and liberality;" and (2) that if a contract is averred, it is a verbal contract altering a formal written contract, which, according to the authority cited by the Lord Ordinary, "cannot be done." I differ from the Lord Ordinary on both points.

The pursuer's averments (Cond. 7) appear to me to set forth quite distinctly an undertaking on the part of the defender, which, if established, the pursuer is now entitled to enforce. The terms of the pursuer's letter quoted in Cond. 8, on which the Lord Ordinary appears to have proceeded as showing that there was no undertaking, beyond what the defender pleased to do or to give, are not, as I read them, at all inconsistent with the pursuer's averment. In that letter the pursuer merely expresses his belief that the defender will do him justice, but the context shows that the justice he so expected at the hands of the defender was not merely from the defender's goodwill and liberality, but from the defender carrying out fairly the agreement which the parties had made.

Then the view that the agreement or contract averred by the pursuer is a verbal contract altering a formal written contract, is, in my opinion, also unsound. The formal written contract here was the pursuer's case. He does not aver any alteration thereon by the verbal contract he now seeks to enforce. On the contrary, the verbal contract could have no effect, according to the pursuer's averments, until the formal written contract had been fulfilled, and such fulfilment is averred, as showing that the condition on which the verbal contract depended has been purified. The defender says, and the Lord Ordinary has adopted that view, that the verbal contract was in reality a contract for the reduction of the rent payable under the written contract, namely, the lease. I think that is a mistake. There was no contract or stipulation for a reduction of rent, or for any other change whatsoever on the terms of the lease. The lease was to be fulfilled in all its conditions, and the rent stipulated for, to be paid, throughout the whole currency of the lease. But that having been done, the pursuer's averment is, that the defender undertook to repay, when the lease had come to an end, any loss the pursuer had sustained as tenant during his tenancy. We are therefore here dealing with a case which is the converse of that to which the observations of the Lord President were directed in the case of *Kirkpatrick*. This is not "an alteration of a written contract by a parole agreement," but it is "the constitution of an original and independent agreement by parole."

While I am of opinion that the pursuer's case is relevant, I am also of opinion that the contract or agreement alleged by him, being an innominate contract of an unusual kind can only be proved by the defender's writ or oath, and I would therefore sustain the third plea-in-law for the defender.

LORD JUSTICE-CLERK—That is the opinion of the Court.

The Court pronounced the following interlocutor:—

"Recal the interlocutor reclaimed against: Repel the first plea-in-law for the defender: Sustain the third plea-in-law for him: Remit to the Lord Ordinary to proceed."

Counsel for Pursuer—Rankine—Cooper. Agents—Macpherson & Mackay, W.S.

Counsel for Defender—W. Campbell—Fleming. Agents—Tods, Murray, & Jamieson, W.S.

Saturday, June 24.

FIRST DIVISION.

THE EDINBURGH YOUNG WOMEN'S CHRISTIAN INSTITUTE AND OTHERS, PETITIONERS.

Charity—Voluntary Association for Charitable Objects Supported by Public Subscription—Amalgamation with Kindred Association—Nobile Officium.

A number of persons combined to form an association for the carrying out of certain benevolent purposes. The funds necessary to start the association were raised by means of a bazaar and direct contributions from the public, and the annual expenses were met by public subscriptions.

Held that the Court had no power to authorise the association to amalgamate with another association having kindred objects in view.

In 1874 a number of persons in Edinburgh, who were interested in the spiritual and temporal welfare of young women, combined to form an association (subsequently called "The Edinburgh Young Women's Christian Institute"). The necessary funds were raised by bazaars and direct contributions from the public, and two houses were purchased for the purposes of the association, the titles being taken in the names of trustees, who granted a declaration of trust declaring that they held them for behoof of the association. The annual expenses were met, partly by payments from the inmates, and partly by subscriptions from the public. The association was carried on without a formal constitution until 1884, but in January of that year a constitution was approved at the annual meeting which was called by a newspaper advertisement. The constitution declared that the association should be entitled to unite with other associations having similar objects in view.

When the association was founded there was no other society of the kind in Edinburgh, but in 1877 a branch of "The Young Women's Christian Association"—a kindred society previously formed in London—was started in Edinburgh.

In 1892 it was resolved, as the result of negotiations between the two societies, that they should be amalgamated, and with

this view the premises belonging to the Edinburgh Young Women's Christian Institute were sold.

In May 1893 the Edinburgh Young Women's Christian Institute, and the members of the acting committee thereof, presented a petition in which they craved the Court to authorise them to pay over their funds to the Edinburgh branch of the Young Women's Christian Association, and to convene a special meeting of the petitioners' Institute for the purpose of considering, and, if so resolved, passing a resolution dissolving the Institute, and thereafter to approve and confirm such resolution and decree a dissolution of the Institute.

Argued for the petitioners—The application should be granted. The petitioners were in the position of trustees holding funds for certain charitable objects, and they desired to change the means of attaining these objects—*Clephane* v. *Magistrates of Edinburgh*, February 26, 1889, 7 Macph. (H. of L.) 7. The authority of the Court would protect them from subsequent objections—*Simpson* v. *Trustees of Moffat Working Men's Institute*, January 19, 1892, 19 R. 389. They were entitled to come to the Court for instructions—*Andrews* v. *Ewart's Trustees*, June 29, 1886, 13 R. (H. of L.) 69 (*per* Lord Watson, 73 and 74).

At advising—

LORD PRESIDENT—I do not think we can grant this petition in any part. It became increasingly plain, as Mr Lorimer very fairly developed the situation, that if we were to grant it, we would be laying it down that we would grant authority wherever one voluntary society desired to amalgamate with another in order to further the common purposes of both. That is much too wide a rule to adopt, and I think, therefore, we should refuse the application.

LORD ADAM concurred.

LORD M'LAREN—It may be desirable that the Supreme Court should have power to interpose in the manner desired by the petitioner, and in the course of the argument I pointed out that such power is conferred upon the Chancery Division of the High Court of Justice in England by Act of Parliament. We have no such power, but can give power to a judicial factor, because he is an officer of Court, and entitled to come to the Court for assistance. But I am not aware that we have any power, statutory or otherwise, to give instructions to trustees applying to us for advice.

LORD KINNEAR—I am of the same opinion. If the petitioners have power to do what they ask us to authorise, they do not want our authority. If they have no such power, we cannot give it them.

The Court refused the petition,

Counsel for the Petitioners—Lorimer. Agents — Lindsay, Howe, & Company, W.S.

Saturday, June 24.

SECOND DIVISION.

[Sheriff of Inverness.

WRIGHT *v.* GUILD & WYLLIE.

Process—Defence of Fraudulent Representation—Want of Specification.

The holder of a cheque cashed it at his bank, and paid away part of the money. The granter of the cheque, before it arrived at his bank, countermanded payment. The holder repaid the amount of the cheque to his bank, and brought an action against the granter for that sum.

The granter, in his defences to the action, averred generally, without specification, that the cheque was granted in consequence of fraudulent representations on the part of the payee, and that the pursuer was cognisant of these misrepresentations.

Held that the defence was bad, as when a charge of fraud is made as a matter of pleading, specification of a distinct and unambiguous kind was indispensable, and that here there was an absence of all specification.

Bill of Exchange—Bank—Cheque—Person who Cashed Cheque held to be not Agent of Payee but Holder—Bills of Exchange Act 1882 (45 *and* 46 *Vict. c.* 61), *sec.* 27, *sub-sec.* 1, *and sec.* 29.

A, residing in Ayr, was the holder of a cheque in due course. The cheque was drawn on a bank at Inverness. A, who had no bank account, in order to get the cheque cashed, endorsed the cheque, handed the cheque to her brother B, to whom she owed money. B endorsed the cheque, cashed it at his bank, handed part of the sum to A, and kept the balance till the amount due to him by A could be ascertained on a settlement of accounts between them. The granter of the cheque countermanded the cheque before it arrived at the bank in Inverness. B having repaid the amount of the cheque to his bank, raised an action against the granter for that sum. The defender failed to prove misrepresentation on the part of either A or B.

Held that B, in cashing the cheque, did not act as A's agent, but as a holder of the cheque, and that he was entitled to the amount of the cheque, either as a holder in due course or as a holder deriving his title through a holder in due course.

By section 27 of the Bills of Exchange Act 1882 (45 and 46 Vict. c. 61) it is enacted (subsection 1)—Valuable consideration for a bill may be constituted by (*a*) any consideration sufficient to support a simple contract, (*b*) an antecedent debt or liability. By section 29 it is enacted—(1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely, (*a*) that he became the holder of it before it