nothing to add to what his Lordship says It seems to me that, first of all, looking at the constituting documents of the association it is impossible to find that this is a trade union. Secondly, as regards the other question of liability, it seems to me that the only objections to receiving the defender as a member of the association were objections which were pleadable by the company and by no one else; he cannot take advantage of them on his own behalf. In other words, I think this class of question has been decided again and again in liquidation cases, and if the matter had been tested by the company being wound up there is no doubt whatsoever in my mind that this gentleman would have been put upon the list as a contributor. That really ends the matter, because whether there could or could not have been a question as to whether he could get out of the company by the simple act of resignation, that question is not raised in this proceeding, as the sum for which he is sued is a sum entirely due before the date of his resignation. I am for adhering.

LORD KINNEAR—I am of the same opinion. I think the defender is liable upon his own agreement with the company for the sum sued for, whether he is technically a member or not.

LORD M'LAREN concurred.

The Court adhered and refused the reclaiming note.

Counsel for the Pursuers (Respondents) Hunter, K.C. — A. R. Brown. Agents— Alex. Morison & Co., W.S.

Counsel for the Defender (Reclaimer)— Scott Dickson, K.C. — Chree. Agents — Henry & Scott, W.S.

Friday, February 28.

FIRST DIVISION.

[Lord Dundas, Ordinary.

STAGG & ROBSON, LIMITED *v.* STIRLING AND OTHERS.

Bill of Exchange — Proof — Parole — Competency of Parole Proof of Verbal Agreement to Renew Bills Granted in Terms of Written Agreement—Bills of Exchange Act 1882 (45 *and* 46 *Vict. cap.* 61), *sec.* 100.

An action was settled by written agreement which provided that the defending company should pay the pursuers a certain sum, so much in cash and so much in bills at so many months, the bills to be guaranteed by three directors of the company. The action was withdrawn, the cash paid, and the bills delivered. Certain of the bills not having been met, the pursuers sued the guarantors, who in defence sought to establish by parole (relying on the Bills of Exchange Act 1882, sec. 100) an alleged verbal agreement that the pursuers were to renew the bills from time to time until there was delivered certain material which had not yet been delivered.

Held that the proof sought was incompetent.

Per the Lord President—"The meaning of the provision, I think, was clear enough—to allow you to prove by parole what the rules of law might not allow to be proved by parole, namely, the true relations to each other of the parties upon the bill."

The Bills of Exchange Act 1882 (45 and 46 Vict. cap. 61), sec. 100, enacts—"In any judicial proceeding in Scotland any fact relating to a bill of exchange, bank cheque, or promissory-note, which is relevant to any question of liability thereon, may be proved by parole evidence. . . ."

On September 30, 1907, Stagg & Robson, Limited, van and waggon makers, Selby, Yorkshire, raised an action against John Stirling, Brookdene, Twickenham, and two others, with a conclusion against them jointly and severally for payment of "(*First*) the sum of £400, with interest thereon at the rate of five per centum per annum from 20th August 1907 until payment; (*Second*) the sum of £500, with interest thereon at said rate from 20th September 1907 until payment; and (*Third*) the sum of £500, with interest thereon at said rate from 20th October until payment, being the amounts past due to the pursuers under a guarantee dated 27th July 1907, granted by the defenders in favour of the pursuers." The sum first sued for was the balance of the amount contained in a bill, and the other two sums were the amounts contained in two other bills, all granted by Scott, Stirling, & Company, Limited, carriage builders, Hamilton, in favour of the pursuers, and guaranteed by the defenders, who were the managing and two other directors of that company.

The defenders pleaded, *inter alia*,—"(2) The sums sued for not being due by the said Scott, Stirling, & Company under said bills, the pursuers are not liable therefor under said guarantee. (3) The pursuers being bound to renew said bills are not entitled to decree for the sums sued for."

The *facts* of the case and the nature of the defenders' *averments* are, so far as necessary for this report, given in the *opinion* of the Lord Ordinary (DUNDAS) who on 22nd November 1907, before answer, allowed parties a proof—defenders to lead therein.

Opinion.—"The pursuers, van and waggon makers at Selby in Yorkshire, sue the defenders, who carry on business as carriage builders, etc., at Hamilton, for payment of various sums of money contained in bills drawn by the pursuers upon and accepted by the defenders, which the pursuers say are overdue. The case is the sequel of a former action which the pursuers raised against the defenders on 28th January 1907 for payment of a sum of money as the balance due in respect of goods supplied to the defenders in connection with certain double-decked motor

omnibuses. A few days before the diet appointed for proof in that action the managing directors of the parties respectively met and arranged terms of settlement, and a written agreement entitled 'heads of settlement' was subscribed by them, which is produced in this action. It provided, *inter alia*, that the defenders should 'pay' to the pursuers 'the sum of £2250 in the following manner:—By £250 cash forthwith. £500 bill at one month. £500 bill at three months. £500 bill at four months. £500 bill at five months; that each of the bills should be guaranteed personally by (*named individually*) the managing director and two other directors of the defenders' company; and that 'on payment of the £250 cash three of the bodies are to be delivered; the remainder of the bodies undelivered are to be delivered, if required, to Scott, Stirling, & Company, Limited, when the first bill for £500 is met.' In accordance with these 'heads of settlement' the pursuers received from the defenders their cheque for £250 and four bills of £500 each at one, three, four, and five months date respectively; and the case was taken out of Court by joint minute. The first bill was duly honoured by the defenders; the second to the extent of £100 only; and the sums now sued for are the £400 balance of that bill and the sums of £500 contained in each of the third and fourth bills (which were dishonoured when presented), all which sums the defenders decline to pay. The defenders explain that the account sued on in the former action included the price of certain omnibuses and other goods which had not been delivered by the pursuers to the defenders, and which the pursuers alleged, and the defenders denied, the latter were bound to accept and pay for. The defenders say they were willing to purchase said goods as they required them in the ordinary course of business. Their account of what passed at the meeting when the 'heads of settlement' were drawn up and signed is that 'it was agreed that the defenders should take delivery of said goods as they require them, and that they should grant the bills now sued on. It was further agreed that the bills should be renewed at maturity in the event of the defenders not having taken delivery of goods to the amount of the cash paid by the defenders and of the bills which had fallen due,' and the defenders say that the whole goods of which they have taken delivery are covered by the sums of £250, £500, and £100 already paid by them to the pursuers; and that the latter, being bound to renew the bills in terms of the agreement above set forth, are not entitled to decree for the sum sued for. The defenders moved for a proof of their averments. They claimed that they are entitled to prove by parole evidence the verbal terms of agreement which they allege, in virtue of section 100 of the Bills of Exchange Act 1882 (45 and 46 Vict. cap. 61). [*Quotes sec.* 100, *ut. sup.*] Now this action is a 'judicial proceeding in Scotland,' and the facts which the defenders allege appear *prima facie* to be quite relevant to the question of their liability under the bills mentioned in the summons. I may refer to two recent decisions as illustrating the wide scope and effect which section 100 has been held to possess. The first of these (*Drybrough & Company, Limited*, 1903, 5 F. 665) has features strongly resembling the present case. The defender there was allowed parole proof of an alleged verbal agreement to the effect that the bill on which he was being sued would be renewed from time to time by the pursuers subject to certain conditions which the defender said he had fulfilled. This decision was approved and followed in *Viani & Company*, 1904, 6 F. 989, where the defender was allowed a proof that the pursuer (indorsee and holder of the bill) had verbally agreed that if the bill was in his hands at maturity he would not call upon the defender (the acceptor) to retire it. At the discussion in the Procedure Roll I heard a forcible argument by the pursuers' counsel to the effect that while he fully accepted the authority of the decisions, the proof sought by the defenders should not be allowed because the language of the written 'heads of settlement' is unambiguous and absolutely inconsistent with the terms of agreement which the defenders allege to have been verbally adjected; that the defenders' averments, therefore, were, in face of the written agreement, palpably irrelevant; and that nothing in the Bills of Exchange Act warranted an attempt to contradict by parole proof the written agreement of parties as evidenced not by the bills themselves but by the 'heads of settlement.' I do not think these contentions are sound. I do not consider that the language of the 'heads of settlement' is such as necessarily to exclude or negative the defenders' statement of the agreement as a whole. It certainly seems singular, if the latter is true, that no allusion to renewal is made either in the 'heads' themselves or in the separate guarantee which was granted in pursuance thereof. But the idea of renewal is not expressly negatived; and the fourth paragraph (*v. infra*) of the 'heads of settlement' seems to square in some measure with the defenders' averment about taking delivery of the goods only as they required them. It is also to be observed that the written agreement does not provide that the pursuers are to receive certain payments at stipulated times, and that bills are to be granted for these; but only that the defender shall 'pay' the pursuers 'in the following manner,' viz., by a payment in cash (which was duly made), and granting four bills at such and such dates (which were duly granted). It seems, therefore, that the pursuers' action must rest not on the 'heads of settlement' but on the bills themselves; and it is in fact so laid. Upon the whole matter, I think I must allow a proof before answer, the defenders to lead."

The fourth paragraph of the "heads of the agreement," referred to by the Lord Ordinary, was—"On payment of the £250 cash three of the bodies are to be delivered; the remainder of the bodies undelivered are to be delivered if required, to Scott Stir-

ling & Co., Ltd., when the first bill for £500 is met. The bodies to be finished in accordance with Scott Stirling & Co., Ltd.'s order and specification, in first class style, subject to ordinary storage depreciation."

The pursuers reclaimed, and argued—The "heads of settlement" fixed a definite date of payment for each bill, which was inconsistent with an agreement, as alleged, for their renewal. These "heads of settlement" embodied the whole terms on which the original action was to be settled, and the guarantee there stipulated for would be useless if the alleged verbal obligation to renew the bills was established. Such a verbal agreement could not be allowed to alter the terms of a completed written agreement, and the averment of such was not a "relevant" averment in terms of the Bills of Exchange Act, sec. 100. Proof should not be allowed.

Argued for the defenders (respondents)—Under section 100 it was competent to prove an agreement to renew a bill by parole evidence—*Drybrough & Company, Limited* v. *Roy*, March 17, 1903, 5 F. 665, 40 S.L.R. 594. *Viani & Company* v. *Gunn & Company*, July 14, 1904, 6 F. 989, 41 S.L.R. 822, went even further. *The National Bank of Australasia* v. *Turnbull & Company*, March 5, 1891, 18 R. 629, 28 S.L.R. 500, and *Gibson's Trustees* v. *Galloway*, January 22, 1896, 23 R. 414, 33 S.L.R. 322, were distinguishable because the agreements there averred would, if proved, have freed the defenders from all liability on the bills. The existence of the "heads of settlement" was immaterial. A bill mentioned in a written agreement was subject to the operation of section 100, and it was therefore a bill one of whose characteristics was that an agreement to renew it might be proved by parole. The terms of the guarantee were wide enough to include renewed bills, and not inconsistent with the agreement averred. A proof should be allowed.

At advising—

LORD PRESIDENT—In this case the Lord Ordinary has allowed a proof, and it is against that interlocutor that the reclaiming note has been taken. The pursuers had raised an action against the defenders for goods supplied, and that action was settled upon terms which were embodied in a written document regularly signed before witnesses and called "Heads of Settlement." These heads of settlement settled that the action in the Scottish Courts was "to be withdrawn in the following terms," and then it was provided that Scott Stirling & Company were to pay Stagg & Robson, Limited, the pursuers, the sum of £2250 in the following manner—£250 in cash, £500 by bill at one month, and three other bills for a like sum of £500 at three, four, and five months respectively. Then there was a further stipulation that the bills were to be guaranteed personally, jointly, and severally, by three persons mentioned, and after that there were certain stipulations as to the time within which the goods were to be delivered. Now the bills as they became due were not all honoured. The first was paid, but the second only partly and the others not at all, and the present action is raised to recover the amount. The Lord Ordinary has allowed a proof of an averment which really comes to this, that there was a verbal agreement at the same time that these bills should be renewed when they fell due, and he has felt himself bound to do that because of the 100th section of the Bills of Exchange Act, which provides ". . . (*quotes, sup.*) . . . "I am bound to say that I do not think that that provision of the statute has any application to the matter in hand. It does not mean that there is a sort of magic in the word "bill," and that the moment you allege anything with regard to a bill you at once upset the whole law of evidence. The meaning of the provision, I think, was clear enough—to allow you to prove by parole what the rules of law might not allow to be proved by parole, namely, the true relations to each other of the parties upon the bill; that is to say, that the indebtedness which *prima facie* on the bill is upon the acceptor, might be shown to be not really upon the acceptor; or, in other words, that the true position of the names on the bill might be proved. But I do not think that that section has anything to do with the general rule of law, which is that you cannot alter a written agreement by parole evidence. The result, I think, would be almost fantastic, because the provision in the agreement that these bills were to be guaranteed by certain persons would be practically swept out of existence. They would only of course be bound to guarantee the particular bills which are there mentioned, and if these bills were renewed and represented by other bills, then the guarantee would fly off. I am therefore of opinion that there is no relevant defence to the action, and that decree should be pronounced in terms of the conclusions of the summons.

LORD M'LAREN—I think it is settled that the time-honoured defence that a bill was merely a matter of form and was not intended to impose liability on anyone, is not admissible under the Bills of Exchange Act any more than it was at common law. In one of the first cases that came before this Court under the Bills of Exchange Act—*The National Bank of Australasia* v. *Turnbull & Company*, 1891, 18 R. 629—we found that there was no relevant allegation of any contract of which the bills formed a term, but only a general statement that the acceptor was not intended to be liable, and it was held that the Legislature could not have intended that the question whether a bill was an obligatory document or not was to be tried upon parole evidence. In the present case the allegation is not very different. It is in substance that there was an express or implied obligation to renew the bills when they fell due. Now my opinion is that wherever it can be shown that a bill is one ingredient of a contract then you are entitled to prove the contract, and it may be that under

some condition of the contract the bill is not enforceable. Again, as a bill is in form a unilateral document, although it is always stated to be for value received, any question relative to the consideration of the bill may under the statute be proved by parole evidence, and we have examples in our practice at common law of allowing a proof on a question of no value—although that is not invariably done, and in fact is only done in exceptional cases. But what makes it clear in the present case that the defence is impossible is this, that the drawer of the bill stipulated that he should have the personal guarantee, jointly and severally, of the directors of the company for payment of the bill, and there is no stipulation that the guarantee should be renewed or made applicable to any substituted bill that might afterwards be granted. Now can anything be more absurd than to suppose that, while stipulating for a personal guarantee for the payment of these bills, it was at the same time agreed that the bills should be renewed and that the guarantee should then cease to be binding? It is evident here that the guarantee would be altogether futile if this defence could be received and if proof were admissible to show that the bills were renewable. I therefore agree with your Lordship.

LORD KINNEAR — I am of the same opinion. The old rule of our law, which has been displaced by the 100th section of the Bill of Exchange Act, created a presumption of onerosity so strong that although it might be contradicted it was not allowed to be disproved except by the writ of the party seeking to enforce liability on the bill, or else by a reference to his deposition on oath. That rule was supposed to be supported by favour to trade, but in comparatively recent cases it was seen that it might operate very unjustly, and yet the rule was so well settled that the Court could not disregard it. Now, I apprehend that the main purpose of the section in question was to remedy that injustice, but I think it is extremely probable that the language of the clause went somewhat beyond what was required to remedy the particular mischief to which I have referred, and it may be that it would allow parole evidence being admitted with reference to other questions of liability than those which depend on mere presumption of onerosity. However that may be, I am certainly of opinion that it can only apply to cases where the alleged liability is rested exclusively upon a bill, and not upon a bill as the mere method of carrying into effect a written contract. Now in the present case the bills were granted for the purpose of working out a contract which is expressed in writing, and the terms upon which the bills were to be drawn and accepted are not therefore to be gathered from the mere terms of the bill itself, but from the agreement which was carried into execution by their being accepted. I think it is contrary to perfectly well-settled rules of evidence to allow the terms of that agreement to be altered or enlarged by parole evidence, and I therefore agree with your Lordships that there is no relevant case to be sent to proof.

The Court recalled the interlocutor of the Lord Ordinary, and granted decree in terms of the conclusions of the summons.

Counsel for the Pursuers (Reclaimers)—Scott Dickson, K.C.—Hon. W. Watson. Agents—Webster, Will, & Co., S.S.C.

Counsel for the Defenders (Respondents) — Morison, K.C.— J. S. Mackay. Agents—Deas & Co., W.S.

VALUATION APPEAL COURT.

Wednesday, February 19.

(Before Lord Low and Lord Dundas.)

AIRDRIE, COATBRIDGE, AND DISTRICT WATER TRUSTEES AND ANOTHER *v.* LANARKSHIRE ASSESSOR.

Valuation Cases—"Lands and Heritages"—Slag Heap—Railway Company with Formal Lease of Slag Heap for Ballasting—Valuation of Lands (Scotland) Act 1854 (17 *and* 18 *Vict. cap.* 91), *sec.* 42.

A railway company had a formal lease of a slag heap which it used, having erected machinery, for ballasting its permanent way. A fixed rent, or alternatively a royalty, was stipulated for. Objection was taken to the entry of the slag heap in the valuation roll, on the ground (1) that slag was not a mineral or the slag heap a quarry; (2) that the agreement was really the sale of a commodity, not a let; and (3), on the part of the railway company, that the slag was already valued in its permanent way. *Held* that the slag heap had been rightly entered, being "lands and heritages" capable of yielding an annual rent.

The Valuation of Lands (Scotland) Act 1854 (17 and 18 Vict. cap. 91), sec. 42, provides that the expression "'lands and heritages' shall extend to and include all lands, houses, . . . ferries, piers, harbours, quays, wharfs, docks, canals, railways, mines, minerals, quarries, coal-works, water-works, lime-works, brick-works, iron-works, gas-works, factories, and all buildings and pertinents thereof, and all machinery fixed or attached to any lands or heritages. . . ."

At a meeting of the Valuation Committee for the Middle Ward of Lanarkshire, held on 10th September 1907, for the purpose of hearing appeals against the valuations of the Assessor, under the Valuation of Lands (Scotland) Acts, the Airdrie, Coatbridge, and District Water Trustees and the Caledonian Railway Company appealed against the following entry in the valuation roll for the year from Whitsunday 1907 to Whitsunday 1908, viz.:—