that she adopted it as the settlement of their joint estate, in terms which they had deliberately talked over and approved.

On these grounds I am of opinion that the interlocutor of the Lord Ordinary should be adhered to.

The LORD PRESIDENT, LORD SHAND, and LORD ADAM concurred.

The Court adhered.

Counsel for Pursuer (Reclaimer)—H. J. Moncreiff—Low. Agent—A. P. Purves, W.S.

Counsel for Defenders (Respondents)—D.-F. Mackintosh, Q.C.—H. Johnston. Agents—Mackenzie & Kermack, W.S.

Thursday, July 8.

SECOND DIVISION.

[Sheriff of Forfarshire.

GRAHAM (COUTTS' TRUSTEE) v. WEBSTER.

Bankruptcy—Cash Payment within Sixty Days of Bankruptcy—Fraud.

A debtor while insolvent, and knowing himself to be so, sold a piece of moveable property over which a creditor had lent him money, and with the proceeds paid off the loan in cash. The creditor was no party to having the sale effected, and was not in any way in collusion with the debtor. *Held* that the payment being a cash payment was effectual, and could not be cut down by the trustee of the debtor, who was made notour bankrupt and decree of cessio obtained against him within sixty days of the sale and payment.

Thomas v. *Thomson*, Jan. 13, 1865, 3 Macph. 358, *followed.*

On 20th October 1879 Webster & Littlejohn, solicitors, Arbroath, on behalf of Mrs Webster, a widow, residing at 1 Kersland Terrace, Hillhead, Glasgow, advanced the sum of £200 to Messrs D. & W. Coutts, traction-engine owners, Arbroath. In security of the advance they took a document from the borrowers bearing that they sold thereby to Mrs Webster a traction-engine, threshing machine, waggon, &c. A relative back-letter was however granted stating that the disposition was truly to be held only till the bill of the same date for £200 with interest should be paid, failing payment of which on demand the machine was to be Mrs Webster's. A bill at one day's date was granted by D. & W. Coutts, William Gordon, Arbroath, signing the bill also as an obligant. Interest on the sum of £200 was regularly paid till Martinmas 1884. In 1880 D. & W. Coutts bought a new engine from John Doe, and paid instalments of the price till they had paid £185 up to December 1884, when Doe, who had raised an action for the balance of the price, obtained decree against them therefor with expenses. In this action Webster & Littlejohn acted for D. & W. Coutts by putting in defences and endeavouring to negotiate a settlement, but they did not appear for him at the proof, and decree went by default. About the beginning of September 1884 D. & W. Coutts had begun to get into difficulties. The fact of their being so was known to Webster & Littlejohn. On 8th November 1884 Messrs Webster & Littlejohn wrote to D. & W. Coutts stating that they would require to get possession of the engine sold to Mrs Webster, and sell it so as to save loss; and they stated in this letter that unless Doe could be arranged with the bankruptcy of D. & W. Coutts would probably supervene. On 1st November D. & W. Coutts sold to a man named Clarke the engine mentioned in the disposition to Mrs Webster, and various other articles, and with the proceeds paid in cash £175 to Webster & Littlejohn, having some weeks before paid them £25, in satisfaction of their client's debt. Webster & Littlejohn had nothing to do with bringing about this transaction with Clarke, but it was admitted in this case that D. & W. Coutts knew themselves to be insolvent and thought Mrs Webster had a preferable claim on them, and considered that they had made Doe a reasonable offer, which had been refused.

On 22d December 1884 decree of cessio was pronounced against D. & W. Coutts by the Sheriff-Substitute of Forfarshire, at the instance of David Souter, a creditor.

David Morgan Graham, auctioneer, Forfar, was appointed trustee on the estate of D. & W. Coutts, and on 30th April 1885 he raised an action in the Sheriff Court of Forfarshire against Mrs Webster, with consent of John Doe, for all right and interest competent to him, for £200.

The ground of action as laid by the pursuer appears from the following articles of his condescendence and from his pleas-in-law:—"(Cond. 6) At the time said articles were so sold the said Webster & Littlejohn acted as the agents of the defender, and also as the agents of the said D. & W. Coutts and William Coutts, and the said Webster & Littlejohn and D. & W. Coutts and William Coutts were all well aware that they, the said D. & W. Coutts and William Coutts, were and had been, from at least 1st September 1884, bankrupt and insolvent. In point of fact they were rendered notour bankrupt in or about the beginning of December 1884, and at all events within 60 days of the date when the said articles were sold as aforesaid, and the proceeds thereof paid to or on behalf of the defender. (Cond 7) The whole of the said articles so sold to the said John Clarke had been, on or about the said 17th November 1884, transferred by the bankrupts to the defender, or taken possession of by or on behalf of the defender, and were sold by her or for her behoof to the said John Clarke; or otherwise, the said articles were, on or about said date, sold to the said John Clarke by the defender, or for her behoof, and for the purpose of paying her said claim of £200, or by the said bankrupts on the instructions or at the instance of the defender or her said agents, and for the purpose of paying her said claim *in fraudem* and to the prejudice of the bankrupts' other creditors, the said bankrupts and the defender or her said agents well knowing that said bankrupts were then, as they have been ever since, and still are, bankrupt or insolvent; or otherwise, the said articles were sold to the said John Clarke in the full knowledge by the bankrupts and by the defender or her said agents that the bankrupts were then bankrupt or insolvent, and with the purpose of paying the defender's said claim *in fraudem* and to the prejudice of the bankrupts' other creditors; and the said transfer and sale of

said articles, and the said payment of the proceeds thereof, were carried through fraudulently and in collusion between the said bankrupts and the said Webster & Littlejohn acting for the defender, and with the purpose foresaid."

He pleaded—"(1) The transaction complained of having been carried through while the said bankrupts were in a state of insolvency, fraudulently on the part of the defender or those for whom she is responsible, and to the prejudice of the said bankrupts' creditors, is voidable. (2) The said payment of £200 or thereby having been obtained by the defender fraudulently and in collusion with the bankrupts, while the latter were known by her and by themselves to be insolvent, and with intent to defeat and to the prejudice of the just rights of their other creditors, and otherwise, in the circumstances condescended on, the defender is bound to restore the said sum. (3) The said goods having been transferred by the said bankrupts voluntarily while they were in a state of bankruptcy, or at least within sixty days of their notour bankruptcy, in satisfaction of a pre-existing debt, to the prejudice of the bankrupts' other creditors, the defender is bound to restore the sum sued for, being the price or surrogatum of the said goods."

The defender pleaded—"(3) The defender through her agents having merely got payment in cash of a debt admittedly due to her, cannot be compelled to repay same to the pursuers or to anyone else. (4) The whole actings and transactions of the defender and her agents in regard to said loan and the repayment thereof having been in *bona fide*, she is entitled to be assoilzied. (8) The said D. & W. Coutts having paid to the defender's agents in cash a debt which they were justly due to her, the payment cannot be held to be a preference either under the Bankruptcy Acts or at common law, and the pursuers are therefore not entitled to call upon the defender to repay the same."

The Sheriff-Subsitute allowed a proof before answer. Thereafter he pronounced this interlocutor:—"Finds (1) that on 20th October 1879 D. & W. Coutts borrowed £200 from the defender; (2) that they gave as security an assignation of their rights of property in an ambulatory steam threshing machine and relative implements; (3) that the money so obtained was used in paying a loan, by the help of which they had originally paid for said machine and implements; (4) that on or about 17th November 1884 the surviving partner W. Coutts sold said machine and other articles to John Clarke for the sum of £200, and that on obtaining payment of said £200 in the office of his agents, who were also agents for the defender, he paid to them the sum of £175, being the balance of said £200 then resting owing; (5) that at the date of said payment W. Coutts was insolvent, but finds that the pursuers have failed to prove that said cash payment is null, either in respect of fraud at common law, or of the Act 1696, c. 5; therefore assoilzies the defender from the conclusions of the action: Finds the defender entitled to expenses, &c.

"*Note.*—That the transaction sought to be challenged in this action was a cash payment is all but indisputable, but it is equally indisputable that it was a cash payment made by a man who knew himself to be insolvent; that it was made to agents who knew that he was on the verge of bankruptcy, and that it gave the defender (who herself knew nothing about it) a preference over Coutts' other creditors, and in particular over John Doe, the largest creditor, who appears in process as an auxiliary pursuer.

"It is settled law that up to the instant of sequestration a bankrupt can make valid payments in cash (Bell's Coms. ii. 201; *Thomas* v. *Thomson*, 3 Macph. 358; *Nicol* v. *M'Intyre*, 9 R. 1097. But there is a question left open about the reducibility of fraudulent payments in cash. What sort of payment that may be is left to the imagination. But whatever its features, I am of opinion that they do not appear in the cash payment here challenged. I can detect in it no conscious fraud on the part of anyone, and I cannot conceive of unconscious fraud. I rather incline to believe that W. Coutts did what he did, not with intent to do wrong, but under the conviction that he was doing right. The chief articles that he sold to pay this £200 in cash had really been paid for in part by this very £200. He could not pay the engine in 1878 when he bought it from Doe, the pursuer, so he borrowed £220 from John Hay, a friendly farmer. He repaid Hay in 1879 on the very day when he received this loan from the defender. No doubt John Doe had sold him a second and improved threshing machine at a price of £430, and that only £185 of this price had been paid; that he had no use for two threshing machines, and was unable to pay the second or dispose of the first; that John Doe stood upon his bargain and refused to take back his second machine, even though offered £20 with it, as well as the right to keep the £185 previously paid to him. Coutts certainly had no grateful or friendly feeling to John Doe; but there is no evidence that he sought revenge upon him through fraud, or that he did more for the defender than he believed himself honestly bound to do.

"Fraud, therefore, I put aside as unproved, and I find nothing left in the cause except the allegation that the articles which had belonged to Coutts were actually delivered by him to the defender, and were sold by Coutts, not for himself, but as her agent. This allegation has nothing to rest upon except an ingenious theory propounded in argument to the effect that Coutts was possessed by the idea that the assignation, which he had signed actually without delivery, transferred the property in his threshing machine and other moveables specified in the document to the defender, and that the hold this idea had taken of him transformed him into her agent, and deprived him of the free will of a man dealing with property which he believed to be his own. Coutts' examination in the cessio at Forfar gives some countenance to this theory. But even if it had been proved that Coutts had been under the influence of a legal delusion, that would not bind the defender to the consequences of an error not due to anything done by her or left undone. Moreover, the argument based on this theory is double-edged. If the possession of Coutts was the possession of the defender, then the assignation was complete, and the threshing machine and other articles were not his to sell when he did sell them. If that be so, the pursuers can have no right to recover the price of

what did not belong to the bankrupt, but became the defender's property without delivery at the date of the assignation. But if, on the other hand, the property remained with him, it will not vitiate a cash payment made by him out of the price realised from that property, that he was ignorant that the law of Scotland did not recognise as against creditors the validity of a mere paper title to undelivered moveables."

The pursuer appealed to the Sheriff, who on 5th April adhered to his Substitute's interlocutor.

"*Note.*—This case seems to me to be attended with considerable difficulty, but I have come to agree with the result at which the Sheriff-Substitute has arrived.

"There was at the time the payment in question was made a subsisting debt, which might have been enforced against the debtor. The payment satisfied that debt, and I think it may be considered a legitimate payment so far as the sanctions of the Act 1696 are concerned. There was no substitution of a new obligation for the existing one, nor was the debt further secured. It was paid in cash.

"If that be so, the only remaining ground upon which the pursuer can prevail is fraud—that is, he must prove fraudulent concert on the part both of the debtor and of the creditor.

"The bankrupt admits that he thought the defender had a preferable claim upon his implements, otherwise he would not have sold them. I read this as meaning that he was willing to do what he could to save the defender from loss. But I do not find any evidence sufficient to establish that the sale, or the use made of the proceeds of the sale, was the result of any collusive or preconcerted arrangement between the bankrupt and the defender. In the absence of such evidence there does not seem to be any ground for cutting down the cash payment in question."

The pursuer appealed to the Court of Session and argued—This payment to Mrs Webster although made in cash was not *bona fide* but fraudulent, as in so paying the bankrupt preferred one of his creditors to the others; it was not made in the ordinary course of business, and so was reducible either at common law or under the Statute 1696—Bell's Comms. ii, 201, 226 (7th ed.) Under the circumstances of this case the payment here was equivalent to conveying real estate. In the case of *Thomas* v. *Thomson* there was no averment of fraud, while here there was such an averment.—*Thomas* v. *Thomson*, Jan. 13, 1865, 3 Macph. 358. The answer to the case of *Broadfoot* (quoted *infra*) was that the ground of judgment there was that the payment was made eighty days before bankruptcy. If the circumstances proved were indications of *mala fides* on the part of the debtor, that amounted to fraud—*Ross* v. *Hutton*, June 15, 1830, 8 S. 916; *Mitchell* v. *Rodger*, June 26, 1834, 12 S. 802; *M'Cowan* v. *Wright*, March 9, 1853, 15 D. 494. The agent who acted for Mrs Webster in this matter was aware that Messrs Coutts were insolvent when they paid this debt to Mrs Webster, and there was fraud in taking the money. The private knowledge of the agent as to Messrs Coutts' insolvency must be taken to mean that Mrs Webster also knew of their insolvency—Benjamin on Sale, p. 430, *et seq.*; *Barwick* v. *English Joint-Stock Bank*, May 18, 1867, L.R. 2 Ex. 259; *Mack* v. *The Commercial Bank of New Brunswick*, Marc 14, 1874, L.R. 5 Privy C. App. 394; *Taylor* v. *Farrie*, March 2, 1855, 17 D. 639.

Argued for the respondent—Payments in cash were not esteemed by our law to be fraudulent even within sixty days of bankruptcy, and the principle on which they were allowed to be made by the persons even if insolvent was that they were made for the convenience of business. This transaction was made in the ordinary course of business—*Broadfoot* (*Philip's Trustee*) v. *Leith Banking Co.*, Dec. 9, 1808, F.C.; *Thomas* v. *Thomson* (quoted *supra*). No collusion was shown here—*Gibbs* v. *The British Linen Co.*, June 23, 1875, 4 R. 630.

At advising—

LORD JUSTICE-CLERK—This case has been very fully argued before us, but I am of opinion that there has been no ground shown which should induce us to set aside the judgment of the Sheriffs on the ground of nonconformity with the law of bankruptcy. I agree with the learned Sheriffs that there is not sufficient evidence to prove any such nonconformity. I think it is agreed that the Statute of 1696 does not affect the question at all, but the plea of the pursuers is that the payment of £200 to Mrs Webster was made fraudulently. The grounds of saying that the payment was so made are, that Coutts, the payer of this sum, knew that he had not enough means to enable him to pay all his creditors, and that he meditated taking out *cessio*, that this fact was known to Mrs Webster's agents, and it is said that this transaction, which was an ordinary business transaction, is on these grounds to be set aside. This kind of case may run into very subtle questions, but I know of no case where such a plea has received effect unless there has been shown some fraud in the transaction itself. But there is no fraud in the transaction here. The engine which was Mrs Webster's security for her loan belonged to Coutts; in order to repay her he sold it and gave the money to Mr Webster for his client. There is nothing in all that transaction which has any resemblance to the cases of constructive fraud stated by the institutional writers. There was no false purchase of the engine, or false sale; the whole proceeding was really what it bore to be.

But it has been argued beyond that if the creditor knew that the debtor was at the time insolvent, then there was fraud in the acceptance of the money. I am not disposed to admit that, and the same thing occurred in the case of *Thomas* v. *Thomson*. Even if the recipient of the price of the engine knew that the payer of the price was insolvent, that is not sufficient to make out fraud. If any man who is not able to pay all his creditors in full pays away money that of course leaves less to pay to the other creditors with, and any creditors who receive money from him knowing him to be in that state understand that. But that is not enough to found a challenge of the money so paid on the ground of fraud in what is after all a ready-money transaction. But further, I am not disposed to assume that Mrs Webster is chargeable with the knowledge of Mr Coutts' insolvency which her agents derived from acting as agents otherwise. I do not think that the knowledge of Coutts' insolvency would be enough to ground the challenge of this payment on the ground that Mrs Webster

knew nothing about it. I am of opinion on the whole matter that the pursuer's case fails, and that we should dismiss the appeal and affirm the judgment of the Sheriffs.

Lord Young—I am of the same opinion, and on the same grounds. I would only wish to point out that there is an admitted distinction between the payment of cash in payment of a debt, and the transference or giving over of other kinds of property to a certain and material extent. A person who is insolvent and who is contemplating bankruptcy, whether he knows that he is on the verge of insolvency or is really in ignorance of it, is certainly disabled as a general rule from giving part of his property to some creditors with a view of giving them a preference over his other creditors. But it is certain that a man who is insolvent and knows that he cannot pay all his creditors is at liberty to prefer any of his creditors he pleases where their debts are due, and due in actual money. He is at liberty to give the full sum of their debt to some creditors and not to others, though he is not at liberty to give any pledge to them in security of his debt. There is no doubt about it. The question was raised whether if the payee knew of the insolvent condition of the payer, that rendered bad a transaction which otherwise would have been good. But as I have pointed out, there is a difference between the payment of cash and the transference of other kinds of property. The money received by the creditor cannot be recovered however improperly the cash was originally obtained. But it is alleged that here the creditor knew that his debtor was insolvent, but that would certainly not stop him from receiving payment of his just debt—the thing is quite ridiculous, and would put a stop to many of the transactions of common life. We need something more precise than impecuniosity, and insolvency is just impecuniosity. I have heard Professor Bell say in his poetical way sometimes that insolvency passes over a man like a summer cloud—it is over him one day and is gone the next, sometimes gloomy and sometimes brighter. A man may be unable to pay all his creditors in full, and yet he may quite honestly pay his household bills.

Now, what have we here? Coutts says he knew he could not pay all his creditors, but he had a business, and he hoped to be able to do so in more favourable times. But he is pressed for the debt due to Mrs Webster, he gets the necessary money by a sale of the engine, and he pays her. We cannot profitably inquire into her views as to his solvency, or to her agent's views either. We must exclude all such views.

Professor Bell draws the distinction as to whether a cash transaction is reducible on the ground of fraud or not most pointedly, and I am not prepared to say that there is not a possibility of such a case arising, but such a case has never yet occurred, and I sympathise very much with what the Sheriff-Substitute says. He says in his note—"But there is a question left open about the reducibility of fraudulent payments in cash. What sort of payment that may be is left to the imagination, but whatever its features I am of opinion they do not appear in the cash payment here challenged. I can detect in it no conscious fraud on the part of anyone, and I cannot conceive of unconscious fraud." We must come to the very facts presented in this case, and these facts are simply that this man Coutts could be shown to be insolvent, and the knowledge of his insolvency can be brought home to Mr Webster acting for the defender in this case. These are all the facts except perhaps that Coutts was meditating taking out cessio—but what can that matter? The facts are neither more or less than this, that Coutts' insolvency was known to himself and the agent for Mrs Webster, but that was no ground for not receiving the money. I think the Sheriff-Substitute acted prudently in allowing a proof, but as he has done so of course our interlocutor must have findings in facts.

Lord Craighill—I concur with the result arrived at by your Lordships, and since the case of *Thomas* v. *Thomson* was cited to us I have entertained the feeling that this case could not be decided in favour of the pursuer without setting aside the judgment in that case. But we are bound to decide this case in accordance with the decision in that case. It appears to me that the pursuer has taken the wrong view of the case as to the sale of the engine and the payment of the price to Mrs Webster. As I appreciate the facts the creditors can be in no way prejudiced by our decision in favour of the defender. Mrs Webster had a deed of disposition and security over the engine, and she might have taken possession of it and sold it at any time. But there was no need to consider the advisability of taking that course until Mr Doe began to press Coutts, and then she proceeded to take possession of the engine. Her agent then wrote to Coutts, not for the purpose of compelling Coutts to sell the engine, but to arrange whether Coutts would himself sell the engine and pay over the money, or whether Mrs Webster would need to take possession of the engine in terms of the disposition, and that she should pay herself out of the proceeds. But in that there is no fraud on the creditors. The circumstances are exclusive of fraud. I think the Sheriff's judgment is right.

Lord Rutherfurd Clark—I think that we should affirm the judgment of the Sheriff. I confess that I proceed upon the case of *Thomas* v. *Thomson.* I cannot say that the case has been in any way distinguished in any material point from that case, and therefore the authority of *Thomas* v. *Thomson* is conclusive as to our judgment in this case, unless we are prepared to say that that case is of no authority. I do not see my way to say that, and therefore I am bound to follow that authority. But I must say that if the question was quite open I should have had difficulty in deciding this case, and I do not know which way I should have decided it. I rely upon *Thomas* v. *Thomson.*

The Court pronounced this interlocutor:—

"Find that the sum of £200 mentioned in the record was paid by D. & W. Coutts to the defender in extinction of a just debt due for money lent to that amount: Find that the defender did not by herself or others take possession of the machine and other articles specified in the record, or sell or cause them to be sold to John Clarke in fraud and to the prejudice of the other creditors

of the said D. & W. Coutts, knowing that they were bankrupt or insolvent, and that the said articles were not sold to the said John Clarke in the knowledge of the defender that the said D. & W. Coutts were bankrupt or insolvent, with the purpose of paying her claim in fraud and to the prejudice of the other creditors, and that the sale of the said articles was not effected, and payment of the price thereof was not made, fraudulently or in collusion between D. & W. Coutts and Messrs Webster & Littlejohn acting for the defender: Therefore dismiss the appeal, affirm the judgment of the Sheriff-Substitute appealed against; of new assoilzie the defender from the conclusions of the action," &c.

Counsel for Pursuer—Dickson—G. W. Burnet. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for Defender—Pearson—Graham Murray. Agents—Duncan Smith & MacLaren, S.S.C.

Friday, July 9.

SECOND DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

HARPER v. NORTH OF SCOTLAND AND ORKNEY AND SHETLAND STEAM NAVIGATION COMPANY, THE GREAT NORTH OF SCOTLAND RAILWAY COMPANY, AND BAIN.

Reparation — Dangerous Animal—Bull—Ordinary Precaution in Removing.

A bull was being led through the streets in a town secured in the ordinary manner by a ring in its nose and a rope attached thereto, and by a halter upon its head. It was irritated by boys in the street, and struggled with the men in charge, the result being that the ring in its nose broke through a latent defect, and it escaped from the halter and injured a passenger on the street. *Held* (*diss.* Lord Justice-Clerk) that the animal having been secured in a usual and reasonably safe manner, neither the owner nor the carrier in whose charge it was, was responsible.

On 9th February 1884, George Bain, farmer at Mill of Tillyfour, Monymusk, purchased a young polled black Aberdeenshire bull from John Forbes, farmer, Mains of Brux, Kildrummy. The bull was bought on behalf of William Corrigall, farmer, Stonequay Walls, Orkney. Bain stipulated that before delivery a ring should be put in the bull's nose. There are two ways of doing this. By one the ring is put through the gristle of the nostril and then fastened, by the other a ring in two pieces is taken, and a portion of each is placed against the nostril, and then a rivet is passed through and the ring afterwards screwed tightly against, but not through, the nostril. The latter was the way taken. Forbes got a blacksmith to make a ring, which (after one ring had been rejected as unsuitable and another made) was riveted on to the bull's nose, and on 12th February Forbes and Bain took the animal to Alford Station on the Great North of Scotland Railway, and trucked him there to be taken to his destination in Orkney. There were some other cattle in the truck, but they were removed at Kittybrewster Station, where the truck still containing the bull was shunted. It was afterwards attached to another train and taken to Waterloo Goods Station, Aberdeen, where it was to be removed and put on board a steamer of the North of Scotland and Orkney and Shetland Steam Navigation Company for conveyance to Orkney. The bull arrived at Waterloo Station between three and four in the afternoon, and one of the railway company's servants, W. Sandison, informed Alexander Taylor, the Steam Navigation Company's foreman, of the fact, in order that he might be removed, it being the custom of the railway company to give delivery at the station, and not to remove animals therefrom by their own servants. Taylor asked Sandison to get the bull sent to the wharf. Accordingly Sandison and another of the railway company's servants, Andrew Simpson, after their day's railway work was done, took the bull out of the truck and proceeded with him that evening after seven towards the Steam Company's wharf. The bull when brought to Alford Station had a rope halter round his head and the ring in his nose, with a stout rope attached to it. The nose rope was then taken off the ring and put round the bull's neck, and therewith it was tied to the truck. In this condition the bull had arrived at Waterloo Station. The two men took the ring rope off the bull's neck, and attached it to the ring, leaving the rope halter as it was. While they were going through the streets of Aberdeen with the bull, each of them having hold of a rope, the bull was startled by the noise made by some boys, the ring in his nose broke, and he rushed off through the streets. The ring was not perfect. It was made in two pieces and then riveted, and the hole not being quite properly in the centre of the piece of iron, the ring was weaker than usual, and so gave way. In his rush the bull knocked down and injured two women, Mrs Harper, and Mary Walker, a domestic servant. Both brought actions for damages for the injuries caused, and called as defenders The North of Scotland and Orkney and Shetland Steam Navigation Company, the Great North of Scotland Railway Company, and George Bain as owner and consigner of the bull. The actions both in the Sheriff Court and in the Court of Session were argued on the record made up in the action by Mrs Harper.

She averred that when at Waterloo Station the bull was in a very wild state, and also that "the said accident occurred through the gross negligence and carelessness of the said defenders, or one or other of them, or of those for whom they are responsible, in so far as they did not see to the sufficiency of the rope and ring, nor in the excited state of the animal have it removed in the proper way."

The Steam Navigation Company pleaded—"(1A) The injuries alleged to have been sustained by the pursuer having been the result of a pure accident the defenders ought to be assoilzied. (3) The bull mentioned in the petition having been in charge of servants of the defenders, the Great North of Scotland Railway Company, at the time it injured the female pursuer, the said