Thursday, October 28.

SECOND DIVISION.

WRIGHT *v.* HOWARD, BAKER, & COMPANY.

Master and Servant—Compensation for Injury—Contract by Workman Not to Recover Compensation at Common Law or under Employers Liability Act 1880 (43 *and* 44 *Vict. c.* 42).

A company of contractors effected an insurance against accidents for their workmen, the premium being paid partly by sums deducted weekly or fortnightly from the workmen's wages, and partly by a contribution from the contractors themselves. On the pay-box and in other places about the works printed posters, headed in large type, "Notice to Workmen—Accident Insurance," were posted up. These posters set forth—(1) that the contractors had effected an accident insurance for the benefit of their workmen; (2) that contributions on a certain scale would be deducted from their wages; (3) that certain benefits would be derived from the insurance, one of which was, that if injury should be sustained from an accident to the workman during the course of his employment, and should not prove fatal, compensation would be paid to him weekly at a certain rate, and for a certain period; and (4) that the workman's acceptance of the benefits thereby provided for should be equivalent to a discharge of all claims against the employer at common law or under the Employers Liability Act 1880.

A workman who had been nine or ten months in the employment of the contractors, and from whose wages a deduction had been made as a contribution to the Accident Insurance Fund, was injured by an accident while in the employment of the contractors, and thereafter accepted a weekly allowance in terms of the insurance scheme.

Held that he had thereby discharged all claims against his employers at common law and under the Employers Liability Act 1880.

Benjamin Wright raised an action in the Sheriff Court at Kirkcaldy against Howard, Baker, & Company, contractors, Auchtertool, for £300 at common law, or otherwise for £163, 16s. under the Employers Liability Act 1880, as compensation for injuries which had been received by him, while in the employment of the defenders, by the fall of a bank of earth upon him in a cutting.

The defenders lodged defences, and averred that the pursuer entered their employment under certain conditions which were specified in a notice or bill posted at various parts of the defenders' works, and of the terms and conditions of which the pursuer was fully aware.

The notice was in the following terms:—

"Notice to Workmen—Accident Insurance.—We have effected an accident insurance for the benefit of workmen in our employment. The scale of contributions therefor is as follows, viz.—Where the wages do not exceed 20s. per week, 1½d. per week; where the wages are above 20s. and do not exceed 30s. per week, 2d. per week; where the wages are above 30s. per week, 2½d. per week. Contributions at these rates will, for the convenience of contributors, be deducted from their wages at the weekly or fortnightly pays. The following are the benefits to be derived from the insurance—(1) If any workman in our employment, paying the above contributions, shall sustain personal injury caused by accidental external and visible means, while engaged in our work, and the direct effectof such injury shall occasion his death within three months after he has sustained such injury, the legal representatives of such workmen shall (providing no claim is made under the Employers Liability Act 1880, or at common law) be entitled to receive one year's wages, with a limit of £60, which sum shall be in full satisfaction of all claims in respect of such injury. (2) If the injury so sustained be not fatal, compensation shall (providing no claim be made, as aforesaid, under the Employers Liability Act 1880, or at common law) be paid to such workman at the rate per week of one-third of the week's wage being earned by him at the date of disablement, so long as he remains totally and absolutely incapacitated from attending to work of any kind in consequence of such injury; but the period during which such compensation is payable shall not exceed 26 consecutive weeks for any single accident. (3) All sums paid as compensation to any workman during any one year ending 31st December shall be accounted as in reduction of the total compensation payable as above provided, so that in case of subsequent injury, whether fatal or not, during the same year, the total amount payable shall not exceed the amounts above provided, and all compensation paid while any workman is disabled by injuries which prove fatal shall be deducted from the sum payable in case of death. When an accident happens by which any workman is killed or injured full information as to the nature of the accident and of the injuries sustained must be sent to our office within 24 hours after its occurrence, and a medical certificate by the doctor appointed by us must be produced to us when any payment or allowance is asked for. *Note.*—The above benefits are payable only when the workman has no claim against the employer either at common law or under the Act of 1880, and his acceptance of the benefits hereby provided for shall be equivalent to a discharge of these and any other claims against the employer. The workman has no direct claim against the insurance company. No claim for compensation or aliment will be recognised unless these rules are strictly complied with.—HOWARD & Co., Seafield Dock and Railway Works, 14th February 1890."

The defenders further averred that after the accident the pursuer on 3rd October 1892 sent his father to the office for the compensation money under the insurance contract, and that from that date down to 30th January 1893 the pursuer's father had received on his son's behoof various sums to account of the insurance money amounting in all to £5, 17s.

The defenders pleaded, *inter alia*—"(1) The pursuer having accepted the insurance money, is debarred from raising any action, either at common law or under the Employers Liability Act of 1880; this action is therefore irrelevant, and should be dismissed."

A proof was taken in the case before the Sheriff-Substitute (GILLESPIE) on 23rd March 1893. The facts proved sufficiently appear in the interlocutor and note of the Sheriff-Substitute.

On 8th April 1893 the Sheriff-Substitute pronounced the following interlocutor:—"Finds in fact that the defenders effected an insurance against accidents for their workmen, the premium being paid partly by sums deducted from the workmen's wages, and partly by a contribution from the defenders themselves: That printed posters, headed in large type 'Notice to Workmen — Accident Insurance,' were posted on the pay-box and other conspicuous places about the works, one of the benefits set forth in the notice being a weekly allowance payable to a workman injured in the work: That acceptance by a workman of the benefits thereby provided was declared to be equivalent to a discharge of his claims against the employers either at common law or under the Employers Liability Act: That the contents of the notice were well known to the men employed by the defenders, and the subject of frequent discussion: That on 26th September the pursuer was injured by an accident while in the defenders' employment: That the pursuer, in the knowledge of the conditions of the insurance scheme above mentioned, accepted the weekly allowance under it, and received sums amounting to £5, 17s.: Finds in law that he thereby discharged the claims sued for: Assoilzies the defenders, and decerns," &c.

"*Note*.—The question now before the Court is, whether the claims which the pursuer might otherwise have had, have been discharged by the pursuer by his acceptance of the insurance benefits in lieu of his legal claims.

"There is no averment that the insurance fund is a trap, or that the men as a whole do not get a fair equivalent for their contributions, and the discharge of their legal claims in the shape of an accident allowance, even though a small one, which is given, not only in cases when the employers would be liable, but in the far more numerous cases where the employers would not be liable. It was not disputed, —and after the decision in *Griffiths* v. *Earl of Dudley*, June 16, 1882, L.R., 9 Q.B.D. 357, could hardly be disputed—that a contract to exclude the operation of the Act is valid—'With regard to the form which these contracts should take, it would seem that the workman will be bound by printed regulations or conditions of service, if they be brought to his knowledge, either by being posted up in the works or by some other means, and the posting up would at least constitute cogent evidence of a contract based on these terms.' This statement, taken from an English treatise on the duty and liability of employers, by Messrs Roberts & Wallace, 3rd ed., p. 465, is in the opinion of the Sheriff-Substitute equally applicable to Scotland. The underlying principle seems to be that actual knowledge may be inferred as a fact from reasonable means of knowledge, and inferred against the bare denial of the party whose interest it is to assert ignorance—See Pollock on Contracts, 3rd ed., p. 47 note, and an apposite passage in Ulpian which he quotes.

[The Sheriff-Substitute here stated that although the pursuer never personally came in contact with the defenders' officials after the accident, yet the pursuer's father was in the practice of calling at the defenders' office and drawing the insurance allowance due to his son, and had reported to the defenders that his son was quite satisfied with the insurance money, and that no action would be brought against them.]

"It is of course possible that Wright senr. invented this statement without any authority from his son. Therefore it cannot be affirmed with absolute certainty that the pursuer was expressly told after the accident that acceptance of the insurance allowance would bar legal proceedings. Nor can the Sheriff-Substitute altogether adopt the view of the defenders' agent that the defenders were entitled to deal with Wright's father as his representative. He was his son's agent to the extent of being empowered to receive the money, but it is disputable whether his agency went further.

"But although there is not in Wright's case direct proof of his being expressly put to his election after the accident between the insurance money and his chances at law, the facts and circumstances are sufficient to infer his discharge of his right of action. In *Griffiths'* case nothing passed between the injured workman or his representatives and the employers after the accident. The contract to discharge the claim under the Employers Liability Act was inferred from the posting up of notice similar to that in the present case, coupled with evidence that Griffiths saw and commented on the notice.

"Wright had been nine or ten months altogether in the defenders' employment. He seemed a man of at least average intelligence, and he can read and write. He admits that he understood that there was a sick and accident fund for which a deduction was made from wages. He also admits, though he was at first disposed to deny it, that he sometimes got his pay at the pay-box. If he had said he had not taken the trouble to read the notice to workmen posted up there, the question would have arisen whether he was not put

on his inquiry. Probably for this reason he is not content with saying that he did not read the bill, but asserts—'There was no bill at all posted up on the pay-box that I saw. If it had been there I would have seen it, and I could have read it too.' Now, in the opinion of the Sheriff-Substitute, it is proved that the bill was there, and Wright only discredits himself when he denies its existence.

"There is nothing that workmen regard with more watchful jealousy than deductions from their wages, and it would be strange if a workman did not insist on knowing all about why a deduction was made. This would inevitably bring up the insurance fund and the conditions on which workmen were admitted to its benefits, and the notice in which these conditions were expressed. Moreover, there had been numerous accidents at the works, and this must have made the subject of the accident fund a familiar one among the workmen; so that the inference from the posting of the notice to workmen that its contents were known to a man who could read is greatly strengthened by a consideration of the whole circumstances, while Wright's denial that he knew of its contents has its weight lessened by his denial that there was any notice at all posted up on the pay-box that he could see. Thus when Wright came to receive his weekly allowance after the accident, it cannot be taken off his hands that he was ignorant of the nature and origin of the weekly allowance which he received, and of the terms on which it was paid."

The pursuer appealed.

At advising—

LORD JUSTICE-CLERK—It has been already settled by decision that where employers and workmen agree to do so by arrangement, they may contract themselves out of the operation of the Employers Liability Act; and the question here before the Sheriff is whether or not upon the proof the pursuer has contracted himself out of the Employers Liability Act, and in doing so has placed himself in this position that he could not accept from the defenders, under the insurance arrangements, payments of money, and still keep up his claim under the Employers Liability Act or at common law. The case presented to us on behalf of the defenders is that they formed an accident insurance arrangement with an insurance company, and that in order to meet the insurance they themselves contributed so much, and deductions were made from the wages of the workmen employed by them, and in respect of these deductions submitted to by the workmen they became entitled to certain allowances in the event of an accident. The defenders say that they put up in their works sufficient notice of the conditions, and undoubtedly the bill before the Court if put up in the works in a fairly prominent position was sufficient notice. It sets forth the whole matter completely and very distinctly. It brought into very strong relief, and in a manner capable of being understood by an ordinary workman, the benefits to be derived from this insurance, and that no claim for compensation would be recognised unless these rules were complied with. The Sheriff holds, and I agree with him, that it is sufficiently proved that these notices were properly posted. The only evidence against that is the evidence of people who say that they did not see them. I have the greatest doubt about the truth of that evidence. It may be that many of the workmen did not read the notice, knowing that such conditions existed in the works. But that this bill was posted in such a manner as to form a sufficient notice I have no doubt. That being so, and deductions being made from the pursuer's pay in conformity with the notice, I think it must be assumed that the pursuer knew the terms of the contract.

If that be so, there is no ground for our interfering with the judgment of the Sheriff-Substitute. By receiving the allowances after the accident, the pursuer completed the contract by accepting the terms in the notice. I therefore am of opinion that he has come under the conditions of the notice, and is excluded from making any other claim upon his employers, and that the Sheriff-Substitute is right in sustaining the defenders' plea-in-law. The only alteration that I would suggest we should make on the Sheriff-Substitute's interlocutor is to add after the finding "that the contents of the notice were well known to the men employed by the defenders" the words "including the pursuer."

LORD YOUNG—I only desire to add a word or two in order to show properly the grounds on which I think the judgment should proceed. The pursuer was in the service of the defenders for eleven months prior to the accident, and during that period it is not disputed that he was insured against any accident occurring to him in the defenders' employment. That must be taken as a fact, because every week for eleven months sixpence was deducted from his wages as a premium of insurance, and after he met with the accident he drew compensation under the insurance at the rate of six shillings a week for four months. Anybody who is insured against accident must be insured under a contract. There is no other insurance in this country but insurance by contract. What then was the contract under which the pursuer was insured. He says he does not know. I am not disposed to take that answer off his hands. The defenders on the other hand quite distinctly set forth a contract of insurance which was posted up at conspicuous places in their works, and which distinctly bears that the benefits under it "are payable only when the workman has no claim against the employer, either at common law or under the Act of 1880, and his acceptance of the benefits hereby provided for shall be equivalent to a discharge of these and any other claims against the employer." Now, that is quite intelligible, and I think with the Sheriff that the evidence is clearly in

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 Grangemouth. 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