

an action that can be sustained either as an action for payment of a price, or for damages for breach of contract.

Interlocutor finding the action not relevantly laid, and dismissing it accordingly.

Agents for Pursuers—Murdoch, Boyd, & Co., S.S.C.
Agent for Defenders—William Mason, S.S.C.

Tuesday, July 14.

STIELLS v. HOLMES.

Bankrupt—Bill—Law-Agent—Presumption—Writ or Oath. Possession of a bill by an indorsee is *prima facie* evidence of his being creditor for the amount unpaid; and there is no presumption that where the indorsee is the agent of the acceptor he holds the bill as such agent.

This was an appeal against a deliverance of the Sheriff-substitute of Renfrewshire, in the sequestration of Archibald Watson, saddler in Johnstone. Holmes, agent at Johnstone for the Union Bank, had for some years acted as law-agent for the bankrupt. In the sequestration he claimed on six bills. The first of these was drawn by him upon, and accepted by, the bankrupt. The other five bills were drawn by other parties upon, and accepted by, the bankrupt, and had been discounted with the Union Bank, who indorsed them to Holmes. On these five bills there appeared markings of payment to account, and Holmes now claimed the balance due after these partial payments. The trustee admitted the claim. J. & W. Stiell, creditors, appealed, alleging that Holmes and the bankrupt had various monetary transactions, but no account was ever adjusted between them, and that on a just accounting it would be found that no such sum as that claimed by Holmes was really due to him; and that the bills in question came into Holmes' possession solely as agent for the Union Bank, and did not instruct any advances on the bankrupt's account.

The Sheriff-substitute (Cowan) pronounced an interlocutor in which, after certain findings of fact, he found in law that Holmes was holder of the bills; that there was a presumption that they were paid by him as law-agent of Watson, and that in so doing he was acting in accordance with the practice between him and the bankrupt; that any objection to Holmes' claim could only be established by his writ or oath; and continued the case for the appellant to lodge a minute of reference to the claimant's oath.

J. & W. Stiell appealed.

MACLEAN for appellants.

BALFOUR, for respondent, was not called on.

At advising—

LORD PRESIDENT—I am satisfied as to the result arrived at by the Sheriff-substitute, although I am not quite sure of the means by which he has arrived at it. The claim by Mr Holmes is laid on six bills; and, as regards the first, that for £416, 15s., there is no question. As regards the others, he claims only certain balances due on these bills, because it appears that various sums had been paid to account by the bankrupt. The history of the matter seems to have been this:—That bills were drawn by Muirhead and others on Watson, the bankrupt, and accepted by him. The drawers discounted these bills with the Union Bank. The Union Bank indorsed the bills to "John Holmes, Esq., or order, for value in account with the Union

Bank of Scotland." It is said that this is the way in which the Bank usually indorse bills which they send to their agents for collection, and that Mr Holmes is agent for the Bank at Johnstone. There is nothing in this, however, to limit the title of Mr Holmes as indorsee. His legal title is absolute, and is conceived in the usual terms; and we know nothing about the arrangement he may have with the Bank as regards bills. All that we see is, that by the indorsation he, *qua* indorsee, becomes a creditor in the bills. To take the case of one, which illustrates them all: Mr Holmes marks three payments on the back of a bill for £187 odds, but this still leaves a balance of some £60, which, with interest, brings out the exact sum he claims on that bill. The only evidence of any payment having been made at all is the evidence afforded by these markings on the back made by the holder. But possession of a bill by Mr Holmes as indorsee is *prima facie* evidence of his being the creditor for the balance remaining unpaid; and the only answer made to this is, that Mr Holmes held the joint character of agent for the Bank and law-agent for Watson; and there is said to be a presumption of law that a person holding a bill in these circumstances holds for behoof of the debtor in the bill, the acceptor, and as his agent. I know of no law for that presumption, and none of the cases we were referred to countenance such a presumption. The true state of the matter is that which lies at the bottom of his claim, viz., that to the extent to which it is admitted that these bills have not been paid, the claim of Mr Holmes as indorsee is a good claim for the balance unpaid.

The other Judges concurred—LORD ARDMILLAN remarking, that it would be a most serious thing for law-agents if, as contended for the appellants, there was a legal presumption that all sums disbursed by them on account of clients were furnished by the clients, and that such a presumption could only be overcome by the client's writ or oath.

The Court allowed the appellants to lodge a minute of reference to oath, and found them liable in expenses.

Agent for Appellants—John Galletty, S.S.C.

Agent for Respondent—A. Kirk Mackie, S.S.C.

Tuesday, July 14.

LONDON STEAM COLLIER AND COAL COMPANY v. WINGATE AND CO.

Expenses—Witnesses—Counsel. Where witnesses had been precognosed in England, held that same fees must be charged as if the recognitions had been conducted in Scotland, and the higher fees usual in England *disallowed*. Expenses of precognosing and bringing from England witnesses who were not examined in the cause *disallowed*. Expense of employing English counsel to attend on examination of havers in London *disallowed*. *Question*: Whether two senior and one junior, or one senior and two junior counsel should have been employed? referred to the judge who tried the cause. *Question*—Whether the expense of witnesses coming from England should be calculated on the footing that they travel by day only?

The pursuer objected to the Auditor's findings in regard to the following items:—(1) As to