

support of the view of the employer that the contract was known to the pursuer just as the amount of his wages were known to him. The pursuer must therefore be bound by the terms of the contract.

I may say that if I had entertained any doubt about the matter I would have declined to alter the judgment of the Sheriff, proceeding on the rule that if we acting as a Court of appeal think the Sheriff has arrived at a wrong conclusion, we ought to alter his judgment, but if we have any doubt we ought to leave it alone. I however think here that the Sheriff has arrived at a right conclusion, that the pursuer is bound by the contract, and has discharged any claim he may have had at common law and under the Employers Liability Act against the defenders.

LORD RUTHERFURD CLARK—I am of the same opinion. I am quite satisfied that the pursuer knew the terms of the contract.

LORD TRAYNER was absent.

The Court adhered, pronouncing the same findings as the Sheriff-Substitute, with this exception, that after finding "that the contents of the notice were well known to the men employed by the defenders," they inserted the words "including the pursuer."

Counsel for the Pursuer—Strachan—M'Clure. Agent—David Murray, Solicitor.
Counsel for the Defenders—Ure—Salvesen. Agents—Simpson & Marwick, W.S.

Saturday, October 28.

SECOND DIVISION.

[Lord Wellwood, Ordinary.

LEASK v. BURT.

Reparation—Illegal Apprehension—Police—Relevancy.

A seaman sued a police constable for damages for illegal apprehension, and averred that while he was on board his ship, then lying in Leith dock outside the jurisdiction in which the defender was entitled to act, he had been arrested without a warrant, on a charge of receiving six months previous, on false representations, a small sum as shipwreck allowance from the Sailors and Firemen's Union; that the defender had thereafter taken him handcuffed, by tramcar, to Edinburgh, and from thence by rail to Falkirk, where he had been tried for the alleged fraud, the charge being dismissed as not proven.

Held that the pursuer had stated a relevant case against the defender.

Matthew Leask, seaman, Lerwick, raised an action against Alexander Burt, sergeant of police in the Stirlingshire Constabulary, for £500 as damages for wrongous apprehension.

The pursuer stated—" (Cond. 1) In March 1891 the pursuer was a passenger on board the steamship 'St Rognvald' from Lerwick to Aberdeen. He had secured an engagement on board a Dundee whaler, and had taken his passage on said steamer in order that he might join his vessel at Dundee. The 'St Rognvald' was wrecked on the passage, and a portion of the pursuer's effects, including a bed and cooking utensils, were lost. (Cond. 2) The pursuer was at this time a member of the National Amalgamated Sailors and Firemen's Union of Great Britain and Ireland. Under the rules of said union (Rule 17) it is provided that, 'If a member is shipwrecked or loses his clothes by fire on board ship, and at the time of shipwreck or fire is in benefit as hereinbefore defined, he shall, for the loss of his clothes, or for such portion of them as in value do not exceed the sum allowed, be paid the sum of two pounds, if such loss has not arisen through his own default, negligence, or design. All questions of proof, value and evidence required must be answered and rendered in the discretion and to the satisfaction of the committee.' The pursuer was at the time 'in benefit' within the meaning of the rules of said union, and was accordingly entitled to an allowance in respect of the loss of his effects, the word 'clothes' in said rule having been uniformly construed and understood as including personal effects as well as articles of apparel. (Cond. 3) On his arrival at Dundee the pursuer informed Mr Millar, the Dundee secretary of said union, of the loss that he had suffered, and was then told that he was entitled to an allowance, but that certain documents were required to prove the loss. Mr Millar also informed the pursuer that he would have a better chance of recovering the allowance by applying to the branch of the union to which he had paid his subscriptions. The pursuer had not at that time an opportunity of making such an application, as he had to join his ship immediately, and accordingly no formal application was then made by him. (Cond. 4) The pursuer was absent on the voyage in the Dundee whaler for eight months. Thereafter he resided three months at Lerwick, which is his native place, and he also took one short voyage. He returned from said last-mentioned voyage in June 1892, which was the first occasion on which he had an opportunity of applying to the secretary of the branch of the union to which he had paid his subscriptions, namely, the defender Mr Cowie, who was then secretary at Grange-mouth. Pursuer then verbally informed Mr Cowie of the circumstances of the loss which he had sustained by the wreck of the 'St Rognvald,' and produced some of the evidence required; and on or about 15th July he received a letter from Mr Cowie, dated 14th July 1892, informing him that his claim had been admitted to the extent of thirty shillings, but that arrears due by him to the union amounted altogether to 19s. 5d., leaving a balance at his credit of 10s. 7d., which he stated that he was willing to remit. Pursuer thereupon

wrote Mr Cowie to remit this amount, which was accordingly done. (Cond. 5) The pursuer was thereafter employed as a seaman on board the new steamship 'Durward,' belonging to Leith. During the month of October 1892 Mr T. D. Rennie, who acts as organising secretary for the Sailors and Firemen's Union, accompanied by James Black, secretary of the said union at Leith, called upon the pursuer at the said ship, then lying in the Albert Dock, Leith. Mr Rennie stated to the pursuer that he had received a shipwreck allowance on false statements, and that he would require to pay it back. The pursuer denied the charge, and declined to pay back the allowance, whereupon Rennie said that he would give him (the pursuer) an hour to think over it, otherwise he would take him away with a policeman. Mr Rennie returned in about ten days afterwards, and again asked the pursuer if he did not intend to pay back the money. The pursuer again declined, whereupon Rennie stated he had the authority of the officials of the union to prosecute the pursuer, which he threatened would now be done. The pursuer still declined to make any payment to the union, and Mr Rennie then left. (Cond. 6) On or about Tuesday, 15th November, the pursuer was engaged at his duties on board the 'Durward,' then lying in Leith Docks, when he was called on shore by a man whom he afterwards found to be the defender Alexander Burt. The said defender was dressed in plain clothes, and was accompanied by Black. The defender Alexander Burt asked the pursuer to accompany him to the Union Office, which the pursuer refused to do unless one of the ship's officers was made aware of the fact that he was leaving his duties. Black then informed the second officer of the vessel that the pursuer was being taken to the Union Office on a charge of receiving money on false representations, and that he would return in an hour and a-half and let him know whether the pursuer would be detained or not. (Cond. 7) The pursuer accordingly accompanied the parties above mentioned to the Union Office, where some conversation took place as to matters in respect of which the charge was made. The pursuer objected to being kept waiting in the office an indefinite time, and asked the said defenders whether they had a warrant for his apprehension. To this the defender Burt replied, 'I am the warrant.' During the time that the pursuer was being detained at the said office, the first officer of the vessel arrived and inquired what they were going to do with the pursuer, as he would require to ship another man if the pursuer was not promptly released. The pursuer is unable to say what passed between the first officer and the defender Burt, Black, and Cowie; but the result of it was that the first officer left the office, and as the pursuer afterwards learned, engaged a man to take his place. Pursuer was detained a considerable time in the said office until after the arrival of Mr Cowie, who stated his version of what took place in June 1892 when the pursuer made his claim, which the pursuer

contradicted upon every material point. (Cond. 8) The pursuer was then taken in charge by the defender Burt. As he wanted his clothes out of the ship, he was accompanied to the 'Durward' by the defender Burt and Cowie, where he got his clothes, which were left at the Union Office. He was then taken by the defender Burt and Cowie to the Police Office at Leith, and on the instructions of the said defender Burt was locked up in a cell by one of the Leith police. On the defender Burt's return several hours afterwards the pursuer was taken out of the cell, handcuffed by the said defender Burt, and taken by him on a tramcar to Edinburgh, and thence by rail to Falkirk where he was locked up for the night in the police office, without food and without bed or covering of any description. (Cond. 9) The following morning, 16th November, the pursuer was taken to the court-room of the Sheriff Court at Falkirk, and placed in the dock. A complaint, copy of which is herewith produced, was then read over to him, charging the pursuer with fraud, on the allegation that he had pretended to Edwin Cowie, secretary of the union at Grange-mouth, that when he was wrecked on board the screw-steamer 'St Rognavald,' near Kirkwall, he had lost all his clothes, and did thus induce the said Edwin Cowie to pay to him 10s. 7d. in money as an allowance from said union in respect of the pretended loss of his clothes, which sum he had appropriated to his own use. No copy of this complaint was served upon the pursuer. Appended to the said copy complaint was the usual warrant by the Sheriff-Substitute to officers of Court to search for and apprehend the pursuer, and in the meantime to detain him in a police station-house or other convenient place. The said warrant is dated 16th November 1892, and was in point of fact only granted after the Sheriff-Substitute arrived in Court. (Cond. 10) On the complaint having been read over to him, the pursuer was asked to plead. He pleaded not guilty, and was thereafter admitted to bail to the extent of 25s. (Cond. 11) On Friday, 18th November, the pursuer was tried on the said complaint before the Sheriff-Substitute at Falkirk. After evidence had been led the Sheriff-Substitute (Moncrieff) found the charge not proven, and dismissed the complaint. (Cond. 12) The whole of the said proceedings were wrongous, irregular, nimious, and oppressive. The pursuer was apprehended on 15th November without a warrant of any kind, and was subjected to the indignity of being taken through the public streets in Leith and Edinburgh in custody, and of being detained in the police cells, both at Leith and at Falkirk, without a warrant of any kind having been first obtained from the proper authorities. The said Alexander Burt, in apprehending and detaining the pursuer in the manner above mentioned, without legal warrant, and in treating him in the manner before described, acted wrongously and oppressively. . . . (Cond. 14) In consequence of the said wrongous and illegal actings of the de-

fender the pursuer has suffered great loss, injury, and damage."

The defender lodged defences, alleging that the statements of pursuer in condescendence 1 to 5 were unknown to him, and in regard to the statements in condescendence 6 to 8, "The statements here made, so far as referring to this defender, are admitted to be substantially accurate, subject to the explanations that the pursuer was only handcuffed for a short part of the journey, viz., between Leith and Edinburgh, and that he was supplied with food and drink by the defender at Edinburgh station. Denied that in Falkirk police office the pursuer was without food, bed, or covering of any description. Explained that on 10th November 1892 this defender was informed by Mr Rennie that the pursuer had committed a fraud upon the Sailors' Union by falsely representing to Mr Cowie that he had lost his clothes in the shipwreck of a vessel on the northern coast, and by claiming and receiving payment of thirty shillings in respect of said alleged loss. Mr Rennie desired the immediate apprehension of the pursuer upon this charge, but this defender explained that he could not in any view act upon second-hand information. On 14th November the defender received from Mr Rennie a letter enclosing one bearing to be written by Mr Cowie substantiating the grounds of the charge. This defender accordingly went to Falkirk and placed the papers in the hands of his superior officer there, Superintendent M'Donald, who, after consulting with the assistant of the procurator-fiscal, instructed this defender to go to Leith next morning, see and examine Mr Cowie there, and if *prima facie* evidence of the alleged charge of fraud was forthcoming, arrest the pursuer. It was known to this defender and his superior officer that the pursuer's ship was to leave Leith on 15th November. This defender accordingly went to Leith on the morning of the 15th and saw Mr Black and Mr Cowie, and the latter having distinctly stated the said charge of fraud against the pursuer, and the detailed grounds thereof, this defender, after having seen the pursuer and having had a *prima facie* case of fraud disclosed against him, arrested him in conformity with the instructions he had received from his superior officer as above explained, and conveyed him to Falkirk. This defender acted throughout upon the instructions of his superior officer, and in good faith, and he had reasonable grounds for apprehending the pursuer."

The defender pleaded, *inter alia*--"(1) The action is irrelevant."

On 16th October 1893 the Lord Ordinary (WELLWOOD) pronounced the following interlocutor:—"The Lord Ordinary having considered the debate, Repels the first plea-in-law stated for the defender, and assigns Wednesday the 25th day of October as a diet for the adjustment of issues.

"*Note.*—In my opinion the pursuer has set forth on record a relevant case against the defender, who is a sergeant of police in the Stirlingshire constabulary. The case

stated against Burt is not merely that he apprehended the pursuer without a warrant in circumstances which, *prima facie*, do not seem to justify such a proceeding, but that he apprehended him in Leith, which is in another jurisdiction than that in which he was entitled to act, without any authority from a magistrate of that jurisdiction."

The defender reclaimed, and argued—The action was irrelevant. The arrest was legal. A policeman acting in good faith, and on proper instructions from his superior, was entitled to arrest without a warrant if the circumstances of the case justified—*Peggie v. Clark*, November 10, 1868, 7 Macph. 89; *Young v. Magistrates of Glasgow*, May 16, 1891, 18 R. 825. In this case the police-constable was entitled to apprehend, as he had grounds for believing that the pursuer intended to abscond. In any event, the action was irrelevant, as in the condescendence there was no averment of malice or want of probable cause.

Counsel for the pursuer were not called on.

At advising—

LORD JUSTICE-CLERK—There is no doubt that it is established law that a police-constable may arrest without a warrant if he witnesses a felony being committed, or has immediate information from others who are sure of the fact. But this case does not resemble any of those cases stated by Hume. Here there was an allegation against the pursuer of having committed a fraud six months before by receiving ten shillings and sevenpence by false representations, and the case stated by Mr Dundas amounted to this, that a police-constable on the instructions of his superior officer was entitled to leave his own county and come into another county and practically take precognitions, and if satisfied in his own mind that there was good grounds apprehend the suspected person. That seems to me an extremely inadvisable method of proceeding even if it was within the letter of the law, which I do not think it is.

The cases referred to by Mr Dundas do not seem to bear upon the present. In the case of *Peggie* a man was charged with running away with money received by him to hand to another, and on the police-constable going in search of him he admitted that he had appropriated the money to his own purposes, and merely alleged that he intended to refund it. Now, in such a case it is reasonable to assume that more of the money would have been spent if the police-constable had not arrested the man, and there also the arrest was made after evidence of the misappropriation had been fully taken and facts disclosed proving the guilt of the person arrested. In the case of *Young* the police-constables had direct authority under the local Police Act to arrest, and all complained of was the harsh way in which it was said to have been carried out. Neither of these cases has therefore any bearing on the present.

The only other ground put forward on

behalf of the defender was that the pursuer was intending to abscond. That hardly enters into a question of relevancy, as the pursuer has not stated anything to show this, and we are not entitled to examine the statements of the defender. The pursuer is a sailor, and for some months before the arrest had been employed on board a vessel which made regular trips between Holland and this country. He was therefore only leaving this country in the regular course of his employment. Even if he had been going away altogether there is no evidence showing that there was no time to get a regular warrant for his apprehension before the ship sailed.

In all the circumstances I think that the pursuer has sufficiently stated a relevant case against the defender.

LORD YOUNG—I am of the same opinion. I must say I think the case is a clear one. It is a general rule of law, well defined and recognised, that no man or woman can in this country be deprived of his or her liberty without a warrant from a magistrate. There are certain exceptions to this rule. The Police Acts of large towns give large powers to police constables, one being to apprehend without warrant women known to be of bad fame importuning men upon the street; another being to apprehend without warrant men suspected of intention to commit crime, or persons caught in the act of transgressing the law. And under the common law anyone is entitled to apprehend and take to the police office without a warrant a person whom he finds committing crime against himself; and again a passer-by on the street is entitled to interfere and assist in taking into custody a person robbing another man. But the proposition here is, that a man who is charged with having obtained ten shillings and sevenpence upon false representations six months previous may be served by a sergeant of police or any other person without a warrant on board a ship which is his common place of business, and where he has been for the intervening six months; handcuffed; taken to Edinburgh and then to Falkirk, and locked up for the night in the police office without food or bed or cover of any description. This latter statement is said not to be true, but it is averred. The suggestion that it is not necessary in such circumstances to go before a magistrate and state a case, and ask him for a warrant to apprehend and lock-up—that this may be done by a policeman of his own act, or upon the instructions of a superior officer, is the most extravagant proposition I have heard submitted to this Court for a long time. It is utterly and absolutely illegal.

LORD RUTHERFURD CLARK—*Prima facie* the apprehension of the pursuer by the defender was illegal, and he is therefore entitled to raise the action. It may be that the defender can show at the trial that the apprehension was legal, but I think that he will have great difficulty in doing so.

LORD JUSTICE-CLERK—I have purposely said nothing on the point whether a police constable from one county is entitled to arrest a person in another county.

LORD TRAYNER was absent.

The Court adhered.

Counsel for the Pursuer — Salvesen — James Mackintosh. Agents — Snody & Asher, S.S.C.

Counsel for the Defender — Comrie Thomson — Dundas. Agents — Dundas & Wilson, C.S.

Friday, October 20.

FIRST DIVISION.

HARRIS v. HOWIE.

Trust—Removal of Trustee—Appointment of Judicial Factor.

A petition was presented for removal of the sole trustee under a will, on the ground that he had paid away part of the funds of the trust in discharge of a claim by the testator's father for the amount of advances alleged to have been made by him for his son's education at college, although there was no legal evidence of the validity of the claim.

The Court, without expressing any opinion as to whether there was sufficient legal evidence instructing the claim, *refused* to remove the trustee or appoint a judicial factor, in respect that it was not alleged that the trustee had paid the claim in *mala fide*, and that there was no reason to apprehend danger to the estate remaining in his hands.

Dr Howie died on 11th January 1884. He left a will whereby he appointed his brother John Howie to be his sole executor and universal disponent, and bequeathed him his whole estate and effects, but in trust always for the following purposes—(1) Payment of debts; and (2) that the income and part or whole of the capital of the estate should be applied for the maintenance and education of his (Dr Howie's) two daughters, Anne and Jeanie, in such shares and proportions as his trustee might think proper, and that if any balance remained at their majority or marriage, the same should be payable to them in equal shares, and that in the event of the decease of one, the balance should be payable to the survivor, whom failing his heirs whomsoever. The truster also nominated John Howie to be tutor and curator to his said daughters.

Dr Howie was survived by both his daughters. After his death his brother John Howie accepted the office of trustee and tutor and curator, and entered on the administration of the trust. Dr Howie's estate was given up as amounting to £736, and his daughters were also entitled at the date of his decease to a sum of £1500 from