interlocutor of the Sheriff-Substitute, dated 28th November 1901: Further adhere to the interlocutor of the Sheriff, dated 24th January 1902, appealed from, and dismiss the appeal and decern of new against the defenders for payment to the pursuer of the sum of £11, 6s. 3d. admitted to be due: Find the respondent entitled to expenses, and remit," &c.

Counsel for the Pursuer—Ure, K.C.—Hunter. Agents—Smith & Watt, W.S.

Counsel for the Defenders—Clyde, K.C.—Deas. Agents—Hope, Todd, & Kirk, W.S.

Wednesday, November 5.

SECOND DIVISION.

[Sheriff Court at Falkirk.

BARNETSON *v.* PETERSEN BROTHERS.

Shipping Law — Shipbroker — Foreign Owner—Master Accepting Services and Disbursements by Shipbroker Instructed by Foreign Owner's Agent—Liability of Foreign Owner to Shipbroker—Agent and Principal—Foreign Principal—Liability of Foreign Principal to Shipbrokers Instructed by Agent—Contract—Privity of Contract.

The master of a foreign ship on arrival at a port in this country accepted the services of a shipbroker, who did the business and made the disbursements which were necessary to enable the ship to be berthed, loaded, and dispatched on her next voyage. This shipbroker was instructed by the foreign shipowners' regular agents in this country, to whom the ship had been chartered. In an action at the instance of the shipbroker against the foreign shipowners for payment of his account for services rendered and disbursements made, the defenders maintained—(1) That there was no contract between them and the pursuer, his contract being with the defenders' agents only; and (2) that the services were rendered and the disbursements made for the purposes of a sub-charter which the defenders' agents had entered into for their own benefit, and upon terms which were not authorised by the defenders. *Held* that, the defenders' master having taken advantage of the shipbroker's services and disbursements, the foreign shipowners were liable directly to him therefor.

Samuel Keith Barnetson, shipbroker, Methil, Fife, having used arrestments *ad fundandam jurisdictionem*, raised an action in the Sheriff Court of Stirling at Falkirk against Petersen Brothers, Flensburg, Germany, owners of the s.s. "Rocklands," for payment of an account for services rendered and disbursements made for the "Rocklands" at the port of Methil.

On 11th January 1900 a charter-party was entered into between the defenders and Gans & Sell, their agents in Scotland, under which the "Rocklands" was chartered to carry a cargo of coal from Methil to Kjöge, in Norway. Under this charter-party ninety-six running hours were allowed for loading and discharging, to be effected within four running working days. "Time for loading to count from first high-water after arrival roads from the time the master has got his ship ready to receive cargo and reported her as ready for cargo to charterers or their agents in writing during business hours." The charter-party contained a clause permitting re-chartering "at any rate of freight, but otherwise on the same conditions."

It was not maintained that the ship had been demised to Gans & Sell,

The defenders' agents Gans & Sell on 11th January re-chartered the vessel to Burns & Lindemann, merchants, Glasgow, for a voyage from Burntisland or Methil to Kjöge with a cargo of coal. This charter-party provided as follows:—"Steamer to be loaded in forty-eight running hours, commencing to count when ready to receive cargo, reported at Custom-House, berthed, and written notice given to charterers or their agents within office hours, . . . and to be discharged, weather permitting, in four running working days."

On 26th January Gans & Sell wrote to the pursuer advising him that the "Rocklands" was due at Methil on the 29th, and placing her business in his hands.

The "Rocklands" duly arrived at Methil, and the necessary services were rendered and the usual disbursements made on her behalf by the pursuer.

After sundry correspondence and communications with Gans & Sell and Burns & Lindemann, the nature of which sufficiently appears from the Sheriff-Substitute's interlocutor and note, *infra*, the pursuer rendered his account for services and disbursements to the defenders, and upon their refusal to pay he raised the present action, in which he concluded for payment of his account.

The items in the account sued for, as summarised, were as follows:—

Pilotage, Towage, Dock Dues, Dock Lights, - - - -	£15	11	5
Trimming Cargo and Bunkers,	10	11	4
Water, Consulage, Boatmen, Telegrams and Telephones, Postages and Petties, Clearance, Exchange, and Noting Protest, - - - - -	4	19	9
Cash to Captain, - - -	15	0	0
2 per cent. add. Comm., - -	7	1	0
	£53	3	6

The pursuer pleaded—"(4) Pursuer having been employed under said charter-party to make the disbursements sued for on behalf of defenders' vessel, defenders are liable in direct payment thereof to pursuer."

The defenders pleaded—"(3) The pursuer not having been employed by the defenders, the defenders should be assoilzied with expenses. (4) The pursuer having been employed by the said Gans & Sell,

and the disbursements having been made for them and not on defenders' credit, the defenders should be assoilzied with expenses."

When the present action was raised a litigation was pending between the defenders and Gans & Sell with regard to certain claims by the former against the latter, and the defenders stated that in their accounts with Gans & Sell, and in said action, they gave credit for the disbursements made at Methil which were now sued for by the present pursuer.

After a proof in which, *inter alia*, the facts narrated above were disclosed, the Sheriff-Substitute (RUSSELL BELL) pronounced the following interlocutor:— "Finds in fact (1) that in January 1900 the steamship 'Rocklands,' belonging to the defenders, who are foreigners, was chartered by them to Messrs Gans & Sell of Glasgow, and by the latter in the same month re-chartered to Messrs Burns & Lindemann, also of Glasgow, for a voyage from Methil in Fife to Kjöge in Norway; (2) that the pursuer, who is a shipbroker in Methil, was instructed by the said Gans & Sell to do what brokerage was required on said vessel while in the port of Methil, and that he acted on said instructions and did said brokerage; (3) that he rendered his account therefor to the defenders, and also claimed reimbursement from the said Gans & Sell; (4) that the pursuer has failed to prove that a contract of employment existed between the defenders and him: Finds in law that the defenders are not liable to the pursuer for the amount of the account sued for: Therefore assoilzies the defenders," &c.

Note.— . . . "I think the whole circumstances disclose a case of privity of contract (1) as to the chartering of the ship between the defenders and Gans & Sell; and (2) as to the brokerage between Gans & Sell and the pursuer, but none between the defenders and the pursuer. There is nothing to show that the defenders held out Gans & Sell to the pursuer as their agents and to pledge their credit, and so the case stops short of the question with which it started, of whether an agent in this country can pledge the credit of a foreign principal. There is no relation between the parties to the case until pursuer rendered his account to the defenders, and all that the latter do, *quoad* the pursuer, is to repudiate liability. The inference is to me irresistible that but for Burns & Lindemann's hint as to the financial instability of Gans & Sell the pursuer would never have thought of claiming against the defenders directly. The existence of the subcharter to Burns & Lindemann does not affect the case if I am right in holding that the pursuer's contract was with Gans & Sell. The process is rather a chaotic one, there being produced a great deal of correspondence which has reference to disputes which have no connection with the case."

The pursuer appealed to the Court of Session, and argued—The Sheriff had proceeded on the ground that there was no contract between the pursuer and defenders, but therein he had erred. That the disbursements made by the pursuer were necessary was not disputed, and the defenders had taken the benefit of them, and their captain had accepted the pursuer's services—Bell's Pr. 450, Bell's Com. i. 571; Abbot's Law of Shipping, Part 2, cap. 2 and 3; *North Western Bank* v. *Bjornstrom*, November 9, 1866, 5 Macph. 24, Lord Benholme p. 28, 3 S.L.R. 14; *Meier & Company* v. *Küchenmeister*, March 17, 1881, 8 R. 642, Lord Young, p. 646, 18 S.L.R. 431; *Benn & Company* v. *Porret*, March 11, 1868, 6 Macph. 577, 5 S.L.R. 353; *Stewart* v. *Hall*, November 10, 1813, 2 Dow 29. The law relied on for the defenders with regard to principal and agent did not apply, and the terms of the sub-charter did not affect the present question.

Argued for the respondents—The only charter party authorised by the defenders was that between themselves and Gans & Sell, who had exceeded their authority by the terms of the sub-charter, which they had entered into for their own benefit, and wherein they had ceased to be agents and become principals. The Sheriff had rightly held that the defenders had no contract with the pursuer. The pursuer's contract was with Gans & Sell, and his contract with the defenders' agents did not bind the defenders. When an agent acted for a foreign principal the presumption was that the agent was exclusively liable under any contract he entered into, unless the terms of the contract made it clear that the principal alone was to be bound—Bell's Com. i. 543, note. A foreign principal was not bound by a contract entered into by his agent unless he had given the agent authority to make him a party to the contract — *Girvin, Roper, & Company* v. *Monteith*, November 13, 1895, 23 R. 129, 33 S.L.R. 73.

At advising—

LORD TRAYNER—I think this a very clear and simple case. The defenders' vessel the "Rocklands" arrived at Methil in January 1900, there to load a cargo of coal. The services of a shipbroker were necessary, and these services were rendered by the pursuer. He did the ship's business at the Custom House and elsewhere and made all the necessary disbursements. He advanced money to the captain, paid the pilotage, towage, and dock dues, and the other sums enumerated in his account. That account amounts to £53, 3s. 6d., and is composed of payments made on account of the ship and therefore on account of the defenders, to the extent of £44, 0s. 6d., the pursuer's fees and commission only amounting to the sum of £9, 3s. *Prima facie* the defenders are liable for the pursuer's account, as they took the benefit of the pursuer's services and are *lucrati* to the extent to which he made advances on ship's account. The defenders, however, maintain that they are not liable, on a ground which I think has scarcely been well considered by them. It is this—that they only authorised their agents Gans & Sell to enter into an "arrival" charter, whereas they really entered into a

"berthing" charter. That appears to be true, and may raise a question whether the defenders are entitled to claim demurrage, and who is bound to pay it. But it has nothing to do with a claim made for ship's disbursements by the disburser.

The Sheriff-Substitute proceeds upon the ground that there was no contract between the parties. But if the captain of the vessel put himself in the hands of the pursuer, and the defenders take the benefit of his so doing, there is contract enough to make them liable. They suffer no detriment thereby, because whatever broker had been so employed their liability would, as regards amount, have been exactly the same. I therefore think the pursuer is entitled to decree.

The LORD JUSTICE-CLERK, LORD YOUNG, and LORD MONCREIFF concurred.

The Court pronounced this interlocutor—

"Sustain the appeal and recal the said interlocutor appealed against: Find in fact (1) that the pursuer was employed as shipbroker to attend to the business of the defenders' steamship 'Rocklands,' of Flensburg, and make any necessary disbursements for said ship on her arrival in Methil about the end of January 1900, and to supply her with bunker coal; (2) that as shipbroker the pursuer performed the services and made the disbursements charged for in the account sued for; and (3) that the defenders took the benefit of the pursuer's said services, and were *lucrati* to the extent of the said disbursements: Find in law that the defenders are liable to the pursuer in the sum sued for: Therefore decern against them for payment to the pursuer of the sum of £53, 3s. 6d., with interest," &c.

Counsel for the Pursuer and Appellant—Ure, K.C.—Sandeman. Agents—Wylie & Robertson, W.S.

Counsel for the Defenders and Respondents—Solicitor-General Dickson, K.C.—Spens. Agents—J. & J. Ross, W.S.

Wednesday, November 12.

SECOND DIVISION.

[Sheriff-Substitute at Kilmarnock.

FERGUSON *v.* ANDREW BARCLAY, SONS, & COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7 (1)—*Factory and Workshop Act* 1878 (41 *Vict. c.* 16), *sec.* 93 (3) — *Factory*—"*On or in or about*" *Factory—Employment on Factory Business in Shed of which Undertaker Tenant, half-a-mile from Factory.*

An engineering company were tenants of a railway shed situated about half-a-mile from a factory in which they carried on their business. The company were in use to send a squad of men from the factory to the shed for the purposes of any work requiring to be done there in connection with the business of their factory. While so employed as one of a squad of men in the shed, working at a locomotive engine the property of the company, one of their workmen was injured. No mechanical power was used in the shed. In an appeal under the Workmen's Compensation Act 1897, *held* that the injured workman was not employed "on or in or about" a factory within the meaning of section 7 (1) of the Act.

This was a case stated on appeal from a determination of the Sheriff-Substitute (D. J. MACKENZIE) at Kilmarnock, in an arbitration under the Workmen's Compensation Act 1897 between John Ferguson, Grange Knowe, Irvine Road, Kilmarnock, applicant and respondent, and Andrew Barclay, Sons, & Company, Limited, Caledonia Works, Kilmarnock, appellants, in which the applicant claimed compensation in respect of injuries sustained by him on 11th December 1901 in the course of his employment by the appellants.

The following facts were stated as admitted or proved:—"1. That the applicant and respondent was on 11th December 1901 a workman in the employment of the appellants, who are engineers at Caledonia Works, Kilmarnock, which is a factory within the meaning of section 7 of the Workmen's Compensation Act 1897. 2. That on said date the applicant and respondent was employed by the appellants as one of a squad of men working at a locomotive engine, which was the property of the appellants, in a shed belonging to the Glasgow, Barrhead, and Kilmarnock Railway Company, and used by the said Railway Company, of which shed the appellants were tenants in terms of an agreement. 3. That the shed in question is situated about half-a-mile from the appellants' works, with which it has no direct communication by rail, and had been used by them for similar purposes for several weeks at a time on many occasions before Martinmas 1901. 4. That no steam, water, or other mechanical power was used in said shed. 5. That while in the course of his employment on said 11th December 1901 the applicant and respondent was injured by an accidental explosion of naphtha which occurred when he lifted a tin of that substance in mistake for one of oil. 6. That the injuries to the applicant and respondent were such that he has been since and still is unable to work."

The Sheriff-Substitute's finding was as follows:—"On these facts, while of opinion that the shed in question was not by itself a factory in the sense of sec. 7, sub-secs. 1 and 2, of the Workmen's Compensation Act, I found that it formed part of the factory in which the applicants carry on their business, and that they were liable in compensation to the applicant and respondent at the rate of 14s. 6d. per week from the 1st