

anced that M'Avenue was entitled to give orders or directions to which the pursuer was bound to conform, the fundamental question in the case as to which parties are in controversy must be held to be determined.

The second question is, whether the order was given. Upon this I have no doubt. Nor does it appear to me to be material whether the order was given by word of mouth or by a sign, or in any other way in which it could be communicated. The point is not the mode of giving the order or direction, but whether, whatever the mode adopted was, an order or direction was given. Upon this subject I again refer to the case of *Millward*, which has been already cited.

The third question is, whether the pursuer obeyed the order or direction? Upon this also I have a very clear opinion. The pursuer did obey the order, and this leaves consequently for determination the only other question, whether obedience to the order was the cause of the accident? What is said by the defenders is that though the pursuer may have obeyed an order in going into the furnace, he acted upon no order when he attempted to get out. But going in upon an order, and having finished the work for which he went in, his plain duty was to come out when his services within were no longer required. The original order must, I think, be held to involve this as an implication.

On the whole matter my opinion is that the grounds of action upon sub-section 3 of section 1 of the statute have been established and that the pursuer therefore is entitled to the judgment of the Court.

LORD YOUNG and LORD RUTHERFURD CLARK concurred.

The LORD JUSTICE-CLERK was absent.

The Court pronounced this interlocutor:—

“Find in fact (1) That the accident by which the pursuer was injured was due to fault on the part of James M'Avenue, the gaffer or foreman of the squad with which the pursuer worked when in the employment of the defenders; (2) That the said James M'Avenue was entitled to give orders or directions to the pursuer and the other workmen who wrought along with him, to which they were bound to conform; and (3) That on the occasion in question the said James M'Avenue gave an order or direction to which the pursuer conformed, and that the pursuer suffered the injury for which compensation is sought in consequence of his having so conformed: Find in law that the facts being as above set forth, the defenders are liable to the pursuer in damages.” The Court assessed the damages at £100, therefore recalled the interlocutors in the Court below, and decerned for that sum, with expenses in both Courts.

Counsel for Pursuer (Appellant)—Ure. Agents—Dove & Lockhart, S.S.C.

Counsel for Defenders (Respondents)—James Reid. Agents—Webster, Will, & Ritchie, S.S.C.

Wednesday, March 11.

SECOND DIVISION.

HARVEY v. THE DISTILLERS COMPANY (LIMITED).

Public Company—Rectification of Register—Payment of Shares in Cash—Registered Contract—Companies Act 1867, sec. 25—Cancellation and Re-Issue of Shares.

A contract providing that shares should be issued to the vendor as paid up, to the amount of the value of vendor's property taken over by the company, having been omitted to be entered into and registered in terms of Companies Act 1867, sec. 25, the Court granted a petition by him to cancel from the register the entry of shares in his name, to ordain the company to enter into and register the contract, and thereafter issue the shares as paid up.

J. B. Harvey presented this petition under the 35th section of the Companies Act 1862, for an order to rectify the register of the Distillers Company (Limited) by deleting his name as holder of 1750 £10 shares, and to ordain the company to concur with him in executing and filing with the Registrar of Joint-Stock Companies a contract providing, *inter alia*, that the shares to be issued to him should be fully paid-up shares, and to ordain the company, on the contract being so executed and filed, to issue to him 1750 £10 fully paid-up shares, and deliver certificates thereof, and to order notice to be given to the Registrar of Joint-Stock Companies.

The company was formed in 1877 for the purpose of taking-over six distilleries, with their premises, business, and plant. The owners of these distilleries were the promoters of, and vendors of their premises to, the company. By the preliminary agreements between them, dated in 1876 and 1877, it was agreed that the distilleries should be made over to the company as at 1st May 1877, the heritable property to be paid for in debentures of the company, and the moveable property by the issue to the respective owners of shares of the company to be held as paid up to the extent of the valued amount of such property. The proportions in which the owners of the six distilleries should take up the 12,000 shares of £50 each which it was proposed to issue were also fixed, the petitioner's firm being allotted 2540, and no shares were issued to the public.

Agreements, all dated 18th April 1877, were entered into between the owners of each distillery and a law-agent contracting on behalf of the company, providing for the ascertainment by arbitration of the value of each distillery, including its heritable and moveable property, &c., and also for the mode in which the consideration money so ascertained should be paid by the company to the respective vendors. It was provided that the consideration money for the moveable property should be paid by allotment to the vendors, or as they should direct, of (in the case of the petitioner's firm) 2540 shares, and that they should get credit on the said allotted shares up to the value of the moveable property. It was specially provided by the said agreement that “at or before the issue

of the shares to be allotted as part consideration for the sale hereby agreed to be made, a written contract to the like effect with this agreement, with such modifications as may be considered necessary or expedient, shall be filed with the Registrar of Joint-Stock Companies so far as required by section 25 of the Companies Act 1867."

The company was registered on 24th April 1877, and entered into possession on 1st May thereafter. The valuations made under arbitration were not completed till 10th June 1878. In the meantime, in order to make up the register of members, the law-agent of the company on 6th August 1877, after communication with the respective firms, and ascertaining in whose names they wished their shares placed, entered the names of the allottees or their nominees as holders of the shares without having previously got a contract executed and filed in terms of the 25th section of the Companies Act 1867.

After the valuation of the petitioner's firm's distillery was completed (June 1878), the amount of the moveable property was credited to the shares, and the balance of the nominal amount of the shares was paid up in cash. The petitioner was in ignorance that a contract had not been filed in terms of the Act of 1867, the carrying out of the transaction having been left to the law-agent. There was afterwards a conversion from £50 shares into £10 shares, and the amount of the petitioner's allotment came to be represented by 1750 £10 shares, for which he held a certificate in which they were described as "fully paid."

Having been advised that the mode in which the shares had been issued without a contract being executed and filed in terms of the statute was irregular, and that liability still attached for the part of the shares not paid in cash, the petitioner presented this petition, the prayer of which is set forth in the first paragraph of this report.

The petition was served on the company and on the petitioner's former partner. Answers were put in for the company admitting the petitioner's statements, explaining that in the circumstances it had been thought unnecessary to file a contract under the statute, but expressing a willingness, on the present entry being deleted from the register, to enter into and file a contract as desired.

On the case being called on the Summar Roll the petitioner moved that the prayer of the petition be granted, or that an inquiry should be made into the facts alleged—*New Zealand Kapanga Company*, L.R., 18 Eq. 17; *Denton Colliery Company*, L.R., 18 Eq. 16; see also *Droitwich Salt Company*, 43 L.J., Ch. 581; *Hartley's case*, L.R., 10 Ch. 157.

The Court being satisfied with the admission of the facts by the company, and the *bona fides* of the application, granted the prayer of the petition without further inquiry.

Counsel for Petitioner—W. Mackintosh—Jameson. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Respondents—J. P. B. Robertson—Lorimer. Agents—Fraser, Stodart, & Ballingall, W.S.

Thursday, March 12.

SECOND DIVISION.

COUNTY ROAD TRUSTEES OF SUTHERLAND v. LAWSON.

Road—Assessment—Roads and Bridges (Scotland) Act 1878 (41 and 42 Vict. c. 51), secs. 32 and 37—6 and 7 Vict. c. 81 (Sutherland Road Act 1843)—Liability to Maintain Portion of Road Locally Situated in Another County.

The 32d section of the Roads and Bridges Act 1878 provides that the whole roads "within each county respectively shall form one general trust," and that the roads within each county shall be transferred to the trustees under the Act. Prior to the passing of the Act the road trustees of a county had maintained a piece of road passing through an interjected piece of another county, but forming part of their system of roads.

Held that they were entitled to continue to do so after the Act came into force.

Prior to the passing of the Roads and Bridges Act 1878, the Sutherland roads were administered under the Sutherland Road Act 1843 (6 and 7 Vict. cap. 81). Among the roads under the management of the trustees appointed by that Act was a road numbered 41 in Schedule E of that Act, which is headed "Roads to be repaired, improved, and maintained under this Act." The description of that road, No. 41 in the schedule, was as follows:—"The Lairg and Loch Inver road, leading from Ferry near Lairg, by the Gruids, Rose Hall, to the Bridge of Caslie, through the county of Ross, to Altnagalagach, thence by Inchnadamph to Loch Inver." . . . The preamble of that Act, after reciting the Act 1 and 2 Geo. IV. cap. 23, set forth that a certain portion of the road from Shin Bridge to Assynt, both in the county of Sutherland, situated in a projecting part of the county of Ross, had been made and maintained by the trustees acting under the recited Act; and that it was expedient that the same should be improved, repaired, and maintained by the trustees under the said Act of 1843, and that the powers of the Act should be extended to that portion of the said county of Ross which so projected into the county of Sutherland as aforesaid. Section 27 of the Act of 1843 enacts—"That this Act shall be put in execution for the purpose of more effectually repairing, improving, and maintaining the several roads already made within the said county of Sutherland, . . . and also for repairing, improving, and maintaining the aforesaid portion of road in the said county of Ross, and the bridges thereon (all which roads are specified in the Schedule E hereunto annexed)" . . .

Under the powers of the Act 1843 the Road Trustees maintained the portion of the said road No. 41 passing through the projecting piece of the county of Ross. It formed part of the road system of Sutherland, and did not connect with or form part of the road system of Ross.

The Roads and Bridges Act 1878 was adopted in the county of Sutherland at a meeting of the Sutherland Road Trustees on 30th April 1879, and came into operation on the 1st of