

any premises within the same or forming part thereof, or the person so using any such machinery, shall be deemed to be the occupier of a factory." The statement in the case does not appear to me to show that the respondents were the occupiers of the dock in that sense. They were not owners of the steamship, nor was that ship in their possession; they simply by their servants wheeled goods on barrows from a wooden shed on the quayside to the deck of the ship, from which the goods were lowered into the hold by the crew with appliances upon and belonging to the ship. It seems to me that the respondents in performing what was merely portorage from the quay to the ship could not be reasonably held to be the "occupiers" either of the dock or of the ship any more than a passenger walking on board or a porter carrying his luggage.

For these reasons I consider that the question put in the case should be answered in the negative.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court answered the question in the case in the negative, and remitted to the Sheriff as arbitrator to proceed and to decern.

Counsel for the Appellant—Watt—Glegg, Agents—Hutton & Jack, Solicitors.

Counsel for the Respondents—Salvesen, Q.C.—W. Wallace. Agents—Lindsay & Wallace, W.S.

Tuesday, March 6.

SECOND DIVISION.

[Sheriff-Substitute at Aberdeen.

MARSHALL v. CALEDONIAN RAILWAY COMPANY.

Sheriff—Citation—Railway Company—Railways Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. c. 33), sec. 130—Companies Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. c. 17), sec. 137—Sheriff Courts (Scotland) Act 1876 (39 and 40 Vict. c. 70), secs. 46 and 12 (2)—"Principal Office"—"Place of Business."

The petition in an action brought in the Sheriff Court at Aberdeen against the Caledonian Railway Company, which has its head office in Glasgow, was served upon the defenders at their office in Aberdeen. The Railway Company entered appearance and lodged defences. They admitted that they carried on business and had an office at Aberdeen, but explained that it was not their principal office, and maintained that they had not been duly cited, in respect that under the Railway Clauses Consolidation Act 1845, sec. 130, and the Companies Clauses Consolidation Act 1845, section 137, a railway

company could only be cited at its principal office, or one of its principal offices. The Court *repelled* this defence upon the ground that, whatever might be the meaning of the expression "principal office" in the sections referred to, the Railway Company having a place of business in Aberdeen, and having been cited there, had been duly cited in terms of the Sheriff Courts (Scotland) Act 1876, sec. 46; and also, *per* Lord Young, upon the ground that the defenders, having appeared, were precluded from pleading this defence by section 12 (2) of the Act last mentioned.

Railway—Railways Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. c. 33), sec. 130—Companies Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. c. 17), sec. 137—Citation—"Principal Office."

Opinions that the office of the Caledonian Railway Company at Aberdeen was "one of their principal offices" within the meaning of the Railway Clauses Consolidation (Scotland) Act 1845, section 130, and the Companies Clauses Consolidation (Scotland) Act 1845, section 137.

Thomas Marshall junior, produce importer and commission merchant, 3 Regent Quay, and residing at 147 Union Street, Aberdeen, brought an action in the Sheriff Court at Aberdeen, against "The Caledonian Railway Company incorporated by Acts of Parliament, and carrying on business and having a place of business in the City of Aberdeen."

The pursuer craved decree for the sum of £1500 as damages for injuries sustained by him in a railway accident while he was travelling as a passenger from Glasgow to Aberdeen by the defenders' line of railway. The petition was served upon the defenders at their place of business in Aberdeen. They entered appearance to defend the action, and lodged defences, in which they admitted that they carried on business and had an office at Aberdeen, subject to the explanation that the said office was not their principal office.

The defenders pleaded, *inter alia*—"(1) No process, in respect that the defenders have not been competently cited at their principal office."

The defenders' head office is in Glasgow.

The Railways Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. c. 33) enacts as follows:—Sec. 130—"And be it enacted that any summons or notice, or any writ or other proceeding at law requiring to be served upon the company may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary, then by being given to any one director of the company."

Section 137 of the Companies Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. c. 17) is substantially identical in its terms.

The Sheriff Courts (Scotland) Act 1876 (39 and 40 Vict. c. 70), enacts as follows:—Sec. 12—“With regard to the service of writ issuing from the Sheriff Courts the following provisions shall have effect—that is to say, . . . (2) A party who appears shall not be permitted to state any objection to the regularity of the execution or service as against himself of the petition by which he is convened.” Sec. 46—“A person carrying on a trade or business, and having a place of business within a county shall be subject to the jurisdiction of the sheriff thereof in any action notwithstanding that he has his domicile in another county, provided he shall be cited to appear in such action either personally or at his place of business; it shall, however, be in the power of the sheriff aforesaid, upon sufficient cause shown, to remit any such action to the court of the defender’s domicile in another sheriffdom.”

On 5th February 1900 the Sheriff-Substitute (BURNET) issued an interlocutor, whereby he repelled the first plea-in-law stated for the defenders and allowed a proof.

Note.—“In this case the defenders admit that they carry on business and have a place of business within this sheriffdom, and the execution of citation bears that they were cited to appear in this action by service upon them at that place of business in the ordinary manner. Having appeared in answer to the citation, they are precluded from stating any objection to its regularity (39 and 40 Vict. c. 70), sec. 12 (2). It is plain therefore, and was indeed conceded in argument for the defenders, that their plea of ‘no process’ cannot be sustained as stated. And the argument submitted on their behalf accordingly was that this Court had no jurisdiction, because the defenders had not been cited at their principal office or place of business. But sec. 46 of the Sheriff Court Act 1876 (39 and 40 Vict. c. 70) does not require the citation to be made at the principal place of business of a defender who carries on business within a sheriffdom, but only at the place where he does in point of fact carry on business within its territory. It no doubt authorises the Sheriff, upon sufficient cause shown, to remit an action originated by such service to the Court of the defender’s domicile in another sheriffdom. And the defenders might have shown cause for giving effect to a plea of *forum non conveniens* in this way if they had chosen. But they have made no attempt to do so, and they do not even state upon record where their principal place of business or domicile is.”

The pursuer appealed for jury trial and lodged an issue for the trial of the cause.

Argued for the defenders and respondents—(1) The defenders had not been duly cited according to law. A railway company could only be cited at its principal office, or at one of its principal offices if it had more than one—Railways Clauses Consolidation (Scotland) Act 1845, sec. 130; Companies Clauses Consolidation (Scotland) Act 1845, sec. 137. Aberdeen was not the principal office or one of the principal offices of

the Caledonian Railway Company. That company had only one principal office, viz., the head office in Glasgow. There was no other office in which any part of the general or controlling business of the company was carried on. What constituted an office a “principal office” was that in it either the whole or part of the general, controlling, and managing business of the undertaking as a whole was transacted. Difficulties might arise where a company conducted such business at more than one office, but these difficulties were absent here, because there was only one office where in the case of the Caledonian Railway Company that *kind* of business was transacted. It was the *kind* and not the *amount* of business which determined whether an office was a principal office or not. At Aberdeen, however great might be the *amount* of business transacted, it was in no way different in *kind* from the business which was transacted at every roadside station however small. The Act did not prescribe that the citation should be given at one of the principal stations of the company, but at one of the principal offices, and the importance of the station had no bearing upon the question. These views as to the meaning of the expression “principal office” had been given effect to in the English cases of *Palmer v. Caledonian Railway Company* [1892], 1 Q.B. 823; and *Garton v. Great Western Railway Company* (1858), 27 L.J., Q.B. 375. In the former of these cases it was held that Carlisle was not one of the principal offices of the Caledonian Railway Company. Carlisle occupied exactly the same position in the Caledonian system as Aberdeen, these two stations being the termini of the main line, and the same kind and amount of business was carried on in each of them. In *Garton* it was decided that Bristol was not one of the principal offices of the Great Western Railway Company although it was then one of the termini of that company’s line. The case of *Aberdeen Railway Company v. Ferrier*, January 28, 1854, 16 D. 422, was a decision upon the question of jurisdiction. In *Jack v. North British Railway Company*, June 2, 1885, 12 R. 1029, it was decided that the Sheriff in terms of the Sheriff Courts (Scotland) Act 1876, sec. 46, had jurisdiction over a railway company which had a place of business or at least a principal place of business in the county. The defenders here did not dispute the jurisdiction of the Sheriff Court at Aberdeen. Their only objection was to the citation. If the case of *Jack* were to be considered as a decision upon the question of citation, then it was submitted that in that case the Court might, so far as appeared, have proceeded upon the view that the North British Railway Company’s office at Glasgow was one of their “principal offices” in the sense indicated above. (2) The defenders were not barred from taking the present objection by having appeared in answer to the citation. The objection now stated was not an objection to the regularity of the citation. The defenders’ submission was that here they had never

been cited at all in the manner prescribed by the Railways Clauses Consolidation (Scotland) Act 1845, section 130. Where the objection was that there had been no citation at all, that was not merely an objection to the regularity of the citation, and section 12 (2) of the Sheriff Courts (Scotland) Act 1876 did not apply—*M'Bev v. Knight*, November 22, 1879, 7 R. 255, per Lord Ormisdale at page 257. If the defenders had taken no notice of the citation and had then raised this question when the pursuer attempted to enforce his decree, they would have been met with the defence that their objection came too late, and that they ought to have appeared and defended the action—*Cruickshank v. Gow & Sons*, January 25, 1888, 15 R. 326.

Argued for the pursuer and appellant—This case was ruled by *Jack v. North British Railway Company, cit.*, which decided that the North British Railway could be duly cited at their office in Glasgow, that being one of the principal places at which they carried on their business. The provisions of the Railways Clauses Consolidation (Scotland) Act 1845, section 130, and the Companies Clauses Consolidation (Scotland) Act 1845, section 137, had been superseded in so far as they were in conflict with the provisions of the Sheriff Courts (Scotland) Act 1876, section 46, and that section not only regulated the question of jurisdiction, but provided for the mode of citation. Apart from this the defenders were precluded from stating this defence by having appeared to defend the action—*Sheriff Courts (Scotland) Act 1876, section 12 (2)*.

LORD JUSTICE-CLERK—I must confess I have been somewhat surprised that the Railway Company should have thought this question of great importance, and if that view had not been intimated I do not think that we would have called for any reply to Mr Deas' very able statement.

Under the Act of 8 and 9 Victoria it is quite plain that it was contemplated that a railway company might be in a position to be cited at more places than one. The Act expresses distinctly that it shall be at the principal office, or at one of the principal offices if there are more than one. Therefore it contemplated from the very first that there might be more than one principal office. No suggestion has been made, so far as I have heard, what other principal office there could be, as distinguished from the head office of the company, where the general business of the company was transacted, except certain places which being centres of important traffic became principal places in the business of the company—the principal offices, as distinguished from other and smaller places such as country stations or small offices. There is no definition given, and the question whether an office is a principal office or not must be arrived at simply by the exercise of reasonable common sense. What forty years ago might not be a principal office might in course of time become so, and it is quite possible, although in modern

times not very likely, that a place which was once a principal office might cease to be so. There might be competing traffic which carried off the receipts which were being got in a particular district, thereby causing the office to lose its importance, causing the company to reduce expenditure and staff at that office. In this case, under the Act of 8 and 9 Victoria, I should be inclined to hold, although without any definition or aid except the words "principal office," that Aberdeen now was a principal office of the Caledonian Railway Company. But further than that, we find in the Sheriff Court Act of 1876 the following express enactment as regards the jurisdiction of the Sheriff Court—[*His Lordship read the section*]. It appears to me that that is a very distinct enactment that if a person or company carries on business say in Aberdeen (although doing so in a great many other places), and has an office there, that person or company shall be subject to the jurisdiction of the Sheriff Court, and may be cited there.

I have come to the conclusion that the objection stated to the citation is unfounded and ought to be repelled.

LORD YOUNG—When I read this case I was not indisposed to sympathise with the Railway Company, as it occurred to me their purpose was to prevent actions being brought against them in the inferior courts wherever they had a roadside station, and therefore an office; but when the case is explained it appears that that is not the question at all. This is an action brought against the Railway Company in the Sheriff Court of the county of Aberdeen by a passenger who had a ticket from Glasgow to Aberdeen, and who was hurt by an accident which he attributes to the fault of the Railway Company. The accident took place at Coupar-Angus station, between Perth and Aberdeen. It is admitted that the Sheriff Court of Aberdeenshire was a competent court in which to bring the action. No objection is taken to the jurisdiction; the Railway Company submit to the jurisdiction, but they appear in Court and say that, although they have no objection to the jurisdiction they have not been properly cited. Now, there is a statute dealing with this matter of citation of parties who are subject to the jurisdiction of a Sheriff Court—the Act of 1876. It provides that if the party appears he can state no objection to the citation. He has been cited in such a way as to effect the only object which the Act had in giving a citation, viz., the appearance in court of the party cited to appear. The statute provides that if he appears he cannot be heard to say that he has not had due and sufficient notice to appear—that he has not been duly cited. The same statute provides that a party who is subject to the jurisdiction of the Sheriff Court may be cited at any place of business which he has within the jurisdiction of the Court. He may be cited at his place of business in the country, even although he is outside the jurisdiction of the Court. That applies to regular

formal notice to a party called as a defender who appears in a court to the jurisdiction of which he admits he is subject. Now, the Caledonian Company here were cited at their place of business, and that provision of the statute has therefore been complied with. They entered appearance and stated defences to the action, and therefore, according to a provision of the same statute, it is too late for them to say that they had not sufficient notice, for they have appeared in answer to the citation, and the sole purpose of the citation has been fulfilled, for a citation is just a formal notice to appear. What do they say in the record here, referring not to the Act of 1876, but to the Act of 1845? They say in answer to article 1 of the condescendence, that they have a place of business in Aberdeen—that means in the county of Aberdeen, for the city is within the county—they admit that they carry on business and have an office at Aberdeen, but “subject to the explanation that the said office is not the principal office of the defenders;” and then their plea-in-law upon that is that there is “no process, in respect that the defenders have not been competently cited at their principal office.” Now, I think the statute law and the common practice applicable to the Court to whose jurisdiction they are subject do not require citation at the principal office, but require citation only at their place of business, where they carry on business. That has been complied with, and I cannot read any provision in the Act of 1845 as at all at variance with that provision of the Act of 1876 and with the practice following upon it. I am therefore of opinion with your Lordship that this objection is unfounded. If it were necessary—which I think it is not, for the reasons which I hope I have satisfactorily explained in my opinion—to determine whether their office at Aberdeen was one of the principal offices of the Caledonian Railway Company, I should as a matter of fact, and upon what the Court may take cognisance of as a matter of very common knowledge, assume that Aberdeen was one of the principal offices of the Caledonian Railway Company; but for the reasons which I have stated it is not necessary to determine that. I therefore think that this plea ought to be repelled, and the case proceeded with upon the appeal of the pursuer for a jury trial.

LORD TRAYNER—I concur. The objection has been stated with great clearness, but I think it is not tenable. The Act of 1876 provides that any person carrying on business in a county shall be subject to the jurisdiction of that county, and that service of any action brought against him there shall be sufficient if it is served at the place where he carries on business. That has been done here.

If it were necessary to consider the provision of the Act of 1845, and disregard the Act of 1876, I should be prepared to hold that Aberdeen was one of the principal places of business of the Caledonian Railway Company. But I think the Act of 1876 and its provisions govern this question, and that there has been good citation.

LORD MONCREIFF was absent.

The Court pronounced this interlocutor:—

“Affirm the interlocutor of the Sheriff-Substitute of 5th February last, and of new repel the first plea-in-law for the defenders: Further, approve of the issue as the issue for the trial of the cause: Find the pursuer entitled to expenses since 22nd February last,” &c.

Counsel for the Pursuer—Glegg. Agents—Alex. Morison & Company, W.S.

Counsel for the Defenders—Dundas, Q.C.—Deas. Agents—Hope, Todd, & Kirk W.S.

Friday, March 9.

FIRST DIVISION.

NORMAND'S TRUSTEES v. NORMAND.

Succession—Vesting—Conditional Institution.

A trustor directed his trustees to hold a certain sum for three of his grandchildren in liferent, and made the following disposition of the fee:—“Upon the death of any one of my said grandchildren, or at any later period of division which he or she may appoint, my said trustees shall pay over his or her share of the said funds to or among his or her children when and as they arrive at majority or are married, whom failing to his or her assignees, whom failing to my own nearest heirs.”

Held that on the death of each liferenter the fee of the share so liferented vested in his or her children then existing.

Trust—Power to Make Advances—Advances to Minors without Express Authority.

A trustor directed his trustees to hold a certain sum for a grandchild in liferent and his great-grandchildren in fee. Under the terms of the bequest the fee vested in the great-grandchildren on the death of the liferenter, but the term of payment was postponed until they respectively attained majority or were married. There was no express direction to accumulate the income during the period between the death of the liferenter and the majority or marriage of the fiars, nor any express power to the trustees to make advances to the fiars during that period. The liferenter died leaving children in minority, and the trustees, on the representation that advances were necessary for their education, paid the income of the trust to their guardian for their benefit. *Held* that these payments were properly made.

James Normand, manufacturer in Dysart, died on 25th August 1874, leaving a trust-disposition and settlement, by which he made, *inter alia*, the following disposition—“(Primo) To hold and apply the same for