from the company, which had advanced nothing. Interest, of course, was running upon this £4000; so that it would seem to have been contemplated that the other half of the price, the £4000, should be payable in instalments of six and twelve months. Whether that would of itself have been such a variance between the offer to the company and the sale to him is a question. But the answer to this objection is that when they came ultimately to adjust the bargain between Barclay and Gilmour, as is proved by the draft of the agreement, the assignation which was made out on Gilmour's instructions departs altogether from that provision about the instalments, and makes it an assignment for a price paid. That, I think, it was quite competent for the two parties to agree upon, and I think it proved that they did agree upon it, and that therefore there can be no challenge now of the transaction on any such ground.

Therefore, on these two matters I am of opinion that the action must fail. It is of no moment in this inquiry at what precise time this became a concluded and absolute and specific obligation to assign. I do not see that the company have any interest in that matter. It is sufficient that James Barclay, the cedent, was validly and effectually a partner of the concern; and secondly, that he validly and effectually obtained the right to assign by an offer which he made to the company at the price of £8000. If those two things are proved this action has failed, for it is an action to set aside the agreement as being contrary to the provisions of the contract of copartnery.

Those are, shortly, the views that I take upon those matters that were argued to us, and I do not think it necessary to go into any part of the proof, because I think the ground that I have suggested really stands apart from the specific facts.

The third objection, which was not pleaded to the Lord Ordinary, and which is not raised by the record, is, that the contract of copartnery does not warrant the splitting up of shares or an assignation to more than one assignee—in other words, that while there is power to assign the share and interest of a partner there is no power to increase the number of the partners of the company by assigning to a variety of individuals. Not only is this not pleaded on the record, but it is not covered by the conclusions of the summons. This copartnery, which was not a joint-stock company, but a copartnery of certain persons with certain shares in the capital of the concern, did admit a certain power of assignment by a partner of his share and interest. It does not necessarily follow, however, that he can assign a part of his share and interest and retain the rest, nor does it necessarily follow that he can assign the share and interest in portions. And, what is perhaps more material, it is impossible to understand from the facts in this case whether the share which it has been attempted to assign is a *pro indiviso* share or a separate share. It is said, and said quite truly, that the general purpose of the contract is that the votes of the partners are to be according to capital; that therefore the numbers do not signify, seeing that a larger number of partners had after all no more than the vote for the amount of capital they represented. I do not wish to give any opinion upon how far that is absolutely the construction of this contract, but it does not necessarily follow that any number of persons may have a seat at the board of the company, or may have a voice in its administration, even under any rules. I have thought it right to indicate that there may be thus a question of very considerable importance behind the matters that we have now been discussing. But no such question is raised by this record, because the object of the action is to set aside the agreement. The agreement to assign to a nominee of Mr Allan Gilmour is quite consistent with an obligation to assign to only one person. I propose that we should adhere to the interlocutor of the Lord Ordinary, reserving this last objection, which arises only when the assignee comes to demand admission to the company and a right to interfere in its concerns. And that probably may also have this advantage, that on the one hand it is manifestly an objection which the parties have it in their own power to meet and obviate if they think fit; and, on the other hand, it will be for the pursuers in this action to consider whether, having failed in their main object, which was manifestly to prevent the influence of a rival manufacturer being felt in their concern, they have any interest in proceeding further.

Lord Benholme—I agree in thinking that the interlocutor of the Lord Ordinary ought to be affirmed, and as the grounds of my opinion have been so fully and, to my mind, so satisfactorily stated by your Lordship, I do not mean to add anything to that expression of opinion.

Lord Neaves—I am in the same situation. I concur in the opinion delivered by your Lordship, and in the grounds of it, and have nothing to add to what has been so distinctly and correctly stated.

The Court pronounced the following interlocutor:—

"The Lords having heard Counsel on the reclaiming-note for the Lonsdale Hematite Iron Coy. and others against Lord Mure's interlocutor of 15th September 1873, Refuse said note, and adhere to the interlocutor complained of, reserving any question as to the obligation of the pursuers to receive and admit as partners of the concern more than one assignee, in respect of the share and interest of a partner; find the pursuers liable in additional expenses, and remit to the Auditor to tax the same and to report."

Counsel for Pursuer—Watson and Moncrieff. Agents—Maconochie & Hare, W.S.

Counsel for Defenders (Gilmour and Others)—Solicitor-General (Clark), Q.C., Asher, and Jameson. Agents—Fyfe, Miller & Fyfe, W.S.

Tuesday, February 3.

SECOND DIVISION.

SPECIAL CASE.—LORD ADVOCATE (ON BEHALF OF THE COMMISSIONERS OF BOARD OF TRADE) AND JOHN GRANT.

Statute 17 *and* 18 *Vict. c.* 104, *part iii.* § 228, *s.* 1. Under 17 and 18 Vict. c. 104, part iii. § 228, s. 1—*Held* that the liability of the owner of a vessel lost at sea terminates with the cure of the seamen disabled in the service of the vessel.

The parties to this case were the Lord Advocate

on behalf of the Board of Trade, and John Grant, ship broker, Leith, owner of the barque Craigellachie of Bo'ness, which was totally wrecked near Cape Horn in June 1872. When the wreck occurred, five British seamen, shipped at Liverpool, viz., James Johnston, chief mate, Robert Alexander, carpenter, John Macfarlane, Peter Fraser, and James Cubbins, were more or less injured. The master and crew were taken off the wreck by the first passing ship on the following day, and landed at Port Stanley, Falkland Islands, where, in presence of George Trois, shipping master at Stanley, the men were discharged by the master in regular form, and their wages paid in full. From 26th June 1872 the five men above mentioned were maintained by the said George Trois, until 1st July 1872, when the said Peter Fraser and James Cubbins were despatched cured to Monte Video. The said James Johnston, Robert Alexander, and John Macfarlane, in consequence of the severe nature of the injuries they had received in manner foresaid, were detained at Port Stanley until 15th August 1872, when they also were despatched cured to Monte Video by the said George Trois. The remainder of the crew were sent in the Government mail ship to Monte Video, where they got employment. No claim was made on the second party, either for their maintenance or passage, they not having been injured in the service of the ship. The said shipping master's account of expenses incurred in providing medical attendance, and subsistence for the said James Johnson, Robert Alexander, and John Macfarlane, from 26th June to 15th August 1872; his account for the subsistence of the said Peter Fraser and James Cubbins, from 26th to 30th June inclusive; the expense of the master's and the said five seamen's passage home to this country, and the sums expended for their subsistence at Monte Video, were paid by the Board of Trade. The whole amounted to the sum of £72, 11s. 2d. The Board of Trade called upon the owner to repay the same, in respect of its being a charge to be defrayed by the owner of the ship, in terms of the Merchant Shipping Act, 1854, 17 and 18 Victoria, cap. 104, part iii. sections 228 and 229. He offered to repay to the Board of Trade the sum of £5, 5s., being 12s. incurred for the master's subsistence at Monte Video, and £4, 13s, being the price of his passage home per steamer "Boyne" as a shipwrecked and destitute master of a British vessel. Repayment of these items by the owner was guaranteed to the Board of Trade by the said master previous to their being expended, conform to guarantee by him dated 17th July 1872. A guarantee not being necessary, he was not requested to, and did not guarantee, repayment to any other disbursements than those above named. The owner further offered repayment to the Board of Trade of the sum of £11, 12s., being the amount which he calculated to have been expended for medical attendance, in order to compromise the claim, but expressly denying liability. The offer of repayment of these items, amounting to £16, 17s., as in full of the account, was not accepted, and was withdrawn; and the owner denied all liability except for the sum of £5, 5s. before mentioned.

The question of law submitted to the Court was:—

"Whether the said sum of £72, 11s. 2d., less the aforesaid sum of £5, 5s., is, or is not, a charge which, under the Merchant Shipping Act, 1854, part III, can be recovered from the party of the second part, as owner of the 'Craigellachie' at the date of her loss?"

At advising—

LORD NEAVES—[*After narrating the facts*]—The claim here is, 1st, for the maintenance and medical attendance of certain seamen up to 1st July 1872 and 15th August 1872; and, 2d, their maintenance until the period of their arrival home.

In my opinion the solution of the question depends on the construction of the 228th section of the Act 17 and 18 Vict., and the first head of that section, which provides that if the master or any seamen or apprentice receives any hurt or injury in the service of the ship to which he belongs, the expense of providing the necessary surgical and medical advice, with attendance and medicines, and of his subsistence until he is cured, or dies, or is brought back to some port in the United Kingdom, if shipped in the United Kingdom, or, if shipped in some British Possession, to some port in such possession, and of his conveyance to such port, and the expense, if any, of his burial, shall be defrayed by the owner of such ship, without any deduction on that account from the wages of such master, seaman, or apprentice.

I think the true construction is, that if in the course of service, and up to the final wreck, any of the persons mentioned meets with an accident, the clause applies; but the liability has a terminus, and continues until the person is either (1) cured, or (2) dies, or (3) is brought back. Until one of these three events happen the liability of the owner continues. In this case the liability begun by the accident terminated by the cure of the men. It is said that the wreck terminated the contract of service, and that injuries sustained in course of the wreck could not incur liability on owner. I think the contract lasts up to the final wreck—up to the latest moment—and that the final wreck alone terminates the contract of service. The consequence is, that the owner is liable for the sums incurred for medical attendance and subsistence until the cure, but no further—and that seems to have been offered and withdrawn.

LORD BENHOLME—I agree with Lord Neaves. It is clear the injuries were received whilst in the service of the ship. There is no doubt of the commencement of the owner's liability, and equally little doubt that the occurrence of either of the three alternatives mentioned in the section terminates that liability.

LORD JUSTICE-CLERK — I concur. It is conceded that if the ship were wrecked and the seamen not injured, no claim would arise against the owners for passage. The injuries occurred previous to the shipwreck, in the service of the vessel. I am clear the Act applies, and as soon as cured they became able-bodied seamen.

Counsel for Parties of the First Part—Solicitor-General (Clark) and Rutherford. Agent—W. J. Sands, W.S.

Counsel for Parties of the Second Part—Readman and Asher. Agents—Boyd, Macdonald & Lowson, S.S.C.