Further, I am unable to accept the view that the pursuer, pressing his debtor for payment, accepted the cheque on such a condition as made it of no value to any endorsee. To avoid the liability which in ordinary course attached to him as the granter of a dishonoured cheque it lay upon the defender to show that his obligation to meet the cheque was conditional, and if the condition did not appear *ex facie* of the cheque, to bring home knowledge of the condition to the onerous indorsee and holder of it. This onus I think the defender has not discharged, and therefore the pursuer is entitled to our judgment.

LORD MONCREIFF—I concur.

(1) The meaning which the defender now seeks to put on the words "against cheque" is "not negotiable." But there is no proof whatever of practice or custom warranting such an interpretation—it is unknown.

Besides, such a meaning would not be consistent with the purpose for which the cheque was granted, which was, that it might be at once transferred to a creditor. If it was only to be paid out of funds provided by Hurry, Hurry's own cheque would have been equally good.

(2) Assuming the competency of the proof allowed, it is not satisfactorily proved that the pursuer took the cheque in the knowledge of the meaning and effect of the words contended for by the defender and accepted it on that footing.

The Court pronounced this interlocutor:—

"Sustain the appeal, and recal the interlocutor appealed against: Find in fact (1) that the defender drew a cheque for £400 in favour of Messrs Kyle & Hurry, writers, Glasgow, on the Commercial Bank of Scotland, Limited (St George's Cross Branch, Glasgow), on 27th November 1899; (2) that the said payees endorsed and delivered said cheque to the pursuer, who became the holder in due course; (3) that the pursuer duly presented the said cheque for payment at the said branch of the said Commercial Bank of Scotland and that payment was refused; and (4) that the defender has been applied to for payment of the sum contained in said cheque, but that he delays or refuses to pay said sum: Find in law that the defender is liable to pay the said sum of £400 to the pursuer as holder in due course of said cheque: Therefore repel the defences, and ordain the defender to make payment to the pursuer of the said sum of £400, with interest thereon at 5 per cent. per annum from 27th November 1899 till payment, and decern: Find the pursuer entitled to expenses," &c.

Counsel for the Pursuer and Appellant—M'Lennan — Craigie. Agents — Miller & Murray, S.S.C.

Counsel for the Defender and Respondent—Johnston, K.C.—Deas. Agents—J. & D. Smith Clark, W.S.

Friday, July 19.

FIRST DIVISION.

[Sheriff-Substitute at Falkirk.

COCHRANE *v.* DAVID TRAILL & SONS.

(*Ante*, March 16, 1900, 37 S.L.R. 662, and 2 F. 794, and November 1, 1900, 38 S.L.R. 18, and 3 F. 27.)

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap*, 37), *Second Schedule* (8), (14) (*a*) (*b*)—*Act of Sederunt, June* 3, 1898, *sec.* 7 (*a*)—*Memorandum of Agreement — Verbal Agreement — Process — Application for Warrant to Record Memorandum—Proof of Verbal Agreement—Proof.*

Under the provisions of the Workmen's Compensation Act 1897, Second Schedule (8) and (14), and the relative Act of Sederunt June 3, 1898, sec. 7 (*a*), it is competent to record a memorandum of a verbal agreement.

The genuineness of a memorandum of a verbal agreement to pay compensation under the Workmen's Compensation Act having been disputed, the workman presented an application for a special warrant to record the memoandum. The employers in answer denied the existance of any such agreement. The Sheriff-Substitute allowed parties a proof of their averments *habili modo*. On appeal the Court *affirmed* this interlocutor and remitted the case to the Sheriff Court.

This case is reported *ante ut supra*.

David Cochrane, a lumper in the employment of David Traill & Sons, stevedores, Grangemouth, met with an accident on 9th September 1898, whereby he was disabled from work.

After various proceedings, Cochrane on January 4, 1900, lodged in the hands of the Sheriff-Clerk at Falkirk a memorandum setting forth an agreement which he alleged had been come to between himself and Messrs Traill to pay him compensation under the Workmen's Compensation Act 1897 at a certain rate, in order that the memorandum might be recorded in terms of the Workmen's Compensation Act 1897.

On 17th January 1900 the Sheriff-Clerk intimated to Cochrane's agent that he had received a letter from Messrs Traill disputing the genuineness of the memorandum of agreement, and that consequently the memorandum could not be recorded without a special warrant from the Sheriff.

Cochrane accordingly presented a petition in the Sheriff Court at Falkirk against Traill & Sons, in which he prayed the Court "to grant warrant to record in the special register of Court kept for the purpose, the memorandum of agreement between the pursuer and the defenders, proposed for registration by the pursuer in terms of the Workmen's Compensation Act 1897, and relative Act of Sederunt."

Cochrane averred that the defenders in October 1898 had informed his law-agent

verbally that they had been instructed by their Insurance Company to admit liability and pay pursuer half wages under the Act; that on 7th October they wrote to pursuer's wife intimating that they were in the meantime going to pay her 14s. per week, being half wages, counting from the first fortnight after the accident; that they had paid to the pursuer 28s. fortnightly from 7th October 1898 until 7th April 1899, when they stopped payment and intimated that they were to make no further payments; and that by their communications and actings they had agreed to pay the pursuer compensation at the rate of 14s. per week until he should be able to resume work.

Messrs Traill denied that any such agreement as alleged had been entered into.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37) enacts as follows — Second Schedule, . . . "(8) Where the amount of compensation under this Act shall have been ascertained . . . by agreement, a memorandum thereof shall be sent in manner prescribed by rules of court, by . . . any party interested, to the registrar of the county court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court judgment . . . (14) In the application of this schedule to Scotland (*a*) 'sheriff' shall be substituted for 'county court judge,' 'sheriff court' for 'county court,' . . . 'sheriff clerk' for 'registrar of the county court,' and 'Act of Sederunt' for 'rules of court.'"

The Act of Sederunt of June 3, 1898, passed in virtue of the powers conferred by the Workmen's Compensation Act 1897, enacts as follows — Section 7 (*a*) — "The memorandum as to any matter decided by . . . agreement, . . . shall be as nearly as may be in the form set forth in Schedule A appended hereto. Where such memorandum purports to be signed by or on behalf of all the parties interested . . . the sheriff-clerk shall proceed to record it in the special register to be kept by him for the purpose, without further proof of its genuineness. In all other cases he shall, before he records it, send a copy . . . to the party or parties interested (other than the party from whom he received it), in a registered letter containing a request that he may be informed within a reasonable specified time whether the memorandum . . . is genuine; and if within the specified time he receives no information that the genuineness is disputed, then he shall record the memorandum without further proof; but if the genuineness is disputed he shall send a notification of the fact to the party from whom he received the memorandum, along with an intimation that the memorandum will not be recorded without a special warrant from the sheriff."

On 5th April 1901 the Sheriff-Substitute (BELL) allowed parties a proof *habili modo* of their averments *quoad* the alleged agreement between them.

Note.— . . . "The remaining contested point in the case is, whether there is an agreement between the parties as to payment of compensation which can be registered as provided by the Act. That is a matter for proof. But the defenders maintain that there can be no proof, because the Act presupposes an agreement in writing. This is a point on which no decision has yet been pronounced, but there is an *obiter dictum* by Lord Low in the Outer House in the Court of Session action (2 F. 797)—'I do not think, however, that it is essential that an agreement as to compensation under the Act should be in writing. The Act does not say that the agreement must be in writing; and the provision that a memorandum of the agreement, and not the agreement itself, is to be registered, seems to me to contemplate that the agreement may not be in writing.' What is averred here is not a mere naked verbal agreement; certain documents are founded on as evidence of an agreement, and the averments of payment of the compensation for a certain period amount to those of *rei interventus*. On the whole, I do not think I can deny the pursuer an opportunity of trying to set up a valid registrable agreement."

The defenders appealed to the First Division of the Court of Session.

The Act of Sederunt July 11, 1828, passed in pursuance of the Judicature Act (Court of Session Act 1825) (6 Geo. IV. cap. 120) enacts as follows (sec. 5)—"Whereas it is enacted by section 40" (of the Judicature Act) "that in all cases originating in the inferior courts, in which the claim is in amount above £40, as soon as an order or interlocutor allowing a proof shall be pronounced . . . it shall be competent to advocate such cause to the Court of Session, it is enacted and declared, that if in such causes the claim shall not be simply pecuniary, so that it cannot appear on the face of the bill that it is above £40 in amount, the party intending to advocate shall previously apply . . . by petition to the judge in the inferior court for leave to that effect . . . and the petitioner shall be bound, if required by the judge, to give his solemn declaration that the claim is of the true value of £40 and upwards; and on such petition being presented, and on such declaration, if required, being made to the satisfaction of the judge, leave shall be granted to advocate, and the clerk of the inferior court shall certify the same.'"

The pursuer objected to the competency of the appeal, and argued—This was an appeal under the Judicature Act, sec. 40. The case was one in which the value could not appear "on the face of the bill," and in such circumstances the Act of Sederunt of 11th July 1828 prescribed a certain mode of ascertaining the value, and required a certificate thereof by the clerk of the inferior court. No such certificate having been obtained by the defenders the appeal was incompetent.

Argued for the defenders—The pursuer's claim was "simply pecuniary," and its value was over £40, because the recorded

agreement would be equivalent to a decree for a weekly payment of fourteen shillings —*Hamilton* v. *Hamilton*, March 20, 1877, 4 R. 688; *Cunningham* v. *Black*, January 9, 1883, 10 R. 441; *Purves* v. *Brock*, July 9, 1867, 5 Macph. 1003. The appeal was consequently competent. The procedure in the Sheriff Court was incompetent. The alleged agreement was an agreement at common law, and not under the Workmen's Compensation Act. The provisions of that Act as to recording a memorandum of agreement referred only to agreements come to in the course of proceedings under the Act, which was not the case here. The proof allowed by the Sheriff-Substitute might be appropriate if the question were one as to the genuineness of a written agreement, but what the pursuer was seeking to do was to prove that there was an agreement by spelling one out of the actings and communings of parties. As appeared from the previous cases about the same matter *ut supra*, it was essential that the alleged agreement should have been in writing.—See *per* Lord Adam, 3 F. 27.

At advising—

LORD ADAM—In September 1898 when in the employment of the respondents the petitioner met with an accident.

He alleges that an agreement was entered into between him and the respondents, whereby the amount of compensation due to him under the Workmen's Compensation Act was ascertained.

Thereafter he sent a memorandum embodying the alleged agreement to the sheriff clerk to be recorded in the Sheriff Court books.

On receiving this memorandum the sheriff clerk (it not having been signed by all the parties interested), as directed by section 7 (a) of the Act of Sederunt, intimated to the respondents the fact of such a memorandum having been sent to him for registration. He received a reply to the effect that the respondents disputed the genuineness of the agreement.

That made it necessary for the petitioner to apply to the Sheriff for a special warrant of registration, which he accordingly did by presenting the present petition. A record was made up in the action, and the Sheriff-Substitute on 5th April 1901 pronounced an interlocutor by which he allowed the parties a proof *habili modo* of their averments *quoad* the alleged agreement between them. This is the interlocutor which is now appealed against.

The objection to the interlocutor maintained to us was, shortly, this, that an agreement as to compensation under the Workmen's Compensation Act required to be in writing, and that as the agreement in this case was not alleged to be in writing, a proof of it was incompetent.

I see nothing in the Act which requires that an agreement under the Act must be reduced into writing, and I suppose signed by the parties.

All that the Act requires—section 8 of the second schedule—is that where the amount of compensation shall have been ascertained either by a committee or by an arbiter, or by agreement, a memorandum thereof shall be sent by the committee or arbiter, or any party interested, to the sheriff-clerk for registration. If the agreement itself had been required to be sent the case would have been different, because, of course, a verbal agreement could not be sent. But there is no diffculty in sending a memorandum of the terms of a verbal agreement.

The petitioner is certainly a party interested, and has a right to send a memorandum of the alleged agreement for registration. On the other hand, the respondents have a perfect right to dispute its genuineness—that is, as I understand, either that there was no agreement at all, or if there was, that the memorandum does not truly set forth its terms.

That appears to me to be the only relevant question raised on this record.

What the Sheriff has done is to allow a proof of the alleged agreement, and I think he is quite right. But while I do not think that the Act requires that an agreement should be reduced into writing and signed by the parties, the proceedings in this case and in the previous case before us about the same matter, which will be in your Lordships' recollection, certainly show the expediency of that course being followed.

I am therefore of opinion that the appeal should be dismissed and the case remitted to the Sheriff, upon whom the duty lies of granting warrant to record the memorandum if he shall be satisfied of its genuineness.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD M'LAREN was absent at advising.

The Court dismissed the appeal and affirmed the interlocutor of the Sheriff Substitute dated 5th April 1901.

Counsel for the Pursuer and Respondent —Sandeman. Agent—William B. Rainnie. S.S.C.

Counsel for the Defenders and Appellants —Watt, K.C.—W. Thomson. Agents—Macpherson & Mackay, S.S.C.

Friday, July 12.

SECOND DIVISION.

[Sheriff of Lanarkshire.

BURNS *v.* COLVILLE.

Agent and Client — Remuneration — Promotion of Railway Bill—Attendance by Local Agent at Parliamentary Committee — Proof of Employment.

Circumstances in which *held* that a solicitor who was employed by the promoters of a railway bill, as their local agent, was entitled to remuneration for his attendance and services in London in connection with the proceedings