of the owners appearing on the register, and, as he says, "outside the sequestration." In making this assumption he was in error. But his state of knowledge cannot in my opinion affect the question of his liability. He knew that the general business—an extensive one—was being carried on and he gave authority for this. Part of that business was the sailing of the "Jeanie Hope," and apparently another vessel which belonged to the firm, and the entering into the necessary charter-parties and granting of bills of lading. This general authority was quite sufficient to warrant Mr Hope or Mr Smith continuing to sail the vessels as before, and to warrant Mr Smith in entering into the charter-party for the trustee's behoof, and to authorise the granting of bills of lading binding on him. The general authority given by the trustee conferred power on Mr Hope or Mr Smith to continue sailing the vessel as before, and it can be no answer to the pursuer's claim that the trustee gave this authority on imperfect inquiry or information as to the actings or course of dealings which this authority would cover. When to this is added the circumstance that every receipt and disbursement connected with the vessel and her constant employment was regularly entered in the books kept by Mr Smith or under his supervision for the defender down to 23d October, when the charter-party was entered into, and that the receipts and disbursements connected with the very voyage in question were also so entered, I do not see that it is possible to doubt that the defender was the party who became bound by contract with the pursuers for the safe carriage of the cargo. If the defender was not the contracting party as principal, I confess I do not know who was. It was not Mr Berry, for, so far as the evidence shews, he did not in any way interfere to take or control the management of the vessel after getting the conveyance which he held in security of his advance. It was not Mr Smith, for he professedly acted as a clerk or agent only, and it was not Mr Hope, for he had neither title nor authority to sail the ship on his own account, but was only the defender's agent to continue to carry on the business on the defender's account, under the expectation that he or his firm might re-acquire it, which they never did. It could then only be the defender, for behoof of the sequestrated estate, by whom the vessel was sailed, and to the estate accordingly the profit or loss of the trading must enure, as that would appear in books kept in relation to the continuing business, which books must be regarded as simply the books of the defender.

On these grounds I find myself unable to agree with the Lord Ordinary. I am of opinion that his Lordship's judgment should be recalled and decree granted against the defender, as trustee on the sequestrated estates of William Hope & Sons, for the amount sued for. I think the defender is liable for that sum as having been the party who contracted, through his agents or servants, to carry the pursuers' cargo safely to its destination.

The Lord President, Lord Mure, and Lord Adam concurred.

The Court pronounced this interlocutor:—

"Adhere to the first and second findings of the Lord Ordinary: *Quoad ultra* recal the said interlocutor: Find that when the said damage was sustained by the pursuers as owners of the said cargo the vessel was under the control of the defender as trustee on the sequestrated estates of John William Hope, merchant in Leith, and of William Hope & Sons, merchants there, and was sailed by the defender for behoof of the sequestrated estates, and that the contract of affreightment under which the cargo was carried was entered into on behalf of the defender and the sequestrated estates: Therefore repel the defences, decern against the defender as trustee of William Hope & Sons for payment of £602, 19s. 2d.: Find the pursuers entitled to additional expenses," &c. [*The difference between* £558, 15*s.* 11*d.*, *the amount of damage as stated in the Lord Ordinary's interlocutor, and the sum above decerned for*, £602, 19*s.* 2*d.*, *was composed of interest*].

Counsel for Pursuers (Reclaimers)—Pearson—Goudy. Agents—J. & J. Ross, W.S.

Counsel for Defenders (Respondents)—Mackintosh—Dickson. Agents—Irons, Roberts, & Lewis, S.S.C.

Saturday, January 16.

FIRST DIVISION.

[Sheriff of the Lothians.

CASEY AND OTHERS *v.* SINCLAIR & SONS.

Reparation—Master and Servant—Relevancy.

A workman in the employment of contractors who were making a sewer passing under a railway, was, while crossing the line, killed by a train. His widow and children sued the company for damages, and alleged that at the time he could not see the approach of the train. The Court *ordered* the pursuers to specify the cause of his being unable to see the train.

This was an action of damages at common law, and also under the Employers Liability Act 1880, brought in the Sheriff Court at Edinburgh at the instance of the widow and children of Thomas Casey, labourer, who had been killed while in the employment of Peter Sinclair & Sons, builders, Caledonian Cresent, Edinburgh.

In and prior to the month of May 1885 the deceased was in the employment of the defenders as a labourer. At that time the defenders had a contract for the construction of a sewer about 500 yards in length, and which had to pass under the North British Railway at a point a short distance west of the Haymarket Station. At the point the drain crossed, the line is on an embankment.

The pursuers averred—"(Cond. 2) . . . The defenders had at the said operations foremen and others entrusted with the superintendence thereof. To the orders and directions of those foremen and others the said Michael Casey was bound to conform. (Cond. 3) . . . In connection with the said contract the defenders or their said foremen ordered and directed that the operations should be carried on simultaneously at both sides of the main line of said railway, and that the workmen

should cross over it to and from and in the course of their work, and that the workmen's tools and other material used in connection with the work should be conveyed over the line. On or about the 16th day of May 1885 the said Michael Casey, in the discharge of his duty to the defenders, and in obedience to orders or directions which he received from one of the defenders' said foremen or other superintendents, was crossing the said line of railway when he was suddenly knocked down and run over and instantly killed by a train which had come swiftly to the spot where the accident happened. At the same time there was a train coming in the opposite direction."

The answer to Cond. 3 contained the following statement—At the time Casey did cross the railway—9·50 in the morning—it was daylight, and the train that killed him, being the train for Queensferry, was due, and had stopped at Haymarket Station, where it could be seen from where the men were working. He could see and ought to have seen the train before crossing. From where he was he could see the train all the way from the Haymarket Station."

The pursuers averred—"(Cond. 4) . . . The defenders or their said foremen or superintendents culpably and recklessly permitted and ordered and directed the said Michael Casey to carry on his work by crossing the railway line. . . . The said Michael Casey could not see the train which ran over him approaching, and thereby he could not have himself ascertained at the time, and before he was knocked down, whether the line was clear when he endeavoured to cross."

The defenders pleaded that the statements of the pursuers were not relevant.

The Sheriff-Substitute (RUTHERFURD) on 11th Dec. 1885 repelled this plea and allowed a proof.

"*Note.*—It is not without considerable hesitation that the Sheriff-Substitute has allowed a proof in this case. On the part of the defenders it was maintained that the pursuers' averments are irrelevant, inasmuch as they do not negative or exclude the possibility of the deceased having met his death through his own negligence. The pursuers allege (Cond. 2) that the deceased was killed while crossing the North British Railway at a point where the line runs upon a raised embankment, and it was argued that he must have been in a position from which he could have seen any approaching train, and as the danger was known and obvious he ought not to have attempted to cross the line until he was certain that the way was clear. The pursuers, however, allege (Cond. 4) 'that the deceased could not see the train which ran over him approaching, and thereby he could not have himself ascertained at the time, and before he was knocked down, whether the line was clear when he endeavoured to cross.' Now, the pursuers do not state what prevented the deceased from seeing the approaching train by which he was killed; but they aver at the end of article 3 of the condescendence that at the same time there was a train coming in the opposite direction, and it is possible that while the attention of the deceased was attracted by the one train he was run over by the other without contributory negligence on his part. If that were so, and if, as the pursuers allege, the deceased was exposed to unnecessary risk not incidental to his employment, and against which the defenders took no steps to protect him, the Sheriff-Substitute is not prepared to say that they would not be liable in damages, and he has therefore allowed a proof."

The defenders appealed to the Court of Session under section 40 of the Judicature Act.

The appellants argued that the pursuers' statements were irrelevant. All the general elements of danger in connection with the work in question were known to the deceased; this particular element of danger, viz., the approaching train, should have been known. The pursuers should specify why the deceased could not see the train approaching—*M'Gee* v. *Eglinton Iron Company*, June 9, 1883, 10 R. 955; *Waterson* v. *Murray*, July 1, 1884, 11 R. 1036.

The Court ordered the pursuers to specify the reason why the deceased could not see the approaching train.

At the next calling the pursuers amended the record by setting forth that the cause of deceased's failure to see the train was that smoke at the time obscured his view, and the case was then allowed to proceed.

Counsel for Pursuers—Rhind — W. Campbell. Agent—D. Howard Smith, Solicitor.

Counsel for Defenders — R. Johnstone — Kennedy. Agent—John Macpherson, W.S

Tuesday, January 19.

SECOND DIVISION.

[Sheriff of the Lothians.

BYERS *v.* LINDSAY.

Bills of Exchange—Proof of "No Value"—Bills of Exchange Act 1882 (45 *and* 46 *Vict. c.* 61), *sec.* 30—*Presumption of Value in Hands of Onerous Holder.*

Circumstances in which *held* that the acceptor of a bill which had been dishonoured had failed in an action at the instance of the holder to displace the presumption raised by the 30th section of the Bills of Exchange Act 1882, that "every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value."

Peter Byers, a farmer at Longford, West Calder, raised this action for payment of £85, which he alleged was due to him by David Lindsay, residing at Whitburn, on a bill drawn by William Alexander, cattle dealer, and accepted by the defender, and of which he alleged he was onerous indorsee and holder, and which had been dishonoured by the defender. The defence was —(1) that the pursuer was not an onerous holder of the bill; (2) that the bill was not granted or indorsed for value, and that the pursuer was informed of this both by the drawer (Alexander) and the defender, the acceptor, before he got possession of it.

The Sheriff-Substitute (MELVILLE) allowed the defender a proof of his averments.

The proof was largely directed to the question whether the defender, as he deponed, had accepted the bill for Alexander's accommodation, and while the evidence was somewhat conflicting, it appeared that the pursuer and Alexander had had many previous bill transactions; that the latter