"upon the facts and circumstances connected with "the making and endorsement of the bill, was not ques- "tioned either at the bar or by the House. On the con- "trary, the House did take that evidence into account "although it was ultimately held that the claim preferred "by D. was neither supported by the principles of the "law merchant nor by any inference derivable from these "facts and circumstances. But the House rejected the "parol evidence adduced by D. in order to establish an in- "independant contract of guarantee, upon the ground that "such a contract could only be proved by a writing pro- "perly signed under the 6th section of the Mercantile Law "Amendment (Scotland) Act 1856, which extends to "Scotland the provisions of the English Statute of Frauds "with respect to mercantile guarantees."

"What actually was decided then in *Macdonald vs Whitfield* so far as respects admissibility of verbal testimony, was that verbal testimony upon the facts and circumstances connected with the making and endorsement of the bill, not objected to at trial or hearing, could be taken into account by the Court, and that, where a rule of law forbade proof of an independant contract of guarantee being made otherwise than by writing, verbal testimony of the making of such independant contract would be rejected.

"That is all that purports to have been decided though it may be *inferred* that verbal testimony of the facts and circumstances was considered admissible.

"The case of *New London Syndicate vs Neale* was decided fifteen years later by a court which though technically not bound by reports of the Judicial Committee would of course have held them in the greatest respect.