

pressed. I am of opinion, therefore, that a written contract was not requisite, and, on the whole matter, that this bill of suspension should be refused.

LORD NEAVES—I am quite of the same opinion in regard to the question of jurisdiction. The statute under consideration is one of very great importance. It has removed an aspect of things which was harsh and severe in the extreme upon the class of men affected by it. The proceedings under it are made civil to this extent—that nothing criminal is presumed against the workman. At the same time, these proceedings may result in imprisonment, and I agree with your Lordship that that is enough to sustain our jurisdiction.

Upon the merits of the suspension, it is not very easy to reconcile the conflicting clauses of the statutes, but I think, on the whole, the course which your Lordship has taken is the safest one. This new Act may be taken as just a mode of enforcing any contract of service, or for work, between the parties enumerated in the Act of 4 Geo. IV. But at common law any such contract, the duration of which is under a year, might be proved without writing. While the proceedings were of a criminal nature, writing was very properly required where there had been no entry upon the service. The reason for this is, however, now no longer apparent. Nor do I think that the distinction between a contract which is to be enforced at its commencement, and one that is to be enforced during its currency, was intended to make any difference in the manner of proof under the new Act.

There is no doubt that it would stultify the Act to say that you cannot enforce the performance of a job under its provisions, if the workman has been so negligent as not even to commence to it, unless you can produce a written contract, while if he have only set his hand to it, you are within the statute, writing or no writing. I think therefore, with your Lordship, that the safest course is to hold that the clear expressions of the interpretation clause disclose the intention of the Legislature, and that any contract capable of being proved at common law by parole evidence is enforceable under this Act. But besides this, I must remark that it is not necessary to libel a written contract, even if there was one, and that we have no business to look into the evidence which satisfied the Sheriff.

LORD COWAN—I am very clearly of the same opinion. On the question of jurisdiction I have no doubt whatever, on the grounds stated by your Lordships, that we, and we alone, have jurisdiction in the matter. On the other question, I must say I do not understand the meaning of a clause which sets itself forth to be an interpretation clause, unless it is to be held as applicable to the whole statute. Now, we have it here expressly declared that the words "contract of service" shall include any contract in writing or by parole. When we come to section 3, we have a reference to a previous Act, which seems to introduce a conflict of meaning with the interpretation clause. But I think the more reasonable view to take is, that this clause means that no other contracts shall come under the application of this Act than those enumerated in the previous Act; but that the mere constitution of the contract is to be regulated by the interpretation clause. Notwithstanding the dictum of the learned writer referred to, I think that the interpretation we are going to put on the statute is the correct one.

Bill of suspension refused.

Agent for Complainer—James Barton, S.S.C.

COURT OF SESSION.

Tuesday, March 19.

FIRST DIVISION.

DALL (HILL'S TRUSTEE) v. GOWANS.

Partnership—Income Tax—Accounting.

Held that, though income tax is strictly due by the beneficial recipient of income, it was the real understanding of the parties to an agreement dissolving a partnership, whereby one of the partners undertook the whole liabilities of the firm, that a sum of income tax due should be considered a debt of the firm, and discharged by the partner so undertaking the firm's liabilities. Effect given to this view in an accounting.

This was an action of payment of the balance on an account of charge and discharge between Robert Hill, W.S., and Mr James Gowans, railway contractor, Edinburgh. Mr Hill had for many years acted as law agent for the firm of Gowans & Mackay, contractors, and had at the same time managed all their cash transactions, and likewise those of Mr Gowans himself, as an individual. This action was raised by Mr Thomas Dall, C.A., trustee on Mr Hill's sequestrated estate, against Mr Gowans, who had, upon the dissolution of the copartnership of Gowans & Mackay in 1866, assumed the whole liabilities of the firm.

On 19th March 1870 the Lord Ordinary remitted to Mr William Wood, accountant, to examine into the accounts between Mr Hill and the defender, and to report. After a long course of proceedings before the accountant, he reported, of this date, 20th September 1871, bringing out a large balance due by the defender to the pursuer. To this report both the pursuer and defender put in notes of objections. The Lord Ordinary repelled all these objections; gave decree in favour of the pursuer for the sum brought out in the accountant's report, finding him entitled to his expenses, under deduction of one-fourth.

Against this interlocutor the defender reclaimed. Solicitor-General (CLARK) and INNES for him.

SHAND and WATSON for the pursuer.

At advising—

LORD PRESIDENT—There were a number of points raised in this accounting, but they have been a good deal narrowed, and we have now only four points to dispose of. The first is the amount of commission due to Mr Hill. On that I shall only say that I see no reason to disturb the result at which both the accountant and the Lord Ordinary have arrived. The next question is, Whether the defender is entitled to credit for a sum of £500 as at date 26th October 1867? The evidence relied on by the defender is contained entirely in Mr Hill's scroll cash-book. The entries in this book are made in a very short-hand way; and if his books had been kept in ordinary form the entries would have been carried to other books, and ledgerized, and would thus have appeared in a more intelligible form. There are only two facts connected with this £500 which are proved in any other way than by the entries in the cash-book. The first is, that £500 was drawn from Mackay's account with the Commercial Bank on the 26th October, by means of a check drawn by Hill, who had power to operate on the account. The second is, that £500 was on that

day lodged by Hill in his own account with the National Bank. The effect of these two facts is that £500 was transferred from Mackay to Hill, thus creating a debit against Hill in favour of Mackay. But if we give effect to the jottings in the cash-book a perfectly different result will be produced. The jottings represent certain intermediate transactions—(1) A payment of £500 by Mackay to the firm of Gowans & Mackay; (2) a payment of the same sum by the firm of Gowans & Mackay to Gowans; and (3) a payment of the same sum by Gowans to Hill. On these entries Mr Gowans relies, to show that on that day Hill received £500 from him. This depends on whether effect is to be given to these jottings as if they represented three different payments. It seems a very curious circumstance that so round-about a series of payments should have been made on that particular day. But if it can be shown from the whole circumstances of the case that it is against all probability that such payments should have been made, then no reliance can be placed on the jottings. Is it conceivable that on the 26th October 1867 Mackay should have paid £500 to the firm of Gowans & Mackay? We have evidence to show the condition of accounts between Mackay and the firm at that date. Gowans had drawn very largely on the account of the firm, and Mackay very moderately, although they were equally interested in it. The accountant has shown that down to October 1864 there had been drawn by Gowans £9000, and by Mackay about £300, and these drawings had gone on in the period from October 1864 to October 1867. In fact, at the time of this supposed payment by Mackay to the firm, Gowans had drawn £12,000, and Mackay only £1172; the one had drawn more than ten times the other. Yet it is represented that on 26th October 1867 Mackay thought fit to pay £500 into the concern. That is not credible, and as little credible is the next step, of transferring the £500 from the firm to Gowans. I have no hesitation in saying that these jottings do not represent real operations, and on that ground I am of opinion, with the accountant and the Lord Ordinary, that Mr Gowans is not entitled to credit for that sum of £500.

The next question regards a sum of income tax. The partners of Gowans & Mackay had agreed to dissolve the copartnership, and on May 26, 1869, they exchanged mutual discharges. Mr Gowans got endorsed to him a bill by the Highland Railway Company for £13,952, 12s. 4d., and Mr Mackay one by the same company for £8651. In consideration of these bills so endorsed to them, the one partner, Gowans, undertook to pay off all the outstanding debts and liabilities of the firm; while, on the other hand, Mackay assigned to his partner, Gowans, the whole other assets of the firm, and all rights he had or might have to them. Now, at the time that this arrangement was made there was due by the firm a sum of income tax amounting to £250. The question is, whether this is one of those payments which Mr Gowans undertook to discharge? Mr Gowans did pay the sum of £250 on 31st May 1869, but Mr Hill afterwards paid over to Mr Gowans what was called Mr Mackay's share of this—the notion being that this £250 was not a debt of the firm, but of the partners individually. Now, there is no doubt that this tax is payable by the beneficial recipients of income. If matters were always settled strictly, we should have fewer questions on this subject in Court. But this

principle is frequently lost sight of, and Mr Gowans, when he paid the £250 as above mentioned, was, I am persuaded, acting upon the real understanding between the partners. I think, therefore, that the point has been properly disposed of by the Lord Ordinary.

The only other disputed matter arises under date 14th May 1866. This relates to a sum of £100 lent by to George Gowans, the defender's brother. Mr Gowans and his brother had given a joint bond for the sum, which Mr Hill paid, and Mr Hill's trustee comes now on Mr Gowans to relieve him of the sum in this bond. But Mr Gowans very naturally says—I insist on an assignation. Now, there seems to have been a good deal of reluctance on the part of Mr Hill's trustee in granting this assignation. This is to be regretted, as it must be granted now, and till it is granted we cannot give decree for this sum. This is, however, sufficient to dispose of that question.

The matter of expenses remains for our consideration. There are a number of opposing things to be looked to. On the one side, the extremely loose and unsatisfactory state in which Mr Hill's books were kept has undoubtedly been a source of great expense and of much of the difficulty that has been experienced in clearing up some of the questions, which would otherwise have been free from doubt. On the other hand, there has been some misconduct of the litigation on the part of the defender. This has been more apparent indeed to the Lord Ordinary than to us, as it came more immediately under his notice. But I think that the modification which he has made is hardly sufficient. He has deducted one quarter from the pursuer's expenses. We are all agreed that it should have been one-half.

The rest of the Court concurred.

Agents for Pursuer—Lindsay, Paterson, & Hall, W.S.

Agent for Defender—Laurence Macara, W.S.

Tuesday, March 19.

SPECIAL CASE FOR THE COMMISSIONERS OF SUPPLY FOR THE COUNTY OF ARGYLL AND OTHERS.

Trust—Commissioners—Public Property—Assessment, Liability to—Valuation.

Held (in conformity with the previous decisions in the cases of the *Clyde Navigation Trustees* and the *Leith Dock Commissioners*), that the Commissioners of the Caledonian Canal were liable to be assessed for county rates, in respect of their ownership and occupancy of the Crinan Canal and its appurtenances; and that the valuation fell to be made under the General Valuation Acts, and not under the Special Act of 1799, passed when the canal was in the hands of a private company, and when such enterprises were not familiar to the law.

The parties of the first part to this Special Case were the Commissioners of Supply for the county of Argyll. Those of the second part were the Commissioners of the Caledonian Canal, in whom was also vested the Crinan Canal, which lies wholly within the said county of Argyll.

The question between these two parties which