

REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL DEALING WITH QUESTIONS OF INTEREST IN SCOTS LAW. *(Continued from page 588 ante).*

HOUSE OF LORDS.

Tuesday, March 20.

(Before the Lord Chancellor (Loreburn),
 Lords Macnaghten, Davey, Robertson,
 and Atkinson.)

**WILLIAMS AND OTHERS v. NORTH'S
 NAVIGATION COLLIERIES, LIMITED.**

*Master and Servant—Wages—Deductions
 —Deduction of Fine Due by Workman—
 Truck Act 1831 (1 and 2 Will. IV, c. 37),
 sec. 3.*

Held that under the Truck Act 1831 an employer was not entitled to deduct from a workman's wages the amount of a fine due by the workman to the master under an order of a court of summary jurisdiction. The only deductions he can make are those expressly sanctioned by the statute (see sections 23 and 24).

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., ROMER and MATHEW, L.J.J.), who had reversed a decision of BUCKNILL, J.

The facts of the case are narrated in the judgments of their Lordships *infra*.

Section 3 of the Truck Act 1831 provides as follows—"And be it further enacted that the entire amount of the wages earned by or payable to any artificer in any of the trades hereinafter enumerated, in respect of any labour by him done in any such trade, shall be actually paid to such artificer in the current coin of the realm and not otherwise, and every payment made to any such artificer by his employer, of or in respect of any such wages, by the delivering to him of goods or otherwise than in the current coin aforesaid except as hereinafter mentioned, shall be and is hereby declared illegal, null and void."

At delivering judgment—

LORD CHANCELLOR (LOREBURN)—I do not propose to enter upon a consideration of the authorities that were cited to us in the course of argument or dealt with in the Court of Appeal, as I understand that Lord Davey intends to refer to them, but I have come to the conclusion that the judgment appealed from ought to be reversed and a

declaration given in the sense asked for by the plaintiffs. The facts lie in narrowest compass. Certain workmen in the service of the defendant company were entitled to wages payable on the 30th January 1904. A fortnight earlier each of them had been ordered by magistrates in petty sessions to pay a fine to the defendant company, of which 10s. was due on the 30th January. On that date the defendant company made out an account with each of them, in which, apart from other items which were not complained of, the sum of 10s. for fines was deducted from the wages and the balance alone was paid. In the case of the plaintiff Jacob Williams, whose case is typical of the rest, he had earned £3, 13s. 2d. and received £3, 2s.; the difference consisted of an agreed deduction of 1s. 2d. for doctor and the 10s. fine which was not agreed. Upon this the workman commenced an action for damages and an injunction and a declaration that the deduction of 10s. was illegal. It was agreed in the Court of Appeal that the relief sought should be limited to a declaration, and on that footing the case came here. The question is whether the employers when they paid the wages on the 30th January were in law bound to pay in coin the total sum due for wages, or were entitled in law to deduct 10s. due from the workmen to the employers and pay merely the balance in coin. This turns upon the true construction of sec. 3 of the Truck Act 1831. Now I find in that section an explicit enactment that "the entire amount of the wages earned by or payable to a workman" shall be "actually paid" to him in the current coin of this realm, "and not otherwise." The section does not say when it is to be paid, for the common law will settle that as soon as the agreement of service is ascertained. The section does say that when paid it shall be paid in coin of the realm and not otherwise. I cannot think that this means that it shall be paid as to part in coin and as to the remainder in account. Our attention was directed in argument to the word "payable"; we were invited to hold that the obligation to pay in coin applied only to the entire amount of wages payable after deducting cross claims. In this case it was argued that only £3, 2s. was payable, because on striking an account that was the balance due. A reference to sec. 23 shows to my mind that this would be a wrong interpretation even

if the language of the Act admitted of it. Sec. 23 provides with elaborate care and under strict safeguards the cases in which debts due from the workman may be deducted from the wages due to the workman when the employer is paying the wages. These provisions would be wholly unnecessary if an employer were already authorised by sec. 3 to deduct anything that the workman owed him and to pay in coin merely the balance. The word "payable" may have been inserted because otherwise the law could have been evaded by making wages payable in advance before they had been earned. Or it may have been inserted because there might be deductions authorised by sec. 23 which would not diminish the wages earned but would diminish the sum payable for wages. However that may be, it appears to me that an obligation rests upon the employer under the Truck Act 1831, sec. 3, to pay in coin (for we are not concerned with bank notes in this case) all the money payable as wages, and that in ascertaining how much is payable as wages he can subtract nothing except the deductions expressly sanctioned by sec. 23. The deduction of 10s. for fines was therefore in the present case illegal. Mr Lush argued that this construction would be very anomalous. He urged that if the employer did not pay the wages at all and were sued, he would be entitled then to set off in the action anything due to him except such sums as fall within the prohibition of section 4. It would be strange, said Mr Lush, if an employer could by breaking his contract and forcing litigation obtain an advantage denied to him if he fulfilled his contract. No doubt this would be an anomaly, as are the Truck Acts themselves, and some other Acts which interfere in a limited degree with freedom of contract. It is necessary to distinguish between the clauses of the Act relating to set-off in an action and those relating to stoppage or deduction when the wages are paid. Possibly the Legislature thought that a court might be trusted to strike a balance in the rare cases where the dispute came into court, but that the vast multitude of weekly or other payments which never come near a court ought to be regulated by a simple and wholesome rule, namely, that they should be paid wholly in coin save for certain carefully specified exceptions. This is, however, a mere conjecture. It is enough to say that, assuming that the Act of Parliament has so provided, the fact that the provision is anomalous does not permit us to disregard the plain meaning of the words used. Accordingly I move your Lordships to reverse the judgment of the Court of Appeal and to enter judgment for the appellants, with a declaration in the sense prayed.

LORD MACNAGHTEN—I have had an opportunity of reading the judgment which has just been delivered by the Lord Chancellor, and I entirely agree with it.

LORD DAVEY—I agree with the judgment of the Lord Chancellor, and with the reasons which he has given for his judgment. The

learned Judges in the Court of Appeal rested their decision mainly on the ground that it was neither an offence nor a violation of the statute to give effect to a legal right of set-off. Set-off in an action I understand. It is a right given by statute to a man who is sued for a sum of money to defend himself by claiming a debt due to himself from the plaintiff in satisfaction or reduction of the debt for which he is sued. But set-off outside the Court means nothing more than a claim of deduction and retention, and the question comes to be whether the deduction of a cross debt which might be the subject of a set-off in an action is a legitimate deduction, or whether the express enactment that the entire amount of the wages shall be actually paid in current coin can be so qualified. I agree with my noble and learned friend that there can be but one answer to that question. By section 23 certain deductions are permitted to be made, or, to use the language of the marginal note, "particular exceptions to the generality of the law" are made under strictly defined conditions, and no other deductions or particular exceptions are, in my opinion, authorised. The learned counsel for the respondents argued that the employer was not bound by the Act to pay in full, and non-payment was not an offence under the Act. Be it so; but this was not a case of non-payment or repudiation by the master of his debt, but of retention of a part of the workman's admitted wages in payment of a debt to himself, and was intended to be payment or satisfaction *pro tanto* of the workman's wages. Bowen, L.J., stated the exact point in *Hewlett v. Allen*, [1894] A.C. 333, [1892] 2 Q.B. 662, when, commenting on the third section, he said that payment in account will not do, and that the employer cannot for the purpose of compliance with the statute be both payer and payee, while, on the other hand, he held that set-off in an action was only prohibited in the cases mentioned in sec. 5. It is sufficient to look at the account which was handed to one of the appellants to see that this is nothing more than payment in account, which I agree with the Lord Justice will not do. I will only add that I can see very good reasons why the Legislature should not allow a deduction to be made by the employer himself, although it might be the subject of set-off in an action where the amount and propriety of it could be impartially investigated. Mr Lush boldly said that there was a clear and consistent course of authority in favour of the respondents, and that it was too late for this House to revert to the views of the appellants. The exact contrary of this statement appears to me to be nearer the truth. Not a single one of the numerous cases which were cited, in my opinion, supports the argument of the respondents, and a good deal is to be found in the judgments of the learned Judges which is against them. In *Chawner v. Cummings*, L.R. 8 Q.B. 311, the plaintiff was presumed to have contracted upon the usual and well-known terms in

the trade, and certain customary deductions which had been made from his nominal wages were held not to be in the nature of payment at all, but the mode of calculating and ascertaining the actual amount of his wages. *Archer v. James* 2 B. & S. 67, was a similar case, and was decided, in the first instance, on the authority of *Chawner v. Cummings*. In the Exchequer Chamber three Judges held that *Chawner v. Cummings* was wrongly decided, and three other Judges, on the other hand, approved the decision, and held that the deductions in question on the case before them were in the same category, and were an element only in calculating the true amount of the workman's wages. But there is not a word in any of the judgments which supports the contention that where the amount of the wages is ascertained the employer can discharge himself by set-off or payment in account. In *Pillar v. Llynvi Coal and Iron Company*, L.R., 4 C.P. 752, it was only decided that deductions of the character authorised by sec. 23 could not be made unless there was a contract in writing, as required by the section. In *Smith v. Walton*, L.R., 3 C.P.D. 109, the workman having damaged a piece of cloth through negligent workmanship, the employer delivered to him the damaged cloth and deducted from his wages the value placed by the employer on the cloth. The question was raised on an information against the employer for making an illegal payment. The Court reversed the decision of the magistrates, who refused to convict, Lindley, J., saying that, whether there was a payment in goods or a set-off, the respondent had infringed the Act. The decision in *ex parte Cooper*, L.R., 26 Ch.D. 693, has no bearing on the case before the House. *Lamb v. Great Northern Railway Company*, [1891] 2 Q.B. 281, was a decision on the amending Act 1887, but the judgment of Smith, J., contains dicta on the construction of secs. 2, 3, 4, and 23 of the Act of Will. IV which are in the appellants' favour. The judgment of Bowen, L.J., in *Hewlett v. Allen* has already been referred to. That case, however, was decided on the ground that the plaintiff had authorised and directed certain payments to be made by the employer on her behalf, and was confirmed in this House on the same ground. The writ in this action claimed payment to each of the appellants of the sum of 10s. deducted by the respondents. In the Court of Appeal, by some arrangement between the parties, the appellants confined their claim to a declaration that such deduction was illegal. Collins, M.R., expressed some doubt whether the Court ought to entertain a suit for a declaration not ancillary to the putting in suit of any legal right. I share that doubt; but as the case has been fully argued and both parties appear to desire the decision of the House upon it, I am not disposed to say more. I am of opinion that the order appealed from should be reversed, and the appellants and respondents having

consented to the hearing in the Court of Appeal being taken as the trial of the action, it be declared that the deduction by the defendants on the 30th January 1904 of the sum of 10s. from the wages due to the appellants respectively from the respondents at that date, was unauthorised and illegal, and it be ordered that the respondents pay to the plaintiffs their costs of this suit, including the costs of the appeal to the Court of Appeal, and also the costs of this appeal.

LORD ROBERTSON—I have had an opportunity of reading the judgment which Lord Atkinson is about to deliver, and I concur in it.

LORD ATKINSON—In this case, in which, by the agreement of the parties arrived at in the Court of Appeal, the relief claimed is limited to a declaration that a sum of 10s. was improperly deducted by the respondents from the wages of certain workmen employed in their service, the question for decision turns upon the construction of sec. 3 of the Truck Act 1831 (1 and 2 Will. IV, c. 37). The case of the appellant Jacob Williams is typical of the others. It is admitted that he had, on the 23rd January 1904, in respect of the fortnight ending on that day, earned wages amounting to £3, 13s. 2d. This sum, according to the practice prevailing in the respondents' colliery, would be payable on the 30th January. On the 22nd December 1903 the appellant had wrongfully absented himself from his duty, and in respect of that misconduct had, on the 16th January 1904, been fined 30s., payable in three instalments of 10s. each, on the 30th January, the 13th February, and the 27th February respectively. The respondents claim a right to deduct the sum of 10s., the instalment payable on the 30th January 1904, from the aforesaid sum of £3, 13s. 2d. The appellant disputes that right. The third section of the Truck Act 1831 runs as follows:—" . . . [Quotes section *v. supra*.] . . ." Some comment was made on the use in this section of the words "or payable to any artificer." I think that these words are introduced for the purpose of meeting a case where some deduction or stoppage authorised by sections 23 and 24 of the statute has in fact been made, and the workman is only entitled to receive the balance of his wages remaining due after such deduction. It has been urged on behalf of the respondents that such a deduction as this does not come within the mischief aimed at by the Truck Acts; that those statutes were merely designed to prevent the payment of workmen's wages in equivalents for cash as distinguished from cash itself. It may well be that this was the main purpose and object of this legislation, and that in this section the Legislature has used language which extends beyond the mischief aimed at and reaches harmless transactions or practices not within its spirit. Still there is no ambiguity in the words used in the section. They are precise and clear, and require that the entire amount of the wages earned

shall be "actually paid to such artificer in the current coin of this realm, and not otherwise." It cannot, I think, be contended that the withholding by the master from the workman of a portion of the wages earned by the latter against his consent is, or could be held to be, a payment by the master to the workman of that very same portion. It is, in fact, the very opposite of payment. It is a refusal to pay, for the not unnatural reason that an equivalent sum is due to the master from the workman. The requirements of the statutes have therefore not been observed in this case. The wages earned have not been paid. The drawback, or stoppage, or deduction, or whatever it may be termed, is not one of those authorised by section 23 or 24, yet it is sought to justify the course taken on this ground, that inasmuch as in any action brought by the workman to recover his wages the master would be entitled to set off the debt due to him in reduction of the workman's claim, it is absurd and anomalous to hold that the master cannot, before action brought, make a deduction in respect of the claim which, after action brought, he can successfully rely upon by way of set-off. No doubt at first sight there would seem to be much force in this argument, but a little reflection will show that there may be good reason even for this anomaly. The whole principle upon which this legislation is based is that the workman requires protection, that if not protected he may be overreached; and it is quite consistent with that principle to hold that in any such action brought by him to recover his wages he may be liable to have the sum found on investigation before the legal tribunal to be due to him by his master diminished by the sum found by the same tribunal on the same occasion to be due by him to his master, and yet at the same time prohibit the master from, as it were, substituting himself for the legal tribunal, investigating his own claim against his workman in his own office and deciding in his own favour. In this particular case, no doubt, the sum which it is sought to deduct is the amount of a judgment debt, and the danger referred to could not arise; but the argument as to the anomaly which I have mentioned dealt with the general scheme and machinery of the statute, and it is in respect of its general application that I consider it open to criticism. The several authorities cited appear to me to support rather than refute the contention of the appellants. They may, I think, be roughly divided into two classes—namely, those cases like *Chauner v. Cummings (ubi sup.)*, in which charges were made by the employer for the use of the instruments by which the workman did his work and earned his wage; and those like *Hewlett v. Allen (ubi sup.)*, in which payments were in effect made by the master out of the wages by the authority of the workman for certain purposes not prohibited by the Truck Acts. In none of those cases was it contended that the master had the right to deduct which is relied upon here. On the contrary, the

effort of the master in each of these cases was to justify the drawback on grounds entirely different from, and inconsistent with, those relied upon in this case. In the first class of cases it was successfully contended that the charges made by the master were not deductions properly so-called from sums due for wages earned, but were sums to be taken into account in ascertaining the amount of wages actually earned; and in the second class of cases the so-called drawbacks or deductions were justified on the ground that these sums in truth and in fact represented portions of the wages earned, paid in current coin of the realm, at the request of the workman, to his duly appointed agent. All the reasoning upon which the several tribunals in the cases cited based their respective decisions would have been unnecessary, and, indeed, beside the point, if the Truck Act had conferred upon the master the right here contended for—namely, the right to deduct from the workman's wages whatever the master could set off in a suit brought by the workman against him to recover those wages. It may well be that the appellant has no merits; that a decision in his favour will enable him to violate his duty with impunity, and evade the payment of his just and legally established liabilities; but if that be so, the fault must lie on that "tutelary shelter," to use the words of Bowen, L.J., which the Legislature has thrown around him, without, possibly, taking sufficient care so to mould and fashion it that it could not be open to abuse. I think that this appeal must be allowed with the declaration in the sense prayed for.

Judgment appealed from reversed.

Counsel for the Appellants—Evans, K.C.—Bailhache—J. Sankey. Agents—Smith, Rundell, & Dods, Solicitors.

Counsel for the Respondents—Eldon Bankes, K.C.—M. Lush, K.C.—A. J. Ashton. Agents—Bell, Brodrick, & Gray, Solicitors.

HOUSE OF LORDS.

Tuesday, May 15.

(Before the Lord Chancellor (Loreburn), Lords Davey, James of Hereford, Robertson, and Atkinson.)

BACK v. DICK, KERR, & COMPANY.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37)—Employment "on or in or about" an "Engineering Work"—Sec. 7, sub-sec. 1.

A firm of contractors who were engaged in substituting electric for horse tramway lines in the streets of a town stored the new rails when unloaded from the railway trucks in