

sign for us all documents relating to, or in connection with, our business in Scotland, and specially we authorise you to sign, per procuracy, for us and our behalf, all cheques, orders, and drafts, and to draw, grant, accept, or endorse for us and on our behalf all bills, promissory notes, and negotiable documents, and to discount the same on our credit and responsibility; and we engage to meet and honour all such cheques, orders, drafts, bills, promissory notes, and negotiable documents drawn, granted, accepted, or endorsed, or bearing to be drawn, granted, accepted, or endorsed by you, the said Samuel Watson Dempster, and to keep the parties dealing with you free and skaitless; and we bind ourselves to ratify, homologate, and confirm the actings and doings of you, the said Samuel Watson Dempster, in respect of all such cheques, orders, drafts, bills, promissory notes, and negotiable documents; Find that between the said months of January and June 1870, inclusive, Dempster operated upon the said accounts, and discounted a number of bills in the pursuers' said branch, which discounts the pursuers allowed on the credit of the defenders, and relying on the said letter and procuracy; find that, *inter alia*, Dempster so discounted the following bills, purporting to be drawn by the defenders upon, and to be accepted by, the parties following, viz.:—(1) for £96, 14s. 7d., by Brigham & Bickerton, machine makers, Berwick, dated 28th March 1870, payable four months after date; (2) for £100, by Howie & Young, engineers, Kirkcaldy, dated 19th April 1870, payable four months after date; (3) for £41, by Nevin & Rintoul, coach builders, Greenock, dated 27th April 1870, payable three months after date; (4) for £44, 10s. 9d., by Robert Russell & Sons, engineers, Carluke, dated 2d May 1870, payable four months after date; (5) for £276, 10s. 9d., by Caird & Company, shipbuilders, Greenock, dated 16th May 1870, and payable four months after date; (6) for £39, 5s. 6d., by James Hatley & Company, contractors, Carstairs, dated 23d May 1870, payable three months after date; (7) for £138, 14s. 9d., by Laing & Melvin, coach builders, Aberdeen, dated 1st June 1870, and payable four months after date; find that Dempster signed the said seven bills as drawer and endorser 'pp.' (that is per procuracy of) Wm. Makin & Sons, except the one secondly above described, which was signed 'for Wm. Makin & Sons, D. M'Pherson,' as drawer, and was endorsed by Dempster as above; find that the signatures, purporting to be those of the acceptors of all the said seven bills, are forged, and that the defenders did not, at the dates thereof, have any claim against any of these parties; Find that the pursuers paid to Dempster the proceeds of all the said bills (deducting bank charges), and that the whole or part of the proceeds of the first six were paid into the said current account, and mixed up with the defenders' other monies therein; find that the proceeds of the seventh bill (deducting charges) having been £137, 2s. 2d., Dempster drew a cheque at the pursuers' said branch, and purchased there-with, and with £20 drawn from the current

account, a draft on Messrs Glyn & Company, bankers, London, for £150 sterling, in favour of the defenders, the balance (£6, 19s. 1d.), after deduction of bank charges, having been paid to him in cash; Find that the said draft for £150 was not transmitted to the defenders, and they did not receive any part of the proceeds thereof; find that, of the parties appearing as acceptors of the said bills,—Messrs Brigham & Bickerton, Howie & Young, Niven & Rintoul, and Caird & Co., were existing firms, and the three first-mentioned had had business dealings with the defenders, but Messrs Robert Russell & Sons and Messrs James Hatley & Company were non-existent and fictitious; find that all of the said pretended acceptors appeared to be in lines of business in which dealings with the defenders might have taken place, that Dempster, when applying for discounts of said bills gave explanations which satisfied the pursuers' officers that they were genuine and *bona fide* bills, duly accepted by parties indebted to the defenders, in the ordinary way of their business, and that the pursuers discounted all the said bills, relying on Dempster's explanations, and on the apparent genuineness of the documents; Find it not proved that the pursuers failed to exercise due caution in discounting any of the said bills, or that the signatures thereto were manifest forgeries, or presented a suspicious appearance, which should have put the pursuers on their guard; therefore refuse the appeal, and decern; Find the appellants liable in expenses; Allow an account thereof to be given in, and remit the same, when lodged, to the Auditor of Court to tax and report, and decern."

Counsel for Makin & Sons—Watson and Balfour. Agents—J. & R. D. Ross, W.S.

Counsel for Union Bank—Solicitor-General (Clark) and Marshall. Agents—J. & F. Anderson, W.S.

CLYDESDALE BANK *v.* MAKIN & SON.

This was an action of precisely the same nature as that of the Union Bank, against the same defenders, and it was arranged by Counsel that the same argument should be held to apply to both cases, and that the same judgment should determine them.

Thursday, March 6.

FIRST DIVISION.

[Lord Ormisdale, Ordinary.]

BATHIE *v.* WHARNCLIFFE.

Lease—Constitution of Lease—Draft—Rei interventus.

Circumstances held sufficient to instruct *rei interventus* to the effect of making an adjusted draft lease, although not extended or subscribed, binding upon the parties.

This action was brought by Margaret Bathie, tenant in the farm of Gateside of Newtyle, Forfarshire, against Lord Wharncliffe, her landlord, and