view that cash payments were forbidden; and I am after full consideration unable to affirm that they constitute a plain declaration by which customers with the International Sponge Importers, Limited, are bound that no ready-money trade is done by that firm, and that travellers are prohibited from receiving money in exchange for goods delivered. It appears to me that such a prohibition should not be lightly inferred. The retail customer, visited by the well-known representative of a wholesale firm, does not in my opinion make an unreasonable or improper or careless supposition when he assumes that, if such an agent or traveller hold the double position of, first, being actually charged with the custody of goods and the delivery of these, and secondly, being entrusted by his employers to collect moneys due upon account, the same agent or representative is empowered to make even better terms for his employers by taking cash—rather than postponed terms of payment—for the goods handed over. I agree with the language of Lord Low upon this point—"Of course the allowance of credit is entirely in favour of the buyer. It would be much better for the seller every time to get his money down in exchange for the goods, and I can see nothing in the fact that the practice of the pursuers was to give credit, and of course of the purchasers to take credit, which could have led to the conclusion that it was beyond the power of their traveller to make a cash transaction."

In short, I do not doubt that, not only did Messrs Watt & Sons in good faith believe, but they were warranted in believing, that the trusted agent of the appellants had power to take the best terms for goods delivered, namely, cash or its equivalent, a cheque in his favour which could be cashed on the spot.

These views are sufficient to dispose of the case. But if we turn to the chapter of responsibility upon the part of the appellants' firm the case presents singular features. When an agent is charged with the custody and disposal of goods in bulk, the ledgerising of those goods, and the accounting for the balance thereof unpaid for in cash or unaccounted for by way of invoice, checks his intromissions and discloses in, say, monthly or quarterly periods, the deficiencies in his stock. Such disclosures would put all parties on their guard and go far to stop both delinquencies and blunders. I cannot find in this case any sufficient explanation why this firm was unable to discover by this ordinary course of business that stock was disappearing and defalcations going on.

The importance of that in regard to the respondents is this, that had the very first transaction been investigated on that footing it would have led to the discovery of a payment in cash not represented by invoice, and then the respondents would have been apprised by the appellants that cash payments were objected to and contrary to their methods of business. The customer, however, was left in the position of this payment four years ago being unchallenged, and he repeated on three subsequent occasions similar transactions in good faith. I should think it a very strong thing to hold that the wholesale dealer thus, through possibly the defalcations of other employees, leaving the customer in the position of making payment after payment in cash without challenge, is entitled now to impugn the entire series as contrary to the custom of trade. It is unnecessary to deal with this point further, except to say that, even although my view had been different upon the main issue, I should have held it almost impossible to affirm with regard to any of the transactions subsequent to the first which remained unchallenged that the views of the appellants could be maintained. In my opinion the appeal fails.

Their Lordships dismissed the appeal, with expenses.

Counsel for the Pursuers (Appellants)—Buckmaster, K.C.—J. O. Kemp. Agents—William Geddes, Edinburgh—Russell & Arnholz, London.

Counsel for the Defenders (Respondents)—Macmillan—the Hon. William Watson. Agents—Mackenzie, Innes, & Logan, W.S., Edinburgh—Bush Mellor & Norris, London.

Friday, April 28.

(Before the Lord Chancellor (Loreburn), Lord Macnaghten, Lord Shaw, and Lord Robson.)

CALEDONIAN RAILWAY COMPANY *v.* GLENBOIG UNION FIRECLAY COMPANY, LIMITED.

(In the Court of Session, July 15, 1910, 47 S.L.R. 823, and 1910 S.C. 951.)

Railway—Mines and Minerals—Fireclay—Railways Clauses Consolidation (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 33), *sec.* 70.

"The Court has to find what the parties must be taken to have bought and sold respectively, remembering that no definition of 'minerals' is attainable, the variety of meanings which the use of the word 'minerals' admits of being itself the source of all the difficulty. It must be taken that what the Railway Company intended to get and the landowners intended to give was the land under the line, for the object was to give, not a wayleave but a support. I say this, speaking generally. Upon the other hand, if anything exceptional in use, character, or value was thereunder, that was reserved, provided it could be included under the word 'minerals' as understood in the vernacular of the mining world and the commercial world and the landowner."—*Per* the Lord Chancellor.

Circumstances in which a fireclay was *held* to be a mineral.

The case is reported *ante ut supra*, where will be found the Railways Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. cap. 33), sec. 70, and, in the opinion of the Lord Ordinary, a narrative of the facts established by proof.

The Caledonian Railway Company (complainers and reclaimers) appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—This case is one of a class which always has been, and I suppose always will be, of exceptional difficulty, as will every case be in which the decision really depends upon a question of degree.

The principle of the decision in this House in the *Budhill* and *Carpalla* cases seems to me to have been this: The Court has to find what the parties must be taken to have bought and sold respectively, remembering that no definition of "minerals" is attainable, the variety of meanings which the use of the word "minerals" admits of being itself the source of all the difficulty. It must be taken that what the Railway Company intended to get and the landowner intended to give was the land under the line, for the object was to give, not a wayleave, but a support. I say this, speaking generally. Upon the other hand, if anything exceptional in use, character, or value was thereunder, that was reserved, provided it could be included under the word "minerals" as understood in the vernacular of the mining world and the commercial world and the landowner.

Now applying that in the present case, it is not doubted that the substance contained in the lowest seam, at least as to three-quarters of it, was a "mineral" within the vernacular which I have described. It is said that the same persons who used that language also included, not merely the remaining fourth of the lowest seam, but the clay contained in all the other seams. I will assume that it is so. But in fact it is no answer to say that the vernacular has a still wider application than it would have if it were restricted solely to Glenboig fireclay.

The evidence given as to common meaning is evidence given of the common meaning at the present day. I should assume that it was the same at the time of the sale unless sufficient ground was given for coming to a contrary conclusion. The particular seam now being worked, to which alone the present decision of your Lordships will apply, is certainly of an exceptional character as to its properties and value upon the evidence before us; and it is not established in the evidence before us that it is present in such large proportions as to destroy its exceptional character.

It is impossible in my view to give further assistance in ascertaining when a substance is to be treated as a mineral within the Act of Parliament than we have endeavoured to give in the cases already cited, and in any observations which their Lordships may make in the course of the present case.

LORD MACNAGHTEN—I agree.

LORD SHAW—I am of the same opinion.

LORD ROBSON—I am also of the same opinion.

Their Lordships dismissed the appeal, with expenses.

Counsel for the Appellants—Clyde, K.C.—the Hon. W. Watson. Agents—H. R. Buchanan, Glasgow—Hope, Todd, & Kirk, W.S., Edinburgh—Grahames, Currey, & Spens, Westminster.

Counsel for the Respondents—D.-F. Scott Dickson, K.C.—Macmillan. Agents—Craig & Henderson, Glasgow—Morton, Smart, Macdonald, & Prosser, W.S., Edinburgh—Walker, Martineau, & Company, London.

COURT OF SESSION.

Friday, January 27.

SECOND DIVISION.

[Lord Mackenzie, Ordinary.

BANK OF SCOTLAND *v.* MORRISON.

Cautioner — Extinction of Obligation — Creditor's Duty toward Cautioner—Suspicions of Principal Debtors' Guilt of Forgery — Obligation to Inform Cautioner.

The cautioner, under an assignation and letter of guarantee, dated 13th June 1899, maintained that the creditor, a bank, knew on 18th December 1906, or at latest in May 1907, that the debtor had forged an acceptance on a bill, and that their failure to disclose to him this knowledge liberated him from his obligations. On 18th December 1906 the bank had become aware that the acceptor of a bill drawn by the debtor had repudiated the signature on the bill, and events occurred such as must have roused their strongest suspicions that the acceptance was forged, viz.—(1) that the debtor, while maintaining that the repudiation was due to misunderstanding, paid on 19th December the bill in full by bank notes; (2) that he promised to bring the alleged acceptor to explain, but failed to do so; (3) that the alleged acceptor's banker informed them the signature must in view of the repudiation be a forgery; (4) that the debtor had used cheques signed by him in the name of his firm to finance his own overdrafts, but under the express condition they were not to be presented for payment. The bank, however, had no legal proof that the alleged acceptance was forged, and it was never so proved, though the debtor was eventually convicted on his own confession of having forged five promissory-notes. No fresh accommodation had been given to the debtor after 18th December 1906, and the account was no worse than at that date.