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

was overdue, and without notice that it had been previously dishonoured, if such was the fact, (*b*) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it. (2) In particular, the title of a person who negotiates a bill is defective, within the meaning of the Act, when he obtained the bill or the acceptance thereof by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to fraud. (3) A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

The following statement of the facts of the present case is taken from the opinion of the Lord Justice-Clerk — In November 1891 Mrs Marion Brackenridge, who kept a restaurant in Ayr, was in pecuniary difficulty. She applied to Mr Joshua Buchanan, as agent for Messrs Guild & Wyllie, brewers, Inverness, stating that she was unable to meet premium payments due on policies, and that she wished to ask for a loan of £100 from them. What she proposed was that she should take all her beer from them, should assign to them her furniture and fittings, and endorse to them the licence of the premises. She informed Mr Buchanan that on one of the life policies £143 had been borrowed. Messrs Guild & Wyllie agreed to make the advance on these terms, and on their receiving a bill for £100 from Mrs Brackenridge. Before the money was obtained Mr Buchanan, as representing the Messrs Guild & Wyllie, came to know that the licence, although for the benefit of Mrs Brackenridge, was in her brother's name, the reason for this being that Mrs Brackenridge did not wish her husband to have anything to do with the licence, and being a married woman she could not hold one in her own name. Thereafter the assignation was drawn out without any mention of the licence, as Mr Buchanan considered that the security for the loan was sufficient without this, and according to his evidence he accepted Mrs Brackenridge's assurance that she would send the certificate to Messrs Guild & Wyllie within seven weeks. Accordingly on 23rd November 1891 Mr Buchanan handed a cheque for £98, 15s. 6d., signed by Messrs Guild & Wyllie, to Mrs Brackenridge, which was the balance of the advance of £100 after deducting discount of the bill.

Mrs Brackenridge having received the cheque endeavoured to obtain cash for it, but found difficulty, the cheque being drawn on a bank in Inverness while she was in Ayr, and had no bank account at all, and being probably not herself in good financial repute. She endeavoured to get several friends to endorse it and obtain the money for her, and ultimately her brother Daniel Wright, baker, Ayr, to whom she owed an account of over £13, endorsed the cheque, and received the contents from his own bank. It does not appear that previous to the cheque being sent to him, he knew anything of the history of the transaction which resulted in the granting of the cheque. He handed over at the time a sum of £55, and proposed to take payment of his own debt of £13 odds. The final settlement between them was put off till next day, when he and Mrs Brackenridge were to square accounts. Before this could take place he was informed by his bank that the cheque had been countermanded. Accordingly he had to repay the amount contained in it to his own bank. He claimed the amount from the granters of the cheque, and they refused to recoup him.

In these circumstances Daniel Wright raised an action against Messrs Guild & Wyllie for the amount of the cheque—£95, 15s. 6d.—with interest from 24th November 1891, the date on which the cheque was countermanded.

The pursuer pleaded—"The pursuer being onerous holder of the said draft or cheque for full value, and the defenders having stopped payment of the same to his prejudice, decree should be granted as craved, with expenses."

The defenders lodged defences, in which they averred "that in consequence of fraudulent representations made by Mrs Marion Brackenridge (who is a sister of the pursuer) to Mr Joshua Buchanan, Glasgow, the defenders' representative, defenders were induced to lend to Mrs Brackenridge the sum of £100 on a bill granted by her for that amount at a currency of three months from the 19th of November 1891, and the cheque in question was for the proceeds of said bill after payment of the bank discount thereon. On 24th November 1891 defenders discovered the fraudulent representations made by Mrs Brackenridge, and countermanded payment of said cheque. The pursuer was cognisant of said representations."

The defenders pleaded—"The pursuer is not an onerous holder of said cheque for full value, and the defenders being in the circumstances entitled to countermand payment of the said cheque, they should be assoilzied, with expenses."

A proof was led before the Sheriff-Substitute (BLAIR) at Inverness, which brought out the facts above narrated. It was proved that Mrs Brackenridge's furniture at the date of the assignation to Messrs Guild & Wyllie was sequestrated for rent, and that Mrs Brackenridge did not tell this to Mr Buchanan. Mrs Brackenridge, however, deponed that with part of the £55 received from her brother as the proceeds of the cheque she paid the landlord his rent.

On 10th April 1893 the Sheriff-Substitute pronounced the following interlocutor:—"Finds that the pursuer was aware that there was a defect in Mrs Brackenridge's

title to the cheque, and is not entitled to be considered a holder of the cheque in due course; and further, that he acted only as the hand or agent of Mrs Brackenridge, and that he was not, as he alleges, the onerous holder of the said cheque for full value: Therefore assoilzies the defenders from the conclusions of the action, and decerns."

The pursuer reclaimed, and argued—(1) The cheque was handed to Mrs Brackenridge in due course of business. Value had been given for it by her; it was a negotiable instrument in carrying out a fairly onerous transaction. Mrs Brackenridge was therefore herself an onerous holder. There was no breach of faith on her part. As regards the sequestration of the furniture, £30 out of the £55 obtained by Mrs Brackenridge had been paid by her to her landlord as the full amount of his rent, and thus the furniture was cleared of the sequestration and made available as security under the assignation. (2) The pursuer gave actual value for the cheque, and was entitled to be dealt with as an onerous holder for a valuable consideration.

Argued for the defenders—The decision of the Sheriff was right. (1) In a question with Mrs Brackenridge they were entitled to countermand the cheque because she made fraudulent representations to them in so far as (*a*) she represented that the licence was in her own name, and (*b*) she had not revealed that the furniture was sequestrated for rent. (2) The pursuer was not a holder at all, or, at any rate, he was not an onerous holder. He had merely acted as agent for his sister, and had not acted in good faith.

At advising—

LORD JUSTICE-CLERK—[*After stating the facts*]—The averment of fraud made upon the record is obviously one of which the defenders cannot avail themselves. When a charge of fraud is to be made as matter of pleading, specification of a distinct and unambiguous kind is indispensable. But in this case, so far from there being any specific allegation, there is an absence of all specification. There is no attempt to state any act of fraud upon the part of Mrs Brackenridge—no time, no place, no description, no notice of any kind whatever. It is surprising that the case should have proceeded as far as it has done without this defect in the defence being noticed. But it is so glaring that an opportunity was given to the defenders to consider whether they would propose to amend their averments. It became plain that the defenders were quite unable to specify any such case as had been boldly averred originally, or to propose any amendment which the Court could allow them to make. Accordingly the element of fraud is practically eliminated from the case. We must deal with it as a case in which Mrs Brackenridge obtained in *bona fide* a loan from the defenders, which in form was given by a cheque in her favour, which she having no bank account was unable to obtain cash for, and cash for which was obtained on the credit of the pursuer's endorsation by the pursuer from his own bank. As the bank could not obtain cash for the cheque they refused to credit the pursuer with the contents, and debited him with the money given upon it, and he having been thus debited with £98, 15s. 6d. for the money obtained from the bank now holds the cheque, in my opinion, exactly as he would have held it if he had directly handed the money for it to Mrs Brackenridge in cash originally, and kept the cheque in his own possession. On the faith of the cheque he obtained money from the bank, and paid it over in part to Mrs Brackenridge, the rest standing over for settlement of the accounts between them. The defenders having granted the cheque, and having failed to justify their stoppage of payment of it, are bound to recoup the pursuer, in respect he on the faith of it parted with money obtained from his bank on his own credit, and which he has had to make good on the failure of the defenders to pay the amount in the cheque.

I hold that on the facts I have stated Mrs Brackenridge was a holder in course, entitled to the contents of the cheque. The pursuer is a holder from her, and does not fall within any of the exceptions statable against a holder under the 3rd sub-section of the 29th section of the Bills of Exchange Act, and is therefore entitled to the rights of a holder. I am, therefore, of opinion that the decision of the Sheriff-Substitute was wrong.

LORD RUTHERFURD CLARK—The pursuer held a cheque endorsed by Mrs Brackenridge. He is therefore certainly entitled to sue thereon with the entire title of the payee. If there is no objection to the latter the pursuer must prevail.

The pursuer has made out that the defenders were not entitled to stop payment of the cheque, but were bound to pay it. He is therefore entitled to decree.

LORD TRAYNER—The cheque in question was granted by the defenders to Mrs Brackenridge in fulfilment of a contract or agreement entered into between her and them. The ground on which the defenders assert the right to countermand the cheque and stop payment of it is, that Mrs Brakenridge obtained it through fraudulent representation. In the record the defenders give no specification whatever of the alleged fraudulent representations, and in my opinion the defenders' averment, vague as it is, is not supported by the proof. On the contrary, I think Mrs Brackenridge was guilty of no misrepresentation, fraudulent or otherwise, and that it has been made clear on the proof that she fulfilled her part of the agreement under which the cheque was granted to her. In that view Mrs Brackenridge was, according to the terms of the Bills of Exchange Act 1882, secs. 27 and 29, a holder of said cheque in due course when the same was delivered to her on 21st or 22nd November 1891. That cheque was endorsed by Mrs Brackenridge to the pursuer on 24th November, and by him cashed at the Union Bank, his own

bankers. It is said by the defenders that the pursuer in cashing the cheque only acted as the agent of Mrs Brackenridge, and that he was not on 24th November in any proper sense a holder of the cheque. I quite understand that argument. The mere possession of an indorsed cheque may not make the possessor a holder in the technical sense. A clerk or messenger taking to the bank to be cashed a cheque payable to his employer, endorsed by that employer, is not a holder of the cheque. The endorsation in such a case is not in favour of the clerk or messenger, and confers on him no title to the cheque or its contents. Further, in some circumstances it might be held that an endorsed cheque may be delivered to the endorsee to be cashed by him after (by his own endorsation) he has interposed his credit as guarantee for the due payment of the cheque to the bank which cashes it, without making him a holder of the cheque. But the present case is different from the cases supposed. It is not necessary to decide what was the precise character in which the cheque was originally delivered to the pursuer. It is enough to say that after the cheque was dishonoured by the defenders, and was returned by the Union Bank to the pursuer, he was then the holder, and a holder for value. He is undoubtedly the holder of the cheque now, and was so when this action was raised. Now, what is his right as holder? If he is a holder in due course he has a right to demand payment of the cheque from the granter, and there is no defence to his demand if the cheque be genuine, as it is admitted to be. But if not a holder in due course he is still a holder deriving his title "through a holder in due course," in which case he is vested with all the rights of, while he is subject to all the exceptions pleadable against the holder from whom he derived his title. Now, I am of opinion that the defenders have established no defence in respect of which they could successfully resist a claim for payment of the cheque if made by Mrs Brackenridge, and that therefore they have established no good defence to the pursuer's claim. I think, therefore, that the pursuer should have decree as libelled.

LORD YOUNG was absent.

The Court pronounced the following interlocutor:—

"Find that the cheque libelled was drawn by the defenders upon the Commercial Bank of Scotland, Inverness, in favour of Mrs Brackenridge, Ayr, on her order, on 20th November 1891, and was delivered to her on defenders' behalf by their agent, Joshua Buchanan on 23rd November 1891; that the cheque was so granted and delivered by the defenders to Mrs Brackenridge for onerous consideration and was not affected by any fraud or illegality; that on 24th November 1891 Mrs Brackenridge endorsed the cheque to the pursuer; that on the same date pursuer having endorsed the cheque cashed it at the Union Bank of Scotland, Ayr, and the bank honoured it on his credit, and on 25th November 1891 the defenders countermanded payment of the cheque, and in consequence the pursuer has had to repay the Union Bank the amount contained in the cheque: Find in point of law that the defenders were bound to make payment of the cheque to the pursuer: Therefore sustain the appeal, recal the Sheriff-Substitute's interlocutor, of 10th April 1893: Grant decree in terms of the prayer of the pursuer's petition, and decern."

Counsel for Pursuer and Appellant—Young—Crabb Watt. Agent—John Macmillan, S.S.C.

Counsel for Defenders and Respondents—M'Kechnie—G. Watt. Agents—Pringle, Dallas, & Co., W.S.

HIGH COURT OF JUSTICIARY.

Monday, June 26.

(Before the Lord Justice-Clerk.)

H. M. ADVOCATE *v.* SMITH.

Justiciary Cases — Indictment — Selling and Pledging Fabricated Manuscripts as Genuine—Relevancy—Want of Specification.

S. was charged before the High Court on an indictment which bore that "having formed a fraudulent scheme of obtaining money from others by fabricating manuscripts and other documents of apparent historic or literary interest, and disposing of them as genuine," . . . he did, in pursuance of the said scheme, (1) time and place specified, "pretend to A. B. that certain MSS. . . . were genuine and what they purported to be, and did thus induce A. B. to purchase the same" and pay to him "various sums of money as the prices thereof, the particular sums being to the prosecutor unknown;" . . . (2) (3) and (4) that he had induced certain pawnbrokers by similar false representations as to certain MSS. to take these in pledge, and to advance money to him on the security of these "and of certain other documents and books," he knowing the representations to be false.

Objections were stated to the relevancy on the grounds, *inter alia*, (1) that the first charge did not specify the money obtained by the fraudulent scheme libelled, and (2) that in the other charges it was averred that he pledged two sets of MSS. together—one set acknowledged to be genuine, and the other alleged to be spurious—but it was not stated how the advances received were apportioned between the two classes.

Objections *repelled*, and observed