him, or otherwise than in current coin, is declared to be void. Section 4 goes on to enact that the artificer shall be entitled to recover from his employer so much of his wages as shall not have been actually paid to him in current coin. Section 5 enacts that in any action brought for wages, the employer shall not be entitled to set-off or claim any reduction in respect of any 'goods, wares, or merchandise' received by the artificer on account of his wages, or supplied to him at any shop or warehouse in which the employer is interested. And section 6 debars the employer from maintaining any action against the artificer for or in respect of such goods, wares, or merchandise.

"These sections by their combined effect seem to me to strike at the deduction made for coals, and to disable the employer both from founding on the coals supplied, as an answer to the claim for wages, and from maintaining any separate action in respect of their value. It is impossible to say that the entire amount of this man's wages was paid to him in the current coin of the realm, for they were partly paid in goods supplied by the defender. It is no answer to say that the goods were supplied at their true value, for in the sections I have mentioned the Act makes no such exception. It is true that in a later section—the 23rd—the element of 'real and true value' is introduced, and introduced with reference, *inter alia*, to fuel. But the same section requires as a condition of the right to make a deduction for fuel supplied, not only that the value shall be true, but also that the agreement for such deduction shall be in writing, and there was no agreement in writing here.

"The essential distinction in the case of the rents seems to me to lie in this, that the rents were not retained by the employer and put into his own pocket, but were paid over by him to a third party, who was the true creditor of the workman. The 23rd section, to which I have referred, deals with the case of a house demised by the employer to the workman at a rent to be thereon reserved, and it permits a deduction for any such rent provided the agreement is in writing. But here there was no necessity for an agreement in writing, because the house was not demised by the employer. He simply acted as the hand of the workman in paying his rent to his landlord, and the fact that he received a small commission for doing so seems to me of no moment. It would be absurd, I think, to call such a transaction 'truck,' for if so, it would equally be truck for an employer to accept a commission from the workman to buy him a pound of tea or tobacco in a neighbouring town, and stop the price off his wages. The very idea of truck is excluded by the fact of the contract in respect of which the deduction is made being a contract between the workman and a third party. Sections 5 and 6 have clearly no application to such a case, for there is no supplying of 'goods, wares, or merchandise' by the employer. Counsel for M'Lucas based their argument mainly on section 3, but the mischief aimed at by that section is the payment of the workman in goods instead of money, and if money is paid, I think it would be a judaical reading of the section to hold that the money must be paid into the workman's own hand, and that it may not be paid, at his request, to his creditor. The opinions of Lord Selborne and of Lords Justices Cotton and Lindley in *ex parte Cooper*, L.R., 26 Ch. Div. 693, and of Lord Justice Bowen in *Hewlett* v. *Allen*, August 10, 1892, 8 Times' Law Rep. 793, are all to this effect. I shall therefore, in the action at the instance of M'Lucas, give decree for the sum of £18, 16s., and *quoad ultra* assoilzie the defender. The cross action by Dr Campbell was brought to meet the case of his being held not entitled to make either of the deductions, and accordingly I think the proper course will be to dismiss it. But as in the conjoined actions success has been divided, I shall find no expenses due to or by either party."

Counsel for M'Lucas—Adam—A. O. M. Mackenzie. Agent—J. B. Haig, W.S.

Counsel for Campbell—W. Campbell. Agents—Murray, Beith, & Murray, W.S.

Saturday, December 24.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

LARSEN *v.* IRELAND & SON.

Title to Sue—Master of Ship—Action for Damages for Breach of Charter-Party.

A charter-party was entered into between Dessen Brothers, as representing the owners of the steamship "Arbutus," and a firm of coal exporters. Thereafter an action for damages was raised by Lars Larsen, "master and part-owner, and as such master representing the ownership of the foreign vessel 'Arbutus,'" against the coal exporters for breach of the charter-party. *Held* that the pursuer had a title to sue.

At Glasgow on 18th January 1892 a charter-party was entered into between Dessen Brothers, as representing the owners of the steamship "Arbutus" of Flekkefjord, Norway, and David Ireland & Son, merchants and coal exporters, Dundee.

In June 1892 an action was raised by Lars Larsen, designed in the summons as "master and part-owner, and as such master representing the ownership of the foreign vessel 'Arbutus' of Flekkefjord, and now or recently lying in Methil, pursuer;" and Messrs Boyd, Jameson, & Kelly, Writers to the Signet, Leith, his mandatories, against the said David Ireland & Son, for £90, 15s. 6d., being the loss alleged to have been sustained by the pursuer through the defenders' refusal to implement their part of the charter-party.

The defenders lodged defences, and pleaded, *inter alia*—"(1) No title to sue."

Thereafter a mandate was signed by H. E. Jansen, manager of the "Arbutus" Steamship Company, who under section 3 of the byelaws of the company bound the ownership by his signature. In this mandate the registered owners of the "Arbutus" declared that the action was raised by Lars Larsen, as master, and representing them with their instructions and authority, and authorised the said Lars Larsen and Messrs Boyd, Jameson, & Kelly to continue to prosecute the action to final judgment, and to grant a receipt as binding as if granted by the owners themselves for any sum found due under the said action.

On 13th December 1892 the Lord Ordinary (STORMONTH DARLING) repelled the defenders' plea-in-law of no title to sue.

The defenders appealed, and argued—The master of a vessel was entitled to sue for breach of charter-party (1) made by himself, or (2) made by the owners of the vessel if he sued in the character of the owner's mandatory or agent. But he could not sue "as master" for breach of a contract made by third parties as representing the owners of the vessel. Here the contract had been made by Dessen Brothers, as representing the owners of the vessel, and the master sued "as such master." Therefore his title was bad. The mandate changed the character in which the pursuer sued, and no effect could be given to it—*Smith* v. *Stoddart*, July 5, 1850, 12 D. 1185.

Counsel for the pursuer were not called on.

At advising—

LORD TRAYNER—I am of opinion that there is nothing in the objection to the pursuer's title to sue. In the first place, the mode in which the instance is set forth accords with a very old and well-settled practice. But apart from practice there seems to me to be nothing in the objection. The pursuer sets forth that he is master and part-owner, and as such master represents the mastership of the vessel. That is a distinct averment that he represents the owners, and is suing this action in their name and on their authority.

I have no doubt, accordingly, that that is a perfectly good instance. Of course it may not be true that the pursuer has the owner's authority, and if that were proved the instance would be negatived. But that is not the question at present. The mandate produced from the owners seems quite sufficient, and not open to any objection.

I am of opinion that the interlocutor of the Lord Ordinary should be affirmed.

The LORD JUSTICE-CLERK and LORD YOUNG concurred.

LORD RUTHERFURD CLARK was absent.

The Court adhered.

Counsel for the Pursuer—Jameson—Salvesen. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for the Defenders—Dickson—Aitken. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Wednesday, January 11, 1893.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

DUTHIES *v.* AIKEN AND OTHERS.

Ship—Mortgage—Entry of Discharge—Merchant Shipping Act 1854 (17 *and* 18 *Vict. c.* 104), *sec.* 68.

Section 68 of the Merchant Shipping Act 1854 provides that on an entry being made in the register-book to the effect that the mortgage of a ship, or of any share therein, has been discharged, the estate, if any, which passed to the mortgagee shall vest in the person "in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had ever been made."

The registered mortgagee of shares in a ship sold them, and the bills of sale in the purchasers' favour were registered. At the same time the mortgages were produced to the registrar, with receipts for payment of the mortgage indorsed thereon, and the usual entry of discharge was made in the register. It subsequently appeared that the bills of sale in favour of the purchasers had been invalidly executed, and fresh bills of sale were accordingly executed by the mortgagee, but these the registrar declined to register, on the ground that the mortgagor had put forward a claim to the shares.

Held that the mortgagor could derive no benefit from the entry of discharge in the register, and that the purchasers, as the true owners of the shares, were entitled to decree ordaining the registrar to register the new and valid bills of sale granted in their favour by the mortgagee.

By two mortgages, dated respectively 30th June 1881 and 15th November 1884, James Aiken junior, shipowner in Aberdeen, mortgaged 40-64th shares of the s.s. "Telephone" to the Commercial Bank of Scotland, and these mortgages were duly registered on said respective dates. On 11th April 1888 the bank sold these shares for £3000 to James, William, and Alexander Duthie, of the firm of Duthie Brothers & Company—13-64th shares to James, 14-64th shares to William, and 13-64th shares to Alexander Duthie. On the same day the bills of sale in favour of the Duthies were registered. On the same day also the mortgages were produced to the registrar, bearing indorsed receipts for the respective sums of £1200 and £1800 "in discharge of the within written security," signed by the secretary of the Commercial Bank, and the registrar made entries in the register-book to the effect that the mortgages were discharged.

Questions having subsequently been raised as to the validity of the bills of sale above mentioned, in respect that they