

when he knew that his land was being improved, although he could not, unless he gave his consent in writing to the improvements, be made liable for those improvements. Why should he be called upon to have given gratuitously any written notice of dissent? Indeed, as Mr Asquith very pertinently pointed out, it could only have been by the operation of his prophetic soul that he could have done so.

For these reasons I think that those words mean "has thereupon executed," and the scheme of the Act is shortly this, to amend the schedules as regards market gardens in the Act of 1883, first, as to what I may call new market gardens in cases in which there is an agreement in writing made after the commencement of the Act to treat them as market gardens; and secondly, as to all market gardens in respect of subsequent improvements, provided the landlord has not after the passing of the Act given a written notice that he will not be liable for those improvements. That seems to me to render consistent the construction of the Act, and it is the construction which I advise your Lordships to place upon it.

LORD BRAMPTON—I entirely agree.

LORD ROBERTSON—I also agree, for the reasons which have been stated by the learned Judges of the Second Division.

Interlocutors appealed from *affirmed*, and appeal *dismissed*, with costs.

Counsel for the Pursuer and Respondent—Asquith, K.C.—A. O. Deas. Agents—Grahames, Currey, & Spens, for John C. Brodie & Sons, W.S.

Counsel for the Defender and Appellant—Haldane, K.C.—E. H. Coles—Allan Lawrie. Agent—H. C. Haldane, for Buik & Henderson, W.S.

Thursday, May 9.

(Before the Lord Chancellor (Halsbury), and Lords Ashbourne, Shand, Davey, Brampton, and Robertson.)

INTERNATIONAL FIBRE SYNDICATE,
LIMITED v. DAWSON.

(*Ante*, February 20, 1900, 37 S.L.R. 451, and 2 F. 636.)

Assignment—Validity of Assignment—Contract—What Contracts Assignable—Delectus Personæ—Jus Crediti under Contract—Title to Sue.

A, the owner of a patent for a fibre decorticating machine, entered into an agreement with B, the owner of an estate in Borneo, whereby it was stipulated that A should supply and erect one of the machines on B's estate, and if it proved satisfactory that B should pay for it a sum to cover cost, freight, and cost of erection, that terms should be arranged for the use of the decorti-

cators on the estate, and that the area under fibre cultivation should be increased by 25 acres *per* three months up to 1000 acres. A decorticating machine was supplied and erected by A. Within a year after the date of this contract, and after the supply and delivery of the machine, he assigned his patent to a limited liability company, together with "licences, concessions, and the like," receiving certain shares in the company, *inter alia*, for the patent, and for "contracts and concessions." Thereafter the company with consent of A brought an action against B, in which they sued as assignees of the contract between A and B. They ultimately restricted their claim to the sum due for the machine supplied and erected by A. In defence B pleaded "No title to sue." *Held (affirming* the judgment of the Second Division) that this plea must be sustained, in respect (1) that the contract between A and B as a whole involved *delectus personæ*, and was consequently not assignable; and (2) that any *jus crediti* for a money payment arising out of the contract, if there was any assignable claim of that kind which had become a complete debt before the date of the assignment, had not in fact been assigned.

This case is reported *ante ut supra*.

The pursuers appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—I think this case is quite clear. I entirely assent to the reasoning of Lord Kincairney, and it appears to me that the whole is summed up in the dilemma which I put to the learned counsel who last addressed your Lordships. Either this was or it was not an entire contract. If it was, it has not been doubted or questioned at the bar that there is a personal element in it which makes the entire contract as referred to in these papers not assignable at all; or if it is treated as something which had become a complete debt before the assignment so that it was practically assigned for £500, then it is clear upon the face of this contract, coupling it with the schedule which is referred to, that there is no assignment at all. Therefore the dilemma is complete—either it was a contract in its entirety, which was not assignable, or if it is treated as a chose-in-action separate from the contract, and separated from it in such a sense that there was a sum then payable, it is not assigned. I think that dilemma is absolutely complete, and it appears to me that that disposes of the case.

I move that the appeal be dismissed with costs.

LORD ASHBOURNE—I entirely concur in the opinion expressed by my noble and learned friend on the woolsack. I do not think under the circumstances the contract, or what is alleged to be the product of the contract, was assignable. And I do not think there was any assignment.

LORD SHAND—I am of the same opinion.

LORD DAVEY—I concur.

LORD BRAMPTON—I am of the same opinion.

LORD ROBERTSON—It is conceded by the appellant that the contract out of which this claim arises was not assignable. The principle that contracts involving *delectus personæ* are not assignable is well rooted in Scots law as well as in the law of other countries. It may, however, be conceded to the appellant that it does not necessarily follow from this that a right may not arise out of an unassignable contract which is itself assignable. I prefer in a Scotch case to call such a right *jus crediti* rather than chose-in-action. The simplest case would be that of a money payment pure and simple which has accrued. Even in the case of such a claim, the assignee, while of course entitled to sue in his own name, is liable to all the answers which could have been made to his cedent. But the questions arising in the present case are, first, whether this claim for £500 of damages is such a money claim pure and simple, and second, whether it has been assigned. Now, the second of these questions seems to me so clear that I do not dwell on the first further than to say that after what has been said the appellant must not consider it as clear. But on the second of these questions I do not find any assignation of debt or damages. It is quite true that the law does not require technical words in an assignation. But here the only thing assigned in the body of the assignation is concessions, and even if this word be amplified by the schedule, then "contracts and concessions" are assigned. Now, at the date of this assignation the claim now sued on had already accrued, and on the theory of the appeal it was a claim separable from the contract. I find it impossible to read this as an assignation of a pecuniary claim. It is at best an assignation of the contract as a whole, and it is in my opinion impossible to apply it to the present claim.

Appeal *dismissed*, and interlocutors appealed from *affirmed*.

Counsel for the Pursuers and Appellants—Lawson Walton, K.C.—J. C. Watt—J. G. Joseph. Agents—Goodchild & Hammond, for William Geddes, Solicitor.

Counsel for the Defender and Respondent—Bousfield, K.C.—Younger. Agents—Sweetland & Greenhill, for Campbell & Smith, S.S.C.

Friday, May 10.

(Before the Lord Chancellor (Halsbury), and Lords Ashbourne, Shand, Davey, and Brampton.)

KIRKCALDY AND DISTRICT RAILWAY COMPANY v. CALEDONIAN RAILWAY COMPANY,
(*Ante*, June 22, 1900, 37 S.L.R. 820.)

Contract—Construction—Agreement to Contribute to Expenses of Promoting Railway Bill—Relief or Primary Obligation—Railway.

The Caledonian Railway Company, being anxious to obtain direct access into the county of Fife, agreed with the Kirkcaldy and District Railway Company that the latter should promote a bill for the construction of four railways. It was agreed between the parties that, in the event of the bill authorising the construction of the railways not receiving the Royal Assent from any cause other than the withdrawal therefrom of the support of the Caledonian Railway Company, that company should "contribute towards the expense of the said bill (1) two-thirds of all outlays incurred in connection with the promotion of the bill; (2) one-third of the professional charges . . . in connection with such promotion." The House of Lords held the preamble not to be proved so far as it related to the three railways Nos. one, two, and four included in the bill. These three were the only ones in which the Caledonian Railway Company was interested. The preamble was held to be proved as regards railway No. 3.

In an action at the instance of the Kirkcaldy Railway Company against the Caledonian Railway Company for payment of the proportionate amount of expenses connected with the bill, in accordance with the agreement between the parties, the defenders maintained—(1st) that the bill had in fact received the Royal Assent, and that on a sound construction of the agreement they were not liable for any portion of the sum claimed, and (2nd) that their obligation was one of relief only, and that as the whole expenses had been paid by the North British Railway Company and not by the pursuers the claim of relief must fail.

Held (*aff. judgment* of the First Division) that under the agreement the defenders were liable in the sum sued for.

This case is reported *ante ut supra*.

The defenders, the Caledonian Railway Company, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—But that we have heard for some short but not unreasonable time the two very able arguments which have been addressed to your Lordships on behalf of the appellants, I should have