Neither Alexander Tulloch nor Margaret Forbes Tulloch had any residential settlement on 13th May 1892. The former then earned the usual journeyman carpenter's wages customary in the district, which are 6d. per hour—the full usual working time being 51 hours per week in summer and about 45 hours per week in winter. His family consisted of his wife and five children, the pauper being the third eldest. The two eldest supported themselves, but the two youngest still lived with their father, and were dependent on him.

In these circumstances a question having arisen between the parochial boards of the parishes of Elgin and Kinloss whether Elgin, as the parish of the pauper's father's settlement, or Kinloss, as the parish of the pauper's birth, was liable for the maintenance of the pauper, a special case was presented to the Court for its decision. It was admitted that one or other of these parishes was liable for her maintenance, and that the parish of New Spynie was not liable.

James Elder, Inspector of Poor for the parish of Elgin, as representing the Parochial Board of that parish, was the first party to the case. A. K. Leitch, Inspector of Poor for the parish of Kinloss, and as representing the Parochial Board of that parish, was the second party.

The question of law was, "Does the burden of supporting the pauper fall upon the parish of Elgin or upon the parish of Kinloss?"

Argued for the first party—The pauper was forisfamiliated, and therefore was chargeable on the parish of her birth. She was in a higher station of life than her father, she being a school teacher and he a journeyman carpenter. She was also earning a considerable wage, amounting to about a sixth of what her father was earning. She therefore maintained herself although lodging in her father's house, and the case was therefore distinguished from *Lees* v. *Kemp*, October 17, 1891, 19 R. 6, and *Mackay* v. *Munro*, January 21, 1892, 19 R. 396, and *Fraser* v. *Robertson*, June 5, 1867, 5 Macph. 819. That she was a minor did not prove conclusively that she was not forisfamiliated, because a boy in minority and not earning sufficient to support himself had been held to be forisfamiliated in the case of *Heritors of Cockburnspath*, June 9, 1809, F.C. A child might also be forisfamiliated without leaving her father's home—*Dempster* v. *M'Whannel*, November 26, 1879, 7 R. 276 (opinion of Lord Shand, 280).

Counsel for the second party was not called on.

At advising—

LORD YOUNG—If we are of opinion that there is no case of forisfamiliation proved here, then according to the terms of the agreement between the parties the burden of maintaining the pauper is to be borne by the parish of Elgin. I think we are all agreed that no case of forisfamiliation has been made out here.

LORD RUTHERFURD CLARK concurred.

LORD TRAYNER—I also agree. There are three considerations which are always material in considering a question of forisfamiliation. These are—(1) Is the person said to be forisfamiliated a major? (2) Does she reside with her father? and (3) If resident in her father's house, does she support herself? I do not say that all these three conditions must concur in order to constitute forisfamiliation, nor is anyone of them essential before forisfamiliation can be affirmed. But these are the usual considerations which would lead the Court to conclude that forisfamiliation has taken place.

In this case they are all wanting—(1) The girl is a minor; (2) she has always lived in her father's house; and (3) she was not earning her own livelihood. It is therefore quite clear that no forisfamiliation has taken place, and that the parish of the father's settlement is bound to maintain the pauper.

The LORD JUSTICE-CLERK concurred.

The Court found that the burden of supporting the pauper fell upon the parish of Elgin.

Counsel for First Party—Dickson—Moffat. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for Second Party—Salvesen. Agent—Robert Stewart, S.S.C.

Tuesday, June 6.

FIRST DIVISION.

[Sheriff of Lanarkshire.

DILLON *v.* NAPIER, SHANKS, & BELL.

Reparation—Defence of Bar on Account of Compensation Received for the Same Injuries in a Separate Action—Relevancy.

A dock labourer working in the hold of a ship lying next a quay, was injured by the fall of a plank dislodged by a workman crossing to the quay from a ship lying outside. He brought an action of reparation against his own master, on the ground that the plank was improperly placed, but this action he subsequently compromised, and granted a receipt in full satisfaction and discharge of all claims against the defender in respect of the accident. He then brought an action of reparation for the same injuries against the workman's master on the ground that he should have provided a gangway for his men crossing over the inside ship.

Opinions expressed (approving the judgments in the Sheriff Court) that the pursuer was not barred by his compromise in the previous action; but action *dismissed* as irrelevant, on the ground that the pursuer had failed to set forth any fault on the defenders' part.

Upon 14th July 1892 Patrick Dillon, quay labourer, was working in the hold of the "Collingham," which was lying at the north side of the Queen's Dock, Glasgow, where her cargo of ore was being discharged. To prevent the ore falling back into the hold skids or planks were put across its mouth. One of these fell upon Dillon and dislocated his arm, having been dislodged by the foot of a ship-carpenter in the employment of Napier, Shanks, & Bell, shipbuilders, who was crossing over the "Collingham" in order to reach the quay from the "Bosphorus," then in course of construction, and lying outside the "Collingham."

On 10th August 1892 Dillon raised an action of reparation in the Sheriff Court at Glasgow against his own employer for £200, on the ground that the plank had been improperly placed, but this action he subsequently compromised for £20 paid by an insurance company, to whom his agent on 17th August wrote as follows—"Of course my client reserves his claim against the shipbuilders while discharging all claims against your insured. If the case is settled, kindly let me know what form of discharge you wish. I think a receipt upon the original petition, signed by my client himself, would keep you safe." Upon 20th August he granted the following receipt—"Received from the defender Thomas Davidson the sum of £20, in full satisfaction and discharge of all my claims and demands, present or future, against him under the petition, for and in respect of the accident which happened to me whilst in his service on the 14th day of July 1892, including costs."

Upon 15th September 1892 Dillon raised an action of reparation in the Sheriff Court at Glasgow against Napier, Shanks, & Bell for £250 as reparation for the same injuries. He averred—"(Cond. 7) In terms of the custom of the harbour of Glasgow, and the rules and regulations of the Clyde Trust, those in charge of one vessel outside another are bound to provide a gangway for their men over the deck of the inside vessel. Though warned by the stevedore's foreman, defenders, or those for whom they are responsible, failed to form any gangway over the 'Collingham' in which pursuer was working. Had defender provided a proper and suitable gangway, as required by the regulations and custom of Glasgow Harbour, none of their men would have been on the deck of the 'Collingham,' and pursuer would not have been injured in the manner described."

He pleaded—"(1) Pursuer having been injured, as before described, through the defenders having committed a breach of the Clyde Trust Regulations and the custom of the harbour of Glasgow, decree should pass as craved, with costs."

The defenders pleaded—"(1) The pursuer having accepted the sum of £20 in settlement of his claim to compensation for the injuries libelled by him, has no title to sue in the present action."

Upon 4th November the Sheriff-Substitute (SPENS) repelled the first plea-in-law for the defenders, and allowed a proof.

"*Note.*—The pursuer in this case raised an action in this Court claiming damages against Thomas Davidson, a stevedore, in whose employment he was, in connection with the same accident, for which damages are claimed here at common law against the defenders, who are shipbuilders. It appears that the sum of £20 was accepted from an Employers Liability Insurance Company in which Davidson was insured, as a discharge as against him, and that action was never called in Court. It is now pleaded that because of this settlement with Davidson pursuer is barred from raising this action against the defenders. It seems to me very clear that if in the receipt there had been an express reservation of the claim of pursuer against the defenders the plea would necessarily fall. In the letter to the manager of the insurance company from pursuer's agent, of date 17th August 1892, which was the letter on which the settlement proceeded, it is there said, 'Of course my client reserves his claims against the shipbuilders while discharging all claims against your insured.' It would, in my opinion, be too narrow a distinction to draw to hold that such a reservation in the receipt bars such a plea, but the letter on which the settlement proceeded expressly containing such a reservation does not bar. Should liability be held as established against the shipbuilder, pursuer would not be entitled to get more than what is estimated as the true value of his loss by the accident, and I imagine defenders would be entitled to plead that the £20 received must be deducted from the sum that would otherwise fall to be awarded."

The defenders appealed to the Sheriff (BERRY), who on 16th March adhered.

"*Note.*—I have come, on consideration, to be of opinion that the discharge granted in the action at the pursuer's instance against the stevedore, in whose employment he was at the time when he met with his accident, does not operate as a bar to the present action against another set of defenders. The sum paid in that other action was paid before it was called in Court; and the payment may have been made by the defender in order to get rid of an unfounded demand, resistance to which might have involved him in expenses, while on the other hand it might have been accepted by the pursuer, although he regarded it as insufficient compensation for his injuries, because he felt uncertain of success. The discharge was given merely as a discharge of the pursuer's claim in that action; and it did not, as it seems to me, imply a discharge to other defenders who were being sued in separate proceedings. I do not think it was necessary for the pursuer to reserve in terms his claim in those separate proceedings against other defenders.

"I think it unnecessary to consider whether, if an express reservation of the pursuer's claim against the present defenders had been necessary, it would have been competent to import into the dis-

charge the terms of a letter of the pursuer's agent on which the settlement is said to have proceeded, but to which no reference is made in the discharge itself."

The pursuer appealed to the First Division of the Court of Session for jury trial, when the defenders argued—1. The action was irrelevant. The only fault alleged was failure to provide a gangway. That was quite unnecessary except in cases of unloading, which alone were contemplated in rule 64 of the Harbour Regulations relied on by the pursuer. No custom apart from that rule had been set forth, nor did any such custom exist. 2. The pursuer was barred by his conduct in the former action, which was brought to recover reparation for precisely the same injuries, and was compromised after being served. By his receipt, which contained no reservation of his right to proceed against the present defenders, the pursuer must be held to have considered £20 full satisfaction for his injuries. The action proceeded on delict, but where one wrongdoer was discharged all were discharged. In the case of the *Western Bank* (*infra*) the defenders were sued in the same action: Here there were separate actions. The following cases in England were in point, viz.—*Brinsmead* v. *Harrison*, June 19, 1872, L.R., 7 C.P. 547; *Wright* v. *London General Omnibus Company*, April 25, 1877, L.R., 2 Q.B.D. 271. [*By the Court*—Was the principle of those cases not *res judicata?*]

The pursuer admitted that rule 64 was the rule referred to, and that it was not in point, but argued (1) That custom had been sufficiently set forth and that the precaution of a gangway was reasonable and necessary; (2) that he was not barred by the previous action. The receipt expressly bore that it was only the claims against the defender in that action which were discharged, and the letter of 17th August made it clear that his right of action against the present defenders was reserved. The cases of *Western Bank* v. *Bairds*, March 20, 1862, 24 D. 859 (Lord Cowan, p. 912); *Campbell* v. *A. & D. Morrison*, December 10, 1891, 19 R. 282 (Lord Low's opinion) were in point. There had been no judgment here, but only a private compromise to avoid an action. There had been no satisfaction of a claim.

At advising—

Lord President—The first question we have to determine is whether the pursuer has stated a relevant case. The allegation of fault is contained in the 7th article of the condescendence. Now, in the nature of things it cannot be said that there is any necessary obligation on a shipowner to lay a gangway over some other person's ship, and the pursuer has industriously and carefully shown that he rests his claim, not on any obligation arising from the facts of the situation, but on the custom of the harbour of Glasgow and on the rules and regulations of the Clyde Trust—in other words, on an artificially constituted duty. Now, Mr Orr has admitted that so far as these rules and regulations are invoked the pursuer has in mind the 64th rule, which manifestly has no application to the case in hand, for it applies to the case of a ship discharging cargo, and the ship here, the "Bosphorus," was not discharging cargo. Again, if the custom of the harbour of Glasgow is to be read as something separate from the 64th rule, it is not supported by any statement of what the alleged custom really is, so as to render a deviation from that custom an illegal act entailing pecuniary liability for resulting loss. We have here alleged only two things—first, a deviation from a custom unsupported by any averment inferring pecuniary responsibility, and second, a rule of the Clyde Trust which is plainly not applicable. I cannot discover any other allegation pointing to failure of duty on the part of the defenders and therefore in my opinion the action is irrelevant and falls to be dismissed, and that disposes of the case.

As, however, the question of discharge has been raised and discussed, it may only be right that we should express the opinions we have formed upon it. I should not be prepared to hold that the receipt has necessarily the effect which has been ascribed to it by the defenders. The document is in form merely a receipt for a sum of money written on a penny stamp, and does not purport to be, and is not stamped as, a formal discharge. It is founded on, not by the person in whose favour it was granted, but by a third party external to the pecuniary transaction which is there set forth, and founding upon it for a purpose collateral to its intendment. In these circumstances my impression would be that we were entitled to look to the facts and see whether this third party is right in thinking it was something more formal and conclusive than primarily it bears to be. Having regard to the letters to which we have been referred (and we are referred to no other means of judging), I am of opinion that it is not.

Lord Adam—I agree with your Lordship on both points. The only averment said to be relevant is that set out in the beginning of Cond. 7, which refers to the custom of the harbour of Glasgow and the rules and regulations of the Clyde Trust. Now, it is admitted that the 64th rule is the rule relied on. And it is manifest that there is no such liability, as might arise under that rule, in the circumstances here. On the contrary, it is clear and is admitted that if the two statements as to the custom and as to the rules are to be read together, there is no obligation on the owner of an outside vessel to provide a gangway over the inside vessel, except when the outside vessel is having its cargo unloaded. It is easy to appreciate the reason for such a rule when a ship is discharging cargo which has to be carried across the vessel lying between it and the quay. But then the rule has no application when the outside vessel is not unloading, and all that there is to do is for a sailor on board the outside vessel to pass across the intermediate vessel, with his hands free and

his attention not occupied. It is out of the question to say that in these circumstances it is necessary to supply a gangway.

On the question of discharge — If the defenders stood on the receipt alone I would have been of opinion that it was no bar to the action. The words "in full satisfaction and discharge of all my claims against him under the petition" would appear to me to be a limitation of the discharge to the defender in that particular action. But then I think we are entitled to look at the letters which preceded and accompanied the so-called discharge. It is in form simply a receipt for £20, but if it is to be regarded as a discharge (assuming the question of the sufficiency of stamp to be out of the way), we are entitled to get behind it and to see what it was really granted for. Now, reading the letters it is clear that the parties intended to reserve any claim against the shipowners. Regarding it, therefore, as I do, as merely a compromise, and not as a payment in full satisfaction of all possible claims for the particular injury, then I think the receipt is not enough to bar the action.

LORD M'LAREN—I agree on both points. It is of course necessary when vessels are lying two or three deep, that the sailor and other persons on board the outside vessel, should be enabled to pass over the vessel lying between their vessel and the quay. And it seems to be the theory of this case, that in the exercise by such persons of this right of way-leave, a duty arises to the owner of the outside vessel to use proper precautions for the prevention of injuries that might result to persons crossing. I have nothing to say against that theory, but applying it to the circumstances of this case I am of opinion that there is no relevant statement of a duty incumbent on the defenders, for the safety of those on board their ship, which was neglected by them. There is only a statement of a breach of the harbour regulations, but a breach that does not suggest to me that it was the proximate cause of the accident.

On the second point I have little to add. I agree that we are entitled to look not only at the receipt, but also at the letters which have been read to us for the purpose of ascertaining what was the real consideration for the payment of this sum of £20.

LORD KINNEAR concurred.

The Court dismissed the action as irrelevant, but as the plea of irrelevancy had not been stated in the Sheriff Court, found no expenses due.

Counsel for Pursuer and Appellant—Orr. Agent—W. A. Hyslop, W.S.

Counsel for Defenders and Respondents—Dickson—Napier. Agents—Webster, Will, & Ritchie, S.S.C.

Tuesday, June 6.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

FALCONER *v.* DOCHERTY.

Reparation — Slander— Issues— Innuendo from Failure of Trustee to Publish Accounts—Charge of Partiality.

Held (1) that, looking to an article complained of as a whole, to say of a trustee, "He gives the money, it is supposed, but whether he dispenses the whole of it or not is not known, as he has never proposed to publish a statement of how it is employed"—might bear the innuendo that "he is not a trustworthy trustee and administrator of a charitable bequest, . . . and is a person capable of appropriating the funds of the bequest to his own uses and purposes;" and (2) that a charge of partiality is not of itself actionable.

The following letter appeared in the *Caithness Courier and Weekly Advertiser for the Northern Counties* upon 18th November 1892:— "ADVICE WANTED.

"To the Editor of the *Caithness Courier*.

"Sir,—Here is a case which came under my notice. A certain clergyman has a fund, the proceeds of a charitable bequest, left for the poor of the parish. He gives the money, it is supposed, but whether he dispenses the whole of it or not is not known, as he has never proposed to publish a statement of how it is employed. A poor woman whose husband was unwell, and the family in great destitution, called on the minister, and wanted a portion of the money to buy a little meal for to keep them living. The minister refused, because, he said, her husband did not attend the church. She replied that she did not think that the money was to be given to any one because he attended any particular church, but to the poor of the parish. 'Oh, but,' replied the reverend, 'your husband was in the public-house bar, and he spoke disrespectfully of me there.' 'But, sir,' she answered, 'don't you go to the bar yourself?' Minister—'Yes, but I don't go there to drink.' Woman (looking up at his rubicund face)—'I'm no so sure o' that, sir.' She got none of the money. What should the woman do in such a case? Apply to the session, you say. But if he has no session, what then? My advice is for the woman to take two with her, and call on the Reverend Mr Falconer, and ask him what she should do to get a share of the money left for the benefit of such as she. It would be interesting to hear what steps he advised her to take.—A FRIEND OF THE POOR."

Upon 16th January 1893 the Rev. W. J. S. Falconer, minister of the parish of Dunnet in Caithness, brought an action of damages for slander against William Docherty, High Street, Thurso, and against William Docherty junior, 9 Hill Square, Edinburgh, as being the printer, publisher, and the proprietor respectively of said newspaper.