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

in January 1884, and that during the voyage she encountered rough weather. The pursuer was directed by the captain to take his turn at steering the vessel, and while so engaged he was jerked from his position, lost his grip of the wheel, and was flung on the bridge deck, while in falling his left hand got entangled and crushed in the wheel chain. It appeared that the accident was mainly attributable to the fact that one of the spokes of the wheel was awanting, which caused the pursuer to loose his grip of the wheel in a rough sea. It further appeared that this spoke was awanting at the time when the ship started on her voyage from Glasgow. After the accident the pursuer's hand was dressed, and medical aid was called in on the ship's arrival at Falmouth. Mortification however set in, and it was found necessary ultimately to amputate the thumb and forefinger of his left hand. The pursuer alleged that by the accident he was permanently disabled, and prevented from earning his livelihood as a sailor. After a proof the Sheriff-Substitute (GUTHRIE) found that the defenders were responsible for the want of the said spoke, and he assessed the damages at £50 To this interlocutor the Sheriff (CLARK) adhered.

The defenders appealed to the Court of Session, and argued—The evidence showed, not that the spoke was broken when the ship started, but that a spoke was broken on the voyage The true cause of the accident was the captain taking away the second man from the wheel, and leaving only one to manage the steering—this was a cause for which the defenders were not responsible. If the pursuer knew the spoke was awanting, and still continued to work at the wheel, he was acting in the face of a known danger, and could not now claim compensation. In such a case the captain and the seaman were fellow servants, and the owners were not liable. Besides, the defenders employed a duly qualified person to inspect the ship before she started on her voyage, and in so doing they relieved themselves of all responsibility.

Replied for the pursuer — There was clear negligence on the part of the defenders in allowing the ship to start with defective steering gear, and the ship's-husband was not a fellow servant to the extent of precluding the defenders' liability. Under the Merchant Shipping Act 1876 (39 and 40 Vict. cap. 80), sec. 5, there was an implied contract that the ship was seaworthy. Defective steering gear was unseaworthiness both at common law and under the statute. The pursuer dared not have refused to steer on the ground that the spoke was awanting; he had not the option of working or not working in the face of a known danger—*M'Gee* v. *Eglinton Iron Co.*, June 9, 1883, 10 R. 955; *Griffiths* v. *London and St Katherine Docks*, L.R. 12 Q.B.D. 493, *aff.* 13 Q.B.D. 259; *Balleny* v. *Cree*, May 23, 1873, 11 Macph. 626.

At advising—

LORD PRESIDENT—[*After narrating the facts and stating that he agreed with the Sheriffs*]—An attempt was made by the defenders to maintain that they could avoid all liability for this accident because the pursuer knowing of the broken spoke in the wheel continued to work in the face of a known danger, and so acting he had only himself to blame for what subsequently occurred. No doubt a workman on land is not obliged to work in the face of a known danger; if he resolves to encounter the danger he has himself to blame if he sustains injury—he may refuse to go on until the defect is remedied, and may thereby cause considerable loss not only to himself but also to his employers.

The case, however, of a seaman is very different from that of a workman on land. Is he, because he discovers something defective with the gearing, to strike work? The discipline of a ship is quite inconsistent to such a notion, and if a sailor on board a ship of the mercantile marine were so to act he would in all probability be put in irons while the ship remained at sea, and be sent to prison when she reached the next port. The two cases are quite distinct, and no analogy can be drawn between the present case and that of a workman on land.

LORD MURE—I am of the same opinion on the facts, and I agree with what your Lordship has said as to the law applicable to this case.

LORD SHAND—I concur in the judgment, and also with what your Lordships have said.

Another point which the defender tried to make out was that in respect that a fellow servant of the pursuer had been deputed by them to inspect the ship, to look after the steering gear, and generally to put right anything that he found defective, that they were not to be held liable for any neglect by him of these responsible duties. If the defenders could have shown that such an officer had been appointed by them, and that he had entirely neglected his duties, a very difficult and delicate question might have arisen. We are however freed from any such inquiry, as there is nothing from beginning to end of the evidence which can be said to raise this question.

LORD ADAM—I concur, and have nothing to add.

The Court pronounced the following interlocutor:—

> "Find that the pursuer being a seaman on board the s.s. 'Neptune' on a voyage from Rouen to Glasgow, was steering the ship in a rough sea on the 26th of January 1884: Find that while so employed he was lifted by the wheel, and lost his footing on the narrow platform, whereby his left hand was caught in the steering gear and severely injured, so that the thumb and forefinger had afterwards to be amputated: Find that the accident was chiefly due to the want of one of the spokes of the wheel which made the man steering apt to lose grip of the wheel in a rough sea: Find that the said spoke was awanting before the commencement of the voyage: Therefore refuse the appeal, and of new decern against the defenders in favour of the pursuer for Fifty pounds sterling, the amount of damages assessed by the Sheriff."

Counsel for Pursuer — Young — Younger. Agent—J. A. T. Sturrock, S.S.C.

Counsel for Defenders — Pearson — M'Nair. Agents—J. & J. Ross, W.S.