being in the position of a pursuer who had recovered less than £5 in terms of section 40 of the Court of Session Act 1868.

This was an action of damages at the instance of a husband and wife for bodily injuries sustained by both in a coach accident, the husband suing for his own interest and as administrator-in-law for his wife. The case went to trial before the Lord President and a Jury at the late sittings (*ante*, p. 479) on two issues, the first relating to the injuries sustained by the wife and laying the damages at £450, and the second relating to the injuries of the husband and laying the damages at £50. The jury returned a verdict for the pursuers on the first issue, assessing the damage at £25, and for the husband on the second issue, damage one farthing.

The pursuers now moved the Court to apply the verdict and find them entitled to expenses.

The defenders resisted this as regards the expenses applicable to the second issue, and asked for the expenses themselves, on the ground that the verdict on the second issue was practically in their favour.

ASHER, for them, quoted the 40th section of the Court of Session Act 1868, which provides "Where the pursuer in any action of damages in the Court of Session recovers by the verdict of a jury less than £5, he shall not be entitled to recover or obtain from the defender any expenses in respect of such verdict," except in certain specified cases, of which the present was not one. He maintained that this section excluded the husband's right to recover any expenses in respect of the issue relating to himself.

DARLING, for the pursuers, replied that the section quoted did not apply to the husband here, who was the substantial pursuer in both issues, and he contended that as the true question between the parties had been fault or no fault, and as no additional expense had been caused by the second issue, the pursuers were entitled to their full expenses.

The Court gave decree in terms of the verdict, and found the pursuers entitled to expenses, holding that the husband was not in the position of a pursuer who had recovered less than £5, and that no additional expense had been caused by the second issue.

Pursuers' Agents—Bruce & Kerr, W.S.

Defenders' Agents — D. Crawford & J. Y. Guthrie, S.S.C.

Friday, May 22.

FIRST DIVISION.

[Lord Ormidale, Ordinary.

LA COUR & WATSON *v.* GEORGE DONALDSON & SON.

Ship — Place of Discharge—Demurrage— Charter-party—Bill of Lading.

A steamer was chartered to bring a cargo of wood to a certain port, "or as near thereunto as she could safely get," and being unable to get a berth at the quay, lay about sixty feet off it. It was proved that such cargoes were frequently landed at this port by means of rafts or lighters, but the affreighter, though called on to take delivery, delayed doing so until the vessel could get a berth at the quay. —*Held* that they were liable for demurrage, the vessel having reached her place of discharge within the meaning of the charter-party.

Held that the quantity stated in the bill of lading must be held to be the quantity actually delivered, in the absence of direct proof of short delivery.

This action was brought by Messrs La Cour & Watson, merchants and ship brokers in Leith, owners of the steamer Enniskillen, against George Donaldson & Son, timber merchants, Alloa, for (1) £100, for demurrage of the said vessel for four days, and (2) the sum of £5, 1s., 11d. as the ballance of freight due to the pursuers.

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 23d December* 1873.—The Lord Ordinary having heard counsel for the parties, and considered the argument and proceedings, including the proof, finds it established by the pursuers that there is resting-owing to them by the defenders, 1st, the sum of £100 sterling in respect of demurrage; and 2d, the sum of £5, 1s. 11d. sterling in respect of freight, with interest on these sums respectively at the rate of 5 per cent. per annum, from the 11th of July 1873 till payment, and decerns accordingly against the defenders for payment to the pursuers of said sums and interest: Finds the pursuers entitled to expenses; allows an account thereof to be lodged, and remits it, when lodged, to the Auditor to tax and report.

"*Note.*—The pursuers' claims for demurrage and balance of freight have reference to a cargo of railway sleepers which the pursuers, as owners of the steamship 'Enniskillen,' contracted to bring from a port in Sweden to the defenders at South Alloa.

"According to the charter-party, which is dated 27th May 1873, it was agreed between the parties, the pursuers, as owners of the 'Enniskillen,' on the one hand, and the defenders, as the affreighters, on the other, that the steamer, having taken on board a cargo of railway fir sleepers, should proceed therewith to 'South Alloa, or as near thereunto as she may safely get,' and (with the usual exceptions of the act of God, the Queen's enemies, &c.) 'deliver the same to the affreighters, or to their assigns,' on being paid freight in the manner and at the rates therein stipulated; and the charter-party farther bears, 'cargo to be brought to and taken from alongside at merchant's risk and expense. The steamer to be loaded and discharged as fast as she can load and deliver, demurrage over and above the said lying days at £25 per day.'

"The 'Enniskillen' arrived with her cargo of railway sleepers at South Alloa on Tuesday evening the 1st of July 1873. She could not then, however, or until the Monday following, the 7th of July, get alongside of the quay, but remained moored about 50 or 60 yards from the quay. Part of the cargo was delivered to and received by the defenders on Saturday the 5th of July, and the remainder of it on the Monday, Tuesday, Wednesday, Thursday, and Friday of the following week. So far the Lord Ordinary did not understand there was or could be any dispute. But while the pursuers maintain that four lay days only—viz., Wednesday the 3d of July, the day after the arrival of

the 'Enniskillen' at South Alloa, and the following Thursday, Friday, and Saturday, ought to be allowed for discharging her cargo, and that the five days of the next week during which she was unloading must be reckoned for demurrage, the defenders dispute that they are liable for any demurrage at all. In order to arrive at a sound conclusion on the dispute thus raised between the parties, there are various points of interest and importance in the law and practice of shipping which require explanation.

"1. The first and main question is, What, in this case, and in the true sense of the charter-party, must be held to be the place at which the defenders were bound to take delivery of the cargo? Was it where the steamer was moored on her arrival at South Alloa, as the pursuers contend, or at the quay at which she was ultimately berthed, as contended for by the defenders?

"It is important, with reference to these questions, to keep in view that, according to the terms of the charter-party the destination of the 'Enniskillen' was 'South Alloa, or as near thereunto as she may safely get.' Nothing is said about her being berthed at the quay, and it is not left to the discretion of the defenders to fix any particular point at South Alloa where her cargo should be discharged. It is clear from the proof, however, that the steamer could not have got a berth at any quay on her arrival at South Alloa, or sooner than she did—viz., on Monday the 7th of July. But it is sufficiently proved, the Lord Ordinary thinks, that the cargo of the 'Enniskillen' might have been discharged at the place where she was moored on Tuesday evening the 1st of July, and where she lay during the four following days, if the defenders had adopted the necessary means for taking delivery of it. Supposing, however, that the cargo could not have been discharged till the 'Enniskillen' was got alongside of the quay, and that this could not have been accomplished sooner than it was owing to the berths at the quay being otherwise occupied, still the lay days must, in the Lord Ordinary's opinion, be held to run and be counted against the defenders from the morning of Wednesday the 2d of July, or at any rate from the hour on that day when the vessel was reported and cleared at the custom-house, although at her moorings, some distance from the quay. In the words of Mr Bell (Commentaries, vol. ii. p. 575), the affreighter is liable for demurrage 'where the delay shall have arisen from circumstances over which he has no control, provided they are not 'such as to dissolve the contract. His engagement is absolute that the thing shall be done within the time.' And among other illustrations of this rule, Mr Bell gives that of delay being occasioned by the crowded state of the docks, or the order of warehousing the goods, or a prohibition of intercourse on account of an infectious disease. In short, Mr Bell adds:—'In such cases the rule is, that during the loading or unloading of the ship the merchant runs all the risk of interruptions from necessary or accidental causes; while the shipowners have the risk of all interruptions from the moment the loading or unloading is completed. Even the unlawful seizure of goods by revenue officers, occasioning delay, or detention by port regulations or custom-house restraints, is no defence against demurrage.' The law is stated to the same effect in Abbot on Shipping (11th ed., p. 629), where it is remarked that the general rule appears to be, that if the merchant covenant to do a particular act which it becomes impracticable for him to do, he must answer for his default, unless the act be or become contrary to the laws of his country—as a trading with an enemy.' And the decided cases cited, as well in Mr Bell's Commentaries as in Abbot, appear amply to support the law as so stated.

"The Lord Ordinary may in particular refer to the cases of *Randall* v. *Lynch*, in 1809 (2 Campbell, 352, and 12 East, 179), and *Brown* v. *Johnstone*, in 1842 (10 Mees. and Wel., 331), where it was held that the press of business at the port of discharge having delayed or obstructed the unloading of a vessel, did not prevent the running of the lay days against the affreighter. Nor does the Lord Ordinary think that the present case is taken out of the general rule, as was maintained on the part of the defenders, on the ground that the quay of South Alloa must be held to be the usual place of discharge there, for this is not established by the proof, according to his reading of it; and even if it had, such a circumstance does not appear to him to be sufficient to render the general rule inapplicable. In the most favourable view for the defenders that can be taken of the proof, it merely appears that it is usual for a vessel to unload at the quay at South Alloa when there is a disengaged berth there, and when it can otherwise be got at. In the present instance, however, it has been distinctly shown, on the one hand, that the 'Enniskillen' could not have obtained a disengaged berth at the quay, and could not have been laid alongside of it sooner than Monday, the 7th of July; while, on the other hand, it has also been distinctly shown that she might quite well have been unloaded if the necessary means had been taken for the purpose at the place where she was moored on her arrival on the evening of Tuesday, the 1st of July, and where she lay from that time till her removal to the quay on the Monday following; and also that it has been as usual to discharge vessels, whether steamers or sailing ones, from such a place as from the quay. The cases of *Parker* v. *Winlo* (27 L. J. Q. B., p. 49), and *Batisfell* v. *Lloyd* (31 L. J. Ex., p. 413), cited in the argument for the defenders, appear to the Lord Ordinary to be distinguishable from the present, and those relied on by the pursuers, inasmuch as in the former it seems to have been held by the Court that by the terms of the charter-party the ship was bound to go to any point at the port of destination that might be pointed out by the affreighters, and in the latter, that she required to be brought to the particular wharf named in the charter-party. And it has also to be remarked, in reference to both cases, that the wharf where it was held the cargo was deliverable was not preoccupied or obstructed, as in the present case, by other vessels.

"2. Assuming then that the voyage of the 'Enniskillen' must be held to have terminated when she anchored, as she did, on the evening of Tuesday, the 1st of July, at 'South Alloa, or as near thereunto as she could safely get,' the Lord Ordinary thinks the lay days must be held to have commenced on the following day—viz., Wednesday, the 2d of July. The proof shows that notice was immediately given on the part of the pursuers to the defenders that the 'Enniskillen' was ready to be unloaded, and that it was expected that they, the defenders, would take delivery early on the morning of Wednesday, the second day of July.

Not only was such notice given to the defenders by the pursuers' clerk Mr Wade, and by the captain of the 'Enniskillen,' but they were telegraphed to from Leith to the same effect by the pursuers themselves. But the defenders delayed taking delivery of the cargo, or using the necessary means for that purpose, till the morning of Saturday, the 5th of July. They have, no doubt, put forward various excuses or reasons for this, although they seem to have at first maintained that the cargo could only be taken delivery of from the 'Enniskillen' where she lay by means of lighters; and that the pursuers, if they desired it, were bound to provide lighters at their own expense. But the defenders afterwards appear to have taken up the somewhat inconsistent ground, which they maintained in the course of the proof and at the debate, that although the deck load of the 'Enniskillen' might have been taken away by rafts, which they caused to be put alongside of her on Thursday the 3d of July, they could neither get that or any other part of the cargo delivered to them by the pursuers till Saturday the 5th of July. The Lord Ordinary does not think this view or defence is supported by the proof. On the contrary, it appeared to him that although two rafts were sent out to the 'Enniskillen' on Thursday or Friday, the third or 4th of July—it is not quite certain which of these days—no offer was then made, and no lumpers or other persons were then ready to receive or take delivery for the defenders of the cargo. The mere taking out of rafts to the vessel by two individuals, who immediately left to resume the work in which they were elsewhere engaged for the defenders, was a very idle and useless proceeding, which cannot, the Lord Ordinary thinks, afford the defenders any aid whatever in the present dispute. Neither does the Lord Ordinary think that the defenders have been successful in showing that the delay till Saturday the 5th of July in the unloading of the 'Enniskillen,' was caused by the fault of the pursuers or their shipmaster in not being able to commence the delivery sooner. It may be true that the five lumpers who acted on the part of the pursuers on board of the 'Enniskillen' in delivering the cargo did not commence that work till the Saturday, but the crew of the vessel were on board till the Friday afternoon, and would have been engaged till then from the morning of the preceding Wednesday in delivering the cargo if the defenders on their part had offered and used the necessary means, and employed the necessary hands to receive it.

"3. The next matter in regard to which the parties were at variance was the number of lay days which ought to be allowed for the unloading of the cargo of the 'Enniskillen,' supposing that it ought to have commenced and gone regularly on at the place at which she was moored on her arrival at South Alloa on Tuesday evening the 1st of July. The pursuers have maintained that, according to the proof only four days ought to be allowed, viz., Wednesday, Thursday, Friday, and Saturday, the 2d, 3d, 4th, and 5th of July; while the defenders contended that, even supposing it were to be held that the vessel ought to have been discharged of her cargo at the place referred to, and that the pursuers were ready to deliver it there, five lay days at least ought to be allowed, commencing as from the morning of Thursday the 3d of July. It appears to the Lord Ordinary that, according to the proof, it may be not unreasonably held that the 'Enniskillen' might and ought to have been discharged, if all necessary despatch had been employed, in four days. It is expressly stipulated by the charter-party that the vessel was 'to be loaded and discharged as fast as she can load and deliver,' and it has been proved that she had been on other occasions unloaded in four days.

"4. But at what precise time the four days must be held in the present instance to commence is a more difficult question; for, while it has been proved that the 'Enniskillen' was not formally reported and cleared at the custom-house till shortly before noon on Wednesday the 2d of July, it has also been proved that verbal permission had been obtained from the customs' officers for the discharge of the vessel at the earliest hour of Wednesday, and that this was immediately made known to the defenders. The Lord Ordinary is disposed, looking at all the circumstances, to hold that the clearing at the custom-house must be taken as the time at which the discharge of the 'Enniskillen's' cargo ought to be held to have commenced, for he can see no reason why it can only be held to have commenced the day following, as was contended for by the defenders. The weight of the evidence, as applicable to steamers, if not sailing vessels, is against the defenders on this point, and the express terms of the charter-party are not to be overlooked. If, therefore, the discharge of the cargo of the 'Enniskillen' had commenced at 12 o'clock of Wednesday the 2d of July, previous to which hour she had been reported and a clearance obtained at the custom-house, and reckoning four days from that time, it ought to have been completed at or before 12 o'clock on Monday the 7th of July. But here again it was contended by the defenders, not without some ground in the proof, the Lord Ordinary thinks, that the crew of the 'Enniskillen' having been paid off on Friday afternoon, and the five lumpers engaged in their stead to deliver the cargo on Saturday having, along with the defenders' lumpers, who were engaged in taking delivery of the cargo, stopped work earlier than usual that day, they are consequently entitled to the whole, in place of the half, of Monday. Taking it so, there would remain four days—viz., Tuesday, Wednesday, Thursday, and Friday, the 8th, 9th, 10th, and 11th of July, in respect of which the pursuers have a claim for demurrage at the rate of £25 a-day, or in all £100, in place of £125 as concluded for by them.

"5. The only other matter which requires a word or two of explanation is the pursuers' conclusion for £5, 1s. 11d. as the balance of freight due to them by the defenders. It is not disputed that the whole cargo on board the 'Enniskillen' as she lay at South Alloa was delivered; and it is proved that none was lost on the voyage to that place. The bill of lading, which it is not said was in any respect erroneously made up, must therefore be taken to instruct the amount of the cargo for the freight of which the defenders are liable, and on this assumption it is not, and could not be, disputed that the balance of £5, 1s. 11d., concluded for by the pursuers, is still rest-owing to them. The Lord Ordinary has only further to add on this point that, in the circumstances, the *onus* of proving that there was a short delivery lay upon the defenders, and that they have failed to relieve themselves from that *onus*."

The defender reclaimed, and pleaded *inter alia*:—

"(1) The place at which the ship lay in Alloa Roads not being the proper port of discharge for said ship, under and in terms of the charter-party and custom averred, the pursuers are not entitled to reckon the time the ship remained in said roads as lay days. (2) The defenders having used all due diligence in taking delivery of said cargo, and any delay that may have arisen in the discharge thereof having been attributable to those in charge of the ship, for whom the pursuers were responsible, they are not entitled to claim demurrage therefor. (3) In any view, and in respect of the custom second above averred, the pursuers are not entitled to reckon as a lay day the day on which the vessel was reported at the custom house."

Authorities—Bell's Prin., 431, 432; *Hillstrom* v. *Gibson and Clark*, 2 Feb. 1870, 8 Macph. 463; *Rogers* v. *Forrester*, 2 Campbell, 488; *Burmester* v. *Hodgson*, 2 Campbell, 483; Abbott, p. 275; *Brereton* v. *Chapman*, 7 Bing. 559; *Kell* v. *Anderson*, 10 Mees. and Wel. 498; *Tapscott* v. *Balfour*, 8 L. R., C. P., 46; *M'Lean and Hope* v. *Fleming*, March 27, 1871, 9 Macph. 38 H. L.; *Dishington* v. *Gifford*, July 19, 1871, 9 Macph. 1045; *Shankland* v. *Athya & Co.*, Nov. 28, 1865, 3 Macph. 810.

At advising—

Lord President—This case is in some respects a peculiar one, and one involving an important principle of law. The charter-party binds the shipowners to send a ship abroad and take on board "a full and complete cargo of railway fir sleepers in square and (or) half square, but, if shipped in whole blocks, a sufficient quantity of half blocks shall be shipped for broken stowage. The ship to be provided with a deck load at full freight, not exceeding what she can reasonably stow and carry; and being so loaded, shall therewith proceed to South Alloa, or so near thereunto as she may safely get, and (the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever during the said voyage, always excepted) deliver the same to the said affreighters or to their assigns on being paid freight at the rate of 17s., say seventeen shillings sterling, per load of 8⅓ whole or 16⅔ half blocks, or, in the option of the captain, per load of 50 cubic feet calliper measure, the freight to be paid on unloading and right delivery of the cargo in cash. Cargo to be brought to and taken from alongside at merchants' risk and expense. The steamer to be loaded and discharged as fast as she can load and deliver. Demurrage over and above the said lying days, at £25 per day." Now, the port of South Alloa is said to be a very young port, and it seems to be so, and its accommodation is not extensive or first rate. It has simply a line of quayage along the river bank, and no dock, pier, or harbour. Now, the first question to consider is, when the vessel reached the place of discharge—I say the place, not the port—for when she did so her voyage was ended, and the lay days began to run. Now, it seems to me that the result of the cases on the subject is, that reaching the port of discharge does not terminate the voyage. The voyage is at an end when the vessel reaches that part of the port which is the usual place of discharge for such vessels. If it were the port only, that would leave the place uncertain, for some ports are miles in length. But if the proper place of discharge is a dock, when the vessel enters the dock she has reached her place of discharge, even though she may not be able to get alongside the quay. The question here is, whether this vessel when she lay about sixty feet off the quay had come to her place of discharge. If she had been lying at anchor out in the river it might have been harder to say that she had, but she was moored to the quay, and within sixty feet of it, and the only reason why she could not be brought alongside was that another vessel was lying there. Now, it seems to me that she had reached her place of discharge, and I agree therefore with the Lord Ordinary. But the case does not quite end there, for there are some peculiarities in the charter-party. Suppose the vessel to have reached her place of discharge, and a place where she could discharge, was the merchant bound to wait till she could get up to the quay? The charter-party puts the expense and risk upon him, so that it was his interest to save as much as possible. This was a steamer, and the time of a steamer is precious. The charter-party says she is to load and discharge as fast as she can, so that the time allowed was just so many days as the vessel takes to discharge a full cargo as fast as possible. It is proved that the most usual way is to deliver sleepers on the quay, but that is not the only way in which it can be done; we have it said that they are delivered by rafts as well, not only when the cargo consists partly of large timber of which the rafts can be made, but when it consists of sleepers only. There are therefore two ways in which such cargoes are delivered at South Alloa. The course of practice is not very great, for the place is small and new, but so far as it goes the practice is established. Now, I should have said that unless the merchant had been clearly called on to take delivery at the place where the vessel was lying he was not bound to do so; but a demand was made on him to take delivery there, and he admitted that he was bound to do so so far as was necessary to lighten the ship and allow her to come alongside, and this was done. A delay was caused of five days or four days, and the only question is, whether demurrage was chargeable at all. The nature of the cargo was important. It was not very delicate or requiring gentle handling, so it was not likely to be hurt by being landed on rafts. The single objection to that mode of delivery was that it was rather more expensive. I am quite of the Lord Ordinary's opinion that the ship had arrived at the place of discharge, and that the merchant was under obligation, on the demand of the master, at once to take delivery. With regard to the deduction of £5, that sum consists of two items. It is said that the sleepers were delivered deficient to the extent of twelve of one kind and fourteen of another, and if it were established that that deficiency existed, and that the number of sleepers put on board coincided with the bill of lading, the *onus* of showing how the discrepancy arose would lie on the shipowner. We see from the bill of lading that there were 5224 of one kind and 2182 of another kind, besides some other pieces on deck, and with a deficiency of only twelve of the one kind and fourteen of the other, one must be very well satisfied of the accuracy of the counting at the port of discharge. The defender says he counted accurately and found the deficiency; but what other evidence have we? The mate, who counted on behalf of the shipowners, was not even examined. I am for adhering to the Lord Ordinary's interlocutor.

LORD DEAS—I have carefully read the Lord Ordinary's very full note, and tested it by carefully reading the proof and comparing the two, and the result is that I entirely agree with him; and that being so, it would be out of place to go over the proof in detail. The real question is, whether the ship had arrived at the place of discharge. By the charter-party, she was to load, &c.—(*His Lordship read the terms of the charter-party*). Now, the question whether a ship has arrived at the place of discharge must depend on circumstances. You must consider the nature of the place, the cargo, and the vessel itself, before you can say if the ship has arrived at the place of discharge, and in that view it is important to notice the nature of this cargo, which was not difficult to deliver without injury, and the nature of the place, whether there was any risk to the vessel. It can hardly be said that there was much usage in the case, which might by itself enable us to decide this question; the place has only been in existence for six or seven years. We must look more at what was reasonable under the circumstances. Now, it is important that there was neither difficulty nor danger in delivering at this place, and though Donaldson tried to say there was, still when you come to Gibb's evidence it is impossible to doubt that there was neither one nor other. You must also take into view that though it may take longer time, and so more expense, to land the cargo in rafts, it makes a still greater difference to the steamer if that be not done. Taking all these things into account, I think it would have been very unreasonable not to land the cargo there. It is plain that the demand to take delivery was made at once, and that the defender did so to the extent of lightening the ship, but he says he was not bound even to do that. As to the lay-days, there is no difficulty about them. I think the Lord Ordinary has taken a right view.

The other Judges concurred.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming-note for George Donaldson & Son against Lord Ormidale's interlocutor of 23d December 1873, Adhere to the said interlocutor, and refuse the reclaiming-note; find the pursuers entitled to additional expenses, and remit to the Auditor to tax the account of said expenses, and to report."

Counsel for Pursuer — Asher and Thorburn. Agents—Boyd, Macdonald, & Lowson, S.S.C.

Counsel for Defender—Dean of Faculty (Clark), Lancaster, and J. Gray Webster. Agents — Webster & Will, S.S.C.

Wednesday, May 20.

SECOND DIVISION.

[Lord Shand, Ordinary.

NAPIER *v.* GRAHAM.

Bill—Charge—Suspension—Reference to oath of the charger.

Certain bills were granted and subsequently a party was charged upon them; he thereon suspended the charge, and referred the facts and circumstances to the oath to the charger, *held* that under such a reference it was not competent to examine the charger as to an agreement between the parties, as to which there was no statement in the reference or upon record.

This case arose out of a note of suspension presented to the Court at the instance of John Napier, Eglinton, Irvine, against James Graham, coalmaster in Glasgow. The note set forth that the complainer Mr Napier had been charged to make payment to the respondent—(1) of the sum of £100 sterling, with interest, due by a bill drawn by James Graham upon and accepted by the complainer, dated the 15th day of January 1873, and payable three months after date; and (2) of another sum of £100 sterling, with interest, due by another bill of the same date, similarly drawn and accepted, and payable four months after date.

The complainer averred that on 15th January 1873 he accepted two bills drawn upon him by the charger for £100 each, both dated that day, the one payable three and the other four months after date, and that these bills were given for the charger's accommodation, he, Mr Napier, receiving no value for them, and that he was not and is not indebted to the charger in these sums. On receiving the bills, Mr Graham stated that he would get them discounted at a bank in Glasgow, and engaged to retire them when due. It was admitted, in answer, that Mr Napier accepted the bills drawn upon him by the respondent, being the bills charged on. But the other statements were denied, and it was averred that the bills were accepted for value received by the complainer. Further, the complainer said that on the 25th of January 1873 Graham called upon him and stated that he had been unable to get the bills discounted in Glasgow, and that he found that £160 would meet his present wants, and he asked for a loan of that sum. The complainer declined, but eventually, on 27th January, to accommodate the charger, he accepted two other bills to him, the one for £100 and the other for £60, and payable at three and four months' date respectively. When he received these two bills, the charger mentioned that he had left the other two bills for £100 each in Glasgow, but he stated he would cancel them. The two bills for £100 and £60 which the complainer accepted on 27th January were discounted by the charger, and were both retired by him when they arrived at maturity. But instead of cancelling the two bills of 15th January for £100, the charger protested them, and gave the present charges thereon. The charger (respondent) admitted that the bills had been protested, and the complainer charged, but denied the other statements. Finally, the complainer referred the facts and circumstances in connection with these transactions to the charger's oath.

The complainer pleaded—"(1) The reference to the charger's oath ought to be sustained. (2) The complainer having received no value for the bills charged on, and the same having been granted for the charger's accommodation, the complainer is entitled to have said charges suspended. (3) The complainer not being indebted to the charger in the contents of the said bills, or any part thereof, the charges complained of should be suspended, and the charger found liable in expenses. (4) In the circumstances of the present case, and looking to the terms of the deposition made by the charger in the reference, the complainer is entitled to a proof *prout de jure* of his averments."