should cross over it to and from and in the course of their work, and that the workmen's tools and other material used in connection with the work should be conveyed over the line. On or about the 16th day of May 1885 the said Michael Casey, in the discharge of his duty to the defenders, and in obedience to orders or directions which he received from one of the defenders' said foremen or other superintendents, was crossing the said line of railway when he was suddenly knocked down and run over and instantly killed by a train which had come swiftly to the spot where the accident happened. At the same time there was a train coming in the opposite direction."

The answer to Cond. 3 contained the following statement—At the time Casey did cross the railway—9·50 in the morning—it was daylight, and the train that killed him, being the train for Queensferry, was due, and had stopped at Haymarket Station, where it could be seen from where the men were working. He could see and ought to have seen the train before crossing. From where he was he could see the train all the way from the Haymarket Station."

The pursuers averred—"(Cond. 4) . . . The defenders or their said foremen or superintendents culpably and recklessly permitted and ordered and directed the said Michael Casey to carry on his work by crossing the railway line. . . . The said Michael Casey could not see the train which ran over him approaching, and thereby he could not have himself ascertained at the time, and before he was knocked down, whether the line was clear when he endeavoured to cross."

The defenders pleaded that the statements of the pursuers were not relevant.

The Sheriff-Substitute (RUTHERFURD) on 11th Dec. 1885 repelled this plea and allowed a proof.

"*Note.*—It is not without considerable hesitation that the Sheriff-Substitute has allowed a proof in this case. On the part of the defenders it was maintained that the pursuers' averments are irrelevant, inasmuch as they do not negative or exclude the possibility of the deceased having met his death through his own negligence. The pursuers allege (Cond. 2) that the deceased was killed while crossing the North British Railway at a point where the line runs upon a raised embankment, and it was argued that he must have been in a position from which he could have seen any approaching train, and as the danger was known and obvious he ought not to have attempted to cross the line until he was certain that the way was clear. The pursuers, however, allege (Cond. 4) 'that the deceased could not see the train which ran over him approaching, and thereby he could not have himself ascertained at the time, and before he was knocked down, whether the line was clear when he endeavoured to cross.' Now, the pursuers do not state what prevented the deceased from seeing the approaching train by which he was killed; but they aver at the end of article 3 of the condescendence that at the same time there was a train coming in the opposite direction, and it is possible that while the attention of the deceased was attracted by the one train he was run over by the other without contributory negligence on his part. If that were so, and if, as the pursuers allege, the deceased was exposed to unnecessary risk not incidental to his employment, and against which the defenders took no steps to protect him, the Sheriff-Substitute is not prepared to say that they would not be liable in damages, and he has therefore allowed a proof."

The defenders appealed to the Court of Session under section 40 of the Judicature Act.

The appellants argued that the pursuers' statements were irrelevant. All the general elements of danger in connection with the work in question were known to the deceased; this particular element of danger, viz., the approaching train, should have been known. The pursuers should specify why the deceased could not see the train approaching—*M'Gee* v. *Eglinton Iron Company*, June 9, 1883, 10 R. 955; *Waterson* v. *Murray*, July 1, 1884, 11 R. 1036.

The Court ordered the pursuers to specify the reason why the deceased could not see the approaching train.

At the next calling the pursuers amended the record by setting forth that the cause of deceased's failure to see the train was that smoke at the time obscured his view, and the case was then allowed to proceed.

Counsel for Pursuers—Rhind — W. Campbell. Agent—D. Howard Smith, Solicitor.

Counsel for Defenders — R. Johnstone — Kennedy. Agent—John Macpherson, W.S

Tuesday, January 19.

SECOND DIVISION.

[Sheriff of the Lothians.

BYERS *v.* LINDSAY.

Bills of Exchange—Proof of "No Value"—Bills of Exchange Act 1882 (45 *and* 46 *Vict. c.* 61), *sec.* 30—*Presumption of Value in Hands of Onerous Holder.*

Circumstances in which *held* that the acceptor of a bill which had been dishonoured had failed in an action at the instance of the holder to displace the presumption raised by the 30th section of the Bills of Exchange Act 1882, that "every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value."

Peter Byers, a farmer at Longford, West Calder, raised this action for payment of £85, which he alleged was due to him by David Lindsay, residing at Whitburn, on a bill drawn by William Alexander, cattle dealer, and accepted by the defender, and of which he alleged he was onerous indorsee and holder, and which had been dishonoured by the defender. The defence was —(1) that the pursuer was not an onerous holder of the bill; (2) that the bill was not granted or indorsed for value, and that the pursuer was informed of this both by the drawer (Alexander) and the defender, the acceptor, before he got possession of it.

The Sheriff-Substitute (MELVILLE) allowed the defender a proof of his averments.

The proof was largely directed to the question whether the defender, as he deponed, had accepted the bill for Alexander's accommodation, and while the evidence was somewhat conflicting, it appeared that the pursuer and Alexander had had many previous bill transactions; that the latter

owed him £600 at the date of the bill; that the bill had been regarded at the bank as one for value by the agent of the Commercial Bank, who deponed—"Alexander, in exchanging Lindsay's bill for Walker's (a bill for £100 drawn by Alexander on Walker), stated that Lindsay was owing him £85 for cows. He did not say the £85 bill was an accommodation one."

The Sheriff-Substitute pronounced this interlocutor—"Finds it proved that the bill in question was granted by the defender for the accommodation of the pursuer and William Alexander, and that no value was given for it to the defender: Therefore finds the defender is not liable for the sum sued: Assoilzies the defender," &c.

On appeal the Sheriff (DAVIDSON) affirmed this judgment.

The pursuer appealed, and argued — While under the 100th section of the Bills of Exchange Act 1882 (45 and 46 Vict. c. 61) it was competent for the defender to lead parole evidence of his averments in defence, the 30th section of that Act provided that "(1) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value." The *onus* of displacing this presumption lay upon the defender, and on a consideration of the proof, he had completely failed to discharge it by proving that the bill was merely an accommodation one.

The defender replied—(1) On the merits it was clearly proved that the bill was not granted for value; (2) where from defect of consideration the original payee could not recover on a bill, it fell upon the indorsee to show that it was for value—*Heath* v. *Sansom and Evans*, April 27, 1831, 2 Barnewall and Adolphus' Rep. 291.

At advising—

LORD JUSTICE-CLERK—This case is interesting in so far as it may raise questions under the Act of 1882, but as regards the particular facts here I have no doubt whatever. I am unable to agree with the Sheriff-Substitute. The pursuer was *prima facie* an onerous indorsee, and I have heard nothing to displace him from that position. The Act of 1882 no doubt warranted the Sheriff-Substitute in allowing the defender, the acceptor, to prove *prout de jure* that the bill was for accommodation in the hands of the indorsee. But the proof has entirely failed in this respect. There is a presumption raised by the 30th section of the statute that the holder of a bill in due course is to beheld *prima facie* as a holder for value. Has this presumption been displaced? Alexander, the indorser, is clearly under the impression that Byers was his creditor, and I think it is clear that Alexander was his debtor to the extent of at least £600. In my opinion, then, the presumption remains. Latterly, I think the contention was given up by Mr Rhind that although the bill was not for accommodation between the indorser and indorsee, still it was for accommodation between the drawer and indorser. There was no ground for this contention in the statute. On the whole matter, then, I am of opinionthat though it was competent for the defender to prove that the bill was granted by Alexander to Byers as an accommodation, he has completely failed to do so. I am of opinion, then, that the judgment appealed against must be altered.

LORD CRAIGHILL—I concur. The action is raised by Byers against Lindsay for the sum of £85 said to be due by bill drawn by Alexander upon the defender and endorsed to Byers. The pursuer says that he is an onerous holder, and he asks decree for the sum. There are two defences set forth—1st, that the pursuer is not an onerous holder, and 2nd, that the bill was accepted for the accommodation of Alexander, the drawer. There is no doubt that the Sheriff-Substitute took the right course, having reference to the Act of 1882, when he pronounced the interlocutor allowing the defender a proof of the averments made in his defences. The burden of proof was clearly on the defender to show that the pursuer was not an onerous holder. The pursuer was not called upon to prove that he was a holder for value. It appears to me that the defender has not proved that which it was necessary for him to establish. He has not disproved that the pursuer was an onerous holder. The evidence is not very clear on the question whether Lindsay was an acceptor solely for Alexander's accommodation. But it is unnecessary to go into that question, because the pursuer was an onerous holder and is therefore entitled to decree.

LORD RUTHERFURD CLARK concurred.

LORD YOUNG was absent.

The Court pronounced this interlocutor:—

"Find that the defender has failed to prove that the pursuer is not the onerous indorsee and holder of the bill libelled: Therefore sustain the appeal; recal the judgment of the Sheriff-Substitute and of the Sheriff appealed against; ordain the defender to make payment to the pursuer of the sum of £85."

Counsel for Pursuer — A. J. Young — Orr. Agents—Irons, Roberts, & Lewis, S.S.C.

Counsel for Defender—Rhind. Agent—Hugh Martin, S.S.C.

Thursday, January 21.

FIRST DIVISION.

[Sheriff of Lanarkshire.

ROTHWELL *v.* HUTCHISON AND OTHERS.

Ship—Seaman—Working in Face of a Known Danger.

A sailor was injured during a voyage through the defective condition of the wheel of the vessel. In defence to an action for damages at his instance, the owners pleaded that having gone on working in the knowledge of the defect he could not claim damages. *Held* that this was inapplicable to the case of a seaman, who had not the opportunity of declining to work and seeking other employment.

Philip Rothwell, seaman, raised the present action against Peter Hutchison, shipowner, Glasgow, and others, the registered owners of the steamship "Neptune," to recover £100 for personal injury sustained by him while a seaman on board the defenders' ship. It appeared from the proof that the "Neptune" left Rouen for Glasgow