Friday, January 25.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

M'MEEKIN *v.* EASTON AND OTHERS.

Bill of Exchange—Promissory - Note—Personal Obligation of Granter—Bill Signed in Representative Capacity—Delegation.

A member of a church advanced a sum of £300 to meet a debt due by the church, and received therefor a promissory-note signed by the minister and two of the office-bearers, "in the name and on the behalf of" the said church. The congregation agreed to recognise the note as an obligation resting upon them, but subsequently abandoned this position. The lender raised an action upon his note. *Held* that it was the personal obligation of the granters, and that as the congregation was not a *persona*, and could not take upon it the personal obligation of a debtor, there was no room for the plea of delegation.

This was an action in which Robert M'Meekin, farmer, Culgrange, Inch, Wigtownshire, sued David Easton, Kilmarnock, executor-dative of the deceased Rev. Thomas Easton, minister of the Gospel, Stranraer; Peter Lusk, farmer, Craigcaffie, Inch; and Mrs Maria Hudson or Easton, widow and executrix of the deceased David Easton, doctor of medicine, Stranraer, for payment of the sum of £290 sterling, being balance remaining due of the principal sum of £300 contained in a promissory-note dated 17th March 1882. The note was in these terms—"One day after date, we, the undersigned, in the name and on the behalf of the Reformed Presbyterian Church, Stranraer, promise to pay to Robert M'Meekin, or Miss Agnes M'Meekin, Culgrange, or order, within the British Linen Bank, Stranraer, with interest at a rate not exceeding four per cent. per annum, the sum of £300 sterling, value received. (Signed) T. EASTON; PETER LUSK; DAVID EASTON."

The advance was made in the following circumstances—To meet the cost of repairs upon the Reformed Presbyterian Church, Stranraer, an account was opened in March 1876 with the Clydesdale Bank there, in name of the treasurer of the congregation as authorised by a minute of managers dated 4th March 1876, from which account at sundry times between March 1876 and March 1882 sums were drawn. The balance against the congregation on said account amounted in March 1882 to about £300, and to reduce the burden on the congregation of interest on said sum, which the treasurer represented was accumulating, as he had no funds out of which to meet it, the loan of £300 at 4 per cent. interest was obtained from the pursuer.

The pursuer averred that the note was granted on the representation that Mr Easton was the debtor and the other two his cautioners. They did not ask or receive sanction from the congregation for the transaction. Further, Mr Easton on 18th April 1885 received from Mr Alexander Whitelaw a donation of £300 towards the extinction of the debt upon the church, and collected besides other sums to meet the cost of repairs still outstanding. These various subscriptions, however, he failed to intimate to the managers of the congregation.

The defenders averred that the loan was obtained by the managers of the congregation from the pursuer, who was then an elder and presently president of the managers. The managers authorised the Rev. Mr Easton, Peter Lusk, and the late David Easton, the minister and two of their number, to grant to M'Meekin the promissory-note sued on in the name and on the behalf of the congregation. It was not the case that the Rev. Thomas Easton was principal, and the defender Peter Lusk and the late David Easton truly cautioners, in said obligation, and no representation to that effect was made to the pursuer. The obligation to the Clydesdale Bank was the obligation of the congregation, and not of any individual members, and it was the intention of parties that the obligation to Mr M'Meekin, which was to replace it, should likewise be the obligation of the congregation, and not the personal obligation of the individual members who were authorised to sign in the name and on the behalf of the congregation. The elders and managers of the congregation at a meeting on 21st March 1887 "agreed to recognise Mr M'Meekin's bill for £290 as a debt due to him by the church," and Mr M'Meekin, who was himself present and presided at the meeting, "at the same time agreed to allow the same to remain as formerly at 4 per cent. interest." Further meetings of the managers were held on 20th June and 8th July 1887. At the former meeting it was resolved "that the managers agree to abide by and confirm their minute of March 21st last, recognising and accepting the bill in the said minute described as an obligation resting on the congregation; . . . that Mr M'Meekin be asked to allow the bill meantime to remain in its present form; that a subscription list be opened, . . . and that the following committee be, and now are, appointed to carry out this arrangement, and adopt whatever measures they may deem necessary, so that the whole sum required may be obtained and conveyed to Mr M'Meekin without any undue delay." . . . This resolution was read and approved of, Mr M'Master dissenting, at the meeting of 8th July 1887. At both these meetings the pursuer was present. At a meeting of the congregation on 8th August 1887 the views of the managers as to the adoption of the debt were submitted, and subscriptions to meet it were there intimated. In these circumstances the defenders declined to pay the bills sued on, averring no liability thereunder, in respect that it was the obligation of the congregation merely, and not of the parties signing it. In any view, the managers of the church had undertaken liability for the said promissory-note, and collected subscriptions to defray the liability thereunder, and the said Robert M'Meekin had taken them as his debtor.

The pursuer explained that the managers and congregation now declined to pay him any portion of the debt, on the ground that the donation which the late Mr Easton received from Mr Whitelaw for payment of the debt deprived the defenders of all claim to relief at their hands. They averred that the resolutions embodying the proposed arrangement for payment of the sum in question were all passed under essential error

as to the facts connected with the defenders' obligation for the same, which error was induced by their representations, and in entire ignorance of the fact that the defenders had long since been provided with the means of paying off the debt, and they accordingly maintained that they are in no way bound by said resolutions.

The pursuer pleaded—"(1) The late Reverend Mr Easton, the defender Peter Lusk, and the late Dr David Easton having granted, and being personally liable for the sums due under, the said promissory-note, and the sums sued for with interest being due, the pursuer is entitled to decree as concluded for, with expenses."

The defenders pleaded—"(2) The promissory-note sued on is not the personal obligation of the defender Peter Lusk and of the now deceased Reverend Thomas Easton and David Easton, and the defenders are therefore entitled to be assoilzied. (4) *Separatim*—Delegation."

On 26th July 1888 the Lord Ordinary (KINNEAR) decerned against the defenders in terms of the conclusions of the summons.

"*Note.*—The promissory-note must be held as the obligation of the granters, creating a personal liability against them. If this be its effect there appears to me to be no sufficient averment to support the plea of delegation. There is nothing in what took place at the meetings mentioned on record, according to the defenders' account of them, from which it ought to be inferred that the pursuer has discharged his original debtors and accepted the managers in their place. The defenders may have a claim of relief against the managers of the congregation, but they have not been relieved of their direct liability under the promissory-note."

The defenders reclaimed, and argued—1. They were not personally liable. They only acted for the congregation of the church in granting the promissory-note, and this appeared from the wording of the document itself. The only persons who could be sued were the managers or other persons liable for the debts of the congregation. It appeared on the face of the note that it was granted on behalf of some one other than the person signing, and a proof should be allowed of the circumstances to ascertain the true obligant—Bills of Exchange Act (45 and 46 Vict. cap. 61), secs. 89 and 26; *Gadd* v. *Houghton and Another*, June 20, 1876, L.R., 1 Ex. Div. 357; *Alexander and Others* v. *Lizer*, January 26, 1869, L.R., 4 Ex. Div. 103; *Brown, &c.* v. *Sutherland*, March 17, 1875, 2 R. 615; *Gordon* v. *Campbell*, June 13, 1842, 1 Bell's App. 428; *Woodside* v. *Cuthbertson*, February 4, 1848, 10 D. 604; *Webster* v. *M'Culman*, June 3, 1848, 10 D. 1133; *Chiene* v. *Western Bank of Scotland*, July 20, 1848, 10 D. 1523; *Union London Commercial Bank* v. *Kitson and Others*, May 19, 1884, L.R., 13 Q.B.D. 360. 2. This was a case of delegation, and the pursuer accepted the congregation as his debtor.

Counsel for the respondent were not called upon.

At advising—

LORD YOUNG—I am sorry for the defenders. They signed this promissory-note along with a gentleman who is now dead. There is apparently a question whether it is not his personal debt wholly or in part, or at least a debt incurred by him as minister of a congregation in Stranraer. He seems according to the contention of some of the parties to have expended more money than he was entitled to do upon the repair or alteration of buildings belonging to the congregation. The other persons who signed the note are connected with the congregation.

The money was borrowed from a bank. The bank, I presume, desired to have it paid up. If the bank fell it had no proper debtor at all that would account for the anxiety to get the money paid up, and the pursuer Mr M'Meekin stepped in and paid £300. He got when he did so this promissory-note signed by three gentlemen, the Rev. Mr Easton, David Easton, and Lusk. Is this a worthless document, and did he receive it as such? The idea that this Reformed Presbyterian congregation were the proper debtors in a personal obligation is of course absurd. A congregation could not be debtors on a promissory-note, and there is therefore no personal obligation on them. Well, did not these three gentlemen become the debtors? They were legally capable of being so, and they signed it. They refer on the face of it to its being signed in the name and on behalf of the congregation. That is, it was a debt which the congregation would feel it to be their duty to provide for. They can do that, though they are not capable of being the debtors or creditors on the note, out of good feeling and the conviction that they are morally bound to relieve those who became debtors for their behoof. On the face of the note then, that is the position of the debtors. It is the only thing that could be meant, unless we supposed they meant to give, and Mr M'Meekin meant to take, a worthless document. The only legal view of M'Meekin's position is that he must be taken as saying to those who signed the note that he could not take the congregation as his debtors, but would look to them, and they on their part would look to the congregation for their relief. That is the view of the Lord Ordinary, and it is unanswerably right. We are told that the congregation or many of them refuse to subscribe the money to relieve the defenders, because rightly or wrongly a notion is entertained that the late Rev. Mr Easton got £300 from Mr Whitelaw to relieve them of the obligation, and it was otherwise applied or has somehow not been applied to that purpose. But for that impression the congregation would have collected the money. But the only legal view is that which I have explained.

The defenders plead delegation. To raise that plea they ought to have made a separate distinct statement of the facts on which they wish us to sustain it. But instead of that they give us only a long and irregular answer to the pursuer's statements. But that answer, apart from its mode of statement, is no good answer to the pursuer's case. It is said that the pursuer accepted the congregation as his debtor in place of the defenders. But the congregation is not a person, and could not take over the personal obligation of a debtor. I think that there is no relevant statement of a case of delegation, and that the judgment of the Lord Ordinary should be affirmed.

LORD RUTHERFURD CLARK concurred.

LORD LEE—I come to the same conclusion, but not without some difficulty. That difficulty arises from the allegations, not of the defenders, but of the pursuer. His action is not brought simply on the promissory-note as a document of debt. His condescendence shows that he is not in his own view in a position to lay his action upon it alone. He makes allegations that the Rev. Mr Easton was the principal debtor and that the other obligants were truly cautioners for him, and explaining the history of the transaction in his view of it. Now, on the document all the obligants are in the same position.

But on the whole, while I am clear that there could have been no summary diligence on this document, and have doubts whether it is sufficient to instruct the pursuer's allegations, I concur in thinking that *prima facie* it instructs an undertaking by the defenders personally to pay the sum contained in it. As to the alleged delegation also, I concur in holding the defenders' arguments not relevant to support their plea. My doubt is whether the case as presented is ripe for judgment.

LORD JUSTICE-CLERK—I concur in the opinion of Lord Young, and have nothing to add.

The Court refused the reclaiming-note and adhered to the Lord Ordinary's interlocutor.

Counsel for the Appellants—H. Johnston. Agent—P. Adair, S.S.C.

Counsel for the Respondent—Dickson—Salvesen. Agents—Gill & Pringle, W.S.

Friday, January 25.

FIRST DIVISION.

[Lord Fraser, Ordinary.

CURRORS *v.* WALKERS.

Trust — Investment — Law-Agent — Liability of Law-Agent.

The law-agent of a trust is not bound to volunteer advice to the trustees.

Adam Curror and John Curror, trustees acting under a trust-disposition and settlement, continued to hold as an investment of the trust-estate a loan made by the testator before his death to Adam Curror secured only on his personal obligation. In consequence of Adam Curror's bankruptcy the money was lost, and John Curror's representatives were obliged to make good this loss to the trust-estate.

In an action by the latter parties against the representatives of the law-agent of the trust to recover the amount for which they had been found liable, the pursuers founded on averments to the effect that the law-agent had, in gross neglect and breach of his duty, failed to advise the trustees that it was their duty as trustees to obtain payment of the loan, and that the security upon which the money stood was not such as trustees were entitled to hold as a trust investment. *Held* that the pursuers' averments were irrelevant, and the action *dismissed.*

William Kennedy, W.S., Edinburgh, died on 23rd April 1877 leaving a trust-disposition and settlement dated 10th June 1876, and codicil thereto dated 20th April 1877, by which he conveyed his whole estate, heritable and moveable, to Adam Curror of the Lee, and his brother John Curror in trust for behoof of William Kennedy Moffat, his grandnephew and his heirs, payable or assignable to him on his attaining the age of twenty-one years, or as much sooner as the trustees might think proper. In his codicil he expressed a wish that John Walker, W.S., should be factor and agent for the trustees.

Messrs Adam and John Curror accepted the trust, and nominated Mr Walker to act as factor and law-agent to them.

During the fifteen or twenty years previous to his death, Mr Kennedy had advanced considerable sums of money to Adam Curror, and in December 1876 the latter was indebted to him in the sum of £4000, for which on the 13th of that month he granted to Mr Kennedy a bond and assignation in security, whereby he bound himself to re-pay the said sum, and in security thereof assigned £2400 City of Glasgow Bank stock and £1000 Union Bank of Scotland stock.

It was, however, arranged that Mr Kennedy should not intimate the assignation of the bank stock, and by letter dated 11th December 1876 he undertook not to do so.

After Mr Kennedy's death the loan to Adam Curror was allowed to remain on the security of his personal obligation.

Adam Curror in October 1878 was ruined by the failure of the City of Glasgow Bank of which he was a shareholder. In accordance with the advice of counsel no claim on behalf of Mr Kennedy's trust was lodged in his sequestration in case it should give rise to a claim by the liquidators of the bank against the trust-estate, and the sum of £4000 was thus totally lost to the trust-estate.

Adam Curror died on 11th February 1879, John Walker died on 27th October 1879, and John Curror died on 8th July 1885. The clerk who acted under Mr Walker in the management of the estate had also died before the date of this action.

After John Curror's death the trustee acting under Mr Kennedy's settlement made a claim against John Curror's representatives for payment of the sum of £4000 with interest, and the latter being advised that they could not resist the claim, paid to Mr Kennedy's trust the sum of £5479, 18s. 10d. on 10th December 1885.

With the view of recovering this sum the representatives of John Curror raised the present action against representatives of John Walker.

In their averments the pursuers set forth the facts above narrated, and in particular averred—"Mr Adam Curror and Mr John Curror accepted the trust (*i.e.*, under Mr Kennedy's settlement), and a meeting of trustees (the first meeting) was held on 1st May 1877, when Mr Walker was formerly authorised to act as factor and law-agent to the trust to make up the trustees' title to the trust-estate, and to do whatever might be necessary for the confirmation of the executors, and in regard to the general management of the estate, and to make all necessary payments and disbursements therefor. An inventory of the estate (amounting to £91,918, 15s. 1d. was then