

Counsel for Pursuers—Mr Duncan. Agents—Adam, Kirk, & Robertson, W.S.

Counsel for Heirs at Law—Mr Lancaster. Agents—Jardine, Stodart, & Frasers, W.S.

Counsel for Nephew—Mr Spittal. Agents—Mackenzie, Innes, & Logan, W.S.

(Before Lord Jerviswoode.)

RENTON *v.* NORTH BRITISH RAILWAY COMPANY.

*Bastard—Parent and Child—Title to Sue—Reparation.* Held that the mother of an illegitimate child has a title to sue an action of damages and *solatium* for the death of the child.

This was an action concluding for damages and *solatium* at the instance of the mother of an illegitimate son, who was killed at the Portobello Station of the North British Railway Company through the fault of the railway company's servants. The defenders admitted their liability for the culpable negligence of their servants in causing the death of the pursuer's son, but pleaded (1) that the pursuer has no title to sue; (2) that the deceased having admittedly been an illegitimate son of the pursuer, the pursuer could not maintain the action for damages, and, *separatim*, could not maintain the same for *solatium*; and (3) that the defenders having settled with the widow and child of the deceased, the pursuer could not maintain the action.

The Lord Ordinary pronounced this interlocutor:—"The Lord Ordinary having heard counsel on the 1st, 2d, and 3d pleas in law stated in defences on the part of the defenders, and considered the record, with the minute for the pursuer, No. 7 of process, repels the said pleas, and allows the pursuer to lodge an issue or issues with a view to the trial of the cause as she may be advised within eight days from the date hereof."

"*Note.*—The question to which the pleas in defences, with which the Lord Ordinary has now dealt, relates, is one of considerable importance, more especially in respect to that branch of it which arises directly under the 1st and 2d pleas for the defenders.

"It seems somewhat singular that, as admitted on both sides of the bar, as the Lord Ordinary understood, no direct decision of this Court is reported on which a claim in all respects the same as that of the pursuer here has been either sustained or repelled.

"It is said, however, and the Lord Ordinary believes correctly, that in certain Sheriff-courts such claims have been made and sustained, and the Lord Ordinary has a distinct recollection of a question having been raised before himself as to the liability of an illegitimate child to support his mother who was in poverty, and where he sustained the relevancy of the claim. But, so far as he is aware, the case did not go farther, or at least is not reported.

"On the merits of the question itself the Lord Ordinary cannot say that he has here entertained much serious doubt. It may be true, and the Lord Ordinary proceeds on the footing that it is so, that the person who, either by admission or on proof, may be dealt with, and held to be the father of an illegitimate child, cannot insist in such an action as the present, and this may, and indeed must, be so held while the principle of law is recognised that the full relation of parent and child does not exist between them.

"But the position of the mother is altogether different. The relation in which she stands to her child admits of no doubt. She is in fact and in law its mother, and although the circumstances of the birth may, as here, bring sorrow and reproach upon her, still her comfort and consolation is that her child is spared to her, and is not the less dear to her affections, because for and on account of it she may have suffered much.

"On the whole, the Lord Ordinary is of opinion that the case for the pursuer is relevant, and should proceed to trial."

The action was subsequently compromised.

Counsel for Pursuer—Mr Robert Johnstone and Mr J. A. Reid. Agent—Jardine Henry, S.S.C.

Counsel for Defenders—Mr Shand. Agents—Dalmahoy & Cowan, W.S.

Wednesday, January 6.

(Before Lord Barcaple.)

REID *v.* HART.

*Bill—Value—Banker—Security given to Banker by Promissory-Note granted by the Friend of a Customer.* Held (1) that the security was terminable at any date by intimation from the granter; (2) that the note did not prove value, and the *onus* lay on the banker to prove that any debt was due at the termination of liability.

The pursuer in this action is the agent of the City of Glasgow Bank at Glasgow, and he sues the defender for payment of the sum of £150, being the amount of a promissory-note. He makes the following statements:—" (1) Of this date (August 27, 1866) the defender granted to the pursuer his promissory-note, in the following terms:—

“£150 stg.                      63 Renfield Street,  
Glasgow, 27th August 1866.

“One day after date I, Thomas Hart, writer, Glasgow, promise to pay to William Reid, Esq., at City of Glasgow Bank, No. 2 Bridge Street, Glasgow, the sum of £150 sterling for value received.

“THOS. HART.”

“(2) The defender is due to the pursuer the said sum of £150, contained in the said promissory-note; but although he has been repeatedly required to make payment thereof he refuses, or at least delays to do so, whereby the present action has become necessary.”

The defender maintained the following pleas in answer to the action:—" (1) The instance, in so far as regards the pursuer or pursuers, is defective and ambiguous. The pursuer or pursuers have no title to sue upon the document libelled. (2) The pursuer, William Reid, having fraudulently and wrongously retained the said document without delivering or sending to the defender the back-letter which he required in exchange therefor, the said document was not granted or delivered to the said William Reid, and he has no right of action thereupon. (3) The document in question never having been delivered to the pursuer, and, *separatim*, if delivered, having been so by the defender's messenger without authority from the defender, and in the knowledge by the pursuer that it was delivered without authority, the pursuer cannot enforce payment thereof. (4) At least the said back-letter having been kept and retained by the said William Reid, along with the said note or document, the defender is entitled to assume that the said two documents can only be read together.