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Wednesday, July 14.

FIRST DIVISION.

[Lord Trayner, Ordinary.

MORRISON AND OTHERS *v.* ALLAN (GERRARD'S TRUSTEE).

Trust—Liferent and Fee—Provisions to Children—Divestiture.

An estate, purchased with a wife's funds, was destined to the spouses in conjunct fee and liferent, and to the heirs of the wife heritably and irredeemably, the deed being recorded in these terms. The spouses thereafter executed a trust-disposition by which they disponed to the husband in liferent, for his liferent use allenarly, and to the trustee therein named in fee, the said estate for the purposes therein specified. The purposes were that the wife, in the event of her survivance, should have the liferent of the estate, and that after the longest liver of the spouses the lands should be sold, and certain specified provisions paid to the children of the wife by a former marriage. There was a declaration that the provisions should not become vested interests until the term of payment; but in the event of any of the children predeceasing the term of payment, leaving lawful issue, such issue were to come in place of the parent; and failing such issue the share of such predeceasing child was to go to the survivors. The trustee nominated accepted of the trust, and administered the estate until its sale in 1873, after which he administered the proceeds. The survivor of the spouses died in 1881. In an action thereafter brought by the beneficiaries under the trust-deed against the trustee for an accounting by him in regard to his intromissions with the trust-estate, the trustee maintained that he was entitled to take credit for certain payments which he had made to the spouses out of the capital of the trust-estate, and that on the ground that by said trust-deed the spouses were not divested of the fee of the estate. *Held* that under the destination of the estate the wife was the fiar, and further, that by the trust-disposition, which was a *de præsenti* conveyance of the lands to the trustee, duly recorded, and irrevocable, the spouses had divested themselves of the fee of the estate, and therefore that the trustee was not entitled in an accounting with the beneficiaries to take credit for payments made to the spouses out of the capital of the trust-estate.

Liferent—Meliorations—Recompense.

During the subsistence of the liferent of the husband under the above-mentioned trust-deed the trustee made advances to him out of the capital of the trust-estate, which were expended on improvements on the estate. At that time the husband, and also the trustee and beneficiaries, were under common error in thinking that the husband was fiar of the estate, and that the estate was open to his debts. In an accounting with the beneficiaries the trustee claimed credit for these advances. *Held* that the circumstances were sufficient to rebut the ordinary rule that a liferenter is to be presumed, in improving the subject of his liferent, to do so for the purpose of enhancing his own enjoyment of the estate; that therefore the beneficiaries were not entitled to take the property without making recompense to the extent to which the estate was benefited; and that the trustee was entitled to take credit for his advances which were shown to have increased the estate in value.

Trust—Loan — Duty of Trustee — Heritable Security.

Circumstances in which *held* (*altering* judgment of Lord Trayner) that a trustee who was not to be liable for the sufficiency of investments if "made *bona fide* and without knowledge of more than ordinary risk," was not responsible for the loss arising from the insufficiency of a heritable security on which he had lent the trust funds.

This was an action of count, reckoning, and payment at the instance of George Morrison, John Morrison, Mrs Margaret Jane Morrison or Allan, and Robert Morrison, children of the deceased Mrs Margaret Walker or Gerrard, by her marriage with the deceased John Morrison, shipmaster in Banff, and John Alexander Scott, the only child of the deceased Mrs Ann Morrison or Forbes or Scott, another daughter of the said Margaret Walker or Gerrard, and wife of John Scott, and the said John Scott, as curator and administrator-in-law for his said son, against John Allan, solicitor in Banff, as sole trustee under the trust-deeds after mentioned, and also as an individual.

John Morrison died in 1848, and Mrs Morrison was married in 1862 to George Gerrard, then a farmer at Lichnet, in the county of Banff. There were no children of that marriage. In 1864 Mrs Gerrard succeeded to property which had belonged to her brother of the value of £7774, 9s. 11d., or thereby. In 1867 the estate of Hayfield, in the county of Aberdeen, was purchased by Mr and Mrs Gerrard for the sum of £4250. The disposition bore that the price was paid by Mr Gerrard, and the conveyance was taken to and in favour of George Gerrard and Mrs Margaret Walker or Gerrard, formerly Morrison, his spouse, in conjunct fee and liferent, and to the heirs of the said Mrs Margaret Walker or Gerrard, formerly Morrison, heritably and irredeemably, the deed being recorded in these terms. Notwithstanding the narrative in the disposition it appeared from the evidence before the Court in this case that the funds applied in the purchase of Hayfield were derived from the estate to which Mrs Gerrard had succeeded, from her brother.

"By trust-disposition dated 14th April 1868, Mrs Margaret Walker or Gerrard, formerly Morrison, wife of George Gerrard, farmer, Lichnet, and the said George Gerrard, disponed to him, the said George Gerrard, in liferent, but for his liferent use allenarly, and to the defender John Allan, solicitor, Banff, and to such other persons as

should be named or assumed to act in the trust thereby created, and to the acceptor or survivor in fee, heritably and irredeemably, the estate of Hayfield, in trust for the purposes therein written. The purposes of the trust were (*first*) for payment of the expenses of the trust, (*second*) for payment to Mrs Gerrard during all the days of her life if she should survive her husband, of the free rents and profits of the lands, in such sums, at such times, and in such manner as the trustees should think best for her welfare, and (*third*) that the trustees should, on the death of the longest liver of them, sell the lands and from the free proceeds of the sale purchase an annuity of £50 during the life of Robert Morrison, Mrs Gerrard's son by her previous marriage, the annuity to be payable to the trustees and to be applied by them for the maintenance and support of the said Robert Morrison in such manner as they should see best for his comfort and welfare, and should divide the free residue of the proceeds of the said lands equally among George Morrison, seaman, Banff, Mrs Ann Morrison or Forbes, John Morrison, seaman, then at sea, and Margaret Jane Morrison, then residing with them, the other children of Mrs Gerrard by her previous marriage, share and share alike; but it was declared that if the said Robert Morrison should predecease the time for the provision of the said annuity to him, the funds directed to be so applied should be divided equally among his brothers and sisters, and that the whole provisions therein should not become vested interests in the said George Morrison, Mrs Ann Morrison or Forbes, John Morrison, and Margaret Jane Morrison, until the term of payment thereof; but on the death of any of them before the said term of payment, the provision of any of them so dying, leaving lawful issue, should be divided equally among his or her issue alive at the time of payment, and failing such issue, should belong to the survivors of the said George Morrison, Mrs Ann Morrison or Forbes, John Morrison, and Margaret Jane Morrison, and their issue, equally among them *per stirpes*. It was further declared that the provision to Margaret Jane Morrison should not be actually paid over to her by the trustees at the said term of payment, but should be retained by them, with the interest and profits thereof, for her behoof, and should be paid to her in such sums and at such time and in such manner as the trustees should think best for her welfare, and it was further declared that the provisions, in so far as in favour of females, should be exclusive of the *jus mariti* or right of administration of any husbands they might marry. The deed also contained a power to the trustees to sell any part of the lands."

The defender John Allan accepted of the trust and entered into possession of the trust-estate. The trust-disposition was on 16th April 1868 duly recorded in the register of sasines in Aberdeen on behalf of the said George Gerrard and the defender "for their respective rights of liferent and fee."

On the same date, viz., 14th April 1868, the spouses executed a trust-disposition and assignation by which they conveyed to the defender, as trustee for the ends, uses, and purposes therein specified, sums amounting to about £2000. The defender accepted of this trust also and managed the trust-estate. The action of accounting included the defender's intromissions with this trust. The only question of importance arising in regard to it is stated in the opinion of Lord Trayner, *infra*, and in that of Lord Shand.

Mr Allan administered the estate of Hayfield until it was sold in 1873 at the price of £4178, and thereafter administered the proceeds of the sale.

Mrs Gerrard died on 1st October 1875, and Mr Gerrard on 20th June 1881. On the death of Mr Gerrard the provisions in favour of the pursuers under the Hayfield Trust then became payable, and this action of accounting was raised against Mr Allan to account for his intromissions with the trust-estate.

From the report of Mr Hugh Blair, chartered accountant, to whom a remit was made to examine the defender's accounts, it appeared that the defender had made payments to or on account of Mr and Mrs Gerrard, the liferenters, which was chargeable to revenue, of £2467, 13s. 6d., whereas the total revenue received by the trustee down to the date of Mr Gerrard's death on 20th June was only £768, 15s. 7d., leaving thus an over-payment of revenue of £1698, 17s. 11d. The defender lodged objections to the accountant's report, in which he maintained that he was entitled to take credit for the amount in accounting with the beneficiaries, on the ground that the granters of the trust-deed had not divested themselves of the fee of the subjects, and that therefore the sum was a proper charge against the capital of the trust-funds.

On this point the defender made the following averment in his statement of facts—"The trust-deeds referred to were not granted for any onerous cause, or in terms of any agreement or arrangement, but were purely gratuitous and voluntary. The purpose for which they were granted was to impose some impediment on Mr Gerrard's dealing with and disposing of the means and estate referred to. The said deeds were not intended to divest, and did not divest, Mr and Mrs Gerrard of the fee or capital thereof. It was expressly declared by the said deeds that the provisions therein contained in favour of Mrs Gerrard's children should not become vested interests till the death of the survivor of the spouses. The said deeds remained undelivered during the lifetime of the spouses and of the survivor."

The defender pleaded—"(3) On a sound construction of the trust-deeds referred to, the defender is not bound to account to the pursuer for the capital of the trust-funds expended by Mr and Gerrard."

The Lord Ordinary (Adam) on 1st April 1884 repelled this plea.

"*Note*.—[*After narrating the terms of the trust-disposition.*]—It appears that the defender during the lifetime of Mr and Mrs Gerrard made advances to them out of the capital of the trust-estate, and paid debts incurred by them to the amount, as appears from the accountant's report, of £1698, 17s. 11d., and the question has arisen whether he is entitled to credit for these payments in his accounts with the beneficiaries. That question depends upon whether or not, by the trust-disposition of April 1868, the granters divested themselves of the fee of the lands, or (the lands having been sold) of the proceeds derived from their sale, and it appears to be desirable that this question should be disposed

of before the other questions in the accounting are taken up. There is no doubt that *ex facie* of the deed there is a *de præsenti* conveyance of the lands to the trustee, to be held by him for the purposes of the trust, and that by these purposes the granters were only entitled to the liferent of the lands, while the fee was directed to be held for the children and their issue.

"It is said, however, that the trust-disposition is a purely voluntary and gratuitous deed, and that no doubt is true. But if it was the intention of the trusters, as expressed in the deed, that the fee should be held for the children and their issue, and if, as was the fact, the deed was immediately delivered to the trustee, and acted on, it will not make the gift of the fee to the children revocable, because it was gratuitous. The object the trusters had in view in granting such a deed probably was to protect themselves and the property from the consequences of their own acts. Whether that be so or not, they have effectually done so, the Lord Ordinary thinks, by vesting the fee in a trustee for the benefit of the children and their issue.

"It is further maintained by the defender that no right to the estate vested in the children or their issue during the life of the granters, or either of them, and therefore that the deed was revocable at any time during their lives. It is true that the right of any particular child to a share of the estate was contingent on his or her surviving the period of payment—that is, the longest liver of the granters. But it appears to the Lord Ordinary that the gift was not the less a gift that it was contingent, or conditional on the survivance of the child. If the condition had not been fulfilled, had all the children and their issue failed, the trustee would then have held the estate for the trusters, but there has been no failure of the trust purposes, and it appears to the Lord Ordinary that the defender, as trustee, was bound to protect the contingent interest of the beneficiaries.

"Nor does the Lord Ordinary think that the deed is in any sense testamentary. It is a *de præsenti* conveyance, not of the granters' whole estate, but of a particular subject in favour of existing children or their issue. It was delivered to the trustee, and came into immediate operation. It appears to the Lord Ordinary that the case falls under the principle of *Turnbull*, 1 W. & S. 80, and *Smitton*, 2 D. 225.

"The Lord Ordinary was also referred to the cases of *Spalding*, 2 R. 237; *Forrest*, 4 R. 42; *Mackenzie*, 5 R. 1027; and *Mackie*, March 9, 1883, 10 R. 746, reversed 6th March 1884 [21 Scot. Law Rep. 465]."

The defender further maintained in his objections to the accountant's report, that certain sums forming part of the said £1698, 17s. 11d. were in a special position, one of these being a sum of £553, 11s. 3d. which was expended by Mr Gerrard on improvements on Hayfield out of funds supplied to him by the defender. By minute of admissions the parties admitted that this sum had been expended on Hayfield during the lifetime of Mr and Mrs Gerrard. A proof was led in regard to the facts in connection with this expenditure, the import of which is given in the opinion of Lord Shand *infra*.

On 24th June 1885 the Lord Ordinary (TRAYNER) pronounced an interlocutor by which he found that the defender was not entitled to take credit in his account of intromissions as trustee (first) for the sum of £553, 11s. 3d., the amount said to have been expended in the improvement of Hayfield.

His Lordship also decided that Mr Allan, the defender, had lent £1000 of the trust money on an inadequate security (know as Dallas's bond), and had failed to take proper means to ascertain whether the investment involved more than ordinary risk, and was therefore liable to account for that sum.

"*Opinion.*— . . . (1) The defender claims, in accounting for his intromissions, the right to credit himself with the sum of £553, 11s. 3d. expended by the trusters Mr and Mrs Gerrard on the house at Hayfield. He says that this sum was expended subsequent to the execution of the trust conveyance, that it added to the permanent value of the property, and is therefore chargeable against the beneficiaries. I disallow this claim. I think it is scarcely open to doubt that the alterations and improvements made on Hayfield by Mr and Mrs Gerrard added to its value; but there is no direct evidence, or even definite opinion, to be found expressed in the proof as to the extent to which the value of the house was increased. But assuming the value to have been increased to the extent of the sum now claimed credit for by the defender, I do not see on what title he can claim it. He does not represent the liferenter, who is said to have made the repairs. The liferenter himself made no such claim, and never intimated any intention to make such a claim. It rather appears to me that when the trust-deed was executed it was intended that it should carry the house of Hayfield in its improved condition to the beneficiaries—(1) because the state of the specifications relative to the improvements shews that they were in contemplation before the trust conveyance was executed; and (2) because there is ground for believing that the money with which such repairs were actually made was part of Mrs Gerrard's money, and not of her husband's. . . . .

"3. *Dallas Bond.*—The defender lent £1000 of the trust funds under his charge to a Mr Dallas, on the security of two heritable properties. The properties will not now realise anything like the sum lent, and the question is, whether the defender is personally liable for the £1000 so lent, on the ground that he accepted an insufficient security. The pursuers aver that at the time the bond was granted, Mr Dallas was in pecuniary difficulties, that his bankers had closed his account, and had called upon him to pay up a large debt which he owed them, and that to extricate Mr Dallas from this pecuniary pressure the defender lent him the £1000 in question. These statements are all disproved, and are without foundation. The question still remains, however, whether the defender did lend the money in question on a security which was inadequate. I think he did. There are several witnesses examined on this subject, and there are just about as many opinions as witnesses. But none of them say that they would have lent £1000 on the security taken by the defender. Without going into the details of the evidence, I may say that it appears to be proved—(1) that property in Macduff is of about the same value now as it was in 1868, when the loan was granted; (2) that

the property over which the loan was secured is now valued at such a sum as to make it quite insufficient as a security for £1000; (3) that the principal property is of such a character as to make it very doubtful whether a purchaser or tenant could be got for it, if the proprietor Mr Dallas left it, and that therefore as a marketable subject (and consequently as a security) it was attended with more than ordinary risk. The defender, however, pleads the clause in the trust-deed as exempting him from personal liability. That clause provides that the trustee shall not be liable for investments made by him if 'the investments are made *bona fide*, and without knowledge of more than ordinary risk.' I have no doubt Mr Allan made the investment in good faith. But the clause quoted will not relieve him of responsibility if he made an investment in the knowledge that it involved 'more than ordinary risk,' and if he failed to take the ordinary and proper means to ascertain whether the investment involved more than ordinary risk, he will in my opinion be equally liable. The clause must be strictly construed against Mr Allan. He prepared that clause himself in a conveyance to himself as sole trustee, the granters of the deed having no advice thereanent except from Mr Allan.

"Now, I think Mr Allan did not take the ordinary or proper means to satisfy himself that the properties over which the loan was to be secured were sufficient as a security, or that the proposed transaction did not involve more than ordinary risk. He proceeded entirely on his own knowledge of the subjects, and his own opinion of their value, along with two certificates or valuations by a Mr Dawson. These two certificates represent the subjects over which the security was taken at an aggregate value of £1525. This valuation is condemned by everybody as too high, but I do not go much upon that. It is more material to notice—(1) that the certificates or valuations were made in 1867, a year before the transaction in question, and therefore not made as a valuation with regard to this loan; (2) that they were not got by the defender from Mr Dawson, but were got by Mr Dallas himself; (3) that it does not appear Mr Dawson knew he was valuing the properties as for a security; and (4) that when the valuations were sent by the defender to a correspondent, in order to get the loan of £1000, the loan could not be got. It should be added that Mr Dallas was the client of the defender, who was therefore in the transaction in question acting both for borrower and lender,—a position which placed on him the duty of more than ordinary care. I cannot help thinking that if Mr Allan had been acting only for the lenders he would have been more particular about the security."

On 14th May 1886 the Lord Ordinary (TRAYNER) pronounced an interlocutor in terms of a report by Mr Baxter, Auditor of the Court of Session, *qua* auditor and accountant, giving effect to this and other findings.

The defender reclaimed, and argued—(1) Under the trust-disposition there was no vesting in the children, so that the estate was open to the granter's debts. The rights of creditors created prior to vesting in the children were preferable. The trust was postponed, and therefore not good against creditors. The destination in the conveyance of Hayfield showed that Mr Gerrard was the fiar originally, and he was not divested by the trust-deed—*Forrest* v. *Robertson's Trustees* October 27, 1876, 4 R. 22; *Mackenzie* v. *Mackenzie's Trustees*, July 10, 1878, 5 R. 1027; *Mackie* v. *Gloag's Trustees*, March 9, 1883, 10 R. 746, *rev.* March 6, 1884, 11 R. (H. of L.) 10; *Spalding* v. *Spalding's Trustees*, December 18, 1874, 2 R. 237. The deed was not delivered, because the mere fact of infeftment was not enough unless it could be shown that it was taken with the object of effecting delivery—*Burnet* v. *Morrow*, March 26, 1864, 2 Macph. 929. (2) Even if the estate was not to be held to be open to the debts of the trusters, the defender was entitled to take credit for the amount of the improvement expenditure, on the ground of recompense. Mr Gerrard would have had a claim against the fiars, and the rights of the defender who had advanced the money were the same—*Nelson* v. *Gordon, &c.*, June 26, 1874, 1 R. 1093; *Reedie* v. *Yeaman*, 1875, 12 S.L.R. 625; Ersk. Inst. ii. 9, 60; Bell's Prin. sec. 1063; *Paterson* v. *Greig*, July 18, 1862, 24 D. 137; *Fernie* v. *Robertson*, Jan. 19, 1871, 9 Macph. 437; *Buchanan*, Nov. 10, 1874, 2 R. 78; *M'Millan* v. *Armstrong*, Dec. 6, 1848, 11 D. 191.

The pursuers replied—(1) In order to take advantage of the case of *Forrest* the defender must show that Mr Gerrard was the fiar. But he was not. The fee was in Mrs Gerrard, because the estate was paid for with her money, and her heirs were preferred in the destination—Ersk. iii, 8, 36. Even if Mr Gerrard was originally the fiar he was divested by the trust-disposition, and the trustee was not entitled to advance him any of the capital—*Turnbull* v. *Turnbull's Trustees*, Nov. 12, 1822, 2 S. 1, *rev.* April 15, 1825, 1 W. & S. 80; *Smitton* v. *Tod*, Dec. 12, 1839, 2 D. 225; *Allan* v. *Kerr, &c.*, Oct. 21, 1869, 8 Macph. 34; *Somerville*, May 18, 1819, F.C. (2) The claim by the defender to take credit for the sum of £533, 11s. 3d. was founded on the doctrine of recompense. But that principle could only apply when there had been loss. But Mr Gerrard suffered no loss, for the money so expended was in substance money belonging to the persons whose property was ameliorated. The claim was never made and met during Mr Gerrard's lifetime. The general rule that a temporary possessor is held to make improvements for the period of his own possession should apply. The case of *Nelson* v. *Gordon*, *supra cit.*, was not in conflict with *Reedie* v. *Yeaman*, *supra cit.*

At advising—

LORD SHAND—The defender, Mr Allan, solicitor in Banff, has been called upon in this case to account for his intromissions under two trust-deeds, both of which were granted by Mr and Mrs Gerrard, now deceased, on the 14th of April 1868. One of these deeds placed the property of Hayfield under a trust, and the trust itself has been called the Hayfield Trust. The other trust-deed placed a sum of £2000 under trust for the benefit of the children—with one exception I think—of Mrs Gerrard by a former marriage, and both have remained under the administration of Mr Allan until the Hayfield property was sold, since which time he has had the administration of the proceeds of the sale.

Decree has been granted in this process for sums amounting to between £4000 and £5000 in terms of a report by Mr Baxter, the Auditor of

the Court of Session, and against that judgment Mr Allan now reclaims in the present reclaiming-note, and has submitted an argument to us on four different points.

In the first place, under the Hayfield Trust it has been maintained that Mr Allan ought to receive credit for sums amounting to nearly £1700 in respect of advances which he made during the liferent of Mr and Mrs Gerrard, beyond the amount of the revenue derived from Hayfield, to which unquestionably they were entitled, and it has been argued on behalf of Mr Allan that Mr Gerrard was fiar of the estate of Hayfield, that he was not divested of the estate by the trust-deed which he had executed, or at least that the estate remained subject to his debts. It is argued by Mr Allan that this sum of £1700 was a debt for which the estate or its trustee was liable.

In the second place, it is maintained that at all events, even if that contention be not sound, there are two sums in a special position, and that so far as Mr Allan's advances consist of either of these two sums, he is entitled to retain the amounts in his hands. One of these is a sum of £530 for which he claims credit in name of board for two sons and two daughters of Mr Gerrard; and the other sum is a sum of £553, 11s. 3d. being the amount of admitted expenditure on improvements which it is said Mr Gerrard executed on Hayfield. These, I think, exhaust the points that were stated in reference to the Hayfield Trust.

In regard to the £2000 trust the Lord Ordinary has held the defender responsible for the security called Dallas' bond for £1000, which is now insufficient, for it is clear on the evidence that the amount in that security cannot be realised either from the borrower or the property. An argument was maintained for Mr Allan in reference to that, that he was not personally responsible for the loss that has thus arisen, and that those who are interested in the £2000 bond—the beneficiaries under that trust, who are the pursuers of this action—must bear the loss themselves.

Now, with reference to the first of these questions, the main questions raised were as to the Hayfield Trust, and the first point pleaded for Mr Allan has been disposed of by the interlocutor which was pronounced by Lord Adam when the case was originally before him, dated 1st April 1884. Mr Allan's contention is stated in the first article of the statement of facts for him, and it is to this effect—"The trust deeds referred to were not granted for any onerous cause, or in terms of any agreement or arrangement, but were purely gratuitous and voluntary. The purpose for which they were granted was to impose some impediment on Mr Gerrard's dealing with and disposing of the means and estate referred to. The said deeds were not intended to divest, and did not divest, Mr and Mrs Gerrard of the fee or capital thereof. It was expressly declared by the said deeds that the provisions therein contained in favour of Mr Gerrard's children should not become vested interests till the death of the survivor of the spouses. The said deeds remained undelivered during the lifetime of the spouses and of the survivor." As to the delivery of the deeds there can be no possible question, for the Hayfield trust-deed was put on record and was acted on from the time it was granted, so that point fails.

It was pleaded with reference to this statement in the third plea-in-law that "on a sound construction of the trust-deeds referred to the defender is not bound to account to the pursuer for the capital of the trust funds expended by Mr and Mrs Gerrard"—that is to say, that he is entitled to set against the capital of the trust funds, being the proceeds realised from the sale of Hayfield, the whole of his advances to Mr and Mrs Gerrard. Now, I am of opinion that the view which was taken by Lord Adam, and which is supported by the opinion which his Lordship gave, and which is appended to his interlocutor of 1st April 1884, is sound, and that the argument of Mr Allan upon this subject fails.

The terms of the title to Hayfield are incidentally given in the report by Mr Blair. It is there stated that "at Martinmas 1867 Mr and Mrs Gerrard purchased the estate of Hayfield in the county of Aberdeen for the sum of £4250 sterling. The disposition bears that the price was paid by George Gerrard, and the conveyance was taken in the name of George Gerrard and Mrs Margaret Walker or Gerrard, formerly Morrison, his spouse. in conjunct fee and liferent, and to the heirs of the said Mrs Margaret Walker or Gerrard, formerly Morrison, heritably and irredeemably," the deed being registered in these terms. We find that the deed, so far as the narrative is concerned, is not correct with reference to the source from which the money to purchase Hayfield was derived. The money was not a price paid really by George Gerrard, but was money advanced by Mrs Gerrard out of the proceeds of property to which she had succeeded. We find in the next place that the property was destined to her heirs under this destination, and therefore I cannot doubt that she was truly the fiar of this estate. I do not doubt, however, that Mr Allan acted under a different view. Whether he had seen this destination or not is not clear, but from all indications and appearances that now remain at this time he truly supposed that Mr Gerrard was the fiar of this estate, and I am sure that has been the cause of the confusion that has arisen in the accounting between the parties, and is to some extent the cause of what may be a serious loss to Mr Allan in the end. And I cannot doubt that, so far as the destination is concerned, looking to the fact that the money came from the lady and that the property was destined to her heirs, she was the fiar. But over and above that I think the ground stated by Lord Adam is a most complete answer to this article.

The deed of trust contains a *de præsenti* conveyance of Hayfield by which the estate is disponed by Mrs Margaret Walker or Gerrard, formerly Morrison, wife of George Gerrard, farmer, Lichnet, and the said George Gerrard, to him the said George Gerrard in liferent, but for his liferent use allenarly, and to the defender John Allan, solicitor, Banff, and to such other persons as should be named or assumed to act in the trust thereby created, and to the acceptor or survivor in fee, and there are clauses prescribing what is to be done with these lands which are conveyed to Mr Allan in fee. The deed is put upon the register as of its date or shortly after.

The only clause on which any arguments could be founded on as preventing the effect of that deed as being a complete divestiture, was the

clause that the whole provisions therein in favour of the children shall not become vested interests in them until the term of payment, but I think that that clause must be read with reference to what follows—"but on the death of any of them before said term of payments, the provision to any of them so dying leaving lawful issue shall be divided equally among his or her issue alive at the time of payments, and failing such issue shall belong to the survivors or survivor" of the children, "or their issue equally among them *per stirpes.*" I think that clause of suspension is simply part of the survivorship clause that follows, and I agree with Lord Adam, that so long as any child was in life the trustee held that property in fee for that child. Of course if the children of Mrs Gerrard by her first marriage to whom the conveyance had been granted had all died, Mr Allan would have held the property for the trustees. But as it was from the time the deed was registered, the granters' rights were reduced to those of liferenters, and the children were practically fiars. And so it follows that Mr Allan's third plea-in-law must be repelled, and that he is not entitled to credit for the sum of £1700 which he claims, and which undoubtedly he paid to these liferenters, Mr and Mrs Gerrard, under the misapprehension to which I have referred.

The next question that arises is in regard to the sums to which I have referred. The first of these is a sum of £530 claimed as for board against the children. Now, it appears that the Morrisons, sometimes three and sometimes four of them, being all of age—upwards of twenty-one years of age—undoubtedly lived in the house at Hayfield with their mother and step-father, and undoubtedly their being there must have cost a considerable sum in excess of income, and it is quite evident from a perusal of the correspondence and the evidence that it did cost a good deal more than the income of Hayfield to maintain the parties. The whole income which the parties had out of Hayfield was about £110, and if anything is clear in this case it is that the expenditure greatly exceeded the income. There were three and sometimes four of these children to be maintained at Hayfield, besides Mr and Mrs Gerrard, and the income was therefore quite insufficient for the expense of the household, and accordingly they had to draw, and did draw, upon Mr Allan. Unhappily for him he thought that Mr and Mrs Gerrard were the fiars of the property, and that he was safe to give them what they required and that he could charge the money against the capital of the estate. It is the money advanced in this way to the Gerrards, and not to the children, that he seeks to have repaid to him. If he had not acted on that erroneous view I cannot doubt that as time went on he would have stopped these advances till the children were major, and would then have got an acknowledgment for those he had made before he made more, and in order to induce him to continue them. He would have said, I cannot go on making these advances till you, the fiars of this estate, secure me in repayment of them, past as well as future. If he had done so he would have been entitled to charge the advances against the individuals who gave that authority, who are now fiars of this estate, and against the estate itself or the proceeds of it. But unfortunately he did not take that course, and the advances he made were advances to the parents, although there are grumblings by the parents about the expenses on different occasions, but there is no arrangement for board or charge for board, and that being so I do not see that Mr Allan can put forward such a charge against these children, and get repayment from them of the advances made to their parents. In the whole circumstances I am clearly of opinion that so far as this sum is concerned there is no case in law that can be maintained for Mr Allan.

We next come to the question of improvement expenditure, and that certainly is attended with more difficulty, but on full consideration I have come to the conclusion, differing from the Lord Ordinary, that in the accounting between the parties the defender is entitled to credit for the sum of £533, 11s. 2d. as at the 20th of January 1872.

The facts about this expenditure that was so made are, I think, very clear. In the first place, by the joint-minute which the parties have lodged in process, there does not appear to be any doubt that that sum was so expended. I do not think that this was by any means the limit of expenditure. I think Mr Gerrard spent somewhere more nearly £800 or £900, or even more, upon this property, and that the expenditure of £533, 11s. 2d. has been admitted, and it has been vouched.

The next fact that I think is perfectly clear in the evidence—and in that respect I differ from the Lord Ordinary—is that this property was thereby greatly enhanced in value.

(*His Lordship then dealt with the evidence on this point*)—From all of this evidence it is, I think, made as clear as day that this property had such amounts of money spent upon it as made it of greater value to the possessors of it, and that it was enhanced in value to the full extent of the sums so spent upon it as a marketable subject, and I believe it was these improvements that enabled the parties to get anything like the price which they ultimately got for it.

The question in these circumstances therefore is, whether the fiars of this property were entitled to take benefit from the money laid out and to refuse payment of it. I think it is quite clear that they are not, for I think it is proved in the evidence, that when Mr Gerrard made these improvements he was under the idea and belief that he would certainly be entitled to charge the expenditure on them on the estate. It is not like the case of a liferenter merely who knows that if he is laying out money he is only contributing to the value of his liferent. It is quite clear, upon a body of evidence, that Mr Gerrard was under the belief that he had such a right with regard to the property that he could charge this expenditure, and intended to charge it. The case is quite analogous to that in which a party believing that he has the radical title to an estate proceeds to improve it, and then it is ultimately found that he has not that title, although he was in the *bona fide* belief that he has—a claim of recompense will arise. Now, that Mr Gerrard has that belief is evident from a number of circumstances. In the first place, Mr Allan explains in a single passage of his evidence, "When I was asked to constitute the trust" (that is, the Hayfield trust), "I understood, and so did Mrs Forbes" (a daughter of Mrs Gerrard, who first came to Mr Allan in re-

gard to the constitution of this trust), "that the title to Hayfield was in the name of Mr Gerrard." It is not surprising that Mr Gerrard should have the same view regarding the title to the estate at the time of the constitution of the trust. It is quite clear that Mr Gerrard has that view, for in the first letter which he sent to Mr Allan on the subject, written by his daughter but signed by him, he says—"I would like you to come down here bringing a bond prepared ready to be signed and witnessed. You will better understand what I mean if I say it must be executed in such a form as would constitute it to be an effectual check to any claims my heirs at law could make upon the land of Hayfield in virtue of the title-deeds being made out in my name, but at the same time it must be understood that the trustees hold it merely to be acted upon should circumstances require it at my death, but with no power to trouble me with it during my lifetime." It is impossible to read that letter, coming from Mr Gerrard and sent by Mr Gerrard, without seeing that it is the letter of a man who believed he had the right to settle that estate as he thought fit, and had right to charge these improvements upon the estate.

Then again we have further evidence that in making the improvements it was in his mind all along that they should be so charged. He says in his letter to Mr Allan, dated 7th December 1870—"The supposed carpenter's work, I think, takes in part of Mr Alexander's account. Mrs Forbes does not appear to be pleased with so much money against the estate, although she would wish great improvements but no money to be expended from the estate,"—thus clearly shewing that all parties considered that this money was being raised up against the estate. And then, of date 24th October 1871, we have a letter requesting and authorising Mr Allen to take such steps as are necessary to obtain repayment of the cash "expended by me from my own means in extending the house on Hayfield and making other permanent improvements thereon, by procuring the amount made a burden on the fee of the estate."

Again, you have following upon that the bond itself which was executed immediately afterwards. [This was a bond and disposition in security, dated 20th January 1872, granted by Mr and Mrs Gerrard to third parties by which the lands of Hayfield were disponed in security of an advance to Mr Gerrard of £600 to repay advances for improvements]. It is clear that the parties had the power of burdening the estate in that way, and it should be kept in view that their communications with Mr Allan were for the purpose of burdening the estate by charging these improvements upon it. That was well known to the beneficiaries under this trust. And further, I may notice that Mr Stewart, the clergyman, again seems to give evidence in the same direction where he says, "Except with reference to the raising of money to pay outlays, I can recall no occasion on which he spoke about bonding the property, but he indicated that it was necessary that there should be some bonding of it to get money to pay outlays." Now, how could Mr Gerrard indicate that the estate was to be bonded to pay outlays unless he was in the belief that he had the power to grant such a deed; and therefore there again you have evidence to the same effect. And over and above that I think there is evidence in the letters of Mrs Forbes (afterwards Mrs Scott) pointing the same way. For example, I find she says in one of her letters to Mr Allan—the letter of 14th October 1872—"You must use the power the standing debt gives you to compel either sale or letting the place with a view to lessen the expenditure and get the debts paid off."

Now, it would not have been necessary for the children or anyone else to interfere in this way and to use pressure of this kind if Mr and Mrs Gerrard themselves were in a position to clear off these debts, and subsequently Mrs Forbes again writes on 6th January 1873—"I most deeply regret that it is in my power to use such an argument as the probable absorption for their necessities of the money she freely and unconditionally assigned to us. The great pity is that it was not made an irrevocable deed of gift, making it as much ours as if it had come to us as our personal share of my uncle's succession,"—all showing that they were in the belief that the estate of Hayfield was subject to the debts and deeds of the trusters; and just allow me to say with reference to Mrs Scott that she seems to have taken a most anxious interest in this matter all through, and to have known what she was about; and I cannot help saying that if she had known the true state of affairs she would have arranged this matter on a very different footing. And that being the state of matters I think the result of the proof is (1) that the expenditure is proved clearly; (2) that it is proved that the expenditure greatly enhanced Hayfield; and (3) that the expenditure was not made in circumstances that can raise the presumption that it was intended to go to the beneficiaries, or was made by one who did not believe he had the power to charge Hayfield with it, and intended to charge Hayfield with it, all along.

Something was said to the effect that this was not Mr Gerrard's money that was laid out upon this property. My opinion is that the proof shows that it was his money that was so laid out. It appears to me that when Mrs Morrison married Mr Gerrard in 1862 or 1863 she had no means of her own, and that when she and her family then removed to the farm of Lichnet and lived there with Mr Gerrard, Mr Gerrard was a man of some means, and must have been before he could afford to keep these three or four grown-up children, some of them past majority, for some years; when the succession came in from Mrs Gerrard's uncle there appears to have been more money than was secured under these two trust-deeds, probably £1500 more, and that this was got before 1868 when the parties removed from Lichnet. A considerable part of that sum was doubtless spent, and part of it went into the farm of Lichnet to improve it, and to purchase stock and implements, and when the parties came to leave the farm in 1868 can it be said that money that was in that position can be regarded as secured to Mrs Gerrard exclusive of the *jus mariti* and right of administration of her husband? I think not. Mr Gerrard therefore had money of his own, and that was the money that went into these improvements and must be regarded as his money.

It would make no difference in my mind even if this were Mrs Gerrard's money, because it is quite clear that she had no intention of making a donation of it to her heirs. She meant

that that money should be her husband's, because she allowed him to lay it out on these improvements, and she was a party to the bond by which these were charged upon the estate and authorised that to be done. So I think her intention was that the money should be regarded as hers, and that she looked at it in that light and allowed her husband to use it as his own.

In all these circumstances it appears to me to be quite clear that this is a case for the application of the doctrine of recompense, and my view of the case on this branch of it is that Mr Allan was entitled to recognise Mr Gerrard's right to this sum of £533, and as trustee holding the money to charge it upon the estate by bond, or at all events after the sale to retain it out of the price, for which he has the authority of Mrs Gerrard as well as that of her husband. And so I think that in the accounting Mr Allan is entitled to credit for that sum. And that exhausts the questions as to the Hayfield trust.

As to the second trust, the only question is as to the Dallas Bond, and here again I am unable to agree with the Lord Ordinary. The question that is raised on this branch of the case is whether Mr Allan exercised reasonable care and caution in taking the security he did for that sum of £1000.

The clause in the trust-deed contains very wide powers in reference to investments, and I do not think the Lord Ordinary, judging from the terms of his opinion, seems to have adverted to that circumstance in dealing with the case. The clause as to investments is as follows—"Our trustee shall with all convenient speed invest the said sum of £1500 sterling on bonds, heritable or personal, railway debentures, bank stock, or otherwise."

Now, on the one hand, it is to be noticed that this clause does give very wide powers of investment. It may be even on personal security alone. On the other hand, it must not be lost sight of that Mr Allan in this transaction acted both for the trust he represented and also for Dallas, the borrower of the money. In any question arising about a security in such circumstances I think it must be made very clear that the trustee did act with full care and caution in what he did. But even applying that test, it appears to me that the security must stand, so far as Mr Allan is concerned, responsible for the amount, and that it cannot be thrown upon him.

The objectors, the pursuers of this action, seem to have been under a very great misapprehension when they stated their objection originally, for I observe it was in these terms—"At the time when this loan was granted, 11th August 1868, Mr Dallas was in pecuniary difficulties, and his bankers—the Union Bank of Scotland—had closed his account and called upon him to pay up a large debt which he was due to them. At this time he was a client of Mr Allan, who negotiated the transaction in settling the Union Bank's debt; and with the view of enabling Mr Dallas to settle that debt he lent him £1000 from the trust-funds, taking in security the property in Macduff belonging to Mr Dallas, and which had been, *inter alta*, held in security by the bank for its debt. Mr Allan took no proper steps—indeed took no steps whatever—to ascertain the value of the property, or its sufficiency for the loan, and in point of fact it was not and is not a sufficient security. Mr Dallas' personal obligation was worthless, and he soon afterwards became bankrupt. Interest has not been paid since Whitsunday 1878. The property was not and is not worth the half of the loan and interest, and it is doubtful whether £700 will be got for it. Its present rental is £19.

Now, in every particular that statement is unfounded. In the first place, so far as I can see, Mr Dallas, who had been for many years a member of the town council of Macduff, and was at the time provost, was in perfectly good credit. His bankers expressly say so. The agent who was examined explains in his evidence—I do not know that I need trouble your Lordships by reading it—but he says he considered Mr Dallas' personal credit considerable, and that it was one of the elements that induced him to enter into the transaction that his position was good. The statement is unfounded that the bank had been calling up or requiring their money. Apparently Mr Dallas had taken offence that the bank would not give him some additional accommodation, and resolved that he would change his account, and he obtained this money for the purpose of paying up the bank. The security taken over was one that the bank had held for ten years, and the interest had been regularly paid. The Lord Ordinary notices that a proposal for a loan had been sent to Aberdeen, which had not been accepted. That is quite true, but it was then on the stroke of the term, and as there being no time to go on with the transaction before the term Mr Dallas did not press it for a considerable time afterwards. Then the statement that Mr Allan had taken no proper steps to ascertain the value of the property is not true. He did so, and found that it had cost £1400, and we have the valuation that he got from personal knowledge of the neighbourhood, and seeing that the property was worth the money, Mr Allan gave the loan, obtaining in addition to the security which the bank held the security of another property belonging to Mr Dallas. And finally we have the fact that for ten years afterwards the interest of this debt was regularly paid.

Now, under all these circumstances, was the trustee who was able to lend on personal bond not entitled to lend on heritable security? The security has turned out unfortunate. Mr Dallas has met with misfortunes, and having had to leave his house, it has been let at a lower rent than it is worth, part of it has been unlet at times, there being no one in Macduff who desires to have a house of this kind, and the result is that it has gone down in value.

The only other circumstance against this security is that in the valuation roll it is put in at a very low rental. We have no capital sum stated, but we all know that rentals are kept pretty low, and that sometimes the valuation roll does not contain rentals stated so high as they might. And in the circumstances of this case I do not think that is an element that can effect our judgment.

Now, keeping all that in view, I think there are countervailing circumstances in this case that outweigh the objections to the taking of the security, and upon the whole matter I think Mr Allan did exercise reasonable care and caution and kept within his powers when he lent this

money at the time he did, and therefore I see no grounds for throwing any ultimate loss that may arise on Mr Allan.

Lord Mure—[After stating his concurrence in the opinion appended to Lord Adam's interlocutor of 1st April 1884, and the opinion of Lord Shand, his Lordship dealt with the question of improvement expenditure as follows]—We were strongly pressed with this, that there was a rule that when a liferenter advanced money for improvements on a property he could not make this a charge against the fiar, because he must be supposed to have done it for his own convenience and benefit during the time he occupied the subject. Now, I do not mean to throw any doubt upon the rule which has in some cases been laid down to that effect, but I think with Lord Shand that there are specialities in this case which entitle us to say that these are charges which ought to be allowed to Mr Allan in his accounts with reference to that estate. The Lord Ordinary in his note says—"I think it is scarcely open to doubt that the alterations and improvements made on Hayfield by Mr and Mrs Gerrard added to its value; but there is no direct evidence or even definite opinion to be found expressed in the proof as to the extent to which the value of the house was increased." Now, I agree with the Lord Ordinary in thinking that there is no doubt that the property was materially improved by that expenditure; and I think the actual amount expended may be taken at £553 at least, because there is a minute of admissions to that effect. But the Lord Ordinary goes on to say that Mr Allan does not represent the liferenter, and that the liferenter himself made no such claim. Now, I think that is not quite a correct explanation of the position of Mr Gerrard in this matter, because we have him not only writing the letter of request founded on by Mr and Mrs Gerrard, in December 1873—[This was a formal tested letter addressed to the defender by Mr and Mrs Gerrard, by which they requested and required the defender to retain out of the price of Hayfield certain sums advanced by him and applied by them in improving Hayfield, and also the amount of the defender's business account incurred in connection with the management of the estate]—but we also have it in the letter which Lord Shand has referred to, in which Mr Gerrard writes to Mr Allan—"I hereby request and authorise you to take such steps as are necessary to obtain repayment of the cash expended by me from my own means in extending the houses on Hayfield and making other permanent improvements thereon, by procuring the amount made a burden on the fee of the estate." Now, there is a distinct letter from Mr Gerrard himself to Mr Allan asking him to take steps to recover for him, Mr Gerrard, the expense which he had thus incurred. In these circumstances I concur with Lord Shand that the liferenter certainly expected that he was to be reimbursed or recompensed for his expenditure, and I also agreed with Lord Shand that there is sufficient evidence to show that it was Mr Gerrard's money that was so expended; for we see that upon some transactions in connection with the farm of Lichnet there was a balance that went to pay for improvements on Hayfield. Then we find that not only was Mrs Gerrard aware that this was going on as fiar of the property, but that her children were equally aware that their father's money was being so applied—that it was applied to the benefit of the estate, and consequently to their benefit. Now, in these circumstances, with the actual knowledge of these parties that the money was so expended, with the distinct evidence that the money was Mr Gerrard's money, and that it was expended in the belief—the erroneous belief—that he was fiar of the estate, I think in the whole circumstances of this case that charge may be allowed without trenching in any degree on the rule of law which has been referred to.

Lord Adam—With regard to the first question here—the construction of the Hayfield trust-deed—I remain of the opinion which I expressed when the case was before me in the Outer House, that Mr Allan held the fee of the property for the children, and therefore that Mr Gerrard was a mere liferenter, and was not entitled to expend any part of the principal of the trust-fund, and I have nothing to add to the opinion which I then expressed and to what Lord Shand has now stated.

With reference to the improvement expenditure on Hayfield I also concur with Lord Shand. It appears to me that it must be taken that the money expended upon these improvements was Mr Gerrard's money. I have very little doubt however that originally it was a part of Mrs Gerrard's succession from her uncle, and that the money originally came from that source. I think that is pretty clear upon the proof, because I do not think that Mr Gerrard ever was possessed of much money to expend on any improvements. But that money so given by Mr and Mrs Gerrard was expended on the stock and other things on Lichnet farm, which was Mr Gerrard's farm, and I think the proof shows that the money ultimately expended on these improvements on Hayfield was the proceeds realised from the sale of the stock and effects at Lichnet—that being so I cannot doubt that it must be regarded in this question as being Mr Gerrard's money. In the next place, I am clear upon the proof, upon the grounds stated by Lord Shand, which I need not repeat, that this money was expended by Mr Gerrard upon that property in the erroneous belief that he was entitled to the fee of that estate. I think that he and Mr Allan and all the rest of them entertained a *communis error* on that matter, for they all thought that the effect of the trust-deed was not to limit Mr Gerrard's right to the fee of the estate of Hayfield, and it was in that erroneous belief, I think it is clearly proved, that this money was expended by him upon that estate. I think that fact gives rise to the well-known principle in our law of recompense—that where a person expends money upon another person's property and benefits it, in the erroneous belief that it is his own, the true owner cannot take that property without recompensing the person who expended the money to the extent to which the property has been benefited. I think that principle must receive effect in this case, because I have no doubt the money was expended by Mr Gerrard in the erroneous belief that it was expended on what was in point of fact his own property, and I cannot see that the fact that Mr Gerrard happened to be only a life-

renter is any reason why he should not recover this money. If he had expended the money in the character of liferenter only, and had no other claim to the estate, or believed he had no other claim to the estate, the matter would be quite different, because then we would have been under the principle of money expended by a mere temporary possessor, and in that case it would have been property on which the money had been expended for his own benefit. But that is not the case here upon the facts, and therefore I concur with Lord Shand, that as the money had been expended by Mr Gerrard in the erroneous belief that he was expending it on his own property, the true owner cannot take possession of that property without paying for the benefit which he has thus acquired.

Lord President—I concur in the opinion of Lord Shand, and the only question of much interest in law which has been raised in this case appears to me to be that which regards the right of Mr Allan to take credit for the sum of £553 paid to Mr Gerrard as the amount of improvement expenditure made by him upon the estate during the subsistence of his liferent. The general rule of law I think is quite undoubted that where a liferenter expends money in improving the subject of his liferent he is to be presumed to do so for the purpose of enhancing his own benefit and enjoyment of the estate. But this rule is founded upon a presumption only, and I think that presumption must yield to the facts and circumstances of the particular case whenever these are sufficient to show that there is a view in the mind of the liferenter, and a purpose for which the improvements were made inconsistent with the notion that they were made with a view to his own personal enjoyment of the estate only. In short, I think the presumption may be rebutted by the facts and circumstances of any particular case, and I agree very much in the observations made by Lord Adam with respect to this particular case that Mr Gerrard made these improvements and expended this money under the erroneous belief that he was fiar of the estate and not liferenter, and that of itself seems to me to be sufficient to overcome the presumption upon which the ordinary rule of law is founded, I think it right to add these observations upon the only question of law that is involved in this case. As regards the details of the case otherwise I really have nothing to add to what has been said by Lord Shand.

The Court adhered to the interlocutor of Lord Adam of date the 1st April 1884, and altered the interlocutor of Lord Trayner of date the 24th June 1885, to the effect of finding that the defender was entitled to take credit for the sum of £553, 11s. 3d., and also altered the interlocutor of Lord Trayner in so far as it dealt with Dallas's bond.

Counsel for Pursuers (Respondents)—J. P. B. Robertson, Q.C.—Watt. Agent—Alexander Morison, S.S.C.

Counsel for Defender (Reclaimer) — D.-F. Mackintosh, Q.C. — Begg. Agents—Baxter & Burnet, W.S.

Thursday, July 15.

SECOND DIVISION.

[Sheriff Court of Lothians at Edinburgh.

SCOTT v. ROY.

Process—Finding Caution for Expenses—Undischarged Bankrupt—Slander—Delay.

Circumstances in which the Court *refused* to allow an undischarged bankrupt to sue an action for slander without finding caution for the expenses, in respect the letters on which the slander was founded were not injurious to character, and in respect also of the lapse of time between their publication and the raising of the action.

In 1881 Mr William Gilchrist Roy, S.S.C., sent the following letters to Mr James Gibson Scott, who was then manager of the Money Order Bank (Limited), Mr Macdonald, Q.C., being the chairman:—

"*Edinburgh, 20th April* 1881.

"Dear Sir—I was grieved and disappointed beyond expression to-day when Mr Macdonald, the chairman, came to me to say that it has been reported to him that you were intoxicated this morning in business hours. He is so disgusted that he can scarcely think what ought to be done, and I will abstain from repeating what he said. Our conversation however ended in this, that I agreed to write you saying that unless he receives from you early on Saturday morning a written admission of the offence coupled with a humble apology and a pledge that nothing of the kind will ever occur again, he will take his own way of bringing the matter before the directors and of effectually preventing any recurrence of such a thing on your part, at least as an official of the company. For myself I will only say that I feel affronted beyond measure that anyone recommended by me should so behave, and it is a lesson to me for the future, and the only comfort I have is that Mr Macdonald and others know me too well to suppose that I to any extent *wilfully* deceived them regarding you. That they have been 'let in,' however, would seem to be undoubted."

"*Edinburgh 25th April.*

"Dear Sir—I am very sorry for your own sake that you have not written to Mr Macdonald on the subject of my letter of 20th. The result is a letter which I have received from him to-day, which I would send you but that it deals with other matters, but from which the following is a quotation—'I am quite resolved on this, that he either writes and expresses contrition, or that I take steps to have a full enquiry, with the certain result, if the facts are substantiated, of his removal from office.' It is very sad to think you are so blind to your own interests, but it would seem to be so, and the plain inference is that a man who can so neglect himself and family need not be expected to attend to any adequate degree to the interests of the Money Order Bank. I apprehend that on Mr Macdonald's return to town you will receive an awakening to a sense of your position of a kind you will ever regret, but to avert that, if still possible, I strongly recommend you to lose not another moment in writing him.