

fender, who appears to have been an experienced and perfectly competent pilot. But I think the evidence does show that he failed to exercise due prudence and circumspection on this occasion. Therefore I am constrained to hold that he must be answerable for the consequences of his negligence.

No objection was taken by counsel on either side to the Lord Ordinary's view with reference to the pecuniary results of his judgment. I am therefore of opinion that we must adhere to the Lord Ordinary's interlocutor.

LORD ADAM, LORD M'LAREN, and the LORD PRESIDENT concurred.

The Court adhered.

Counsel for the Pursuer—Salvesen—Younger. Agents—Whigham & Cowan, S.S.C.

Counsel for the Defender—Shaw—A. S. D. Thomson. Agent—William Douglas, S.S.C.

Friday, December 16.

OUTER HOUSE.

[Lord Stormonth Darling.

M'LUCAS (POOR) v. CAMPBELL,

et e contra.

Master and Servant—Wages—Deductions—Truck Act 1831 (1 and 2 Will. IV. c. 37), secs. 3, 4, 5, 6, and 23.

An employer stopped part of a workman's wages in payment of coals supplied by him to the workman. The employer also, as factor for the landlord of the house occupied by the workman, collected the workman's rent by deducting it from his wages. The amount so deducted he handed over to the landlord, less a commission of five per cent. which he retained. The employer had no written authority from the workman to make these deductions.

Held by Lord Stormonth Darling (1) that the workman was entitled under the Truck Act to recover the whole amount of the deductions made in payment of the coals, though these had been supplied to him at market price; but (2) that he was not entitled to recover the amount of the deductions made for rent, in respect that the employer in paying the sums so deducted to his landlord, had acted for the workman.

Archibald M'Lucas, labourer, sued Dr Donald Campbell, lessee of Ballachulish Slate Quarries, for payment of £30, 8s. 6d., as the amount of deductions which he alleged had been made from his wages between the years 1882 and 1890, while he was in the employment of the defender. He averred that these deductions had been made without any authority from him in writing or otherwise.

The defender in answer admitted that deductions had been made from the pursuer's wages for the price of coals supplied to him, and the rent of two houses successively occupied by him between 1882 and 1890, and that these deductions had been made without the pursuer's authority in writing, but averred that the pursuer had ordered the coals freely and voluntarily from the defender's agents, without there being any agreement direct or indirect binding him to get his coals from the defender, and had consented, though not in writing, to the price being deducted from his wages; that the houses successively occupied by the pursuer while in the defender's service were occupied by him as tenant of E. Erskine Scott, trustee on the Ballachulish estate, to whom said houses belonged; that the defender had from time to time, with the pursuer's authority, though not in writing, deducted the amount of his rent from his wages, and paid it over to Mr Scott; and that the pursuer had received full value for the deductions made from his wages in respect both of house rent and coal.

The pursuer pleaded—“(1) Wages to the amount libelled being due and resting owing by the defender to the pursuer, he is entitled to decree as concluded for, in terms of the Statute 1 and 2 Will. IV. c. 37. (2) The said deductions from wages having been made without written authority from the pursuer, he is entitled to decree in terms of the said statute.”

The defender pleaded—“(1) The pursuer's averments are not relevant or sufficient in law to support the conclusions of the action; and (5) compensation.”

The defender Campbell also raised a counter action against the pursuer M'Lucas for payment of the value of the coals supplied to him, and the payments of rent made for him.

A joint-minute of admissions was lodged by the parties, from which it appeared that the coals supplied to M'Lucas had been supplied from stores imported by Campbell; that they had been supplied at the same price as to members of the public, and that their price (amounting in all to £18, 16s.) had been from time to time deducted from M'Lucas' wages; that the two houses successively occupied by M'Lucas while in Campbell's service were the property of E. Erskine Scott; that M'Lucas was his tenant; that Campbell acted as factor in regard to these houses, receiving a commission of 5 per cent. on the rents collected by him; that he had deducted the amount of M'Lucas' rent from his wages, and had paid the sums so deducted (amounting to £20, 12s. 6d.) to Mr Scott, less his commission.

Section 3 of the Act 1 and 2 William IV., c. 37, enacts “that the entire amount of the wages earned by or payable to any artificer in any of the trades hereinafter enumerated, in respect of any labour done in any such trade, shall be actually paid to such artificer in the current coin of this realm, and not otherwise; and every payment made to any such artificer by his employer, of or in

respect of any such wages, by the delivery to him of goods, or otherwise than in the current coin aforesaid, except as hereinafter mentioned, shall be and is hereby declared illegal, null and void."

Section 4 enacts "that every artificer in any of the trades hereinafter enumerated shall be entitled to recover from his employer in any such trade, in the manner by law provided for the recovery of servant's wages, or by any other lawful ways and means, the whole or so much of the wages earned by such artificer in such trade as shall not have been actually paid to him by such his employer in the current coin of this realm."

Section 3 enacts "that in any action, suit, or other proceeding to be hereafter brought or commenced by any such artificer as aforesaid against his employer for the recovery of any sum of money due to any such artificer as the wages of his labour in any of the trades hereinafter enumerated, the defendant shall not be allowed to make any set-off, nor to claim any reduction of the plaintiff's demand, by reason or in respect of any goods, wares, or merchandise had or received by the plaintiff as or on account of his wages or in reward for his labour, or by reason or in respect of any goods, wares, or merchandise, sold, delivered, or supplied to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest."

Section 6 enacts "that no employer of any artificer in any of the trades hereinafter enumerated shall have or be entitled to maintain any suit or action in any court of law or equity against any such artificer, for or in respect of any goods, wares, or merchandise sold, delivered, or supplied to any such artificer by any such employer whilst in his employment, as or on account of his wages or reward for his labour, or for or in respect of any goods, wares, or merchandise sold, delivered, or supplied to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest."

Section 23 further enacts and declares "that nothing herein contained shall extend or be construed to prevent any employer of any artificer or agent of any such employer from supplying or contracting to supply to any such artificer any medicine or medical attendance, or any fuel, or any materials, tools, or implements to be by such artificer employed in his trade or occupation, if such artificers be employed in mining; . . . nor from demising to any artificer, workman, or labourer employed in any of the trades or occupations enumerated in this Act, the whole or any part of any tenement at any rent to be thereon reserved; . . . nor from making or contracting to make any stoppage or deduction from the wages of any such artificer for or in respect of any such rent, or for or in respect of any such medicine or medical attendance, or for or in respect of any such fuel, materials, tools, implements, . . . or

for or in respect of any money advanced to such artificer for any such purpose as aforesaid: Provided always that such stoppage or direction shall not exceed the real and true value of such fuel, materials, tools, implements, . . . and shall not be in any case made from the wages of such artificer unless the agreement or contract for such stoppage or deduction shall be in writing, and signed by such artificer."

Authorities for M'Lucas—*Pillar v. Llynoi Coal and Iron Company*, 1869, L.R., 4 C.P. 752, and 38 L.J. C.P. 294; *Fisher v. Jones, Wilson v. Cookson*, 1863, 32 L.J. C.L. Mag. Cases 177.

Authorities for Campbell—*Hewlett v. Allen & Sons*, August 10, 1892, 8 Times' Law Rep. 793; *ex parte Cooper in re Morris*, February 1, 1884, L.R., 26 Ch. Div. 693; *Hynd v. Spowart & Company*, November 5, 1884, 22 S.L.R. 702.

On 16th December the Lord Ordinary (STORMONTH DARLING), in the action at the instance of M'Lucas, decreed against Campbell for payment of £18, 16s., and *quoad ultra* assuozied him from the conclusions of the action; dismissed the action at the instance of Campbell, and found no expenses due to or by either party.

"*Opinion.*—These are cross actions arising out of the Truck Act of 1831. The facts as set out in the minute of admissions are of the simplest kind. M'Lucas was in the employment of Dr Campbell as a labourer at Ballachulish slate quarries from 1878 to 1890. During that period M'Lucas received from stores imported by Dr Campbell in connection with the quarries, coals to the value of £18, 16s. He was also tenant under the trustee on the Ballachulish estate of successive dwelling-houses, for which Dr Campbell acted as factor, and the rents of which amounted to £20, 12s. 6d. Both the value of the coals and the amount of the rents were from time to time deducted by Dr Campbell from M'Lucas' wages. Dr Campbell received from the proprietor commission at the rate of 5 per cent. on the rents so deducted. M'Lucas admits that the coals were supplied to him at the prices at which they were sold to the public, but as regards both coals and rents he says that the deductions were illegal under the statute, and in the action at his instance he sues for the sum of £39, 8s. 6d. Such a claim is not entitled to any favour, but in so far as it falls under the purview of the Act, it must of course receive effect.

"I have come to the conclusion that there is a distinction between the coals and the rents, and that while M'Lucas is entitled to decree for the sum represented by the coals, he is not entitled to recover the amount of the rents.

"After reciting that in certain trades it is necessary to prohibit the payment of wages in goods, or otherwise than in the current coin of the realm, the Act, by section 3, provides that the entire amount of wages earned by the artificer shall be actually paid to him in the current coin of the realm, and not otherwise, and every payment made to him by his employer in respect of his wages by delivering goods to

him, or otherwise than in current coin, is declared to be void. Section 4 goes on to enact that the artificer shall be entitled to recover from his employer so much of his wages as shall not have been actually paid to him in current coin. Section 5 enacts that in any action brought for wages, the employer shall not be entitled to set-off or claim any reduction in respect of any 'goods, wares, or merchandise' received by the artificer on account of his wages, or supplied to him at any shop or warehouse in which the employer is interested. And section 6 debar the employer from maintaining any action against the artificer for or in respect of such goods, wares, or merchandise.

"These sections by their combined effect seem to me to strike at the deduction made for coals, and to disable the employer both from founding on the coals supplied, as an answer to the claim for wages, and from maintaining any separate action in respect of their value. It is impossible to say that the entire amount of this man's wages was paid to him in the current coin of the realm, for they were partly paid in goods supplied by the defender. It is no answer to say that the goods were supplied at their true value, for in the sections I have mentioned the Act makes no such exception. It is true that in a later section—the 23rd—the element of 'real and true value' is introduced, and introduced with reference, *inter alia*, to fuel. But the same section requires as a condition of the right to make a deduction for fuel supplied, not only that the value shall be true, but also that the agreement for such deduction shall be in writing, and there was no agreement in writing here.

"The essential distinction in the case of the rents seems to me to lie in this, that the rents were not retained by the employer and put into his own pocket, but were paid over by him to a third party, who was the true creditor of the workman. The 23rd section, to which I have referred, deals with the case of a house demised by the employer to the workman at a rent to be thereon reserved, and it permits a deduction for any such rent provided the agreement is in writing. But here there was no necessity for an agreement in writing, because the house was not demised by the employer. He simply acted as the hand of the workman in paying his rent to his landlord, and the fact that he received a small commission for doing so seems to me of no moment. It would be absurd, I think, to call such a transaction 'truck,' for if so, it would equally be truck for an employer to accept a commission from the workman to buy him a pound of tea or tobacco in a neighbouring town, and stop the price off his wages. The very idea of truck is excluded by the fact of the contract in respect of which the deduction is made being a contract between the workman and a third party. Sections 5 and 6 have clearly no application to such a case, for there is no supplying of 'goods, wares, or merchandise' by the employer. Counsel for M'Lucas based their argument mainly on section 3,

but the mischief aimed at by that section is the payment of the workman in goods instead of money, and if money is paid, I think it would be a judaical reading of the section to hold that the money must be paid into the workman's own hand, and that it may not be paid, at his request, to his creditor. The opinions of Lord Selborne and of Lords Justices Cotton and Lindley in *ex parte Cooper*, L.R., 26 Ch. Div. 693, and of Lord Justice Bowen in *Hewlett v. Allen*, August 10, 1892, 8 Times' Law Rep. 793, are all to this effect. I shall therefore, in the action at the instance of M'Lucas, give decree for the sum of £18, 16s., and *quoad ultra* assolvie the defender. The cross action by Dr Campbell was brought to meet the case of his being held not entitled to make either of the deductions, and accordingly I think the proper course will be to dismiss it. But as in the conjoined actions success has been divided, I shall find no expenses due to or by either party."

Counsel for M'Lucas—Adam—A. O. M. Mackenzie. Agent—J. B. Haig, W.S.

Counsel for Campbell—W. Campbell. Agents—Murray, Beith, & Murray, W.S.

Saturday, December 24.

SECOND DIVISION.

[Lord Stormonth Darling,
Ordinary.]

LARSEN v. IRELAND & SON.

Title to Sue—Master of Ship—Action for Damages for Breach of Charter-Party.

A charter-party was entered into between Dessen Brothers, as representing the owners of the steamship "Arbutus," and a firm of coal exporters. Thereafter an action for damages was raised by Lars Larsen, "master and part-owner, and as such master representing the ownership of the foreign vessel 'Arbutus,'" against the coal exporters for breach of the charter-party.

Held that the pursuer had a title to sue.

At Glasgow on 18th January 1892 a charter-party was entered into between Dessen Brothers, as representing the owners of the steamship "Arbutus" of Flekkefjord, Norway, and David Ireland & Son, merchants and coal exporters, Dundee.

In June 1892 an action was raised by Lars Larsen, designed in the summons as "master and part-owner, and as such master representing the ownership of the foreign vessel 'Arbutus' of Flekkefjord, and now or recently lying in Methil, pursuer;" and Messrs Boyd, Jameson, & Kelly, Writers to the Signet, Leith, his mandatories, against the said David Ireland & Son, for £90, 15s. 6d., being the loss alleged to have been sustained by the pursuer through the defenders' refusal to implement their part of the charter-party.

The defenders lodged defences, and pleaded, *inter alia*—"(1) No title to sue."