instalments of £500 each, and also to recover from the defenders the rent paid by him.

The Court adhered.

Counsel for Pursuer (Respondent)—Trayner, —D. Gillespie. Agents—Mitchell & Baxter, W.S.

Counsel for Defenders (Reclaimers)—M'Lean —R. V. Campbell. Agents—Lindsay, Paterson, & Co., W.S.

Thursday, May 22.

FIRST DIVISION.

[Sheriff of Lanarkshire.

BORDES *v.* CROSS & SONS.

Shipping Law—Bill of Lading—Endorsee—Lien—Liability of Endorsee for Freight at Common Law.

The endorsee of a bill of lading, who on the face of the endorsement was the agent of the shippers, re-endorsed the bill thus—"Deliver the within cargo at the port of D. to the order of Messrs A. C., they paying freight as per charter-party;" and Messrs A. C. in a letter to the captain describe themselves as "consignees of the cargo." On the other hand, the captain had under the charter-party to surrender his lien on payment of the advance freight; and had signed a receipt for advance freight which was in these terms—"Received of" the original endorsee "per Messrs A. C., for account of the" shippers, &c., adding, however, to this, which was in English, the following in his native language—"Received the sum of £971 on account of freight, as it is agreed according to charter-party.' Further, in the contract of sale between the shippers and Messrs A. C., it was provided *inter alia*—"Buyer to discharge cargo and to pay freight, in accordance with charter-party, by order only, and for account of sellers," and "in case of total loss of above-named vessel this contract is to be thereby void" —*held* that Messrs A. C. were liable for freight to the captain both at common law and under section 1st of 18 and 19 Vict. c. 111, which provided that "every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract in the bill of lading had been made with himself."

This was an action by the owner and master of the French barque 'Chanaral' against Messrs Alexander Cross & Sons, Glasgow, for payment of £2366, 13s. 10d., being the balance of freight alleged to be due by the defenders to the pursuers in the following circumstances:—

By charter-party dated the 26th day of March 1877, entered into at Valparaiso between the pursuer Antoine Dominique Bordes, as owner of the French barque "Chanaral," of the one part, and Messrs C. Von der Heyde & Company, as agents for the Peruvian Guano Company (Limited), of London, of the other part, the barque was chartered to proceed to Iquique and load a cargo of guano and proceed to the United Kingdom therewith. By this charter-party freight was payable subject to the deductions thereinafter stipulated—at the rate of £3, 3s. sterling per ton "if to a port in the United Kingdom;" and by article 23d the freight was further stipulated to be paid as follows:—"£1 per ton on the estimated cargo in cash on arrival at the port of discharge, three months' interest at the rate of 5 per centum per annum being deducted, and the balance, after deduction of all such sums of money as shall become payable to the charterers or their agents under the provisions herein contained, forty-eight hours after the true and right delivery of the whole cargo, in cash, less three months' interest at 5 per centum per annum, or at the option of the company (the charterers) by their acceptances at three months' date, payable in London, and the captain or owners of the ship are to give, in exchange for said acceptances or cash, duplicate receipt in full of all demands whatsoever upon the cargo or otherwise."

On 1st March 1878 the Peruvian Guano Company entered into a contract with the defenders Messrs Cross & Sons, from which the following were extracts:—

"1. Sold for account of the Peruvian Guano Company (Limited) to Messrs Alexander Cross & Sons, of Glasgow, the buyers thereof, the cargo in bulk as it rises of Peruvian Government guano shipped at Punta de Lobos per 'Chanaral' of 728 tons register as per bill of lading dated

to be delivered over ship's side at the port of in accordance with copy of charter-party hereto annexed. Orders at port of call to be given by sellers.

"2. Buyers to discharge cargo and to pay freight in accordance with charter-party by order only and for account of sellers.

"6. Payment of cargo to be made by buyers to sellers by cash in London upon arrival of the vessel at the port of discharge against delivery of the bill of lading and preliminary invoice, at twelve pounds ten shillings (£12, 10s.) per ton upon the estimated total out-turn, which is to be calculated by adding 35% (thirty-five per cent.) to the registered tonnage of the vessel, and subject to retention by buyers of estimated amount of freight payable under clause No. 2 hereof.

"8. In case of total loss of above-named vessel this contract to be thereby void."

The "Chanaral" arrived at Falmouth on the 3d March, and was on the 7th ordered to proceed to Glasgow. On the same day the defenders wrote this letter to the captain—"We are consignees of your ship and cargo, Peruvian Government guano, and will be glad to see you on arrival. Have the goodness to place your ship's business in the hands of Messrs J. & R. Young & Company, shipbrokers, Buchanan Street, Glasgow, on arrival."

The bill of lading of the cargo was received by the defenders endorsed thus:—

"Deliver to the order of William Alexander Rau, agent of the consignees for the United Kingdom.

"*For* THE PERUVIAN GUANO COMPANY (LIMITED),
"A. HATLY, *Chairman.*
"A. MARRAT, *Secretary.*

"*London*, 16*th March* 1878.

"Deliver the within cargo at the port of Dundee to the order of Messrs Alexander Cross & Sons, of Glasgow, they paying freight as per charter-party.

"W. A. RAU,

"*Agent of Consignees for the United Kingdom.*

"*London*, 16*th March* 1878."

On the 18th March the delivery of the cargo was completed, and on that day the captain signed the following receipt—"Received of Mr W. A. Rau, per Messrs Alexander Cross & Sons, for account of the 'Peruvian Guano Company (Limited),' the sum of £971, being advance freight stipulated in charter-party" (see *supra*). Then followed an account—the whole in English—but immediately above his signature the captain wrote these words in French—"Received the sum of £971 on account of the freight, as it is agreed according to charter-party."

The defenders refused to pay the balance of the freight, pleading *inter alia*—"The defenders having acted simply on behalf of the Peruvian Guano Company in taking delivery of the goods are not personally liable for freight."

The Sheriff-Substitute (LEES) found for the pursuers. He proceeded on the common law, but mainly on section 1st of the Bills of Lading Act (18 and 19 Vict. c. 111), which on the preamble that "by the custom of merchants a bill of lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but, notwithstanding, all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such right should pass with the property," provided that "every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract in the bill of lading had been made with himself."

The defenders appealed to the Court of Session, and argued—(1) The appellants were not liable under the Bills of Lading Act. The Act spoke of "the property passing upon, or by reason of, such endorsement." Now endorsement was of itself proof of nothing. It might be to an agent, or for advance as a security, or it was not necessarily for value to a purchaser. Whether the endorsement passed the property depended upon the intention with which it was signed. Now what were the circumstances here? First, there was the letter of the appellants to the captain, in which they describe themselves as "consignees." That, it would probably be contended, was adverse to the appellants, because they thus assumed the position of owners. But when the dates were examined the result was the other way. For if they were already owners on the 7th March, the day this letter was written, they could not become owners on the 16th, when the endorsement to them was executed; if, on the other hand, "consignees" did not mean owners, then it must mean that they were agents for the Peruvian Company. And that this was the true view was plain from the contract between the appellants and the company, for in it there was the stipulation regarding delivery, which was unnecessary if the property passed by endorsement. There was the stipulation—"Buyers to discharge cargo and pay freight in accordance with charter-party, by order only, and for account of sellers." That meant agency if it meant anything. Lastly, there was the article—"In case of total loss of above-named vessel, this contract to be thereby void." That is to say, if the goods perished, they perished to the company, and that could only be in one capacity—*res perit domino*. In short, while it was intended that this guano should ultimately become the property of the appellants, the sale was suspended, and the appellants received the cargo, not as purchasers, but as agents for the company. When the endorsement was signed they were as yet agents, and had not become owners; consequently the property "could not pass upon or by reason of such endorsement." The statute therefore did not apply. Nor (2) were the appellants liable at common law on the ground of an implied contract with the captain. *Cock* v. *Taylor*, *infra*, mainly proceeded on this—that the captain could not be held to have given up his lien except in return for an undertaking to pay freight—but under the present charter-party the captain was bound to surrender his lien. And then he had signed the receipt for advance freight, which expressly recognised that Messrs Cross were agents only. The Sheriff-Substitute was therefore wrong on both his grounds of judgment.

Authorities—*Cock* v. *Taylor*, 1811, 13 East. 399; *Black* v. *Bakers Incorporation of Glasgow*, 13th Dec. 1869, 6 Macph. 136; *Walker* v. *Langdale's Chemical Manure Company*, 16th July 1873, 11 Macph. 906.

Argued for the respondents—There was no doubt that the statute applied. The cargo had on the reasonable interpretation of the contract been sold to the defenders, and the endorsement on the bill of lading completed the transfer. On the common law it was perhaps not so clear, but still the case was within *Cock* v. *East*, *supra*. The true receipt to which the captain had signed his name were the words he himself had written in French, and English he did not understand.

At advising—

LORD PRESIDENT—This is an action at the instance of the owners and master of the French barque "Chanaral" concluding for payment of the freight of a cargo of guano carried by that vessel from Peru to a port of the United Kingdom, and the action is directed against Messrs Cross & Sons of Glasgow as the parties who received delivery of the cargo in the character of endorsees of the bill of lading of the cargo.

Now, the only defence, I apprehend, which we have to consider is that which is stated in the third plea-in-law of the defenders—"Having acted simply on behalf of the Peruvian Guano Company in taking delivery of the goods, they are not personally liable for freight." In other words, they say that in taking delivery of this cargo they acted entirely as agents for the consignees under the bill of lading, and that the endorsement of the bill of lading by them was not one having the effect of passing the property in the cargo, but was merely in legal effect a mandate to them to receive delivery. It is manifest that this is the only defence that could be maintained in the circumstances, because if the defenders were proper endorsees of the bill of lading—that is to say, if the property in the cargo passed by reason of that endorsement—then the Statute 18 and 19

Vict. c. 111, necessarily applies to the case, and all the rights and liabilities under the contract pass with the endorsement, just as must as property in the cargo does; from which it follows that the endorsee would, among other liabilities, be liable to the ship for freight. I do not think any question has been raised on the construction of the statute. It appears to me that the parties are quite at one as to its meaning; and I do not think there is any ambiguity. If these defenders were endorsees of this bill of lading as proprietors of the cargo, or as thereby made proprietors of the cargo, then it appears to me that the statute applies. On the other hand, if the endorsement was made merely for the purpose of constituting an agent, or in other words was a mandate and nothing else, then the statute does not apply.

Now, in considering that question on the evidence before us, it is no doubt indispensable to take into view in the first place the original contract of sale made between the Peruvian Guano Company and the defenders. The nature of the contract generally is this, that the Peruvian Guano Company undertake to provide a cargo to be shipped by this vessel, and that it shall be carried to this country and delivered over the ship's side at a port which is to be named by the buyers. It is provided by the 5th article of the contract that the price shall be paid according to a certain scale of prices, £12, 10s. per ton being the price of ground guano as it turns out upon delivery; and there is a corresponding reduction of price for every ton of guano that is of inferior quality in point of condition. Then follows the head—"Payment of cargo to be made by buyers to sellers by cash in London upon the arrival of the vessel at the port of discharge against delivery of the bill of lading and preliminary invoice, at £12, 10s. per ton upon the estimated total out-turn, which is to be calculated by adding 35 per cent. to the registered tonnage of the vessel, and subject to retention by buyers of estimated amount of freight under clause No. 2 hereof."

Now, there are several important points to be observed in that head of the contract. In the first place, the payment for the cargo is not to be made until the vessel arrives at the port of discharge, and the payment is to be made in return for the delivery of the bill of lading, meaning of course an endorsed bill of lading and a preliminary invoice which is to calculate the price of the cargo at the highest rate which I have mentioned above, namely £12, 10s. per ton upon the estimated amount of cargo, which is calculated, as is very commonly the case, by adding one-third to the registered tonnage of the vessel. Then follows this also, that this is to be subject to the retention by the buyers of the estimated amount of freight payable under clause No. 2 hereof—that is to say, the buyers are to pay the freight, but they are to be entitled to deduct that freight from the amount of the invoice.

Now, looking back to No. 2, which is referred to in this head of the contract, we find it thus expressed—"Buyers to discharge cargo and to pay freight in accordance with the charter-party by order only, and for account of sellers." The defenders say that that conclusively showed that in taking delivery of the cargo by discharging it, as it is here expressed, these parties were acting only as agents of the sellers. That appears to me not to be the true construction of the clause. On the contrary, I think it is distinctly intended to express that although they are thereby taken bound to pay the freight in accordance with the charter-party upon receiving delivery of the cargo, they are doing that only on account of the sellers, who are to reimburse them; and taking these two clauses together the meaning of the contract is, to my mind, quite clear. The property of the cargo is to be transferred upon the arrival of the ship at the port of destination by a bill of lading in common form. The price is to be at the same time paid, calculated in the way of a preliminary invoice, to be afterwards adjusted as regards figures. The buyers having paid the freight under article 2, are to be entitled to deduct the amount of freight from the price so to be paid, and along with that you must also take into consideration the last article of the contract—that in case of the total loss of the vessel the contract is to be void.

Now, here is a personal contract, but a personal contract which is to be made real at a subsequent date, and that subsequent date is the arrival of the vessel at the port of discharge. There is no property in the cargo until that event occurs. That is the plain reading of the contract. But when the ship arrives at the port of discharge, then the property of the cargo is to be transferred to the buyers. And how? By delivery of a bill of lading and preliminary invoice, and a payment of the price by the buyers in terms of that invoice, deducting the freight which they pay upon delivery, and which the sellers under the personal contract undertook to return them.

Now, then, what happened under this contract? The vessel arrived at Falmouth in the beginning of March, and having received orders to proceed to the Clyde, she reached Glasgow on the 16th of March, and having thus come into the port of discharge, the 6th article of the contract of sale came into operation. And how was it acted upon? On the 4th of March, anticipating the arrival of the vessel at the port of destination, the agent of the Peruvian Guano Company writes to the defenders—"Your orders for port of discharge I shall expect at your earliest convenience, preliminary invoice for said cargo amounting to £8429, 4s. 6d. herewith. Documents in exchange will be sent when the vessel reaches her destination." Now, this is precisely in terms of the 6th article of the contract, and the documents that are referred to are an endorsed bill of lading and a preliminary invoice. Well, the vessel having arrived on 16th of March, the bill of lading in which the Peruvian Guano Company appear as consignees is endorsed by them to their own agent in these terms—"Deliver to the order of William Alexander Rau, agent of the consignees for the United Kingdom;" and Mr Rau endorses it to the defenders—"Deliver the within cargo at the port of Dundee to the order of Alexander Cross & Sons of Glasgow, they paying freight as per charter-party." The one is an endorsment to an agent expressly on the face of it; the other is an endorsement *ex facie* having the full legal effect of an endorsement of a bill of lading, and therefore of conveying both the property of the cargo and all the rights and liabilities of the contract of affreightment. Then contemporaneously

with this Mr Rau, the Peruvian Guano Company's agent, writes to Messrs Cross & Company, handing the bill of lading and charter-party for the cargo of guano per "Chanaral," " together with receipt forms to be used in settling the advance freight of the vessel, showing £958, 17s. 2d. due to the ship, which I hereby authorise you to pay for my account, returning me the receipts duly signed by the captain in course. . . . . I wait your remittance against this cargo, £8429, 4s. 6d. as per preliminary invoice, and regretting that I am unable to offer you any cargo of earlier sailing than the 'Golden Sunshine,'" &c. Now, how stands the preliminary invoice? It states the estimated cargo at a certain amount precisely in terms of the 6th article of the contract, fixing the registered tonnage of the vessel at 728 tons, and 35 per cent. additional, making 983 tons altogether, and that is charged at the highest rate of £12, 10s. per ton. Then there is deducted from that the amount of the whole freight, which is to be paid by the buyer, and the balance is brought out of £8429, 4s. 6d., and that sum is remitted by the buyers to the sellers. The price of the cargo is at that date, after the arrival of the vessel, paid by the buyers to the sellers, and what they receive in exchange for that is an endorsed bill of lading.

Now, really I am at loss to understand how it can be supposed that the endorsement of the bill of lading is made for any other purpose than to transfer the property of that cargo to the buyer. It would be very singular indeed to think of the price of the cargo being paid minus the freight, which under the personal contract the sellers were bound to pay. The whole obligations of the buyer were discharged as far as the seller was concerned, and were discharged plainly because the preliminary invoice states the price of the cargo up to the fullest amount to which it can possibly come, and all that remains to be done on the other side is to deliver the goods sold—or what comes to the same thing, to give such a document as will enable the buyer in his own right to obtain possession of the articles; and therefore the bill of lading here is used for its proper and legal purpose of a transfer of the property of the cargo. How anybody could suppose that endorsement of a bill of lading under such circumstances was intended to create an agency on the part of the cargo I cannot comprehend. If a mandate is given to a person which he is to execute, not for behoof of the mandant, but for behoof of himself, what is that? He is thereby created an assignee. And therefore, even supposing the endorsement was held to be a mandate, it is a mandate *in rem suam*, and has the full effect of a transfer of property, because it constitutes the mandatory an assignee.

That shows plainly enough, I think, that the defence here is really founded on a metaphysical subtlety, and nothing else. The substance of the transaction is as clear as anything. The cargo is to be transferred from the buyer to the seller, and the manner in which the personal contract stipulates that that shall be done is by delivery of an endorsed bill of lading, and that is carried out previously in terms of the contract. Therefore the provisions of the Act of Parliament necessarily apply to this, and this endorsement of the bill of lading not only transfers the property of the cargo, but with it assigns all the rights under the contract of affreightment, and subjects the assignees to all the liabilities of that contract, and among other things to the payment of freight.

Now, that is really quite enough for the case. But we have had an argument to show that, even supposing that the statute did not apply, and even supposing that the defenders may be in some sense agents for the sellers, still in the circumstances in which they obtained delivery of this cargo as endorsees of a bill of lading, there was a new contract made between them and the shipmaster, under which they became answerable for the freight. That is not so clear a proposition as to afford a ground for judgment. At the same time, I do not hesitate to say that the circumstances of the case so bring it within the principle of *Cock* v. *Taylor & Co.*, as decided in the Court of King's Bench. I shall say no more on that part of the case, because I think the first ground of judgment is so unimpeachable that it is quite sufficient for our judgment in this matter.

Lord Deas concurred.

Lord Mure—I agree with your Lordship in thinking that the Sheriff-Substitute has taken a sound view of this case when he has held that the defenders are liable to pay this freight unless they can establish that they were acting as agents for the charterers for the purpose of receiving the cargo, and made the master and owners of the ship aware of the fact.

Taking it apart from the clause of the statute, the leading facts of the case are these—There was the charter-party in the first instance, and then the bill of lading, which bears that the cargo shall be delivered in good order and condition unto the Peruvian Guano Company or their assignees, they paying the freight as per charter-party. Thus, by the terms of the bill of lading, if there was an assignment the assignee had to pay the freight. On the 16th of March 1878 that bill of lading was endorsed to Messrs Cross & Sons, and it contained the important words—"Deliver the within cargo to the order of Messrs Cross & Sons, Glasgow, they paying the freight as per charter-party." Now, these bills of lading were received by the captain, and I understand his evidence to be that they were received on coming to Glasgow, and on receiving them he delivered the cargo to the Messrs Cross. Mr Cross in his evidence seems to have doubts as to whether the bill of lading was shown to him, but the captain is quite distinct that he gave the cargo on receipt of the bill of lading. These facts appear to me to be the same facts as those that were dealt with by the judges of the Court of Queen's Bench in the case of *Cock* v. *Taylor* in 1811, 13 East. 399. The terms of the bill of lading were precisely the same. There was the purchase from the original consignees in that case, the precise terms of which we have not got. The attempt was made to show that because there was no contract there expressed or implied between the consignees and the shipowners, the shipowners could not obtain anything from the parties to whom the goods were delivered. The law supposed to have been laid down by Lord Kenyon was controverted by the Lord Chief-Justice (Ellenborough), whose charge to the jury was objected to, and the

question was brought up before a full bench. After a full argument Lord Ellenborough reiterated his opinion, which was concurred in by the other judges, and as I understand from that date there is nothing to show that that law has ever been altered. The decision is one of very great weight, looking to the eminence of the judges composing the Court. And upon the broad ground, I think the pursuers in this case are entitled to recover the freight to the extent mentioned, apart altogether from the terms of the statute.

With regard to the statute, it appears that if the construction were taken that is contended for on the part of the appellants it would substantially go to nullify the whole of the rules that were laid down in these cases, and which have been understood as matter of custom of trade to be acted upon ever since, because the statute bears, that "whereas by the custom of merchants' bills of lading being transferable by endorsation," &c. I agree with the construction which has been put upon it by your Lordship as being the fair construction.

With regard to the question of agency, there is no evidence of agency so far as I can see on the part of Messrs Cross in the usual sense of that term. They are the purchasers of the goods, and I do not think it can be held that the captain of the ship, who was a foreigner, knew that these parties were acting as agents for the Peruvian Company in the face of his own evidence, for he is distinct in saying that he did not know. I do not think that even the second head of the contract can be held to imply that the mere discharge by the buyers can be held to make them the agents of the sellers. It is quite inconceivable from the evidence of Mr Cross that they ever told the captain they were acting as agents merely. On the contrary, they took care to say nothing about it. There is no evidence that these gentlemen were acting as agents in the matter. The Sheriff has adopted the rule that the agency must be within the knowledge of the captain when giving delivery, which rule was also adopted in the case of *Cock* v. *Taylor*.

Lord Shand—I am of the same opinion. I think the case is a very clear one on both grounds which have been argued on behalf of the shipowners, but more especially upon the true effect of the 1st and 2d sections of the Bills of Lading Act. That statute in its preamble and its first section distinctly recognises what we all know was the state of the law when it was passed both in this country and in England, that the endorsation of a bill of lading might pass the property of the goods or not according to circumstances, and it provides that in the case in which the endorsation has passed the property of the goods, there shall go along with that the liabilities of the shipper under the bill of lading. I think the general effect and the intention of that statute was simply this, that in the case in which the endorsation of a bill of lading was made to the person who had purchased the goods, that person becoming substantially the owner of the goods should become liable directly for the freight, while in the case in which the endorsation was granted to a third party merely as agent or hand for the person to whom the goods belonged, and the property was therefore not intended to pass, the liabilities for the freight should not attach to him. Accordingly, I think that in dealing with this statute as applicable to any case that occurs, practically the question that arises is, Is the endorsation given to one who is in the position of a buyer, or is it given to one in the position of a mere agent? In the former case, the buyer, as having really right to the goods, must take the liabilities which attach to that, including the liability for freight; in the latter, as he is getting no property in the goods, he shall have no liability for freight.

In this case, therefore, I think the only question that it is necessary to determine is, whether Messrs Cross & Sons, the appellants, were the purchasers of these goods, and for that purpose one must look at the contract of sale. It is quite clear that they were so. Then what was the intention and effect of the endorsation? I think it was to transfer the property of the goods. It is, as your Lordship has expressed it, very difficult to see any other purpose for which the endorsation was in the least degree necessary, or any reason why it should not have that effect; for, in the first place, the contract of sale gave them a right to claim the goods; in the next place, the vessel had arrived at its destination; in the third place, the price had been paid; and lastly, this is the mode in which the right of a person in a floating cargo is transferred. The argument for Messrs Cross & Sons was, that the effect of the endorsation was that they were made agents to receive the cargo, and having received it thereupon to deliver it to themselves. I agree with your Lordships in thinking that there is ingenuity and subtlety in that argument, but no substance. Why should they—having made the contract and purchased the cargo, and having themselves got the title in the cargo—why should they then receive the cargo in the character of agents of someone else and deliver it to themselves? The effect of the transaction, I think, plainly was, that they took delivery of the cargo from the shipowners as their own under their own bill of lading and endorsation. The only possible ground upon which the argument to the contrary can be maintained is the terms of articles 1 and 2 of this contract. Article 2 says that the buyers are "to pay freight in accordance with charter-party, by order only, and for account of sellers." I think that stipulation is intelligible and clearly explained by the fact that the bargain between the parties was that a certain sum was to be paid for the cargo, the purchasers keeping in hand enough to pay the freight, or an estimated sum to pay the freight. The freight was the affair of the sellers, and therefore they desired to have some voice in the payment of it, and that they should be consulted as to the amount and mode of payment before that should be done; and so I read these words "by order only and for account of sellers." That being so, I am of opinion that upon the question as to the effect of the statute the case is really not doubtful, and that the Sheriff-Substitute has decided it rightly.

Upon the other argument submitted, which is quite irrespective of the statute, it is worthy of notice that the state of the law in that respect is also recognised in the statute. It is provided that nothing herein contained shall prejudice or affect, "any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee or of his receipt of the goods by reason or in consequence of such consignment or endorsement,"—recognising that

an implied liability may frequently arise from the mere fact of an endorser of a bill of lading transacting with the captain and taking delivery of the goods. Here we have some very important circumstances that I think were calculated to lead the captain—who was in entire ignorance of the contract—to assume that he was dealing with the parties to whom the cargo belonged, and who were taking delivery for themselves. In the first place, we have the letter of 7th March, in which they stated that they are consignees of the ship and cargo, and request him to go to particular brokers. In the second place, you have the terms of the bill of lading, which is the same as that in the case of *Cock* v. *Taylor*, and the very special terms of the endorsation. It is no doubt a very material circumstance here that the captain had no lien, and was bound to deliver the cargo either to the original shippers or to any body who came in their right, and I think it is a weaker case in that respect than *Cock* v. *Taylor*. But yet I think that upon the letter before referred to and the very special terms of the endorsement, the captain was fairly entitled to assume in the absence of any notice that the appellants were not agents, that he was dealing with parties taking this cargo on their own account, and therefore to hold them liable in payment of the freight to him.

Accordingly, upon both of these grounds, I think the judgment of the Sheriff-Substitute is right.

The appeal was therefore refused.

Counsel for Appellants (Defenders)—Trayner—J. P. B. Robertson. Agents—J. & J. Ross, W.S.

Counsel for Respondents (Pursuers)—Asher—Pearson. Agents—Webster, Will, & Ritchie, S.S.C.

Friday, May 23.

FIRST DIVISION.

[Sheriff of Lanarkshire.

STARK (INSPECTOR OF DENNY PARISH) *v.* BEATTIE (INSPECTOR OF BARONY PARISH).

Poor — Residential Settlement — Constructive Residence—Act 8 and 9 Vict. c. 83, sec. 76.

R left B, his parish of residence, owing to ill-health in February 1872, and went to the parish of D. His wife and family continued to live in B, in her husband's house, of which he took a new lease after he had himself left. He did not get regular work till the 6th of June, when he undertook an employment different from that to which he had been bred. He himself never returned there. In August his wife and family removed to D, where R then took a house where he continued to live till his death in April 1875. His wife received parochial relief from D in April 1876. *Held* that R was constructively resident in the parish of B down at least to the 6th of June 1872, and that B was therefore liable in repayment of the relief advanced by D.

The pursuer in this case was inspector of poor of the parish of Denny, and the defender was inspector of poor of the Barony parish of Glasgow.

William Russell was for ten years prior to February 1872 employed as a ship-captain, and during these years had a residential settlement in the Barony parish of Glasgow. In February 1872, becoming somewhat unwell, he went to live with his parents in the parish of Denny, but he left his wife and family in his house in the Barony parish. At Whitsunday following he took a new lease of this house for the next year, and he did not remove his wife and family to Denny till August. He himself had no employment in Denny till the 6th of June, when he got work as stocktaker in an iron-foundry. He continued to live with his parents until his family came to Denny in August, when he took a house on his own account. That was the position of matters at the date of his death on 13th April 1875. His widow applied for and obtained parochial relief from the parish of Denny in April 1876. The parish of Denny now sued the Barony parish for repayment of the advances it had made.

The pursuer pleaded, *inter alia*—"(1) The said William Russell having had at the date of his death a residential settlement in the Barony parish, which had not been lost at the date of relief, and his wife and family being chargeable thereto, and having been proper objects of relief, decree in terms of the declaratory conclusions should be granted. (3) The deceased William Russell having had at the date of his death a residential settlement in the defender's parish, the pauper for herself and her children then derived or inherited this settlement, and not having subsequently lost the same by her own non-residence, or acquired a new one by her own industrial residence, the defence should be repelled, and decree granted as craved."

The defender pleaded—"The derivative residential settlement of the pauper and her children in the Barony parish having been lost by absence, the defender is entitled to absolvitor, with expenses."

The Sheriff-Substitute (GUTHRIE) after proof pronounced this interlocutor:—

"Finds that the deceased William Russell, while in possession of a residential settlement in Barony parish, Glasgow, went in February 1872 to reside with his father in Denny parish for the benefit of his health, leaving his wife and family—except two young sons—at his hired house in Glasgow: Finds that the wife and family continued to live in said house till August 1872, when they removed to Denny parish, where Russell had got employment on 6th June: Finds that Russell's absence from his house and business in Glasgow was at first of a temporary and incidental nature, and that he had not formed an intention of remaining in Denny or removing his family from Glasgow until immediately before or about the said 6th of June: Finds therefore that at the date when the paupers Mrs Russell and her children became chargeable to the parish of Denny, on the 20th April 1876, their settlement in Barony Parish, Glasgow, derived from the said William Russell, was not lost by absence, and that the said parish is liable to relieve the pursuer of his advances on account of the paupers: Therefore decerns as craved."

He added this note—

"*Note.*— . . . . I am of opinion, however, that the residence of the deceased up till