respect of which they could demand delivery at any time. It is only requisite to read the document to make that clear. [*Reads letter of 17th August* 1865.] Is it possible, with this stipulation, that there was any obligation of immediate delivery on the one hand, or right to demand on the other? Suppose the document had been expressed thus, "We bind ourselves, immediately on demand, to deliver to you the copper rollers in question, but on the special understanding," &c. These two things would have been absolutely inconsistent, and therefore this is not such a document as creates in the party to whom it is given that *jus in re* which is essential to make a good security in a question of this kind. The evidence in the case is not satisfactory; and, if I had had any doubt as to the main question, I should have thought it desirable to have farther proof; but assuming everything in favour of the respondents, it is quite impossible to adhere to the interlocutor under review, and therefore I am against causing the parties to incur more expense.

Lord Curriehill absent.

Lord Deas—The state of matters is this. Julius Liebert wanted an advance of money from Max Nanson & Company, and proposed to give them a security over these copper rollers, which were in the hands of the Blanefield Printing Company—and the question is, has that been effectually done either by pledge or by absolute transfer of property? I think the Sheriff has come to a right conclusion in holding that there is no effectual pledge, because the articles said to be pledged were never in the possession of the creditor at all. They were in the hands of the Blanefield Printing Company, and, though the point was not expressly decided in *Hamilton*, there are opinions by all the Judges of this Division to the effect that a pledge cannot be constituted without actual possession, and these opinions were not merely incidental, but were stated after a full hearing. There is no doubt, therefore, that the Sheriff was right in holding that his first interlocutor could not be supported on the ground of pledge.

I think, farther, that the transaction cannot be regarded as a transfer of property. Assuming that the sale-note was transferred along with the letter of 14th of August, the document of 17th August, while it bears that the rollers were to be at the disposal of Max Nanson & Company, goes on to state distinctly to what extent they were to be so. Julius Liebert was to be entitled to remove a portion of the rollers, to add to their number, to take some away and replace them by others, and to have a full right to use them for engraving and for the purposes of his business. The effect was, that Liebert might at any time remove the greater part of the rollers from the custody of the Printing Company, and the custody would then be in him; and the argument would be that these rollers, though in the custody of Liebert, were nevertheless the property of Max Nanson & Company. Now, Max Nanson & Company might very well have possession through the Blanefield Printing Company, but they could not possess through Liebert. When they came into his possession they were in the position of undelivered goods; the property in law was presumed to be his and attachable for his debts. It may be quite true that some of these articles remained with the Printing Company all along, but that is not inconsistent with the property remaining with Liebert, and being acquired by the trustee in his sequestration. If this were not so, a man might have the full use of his moveable property, and yet that might all stand transferred in absolute property to some one else, so as to defeat the claims of his creditors by a stipulation that he was to have the custody of as much as he might require. Here there is neither a transfer by an absolute writing nor by delivery. The Sheriff no doubt has bestowed great attention on the case, but I think the considerations I have mentioned are quite conclusive against his judgment.

Lord Ardmillan concurred.

Agents for Advocator—G. & H. Cairns, S.S.C.

Agent for Respondents—T. Ranken, S.S.C.

Thursday, July 2.

SIMONS & COMPANY *v.* BURNS.

Reparation—Master and Servant—Machinery. A master held liable to a servant in damages for injury through insufficient machinery.

John Burns, labourer, brought an action of damages in the Sheriff-court of Renfrewshire, against William Simons & Company, engineers, founders, and shipbuilders, London Works, Renfrew, claiming compensation for injuries sustained through the culpable negligence of the defenders in failing to provide sufficient mooring apparatus at their building yard, where Burns was at the time employed. The Sheriff-substitute (Cowan) held that the accident was owing to the fault of the defenders, and assessed the damages at £200. The Sheriff (Fraser) adhered. The defenders advocated.

Lancaster for advocators.

Shand and R. V. Campbell for respondent.

The Court adhered.

Lord Deas thought this was a mere question of fact, and that the result of the whole proof was that it was the duty of the master to provide a proper post to which the rope might be attached, and that that duty had not been performed, there being either no post at all, or else such a remnant of a post as to be altogether insufficient for the purpose.

The Lord President and Lord Ardmillan concurred.

Lord Curriehill absent.

Agents for Advocators—Wilson, Burn, & Gloag, W.S.

Agent for Respondent—J. D. Bruce, S.S.C.

Thursday, July 2.

MILNE *v.* SOUTER.

Obligation—Guarantee—Railway—Relevancy. Certain parties bound themselves, in the event of the pursuer obtaining 400 shares in a certain railway and not being able to dispose of them at or above par within two years after the line was opened, to repay him his loss, rateably to the extent of the sums written opposite their respective names. In an action against one of these parties for the amount of deposit and calls on so many shares, objection to relevancy *repelled*, and case remitted to proof.

Robert Milne, with consent and concurrence of the Great North of Scotland Railway Company, brought this action against Alexander Souter, for "payment to the pursuer of the sum of £200 sterling, being the amount of deposit and calls on an