of action by the apprentices had already arisen, as they had been apprehended and were in custody. I cannot, however, but express my surprise at the opinion imputed to the sheriff-substitute, that the 10 Geo. 4. c. 52. has the effect of making all the provisions of the act founded on applicable to apprentices; whereas the obvious intention and construction of the act is only to extend the provisions of the 4 Geo. 4. c. 34. to persons engaged in certain other descriptions of business, as if such other description had been particularly mentioned in it, leaving the distinction untouched

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between such of those provisions as related to apprentices and such as related to servants, and, applicando singula singulis, applying the separate provisions as to apprentices and as to servants, to apprentices and servants in the additional descriptions of trades.

Professional men, possessed of a reasonable portion of information and skill, according to the duties they undertake to perform, and exercising what they so possess with reasonable care and diligence in the affairs of their employers, certainly ought not to be liable for errors in judgment, whether in matters of law or of discretion. Every case, therefore, must depend upon its own peculiar circumstances; and when an injury has been sustained, which could not have arisen except from the want of such reasonable information and skill, or the absence of such reasonable skill and diligence, the law holds the attorney liable. In undertaking the client's business he undertakes for the existence and employment of these qualities, and receives the price of them.

Such is the principle of the law of England, and that of Scotland does not vary from it. I think this case clearly within the principle; but I must observe that this is a case in which your Lordships would not be disposed to disturb the judgment of the court below, without a clear case of miscarriage in the court. There is no principle of law in dispute; the only question was as to its application to the facts of the case; that is the degree of information and skill, diligence and care, to be expected from a particular class of professional men in Scotland, a subject upon which the judges of the Court of Session have much better means of infor-

mation than your Lordships can possess. If there were doubt upon this point in the present case your Lordships would be disposed to give great weight to the opinion of the judges of the Court of Session; but that is not the ground upon which the advice I shall give your Lordships is founded,—being of opinion that there was clearly a want of that reasonable degree of information, skill, care, and diligence which is required to protect professional men from the liability to indemnify their employers against the consequences of any error they may commit.

It is much to be regretted that the appellants did not see their liability, and discharge the obligations they had incurred, when that might have been done at the small expense of the two sums of 25*l.*, which the apprentices have received. Great expenses have since been incurred in the court below, which have been necessarily added to the charge upon the appellants, and to which I am compelled to add the respondents costs of this appeal.

I therefore move your Lordships that the interlocutor appealed from be affirmed, with costs.

The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this House, and that the said interlocutors therein complained of be and the same are hereby affirmed: And it is further ordered, That the appellants do pay or cause to be paid to the said respondents the costs incurred in respect of the said appeal, the amount thereof to be certified by the clerk assistant: And it is also further ordered, That unless the costs, certified as aforesaid, shall be paid to the party entitled to the same within one calendar month from the date of the certificate thereof, the cause shall be remitted back to the Court of

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Session in Scotland, or to the Lord Ordinary officiating on the bills during the vacation, to issue such summary process or diligence for the recovery of such costs as shall be lawful and necessary.

DEANS and DUNLOP—ARCHIBALD GRAHAME, Solicitors.