

subsequently been a party to any deed of revocation—and that for this very good reason, viz., that the deed would not then have been a gratuitous one, and the wife would have had no right to revoke it. Accordingly the pursuer tried to make out that the money came from the husband, and that on the ground that the words “on behalf of” are equivalent to “for behoof of.” But the *prima facie* meaning of the words is that one who pays on behalf of another is acting not for himself but for the person “on behalf of” whom he is said to have been acting. I quite agree to what fell from Mr Cullen that if the words were equivalent to “for behoof of” then the clause should have run not as here “for behoof of” Mrs Bruce but “for behoof of Mrs Bruce and the children.” But in my opinion the only presumption to be drawn from the deed is that the money was paid by Mr Bruce on behalf of (that is, as agent of) Mrs Bruce—in other words, that the money belonged not to him but to Mrs Bruce, and that he paid it to Mr Watt in order that the wife might get a disposition.

If that is so, then, so far as the wife is concerned the deed was gratuitous, and she was entitled to take it in any terms she liked, and so long as the deed was undelivered she was in a position to revoke at any time she pleased. Was there here any delivery to anyone on behalf of the children? She took infetment in liferent allanarly, and although she did not take infetment in fee it is said that this is equivalent to delivery. If it had not been for the case founded on by the Lord Ordinary there might have been some foundation for this argument—that she had thus adopted and recorded the deed for the benefit of all concerned. But that argument is entirely and conclusively met by the case of *Stewart v. Rae*.

If that is so, the question comes to be—the deed being an entirely gratuitous deed and not delivered by her to anyone on behalf of the children, why could she not revoke it? In my opinion she could revoke it, and I think she has done so, not only by her last settlement, but also at the time when she granted the absolute disposition to the bank for an advance of money to her husband.

On the whole matter, I think the Lord Ordinary's interlocutor is right. That is enough for the decision of the case, and accordingly I do not go into the question of prescription, seeing that it has not been dealt with by the Lord Ordinary.

LORD KINNEAR—I agree with your Lordships, and for the reasons given by your Lordships that the interlocutor of the Lord Ordinary is right. I think the case is ruled by the case of *Stewart v. Rae*. On the question of prescription, that was not dealt with by the Lord Ordinary, and I do not think that it is desirable that we should decide a point which the Lord Ordinary has not considered or disposed of.

LORD M'LAREN was absent.

The Court adhered.

Counsel for the Pursuer and Reclaimer—T. B. Morison. Agents—P. Morison & Son, S.S.C.

Counsel for the Defender and Respondent—Cullen. Agents—Alex. Morison & Company, W.S.

Tuesday, January 14.

## SECOND DIVISION.

[Sheriff-Substitute at Glasgow.]

### STEWART v. THE DARGAVIL COAL COMPANY, LIMITED.

*Reparation—Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), secs. 4 and 7 (2)—Factory and Workshop Act 1895 (58 and 59 Vict. c. 37), sec. 23 (1)—“Factory”—“Quay”—Occupiers of Quay—Use of Quay by Coalmasters for Shipment of Coal.*

A company of coalmasters, who had a contract to supply coal to the vessels of a steam packet company, employed a coal porter to put the coal from their carts on to the quay breast at a certain berth in Glasgow Harbour, and thence to load the vessels with the coal. A labourer employed by the coal porter, who had brought a quantity of coal from the carts and laid it on the quay ready to be shipped, was awaiting the arrival of a vessel which was coming up the river, when he fell off the quay and was drowned.

In a claim at the instance of his widow against the coalmasters under the Workmen's Compensation Act 1897, held (1) that, even assuming the quay to be a factory, the respondents were not the occupiers of the quay within the meaning of section 23 (1) of the Factory and Workshop Act 1895; and therefore (2) that they were not undertakers within the meaning of section 7 (2) of the Workmen's Compensation Act 1897.

*Opinion (per Lord Trayner)* that a quay is not *per se* a factory.

This was an appeal in an arbitration under the Workmen's Compensation Act 1897 before the Sheriff-Substitute at Glasgow (GUTHRIE), between Agnes Stewart, widow of the deceased Robert Stewart, coal porter, claimant and appellant, and The Dargavil Coal Company, Limited, Glasgow, respondents.

The facts stated by the Sheriff-Substitute as admitted or proved were as follows:—  
“1. That the appellant's husband, Robert Stewart, was on 23rd July 1901 a labourer employed by John M'Keown, who was himself a coal porter, contracting with the respondents to load bunker coal from the quay breast at berth 38 of Glasgow Harbour into the steamers of the Dublin and Glasgow Steam Packet Company at certain rates per ton. 2. That M'Keown contracted with other owners of steamships and the

merchants supplying them on similar terms, and that he employed labourers, for whose wages he alone was responsible, by the hour, day, or week. 5. That the respondents had a contract at fixed prices extending over a year, from 18th March 1901, to supply the vessels of the Dublin and Glasgow Steam Packet Company with bunker coal free on board; that they brought the coal to the quay on carts, and employed M'Keown under the aforesaid agreement to put the coal from the carts upon the quay breast, and to trim and load them with planks and barrows, or in the case of one of the said company's steamers, by shoots, into the bunkers, and that no machinery was being used by M'Keown or the deceased at the time of the accident. 6. That the planks, barrows, and other plant used for the purpose of trimming and loading were supplied by the owners or agents of the several steamers. 7. That a steamer of the said Steam Packet Company was then coming up the river Clyde, and arrived about an hour after the accident, and that the deceased, after having been engaged in bringing the coal from the carts and laying them upon the breast of the quay and trimming them ready to be shipped, was waiting on the quay, and fell into the river and was drowned. 8. That the berth No. 38 was not at the time of the accident occupied by any vessel."

Upon these facts the Sheriff-Substitute found in law that the respondents were not undertakers in the sense of the Workmen's Compensation Act 1897, and accordingly assoltized them.

The questions of law for the opinion of the Court were:—(1) Upon the facts stated or admitted, were the respondents undertakers of the employment at which the deceased met his death within the meaning of the Workmen's Compensation Act 1897? (2) In the circumstances above narrated, was the quay a factory in the sense of the said Act? (3) If so, were the respondents the occupiers of the said quay at the time the said accident happened?"

The Workmen's Compensation Act 1897 enacts:—Section 4—"Where, in an employment to which this Act applies, the undertakers as hereinafter defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workman employed in the execution of the work any compensation which is payable to the workman . . . by such contractor, or would be so payable if such contractor were an employer to whom this Act applies." Section 7 (2)—"Undertakers" in the case of a factory "means the occupier thereof within the meaning of the Factory and Workshop Acts 1878 to 1895," and "Factory includes any . . . quay, . . . to which any provision of the Factory Acts is

applied by the Factory and Workshop Act 1895 . . ."

The Factory and Workshop Act 1895, section 23 (1), enacts that certain provisions of the Factory Acts with respect to accidents, inspection, &c., "shall have effect as if every dock, wharf, quay, and warehouse . . . were included in the word factory . . .; and for the purpose of the enforcement of those sections the person having the actual use or occupation of a dock, wharf, quay, or warehouse, . . . shall be deemed to be the occupier of a factory."

The appellant maintained (1) that a quay is *per se* a factory—*Bartell v. W. Gray & Co.* (1902), 1 K.B. 225; *Merrill v. Wilson, Sons, & Co.* (1901), 1 K.B. 35; (2) that the respondents were occupiers of the quay within the meaning of section 23 (1) of the Factory and Workshop Act 1895—*Raine v. Jobson & Co.* (1901), A.C. 405; and that they were consequently liable under section 4 of the Workmen's Compensation Act as undertakers.

Counsel for the respondents were not called upon.

LORD YOUNG—I think the question in this case, upon which we have heard a clear and full argument from the appellant's counsel, is attended with no real difficulty. The question is whether a dealer in coal, who has contracted to supply a ship with coal, sending it from his own premises to the place where it is required by the buyer, whether on contract or otherwise, is the occupier of the customers' premises. I put the case of a coal dealer being under contract to supply a private house or hotel or club with coals, his contract being to send the coals periodically from his store to the house, hotel, or club. Could he be called the occupier of the house, hotel, or club? It would be a misuse of language to say that the coal dealer was the occupier of the premises. Is then the case different where his customer is a shipowner? The shipowner has the occupation, for which he pays, of the dock or quay for the purpose of shipping coal or taking cargo. He is the occupier, and the coal dealer who sends his coal there under contract is no more the occupier of the dock or quay than of the house or hotel in the case which I put by way of illustration. That is sufficient for the decision of the case. The respondents not being the occupiers of the premises—which I assume to be a factory—they are not the undertakers within the meaning of the Act.

LORD TRAYNER—I have arrived at the same conclusion. With regard to the second question, I am quite prepared to answer it in the negative, and to express the opinion that a quay is not *per se* a factory within the meaning of the Act. But assuming that it was a factory, I think the third question, viz., whether the respondents were occupiers of the quay, must be answered in the negative, and if they were not occupiers they could not be undertakers within the meaning of the statute, which leads to the first question being also negatived.

**LORD MONCREIFF**—I am of the same opinion. No doubt under section 23 of the Factory and Workshop Act a quay or part of a quay may be a "factory." But for practical purposes it is impossible to apply that term without finding some-one who in the sense of the Act is in occupation of the quay or a defined portion of it. A quay is a public place, and the mere presence on the quay of persons who with or without luggage or goods come on to a quay to await the arrival of vessels will not make them occupiers of the quay. Here it is not distinctly stated that the ship which was coming in was going to that particular part of the quay. If it was, then the shipowners were the occupiers. But if not, it does not follow that the Coal Company were the occupiers. In my opinion they were not. They were waiting to see to what part of the quay the coals should be taken to be loaded on board the vessel assigned to them, and that being so, they cannot be said to have been occupiers in the sense of the Act.

The LORD JUSTICE-CLERK was absent.

The Court answered the first and third questions of law in the negative and affirmed the dismissal of the claim.

Counsel for the Claimant and Appellant—Watt, K.C.—Guy. Agent—Wm Fraser, S.S.C.

Counsel for the Respondents—Campbell, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Tuesday, January 14.

#### FIRST DIVISION.

[Lord Low, Ordinary.]

#### SEMPLÉ v. KYLE.

*Bill of Exchange—Cheque—Verbal Condition—Indorsee for Value—Holder in Due Course—Proof of Condition—Bills of Exchange Act 1882 (45 and 46 Vict. c. 61), secs. 29 (a), 73, and 100.*

In an action upon a cheque by an indorsee and holder for value, who had taken it with notice of dishonour, the defender, the drawer, proved by parole that he had granted it subject to a condition that on the day of granting he should receive the cheque of a third party to cover his liability, and that he had stopped payment in consequence of this condition not having been fulfilled. *Held* that it was competent to prove by parole that the cheque had been granted subject to the condition; that the provisions of the Bills of Exchange Act as to holders in due course applied to cheques; that the pursuer was not a holder in due course; and that he was affected by the condition on which the cheque had been granted.

This was an action at the instance of Thomas Semple, coalmaster in Glasgow, against Thomas Kyle, house factor there.

The pursuer concluded for payment of £500 which he claimed as the indorsee and holder for value of a cheque for that sum drawn by the defender in favour of one Saunders, and ultimately indorsed to the pursuer.

The cheque upon which the pursuer sued was as follows:— No. 2.

"R. D. Glasgow, 11th Decr. 1899.  
£500 Stg.

The Commercial Bank of Scotland, Limited.  
Bridgeton Branch.

Pay to Charles W. Saunders, Esqr., or  
Order Five Hundred Pounds Stg.

*Crossed & Co.*

No. 88,436 (Sgd) THOMAS KYLE.  
(Endorsed).

CHARLES W. SAUNDERS.

WILLIAM LIVINGSTON.

R. W. SAUNDERS.

Remitted by the

Union Bank of Scotland, Limited,  
Kinning Park Branch, Glasgow.

U. B. of S., Ltd.  
Bridgeton."

This cheque was endorsed by Charles W. Saunders, the payee, in favour of William Livingston. Payment of the cheque having been refused by the Bank in accordance with instructions received from the drawer Kyle, and the cheque having been marked with the letters R. D. (refer to drawer), it was endorsed by Livingston to R. W. Saunders, the father of C. W. Saunders, and by R. W. Saunders it was endorsed and delivered to the pursuer.

The defence to the action was that the cheque had been drawn by the defender subject to the condition that he should receive on the same day a cheque by one Russell, who was the father-in-law of one Hurry, at whose request and to oblige whom Kyle, the defender, drew the cheque; that this condition was known to Charles W. Saunders at the time when he received the cheque from the defender, and that he took it subject thereto; that no cheque from Russell having been received by Kyle, the defender, he accordingly in terms of the condition stopped payment of the cheque at the bank; that payment was consequently refused; that the pursuer took the cheque with notice that it had been dishonoured; that he was consequently not a holder in due course, and was therefore affected by the condition subject to which the cheque had been granted.

The pursuer denied that Charles W. Saunders received the cheque subject to any such condition as the defender alleged, and maintained that in any view he was not affected by that condition.

Proof was allowed and led.

The facts established thereby sufficiently appear from the opinion of the Lord Ordinary (Low).

The Bills of Exchange Act 1882 (45 and 46 Vict. c. 61), sec. 29, enacts—"The holder of a bill in due course is a holder who has taken a bill complete and regular on the face of it under the following conditions:—

(a) That he became the holder of it before