pay a sum to the pursuer. Why, then, does the pursuer not sue the bank to pay? The answer is, payment has been stopped. But could it be stopped? Was the mandate revocable? If it is revocable, then it has been revoked. If not, then the pursuer should sue the bank and not the defender, or raise a multiplepoinding as was done in the recent case of Bryce (*ante* p. 114). If the mandate was granted for an onerous cause, it was not revocable. It is not alleged to have been gratuitous. It was therefore incumbent on the pursuer to prove that there was an onerous cause of granting. I think he has failed to do so.

Lord DEAS—The question is whether this cheque was given in payment of a debt, or whether it was intended for a different purpose which was not followed out. Its revocability depends on this. If it was given in payment of a debt, that was a good enough way of discharging the debt. If not, then it was revocable. We held lately, in the case of Bryce, that we should inquire *quo animo* the cheque was granted. Accordingly, what was attempted to be proved here was that the cheque was payment of a debt. The pursuer has failed in this proof, and it does not much matter whether the defender was drunk or sober at the time. I think if we were to hold on the proof that he was sober, the result would just be the same.

Lord ARDMILLAN—I don't think, as Lord Curriehill suggests, that the form of this action is material. We must get at the fact whether or not this cheque was onerously held. I have no doubt that these bank cheques are documents which are examinable to the effect of ascertaining this. It was not a gift; that is not alleged. It was not a loan; that is positively denied. It is said to have been payment of a pre-existing debt. The burden of proving that was on the pursuer, and he has failed in doing so.

PETITION—JAMES HOWIE YOUNG.

Records—Transmission of Deeds to England. The Court will not grant warrant for the transmission of deeds in the hands of the Lord Clerk Register to England, to be used as evidence at a trial there, on the application of a party not having a direct interest in the deeds, and where inspection of the principal deeds is not absolutely necessary.

Counsel for Petitioner—Mr Fraser. Agent—Mr James A. Robertson, S.S.C.

This was a petition for warrant for the transmission of certain deeds, now in the custody of the Lord Clerk Register, to England in order to their being used in a suit which is shortly to be heard before Vice-Chancellor Kindersley. The petition prayed the Court to "grant warrant to and authorise the Lord Clerk Register and Deputy-Keeper of the Records to proceed to London with the deeds or instruments for the purpose of exibiting the same to the Court of Chancery in England on all necessary occasions within six months from the date of your Lordship's warrant, and thereafter to return said deeds to the record." There was produced an affidavit by the petitioner's counsel in England to the effect that the deeds were in his judgment material evidence for the petitioner in the English suit; and that according to the law of evidence in England, and the practice of the High Court of Chancery, official or other copies of the said deeds or instruments will not be received as evidence, but the originals thereof must be produced.

Some years ago a warrant similar to that now asked was granted by the Court in order that a deed might be produced at the trial in the Court of Probate of the case of Shedden *v.* Patrick; and in that case documents produced before that Court by the Deputy-Keeper of the Records in Scotland were taken from that officer and retained in England for a considerable period, an undertaking by the Court for their return to the Record, even at the close of the trial, being at the same time expressly declined. Accordingly, before disposing of the present petition, the Court requested the Lord Clerk Register to make a communication to the Vice-Chancellor with the view of obtaining a distinct assurance that in the event of the petition being granted, the Court's custody of the documents will in no degree be infringed on. The Vice-Chancellor made a reply, in which he said—"I have no hesitation in declaring my individual opinion to be, that when the Court of Session allows its own records to be brought to England in the custody of its own officer, for the purpose of their being produced as evidence before an English court of justice, no circumstances could justify the English court in taking them away from such officer and retaining them without the consent of the Court of Session; and as at present advised, I should act upon that opinion, if such a question came before me. Beyond thus stating my own opinion, I apprehend it is impossible for me to give to the Court of Session the desired assurance, for not only is it within the limits of possibility that I might be convinced by other precedents that my present opinion is erroneous (though I do not think any such precedent could be found), but it is to be borne in mind that any decision of mine is subject to appeal, and I cannot of course answer for the views of the Appellate Court."

The Court to-day, on considering the affidavit and the Vice-Chancellor's letter, refused the petition.

The LORD PRESIDENT — The Vice-Chancellor's communication is of that courteous and candid nature which we might expect from that eminent judge, but I confess I have the very greatest repugnance to allowing the title-deeds of property belonging to other parties to be taken beyond our jurisdiction, especially on the application of a person who has no rights connected with the subject-matter of these deeds—but who finds in the narrative of them something which may throw historical light on a collateral matter in which he is interested.

Lord CURRIEHILL — This is a most important matter, deeply concerning the interests of the public who place their writings on our records for preservation. If the Court sends these documents to a foreign country, where they may be lost or detained, the security of the lieges will be greatly diminished.

Lord DEAS—What is wanted at the trial in England is a knowledge of the contents of the documents. There is no question of forgery, to try which it might be necessary to have the deeds themselves. In this case all that is required may be ascertained by means of official extracts, which is reasonably sufficient evidence. If another country chooses to make a law that official extracts are to be in no case admissible evidence, I don't think we should make the security of our records bend to such a law.

Lord CURRIEHILL—It might be desirable to ascertain whether if we refuse this petition the Court will accept of secondary evidence.

Lord PRESIDENT—That may be ascertained; but I very much agree with Lord Deas that whether they do so or not we should not give up the deeds.

Lord ARDMILLAN—I concur. This petitioner is not the owner of the deeds, nor is he directly interested in them.

Lord CURRIEHILL—There is in history a very good illustration of the danger of parting with these deeds. Cromwell sent a large portion of our records to the archives in England, and although after the Restoration they were sent back, they perished on the way.

The petition was therefore refused, but it was suggested by the Court that the petitioner might possibly adduce sufficient evidence of the contents of the deeds by means of official extracts or examined copies which had been subjected to a double comparison proved by two persons. Such evidence, the Lord President said, had been received in Committees of the House of Commons, and in peerage cases in the House of Lords.