

second issue, I can see no reasonable ground for doubting that there was; and that being so, it is not for the Court to disturb the verdict they have returned on that point.

With regard to the defender's counter issue of *veritas*, I need say no more than that I entirely concur in what has been already stated by your Lordships.

The result, therefore, is, that in my opinion, not only the bill of exceptions ought to be disallowed, but also that the motion for a new trial should be refused.

LORD JERVISWOODE concurred.

The Court pronounced the following interlocutor:—

"The Lords apply the verdict found by the jury in this cause, and in respect thereof decern against the defender for payment to the pursuer of One hundred pounds in name of damages; find the defender liable to the pursuer in the expenses of process, in so far as not hitherto awarded, allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Defender—Fraser and Strachan.  
Agent—David Milne, S.S.C.

Counsel for Pursuer—Millar, Q.C., and Asher.  
Agent—Laurence M. Macara, W.S.

Wednesday, November 26.

## FIRST DIVISION.

[Lord Ormisdale, Ordinary.]

J. A. ROBERTSON (WRIGHT'S TRUSTEE) v.  
WRIGHT AND OTHERS.

*Cessio Bonorum—Assignment—Alimentary Allowance—Discharge.*

In a case where a bankrupt assigned under a *cessio* "one-third of his income," and continued to pay one-third of his salary, though in receipt of a much larger sum, which was gratuitously given to him by way of alimentary allowance,—*held* that he was bound to account to the trustee for one-third of the whole sum, but that the trustee's discharges for the smaller payments excluded his claim for arrears. *Held* that the bankrupt's employers, by whom the alimentary allowance was given, were not liable to the trustee in an action of accounting.

The estates of the defender Mr Wright were sequestrated on March 19, 1870, and the pursuer was appointed trustee in the sequestration. The bankrupt did not succeed in obtaining personal protection, and in June of the same year he raised a process of *cessio bonorum* against his creditors, in which the Court found him entitled to the benefit of *cessio* on his assigning to the trustee in the sequestration "one third of his income." The assignment was accordingly made and intimated to Messrs Blyth & Cunningham, the bankrupt's employers. At the date of his sequestration, the bankrupt, who was a relative of one of the partners of the firm, was employed by Messrs Blyth & Cunningham as cashier and book-keeper at a salary of £200 a-year. In April, after the sequestration but before the *cessio*, Mr Wright was informed by the

firm that they proposed to reduce his salary to a sum more in conformity with the amount of his services to them, and that his salary for the future would be 30s. a week, anything further which he received being a gratuity. They continued to pay him the sum of £200. From the date of the *cessio* down to October 15, 1872, Mr Wright continued to pay to the trustee the sum of 10s. per week, being one third of 30s. per week, which was regularly discharged by the trustee. At the latter date the trustee raised a question as to the amount which he was entitled to receive, and the payments were for the time suspended. In March 1873 the trustee raised an action of count, reckoning, and payment against Mr Wright, and also against Messrs Blyth & Cunningham, concluding for the "amount of the balance of the one-third part of the whole annual income of the defender Robert Pringle Wright, as cashier and book-keeper."

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 25th June 1873.*—The Lord Ordinary having heard counsel for the parties, and considered the argument and proceedings, including the proof—Finds that, according to the true nature of the present action, and of the pursuer's allegations in support of it, he is only entitled to a third of the salary payable by the defenders Messrs Blyth & Cunningham to the other defender, Mr Wright, as their cashier and book-keeper, subsequent to the 18th of June 1870 till the date of citation, being 12th March 1873: Finds it proved that said salary amounted only to £1, 10s. per week: Finds it admitted in the record (Condescendence 6) by the pursuer that one-third of said salary has been duly accounted for and paid to him down till the 15th October last, 1872: Finds therefore that the only further claim the pursuer has is to the defender's said salary at the rate of £1, 10s. per week from the said 15th October last, and that to that extent the defenders have been always ready and willing, as they still are, to pay and satisfy the pursuer's claim: With these findings, and under a reservation of the pursuer's claims on the principles of the present interlocutor, dismisses the action as having been unnecessarily brought, and decerns: Finds the defenders entitled to expenses; allows accounts thereof to be lodged, and remits them when lodged to the auditor to tax and report.

"*Note.*—The Lord Ordinary holds the proof to be quite clear to the effect that the defender Mr Wright neither had nor has for the period in question any claim against the other defenders for salary as their cashier and book-keeper, except at the rate of £1, 10s. per week; and he thinks it is equally clear in the proof that no action was necessary by the pursuer for a third of this salary, as it was paid to him down to the 15th of October last, and as there was no refusal to account for it to him at the same rate subsequently.

"But at the debate the pursuer's counsel maintained that he was not only entitled to a third of Mr Wright's salary payable to him by Messrs Blyth & Cunningham, as their cashier and book-keeper, but also to one-third of an additional allowance, which it appears from the proof was made by these gentlemen to Mr Wright as a gratuitous act of kindness and benevolence merely, and not as salary at all, and for payment of which they are not now, and had not been for the period libelled, under any obligation whatever. The

Lord Ordinary cannot give effect to this view, which he thinks is untenable under the action as laid, whatever might have been its merits if raised in an action laid so as to comprehend it. It will be observed that not only in the formal part of the summons in the present action, but also throughout his condescendence, the pursuer claims merely the salary due to Mr Wright 'as cashier and book-keeper' to the other defenders. The Lord Ordinary cannot therefore see how he could competently find the pursuers entitled to a third of anything else than such salary under the action as so laid.

"The Lord Ordinary has only further to explain that he gave the pursuer an opportunity of amending his summons and record upon showing that it would be competent for him to do so under the Act of 1868; but this opportunity he stated he had no desire to avail himself of, probably because, on examining the statute, he found that no such amendment as would be necessary to serve his purpose could be competently made.

"In regard to the matter of expenses, the Lord Ordinary also gave the pursuer an opportunity of being heard, but he declined saying anything on the subject. On the other hand, it was stated for the defenders that they had been always, and were now, quite ready to pay to the pursuer the sum due by them since 15th October last, whenever it was asked; and no dispute having been raised on this point by the pursuer, the Lord Ordinary felt he had no alternative but to dismiss the action, and find the defenders entitled to expenses."

The pursuer reclaimed, and pleaded—" (1) The pursuer being entitled, under the said assignation by the defender the said Robert Pringle Wright, to one-third part of the whole annual income of the said defender, he is bound to hold count and reckoning with the pursuer, as concluded for. (2) The said assignation having been duly intimated to the defenders, the said Edward Lawrence Ireland Blyth and George Cunningham, or the firm of which they are individual partners, they are bound to hold count and reckoning with the pursuer for one-third of the whole income of the said Robert Pringle Wright, as cashier and book-keeper foresaid. (3) The pursuer is entitled to decree against the defenders for the balance of one-third of the income of the said Robert Pringle Wright, as cashier and book-keeper foresaid, as the same shall be ascertained in the said accounting, as concluded for. (4) In case the defenders shall fail to hold count and reckoning with the pursuer as concluded for, he is entitled to decree in terms of the alternative conclusion of the summons for payment. (5) Generally, the pursuer is entitled to decree in terms of one or other of the conclusions of the summons, with expenses."

Argued for him—The *cessio* was granted on the footing that the bankrupt should assign one-third of his income. Nothing was said about salary, and admittedly the bankrupt received £200 a-year from Messrs Blyth & Cunningham on some footing. The fact that part of it was gratuitous and precarious did not make it any the less income, and as such he was bound to account for it. The discharges by the trustee only covered the amount of the actual payments, and did not exclude the trustee from recovering the balance.

The defender Wright pleaded—" (1) The defender having regularly accounted to the pursuer for

one-third of his income in terms of the assignation, and being still willing to do so, the present action is unnecessary, and should be dismissed. (2) The defender is not bound to count and reckon with the pursuer for sums received by him by way of alimentary donation."

Argued for him—That he had no income except the thirty shillings a-week, for one-third of which he had regularly accounted, and was still willing to account. Anything else which he got was solely through the favour of Messrs Blyth & Cunningham, and might be discontinued at any moment. Income is that which comes to a man of right—the profits of his labour or his capital.

The defenders Blyth & Cunningham pleaded—" (1) The assignation intimated to the defenders in no way binds them to account to the pursuer for any portion of the salary payable by them to their book-keeper, and the pursuer has no title to sue them therefor. (2) On a sound construction of the assignation, it cannot be held to convey sums allowed by the defenders to Wright for alimentary purposes, which could be given or withheld in the option of the defenders. (3) The defender Wright having fully accounted to the pursuer for the one-third of the salary payable to him, and the defenders not being indebted and resting-owing in the sum concluded for, or in any sum, the action is unnecessary. (4) In the circumstances condescended on, the defenders are entitled to absolvitor, with expenses."

Argued for them—They could not be called to account for sums which they had already paid, especially when there was no legal obligation to pay them in the first instance. The only question which could be asked of them was, whether they held funds of Wright's which could be carried by his assignation.

At advising—

LORD DEAS—In this case it appears that one of the defenders, Wright, was sequestrated on March 19, 1870. At that time he was in the employment of Messrs Blyth & Cunningham at a salary of £200 per annum. It was explained in the evidence that his actual services were not worth so much, but that it was given in consideration of his connection with the firm—but however that may be, his salary at that time was certainly £200. He did not succeed in getting personal protection in his sequestration, but on June 18, 1870, he was found entitled to the benefit of a *cessio* by interlocator of that date. He granted an assignation on July 14, which was intimated to Blyth & Cunningham on July 27. Mr Blyth explains, however, that in April 1870 a change had been made in Mr Wright's position, Mr Blyth having thought proper to reduce his salary nearer to what his services were really worth, viz., £80 a year, anything which he might receive in addition being gratuitous. It further appears that the Trustee in the sequestration, in whose favour the assignation of July 14 was granted, drew from Wright 10s. weekly up to October 15, 1872, as being one-third of his income to which the Trustee was entitled. The trustee now brings an action claiming, instead of that 10s. weekly, one-third of £200 a year during the whole period from the date of the assignation downwards, under deduction of the 10s. which he has already received. The summons is not very cautiously framed, for while it concludes for the one-third of Mr Wright's annual income, it asks for it as his

salary as bookkeeper; and I do not think that a gratuity can be called part of his salary. However, I do not understand that your Lordships are prepared to take that view of the summons any more than I am myself. The question before us is twofold, (1) Whether Mr Wright is bound to account for the difference between one-third of £200 and one-third of £80 prior to October 15, 1872, and (2) Whether he is bound to account for it subsequently. Taking that claim in regard to Mr Wright alone, I am of opinion that the trustee's receipts up to that date exclude his claim for arrears. It does not seem improbable, to say the least of it, that it had been taken for granted that Mr Wright's salary was £200. If that had not been taken for granted, I doubt if the Court would have given the trustee so much as one-third; but if so it was all the more incumbent on the trustee to inquire why he was only getting 10s. a week instead of 30s. He does not seem to have made any objection, and from time to time he granted receipts and discharged Mr Wright. In considering this matter we must keep in view this man's position. He had nothing to live on except Messrs Blyth & Cunninghame's allowance, and to allow him to go on spending the money which he got from them, and then to come suddenly down on him for arrears is a sort of claim which seems to me unreasonable. The duty of the trustee was to make his claim from time to time if he meant to make it at all, and I think his claim is excluded up to October 15, 1872. As to what remains after that, it is in a different position, and I do not see why Mr Wright should not account for it to the trustee. He was to assign one-third of his income, come from where it might. The income may vary to any extent, and come from anywhere, but still, an assignation of one-third of it is quite competent, whatever be its nature, alimentary or otherwise, so I see no good answer to that part of the trustee's claim. The more difficult question which next arises is whether Messrs Blyth and Cunninghame are liable to the trustee, as well as Wright. It is somewhat a subtle question. It does not look very reasonable that a friend desirous of giving something in such circumstances should not be able to do so, but still one-third of the income was assigned. This addition was entirely in Mr Blyth's option, both as regards amount and time of payment; when did it become part of Mr Wright's income? Certainly not as long as it was in Mr Blyth's hands, but only as soon as Mr Wright got it, for surely Mr Blyth was under no liability in respect to it. The assignation carried one-third of Wright's income and nothing else, and until it was out of Mr Blyth's pocket, and into Mr Wright's, it was not his income, and therefore could never fall under the assignation as long as Mr Blyth held it.

LORD ARDMILLAN—I am not prepared to rest my opinion in this case on the narrow and somewhat technical ground explained by the Lord Ordinary. The form and language of the summons does not appear to me to present a sufficient foundation for judgment. The words of the interlocutor of Court of 18th June 1870, and the words of the assignation by Wright to the pursuer as trustee granted in implement of that interlocutor, are, I think, sufficient to support the action in point of form, if the pursuer is right on the merits.

The defender, Mr Wright, was found entitled to

the benefit of *cessio* on granting assignation to the trustee "of one-third of his income." The assignation, the granting of which was the condition of his obtaining the benefit of *cessio*, and by granting which he obtained that benefit, is part of an onerous transaction, and is clearly expressed; and by the express words of that document he assigned "one-third part of my whole annual income."

If it were not for the payments and the receipts down to the 15th of October 1872, to which Lord Deas has adverted, I should be of opinion that whatever fund reached this defender as his income, whether in the form of salary, allowance, donation, or otherwise, that fund, to the extent of one-third thereof, is within this assignation. He is bound to fulfil the condition on which he obtained the benefit of *cessio*. The two-thirds of his income left to him may well be considered as sufficient for aliment; and, unless by permission of his creditors, he cannot withhold the remaining third which he undertook to surrender to them.

But the special circumstance which Lord Deas has mentioned is, that up to the 15th October 1872, the pursuer, as trustee for the creditors, accepted payment from Wright of sums amounting in all to £60, 10s., and accepted of these sums as in terms of the assignation, and not as mere payments to account. During the period of these payments and receipts Wright was paying one-third of what may be called his proper salary, at the rate of 30s. a-week to his creditors, and supporting or alimentering himself with the gratuitous charitable allowance which he received in addition to salary. I concur with Lord Deas in thinking that, for the period between the date of the assignation and the last of these receipts, the pursuer, having received these payments and given these receipts, and having made no reservation and no objection and no further claim against the defender, must be contented with what he has got, and cannot for that period demand more. I think that prior arrears are not now due.

But, for the period between the 15th of October 1872 and the 10th March 1873, when this action was raised, I cannot avoid the conclusion that the defender Wright, having received as income the whole sum, whether as salary or as allowance must account for the same, and pay the third part thereof to the trustee for his creditors. The gratuitous or charitable character of the allowance is of great importance, as I shall afterwards explain, in so far as regards the conclusion against the other defenders, Blyth and Cunningham. But I am now considering the case against Wright, and from whatever quarter the allowance came to him, and whatever might be the motive of the employers who gave it, still, when once it had reached the defender Wright, it was part of his income, and known by him to be so. It might, indeed, have been withheld or withdrawn, for it was absolutely gratuitous, and could not have been enforced. But whenever and so long as it reached the defender Wright, it was part of his income.

The second question here raised is peculiar, and is of great interest and importance. The demand made by the pursuer against the employers of Wright is a very singular one. This is truly an action to compel from Blyth and Cunningham second payment of the charitable and gratuitous donation to Wright which they have already paid to him from time to time. The pursuer seeks to enforce against Blyth and Cunningham a conjunct

and several liability for the whole sum, and during the whole period within the conclusions of the action.

I am of opinion that for this demand the pursuer has no foundation in law, and that the defenders Blyth and Cunningham are entitled to absolvitor.

The ground of action is, that the defender Wright has, by his assignation, transferred to the pursuer the right to recover from Blyth and Cunningham certain sums due by them to Wright. The pursuer stands on this assignation as the transferee to him of a debt. This is the true meaning of such an assignation, and the true nature of this claim. By an effectual assignation of a debt the *jus crediti* is, in the words of Professor Bell, transferred by "the conversion of the engagement to pay to the original creditor, into an obligation to pay to the assignee." The assignation simply transfers to the assignee the right which was in the cedent; and the cedent's right must be the measure of the right of the assignee.—*Assignatus utitur jure auctoris*. Now here Mr Wright was not the creditor of Blyth and Cunningham to any further extent than the 30s. a-week of salary. The gratuitous allowance was not a debt due by Blyth and Cunningham to Wright, who could not have enforced more than the salary, and could not have transferred to his assignee any right to enforce more. He had no such right himself. This seems to me a sufficient ground for decision. Blyth and Cunningham gave charitably what they were not bound to give, and were legally entitled to withhold. They could not have been compelled by Wright to pay. It necessarily follows that they cannot be compelled to make second payment to his assignee.

But, apart from this, I am, on a separate ground, of opinion that the conclusions against Blyth and Cunningham for second payment to the pursuer cannot be maintained.

The allowance was absolutely and entirely gratuitous, given from charity and from personal regard. Affection is necessarily personal. It cannot be transferred, as a debt can be transferred from one to another. A gift to one for whom I have an affection cannot be so assigned as to make me donor to one for whom I have a dislike. I am not now speaking of the effect of the assignation as regards Mr Wright, the cedent, who is the donee. After a gift has come into his hands, it may be part of his income, and his assignation may be effectual as against himself. I think it was so. But, viewing it as regards the donor, I am of opinion that an assignation beyond the scope of the donor's intention and affection,—a transference of his gift to another person, and one for whom he had, or may have had, no affection, is quite out of the question. Love goeth not by mastery, and a gift is free, and not compellable; and the demand that, after payment of a donation to one I did love, I shall be ordained to pay it a second time to one I do not love, has, in my opinion, no foundation in reason, equity, or law.

The fact that the assignation was intimated is of no importance in the view I take of the question, because there was no obligation to pay, and there was no debt to assign, and the cedent was not creditor, and, if the assignation had no inherent effect, it could not be made effectual by mere intimation.

I wish only to add, that if I thought there was here a colourable transaction,—an unfair device to

disguise the true nature of the relations betwixt the employer and the employed, adopted to promote injustice, and to defeat the just claims of the creditors, I should take a very different view of the case. But I am quite satisfied that Mr Wright's services as clerk or book-keeper were amply remunerated by his salary alone; and looking to his near connection with the founder, Mr Benjamin Blyth, who is now dead, and who was of the firm, the gift was natural, and not unreasonable; and I have no doubt that Mr Edward Blyth, and Mr Cunningham also, acted honourably, as well as benevolently, in this whole matter.

LORD JERVISWOODE—I have given this case my most anxious consideration, but I do not find myself able entirely to concur with your Lordships as to the arrears prior to October 15, 1872. I do not think that the trustee's discharges are sufficient to cover those sums. With that exception, I concur with your Lordships.

LORD PRESIDENT—This is an important case, and one of some nicety; but I agree with your Lordships that the trustee is not entitled to go back on the period when he received those payments and gave a discharge for them. The real difficulty of the case is as to the position of Messrs Blyth & Cunningham. They are, no doubt, the parties from whom the income was derived; but then the income is of a peculiar kind. If there were any appearance here of a device to defeat the interests of the creditors, I should hold those defenders liable; but I see no reason to suspect anything of that kind. No doubt Mr Blyth says that his relation had £200 a-year down to April 1872, and it was then, when he came back from the Sanctuary, that Mr Blyth altered that arrangement and restricted his salary to £80, which he held to be sufficient for the work done, and he kept it in his own hands to decide what more he would give out of charity. Now, it is this part of the income, depending on the good will of Messrs Blyth & Cunningham, which is said to be carried by the assignation. Now, no assignation of a *nomen debiti* is such that the holder becomes debtor to the assignee if he were not so to the cedent; and so in the case of an assignation of a fund, the assignee becomes owner of the fund, and the holder becomes liable to account to him; but the reason why intimation of assignation has such an effect is because the legal obligation is transferred. Here I think the allowance was assignable, for I hold that a gift or alimentary allowance is assignable; but the effect on the cedent is to bind him to make good his assignation, and I have little doubt that when this assignation was made it was meant that one-third of the bankrupt's income from whatever source was to go to his creditors; but, then, I do not think that that puts the assignee in any better position than the cedent. The cedent could not have enforced any payment of this allowance, therefore no obligation is transferred, and so no intimation of assignation could create one. On that ground, while the assignation is good in itself and effectual in a question with the cedent, it can create no legal obligation against Blyth & Cunningham. I am therefore of opinion that while the obligation is good as against the cedent Mr Wright, it is not so against Messrs Blyth & Cunningham, and that they must be assoilzied. The period for which the obligation can be enforced against Mr Wright is, according to the opinion of the majority, from

October 15, 1872, up to the date of this action. We do not yet know what sums he has received, so at present we cannot give decree without further inquiry.

The Court pronounced the following interlocutor:—

“The Lords having heard counsel on the reclaiming note for James Alexander Robertson (Wright’s trustee) against Lord Ormidale’s interlocutor of 25th June 1873—Recall the interlocutor submitted to review: Find that the defenders, Messrs Blyth & Cunningham, came under no obligation to pay to the defender Wright, during the period libelled, any larger sum in name of salary, or otherwise, than £1, 10s. per week, and that gratuities allowed to the defender Wright, which the other defenders, Blyth & Cunningham, might have withheld at their pleasure, did not become part of the income of the defender Wright till actually paid to him, and consequently were not carried in the hands of the said other defenders by the assignation libelled: Assoizie the said defenders, Blyth & Cunningham, from the conclusions of the libel, and decern: Find the defender Robert Pringle Wright liable for one-third of the gratuities received by him from the said other defenders between the 15th October 1872 and the date of the present action: Find, of consent of parties, that one-third of said gratuities paid during said period amounts to £25, 11s. 8d., and decern against the defender Wright for that sum accordingly, with interest from and after the date of citation till payment: *Quoad ultra* find the conclusions of the action against the defender Wright excluded by the receipts produced, and assoizie him therefrom, and decern: Find the defenders Blyth & Cunningham entitled to expenses, and remit the amount of said expenses, when lodged, to the auditor to tax the same and report; and as between the defender Wright and the pursuer, find no expenses due to either party.”

Counsel for Robertson—Fraser and Blair. Agent—W. B. Hay, S.S.C.

Counsel for Wright—Solicitor-General (Clark) and Mackintosh. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Blyth & Cunningham—Lord Advocate (Young) and Maclean. Agents—Millar, Allardice, & Robson, W.S.

B., Clerk.

Wednesday, November 26.

## SECOND DIVISION.

[Lord Gifford, Ordinary.]

### STEVENSON v. HENDERSON.

*Contract—Common Carrier—Peril of the Sea—Liability for Passenger’s Luggage—Condition.*

A passenger took a ticket by a steamer from port to port; on the ticket were endorsed conditions disclaiming liability for loss from whatever source arising. The vessel was lost on the voyage, and with it the passengers’ luggage,—held, in an action to recover the

value of the luggage against the Steamboat Company, that (1) they had failed to complete their part of the contract; (2) that the conditions on the ticket were insufficient to protect them against the consequences of such failure.

This case came up by reclaiming-note against an interlocutor of Lord Gifford, of date 3d June 1873. The circumstances were as follows:—On 13th July 1871 the pursuer Lieutenant Stevenson, of the 18th Regiment, purchased at the office of the defenders (Robert Henderson and Robert Henderson junior, shipowners, Belfast and Ardrossan, and John Moffat, C.E., Ardrossan), North Wall, Dublin, a ticket which bore to carry him by their steamer “Countess of Eglinton” from Dublin to Whitehaven in Cumberland. The ticket was purchased from the clerk at their booking office in the shed alongside where the steamer was then lying, and it was delivered up by the pursuer to an official of the defenders. The pursuer went on board the steamer immediately after he purchased the ticket. On the afternoon of the same day the steamer, with Lieut. Stevenson on board as a passenger, started on a voyage from Dublin to Silloth, calling at certain intermediate ports, under the command of Mr James Agnew. On the morning of the 14th July the said steamer ran ashore upon the rocks off Langness Point, near Castle town in the Isle of Man, and became a total wreck. The passengers were after some hours rescued from the wreck by means of a communication which was contrived to be effected with the rocks, and they all made their way over the rocks and found refuge in a peasant’s hut in the adjacent country. The pursuer arrived at Douglas along with some of the other passengers in a car provided by the defenders’ agent, about ten hours after the steamer was stranded, with nothing but the clothes he wore, which were much torn and destroyed, and he was himself thoroughly wet—all in consequence of the wreck. Early in the morning of the following day, viz., the 15th of July, the pursuer proceeded from Douglas to Silloth in a steamer provided by the defenders, and he was forwarded from Silloth to Whitehaven by the defenders, free of expense. The defenders refuse to pay the pursuer the expenses to which he was necessarily put in the Isle of Man. These expenses amount to the sum of £1. Mr Stevenson had with him on his journey a large leather portmanteau, which, together with a few loose articles of luggage belonging to him, were duly put on board the steamer at Dublin. The portmanteau and also all the loose articles of luggage were lost when the wrecked vessel broke up, and were never recovered; and the pursuer claimed as the value thereof, and for damage done to his clothes, a sum of £70.

He further averred that (Cond. 5) “the vessel was wrecked as aforesaid through the fault of the defenders or of those in charge of the said vessel, for whom the defenders are responsible. In particular, as the pursuer believes and avers, the negligence of the master or other officers in charge of the vessel, who neglected, although on the morning in question surrounded by a dense fog and near land, either to slow the engines or to use the lead. The Board of Trade inquiry into the circumstances of the wreck was held at Ardrossan on 1st August 1871, and the result of that inquiry was that the cause of the wreck was found to be as above stated, and that the certificate of the said James Agnew was suspended for three months.”