of the county of Midlothian is not a corporation, and is not, I apprehend, liable to be sued in that name, and I take it that it is manifestly extravagant to maintain that all or any of the individual members of the Committee can be made liable for acts which they did not order or authorise.

"Further, the counsel for the defenders directed attention to the fact that the Standing Joint-Committee do not possess or administer any funds whatever out of which the pursuer's claim could be satisfied, and that of itself seems also a conclusive answer to the action.

"I do not, therefore, find it necessary to consider whether fault by the police constables within the scope of their duty is relevantly averred, and I am of opinion, on the grounds explained, that the defenders' third plea-in-law should be sustained, and that they must be assoilzied."

The pursuer reclaimed, and argued—The Joint-Committee was the body which appointed the police and made the assessment by which they were paid; they were therefore responsible for the action of the police. They were liable to pay for damages occasioned by the actings of their subordinates out of public funds in their hands—*Young* v. *Magistrates of Glasgow*, May 16, 1891, 18 R. 825; *Leask* v. *Burt*, October 28, 1893, 21 R. 32.

At advising—

LORD JUSTICE-CLERK—In my opinion the case is quite clear, and we must adhere to the Lord Ordinary's interlocutor. I think the pursuer's case is hardly stateable.

LORD YOUNG, LORD RUTHERFURD CLARK, and LORD TRAYNER concurred.

The Court adhered.

Counsel for Reclaimer—Watt. Agents—Cuthbert & Marchbank, S.S.C.

Counsel for Respondent—Dundas. Agent—J. H. Balfour-Melville, W.S.

Friday, October 26.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

THOMSON *v.* BELL.

Stamp—Promissory-Note or Agreement—Stamp Duties Act 1870 (33 *and* 34 *Vict. cap.* 97), *sec.* 49.

In order that a document may be a promissory-note in the sense of section 49 of the Stamp Act 1870, its contents must consist substantially of a promise to pay a definite sum of money and nothing more.

In an action for recovery of money which the pursuer alleged she had advanced to assist the defender in promoting the sale of a patent liniment, the pursuer founded upon the following letter received from the defender in 1885, as expressing the terms upon which the money had been advanced—"I would propose you pay £50 in two instalments, and after ten instalments of £40. This will give you one-fifth of the interest in the liniment, and I will agree to pay you back all you put into the company, with 5 per cent. added at the end of five years, if you desire it." The document was unstamped.

The Court *held* that the document was in substance a proposal for a partnership, the promise to pay being merely incidental to its main purpose, and therefore that it was liable to stamp duty as an agreement, and not as a promissory-note, and might be legally stamped after execution, and *allowed* it to be received in evidence on payment of the prescribed duty and penalties.

Held further by Lord Adam that the document was not a promissory-note, in respect that it did not contain a promise to pay a definite sum of money.

Opinion by Lord M'Laren that nothing can be a promissory-note except a unilateral obligation which becomes effectual on delivery, and requires nothing done on the other side to make it operative.

Stamp—Receipt or Agreement—Stamp Act 1870 (33 *and* 34 *Vict. cap.* 97), *sec.* 120.

Thomson, in an action against Bell, founded upon an unstamped document granted by the latter in the following terms—"Received with thanks £500 in all for advertising Ertell's liniment. Robt. Bell."

Held that the document was not an agreement, but was a receipt in the sense of section 120 of the Stamp Act 1870, and could not be afterstamped or received in evidence.

This was an action at the instance of Mrs Margaret Thomson against Dr Robert Bell for payment of £426, as the unpaid balance of sums which she alleged she had lent to the defender.

The pursuer averred that the defender, who was the inventor of a patent liniment, had pressed her to become his partner in the sale of the liniment; that she had refused to enter into any such partnership, but had agreed to assist the defender with advances of money, and had lent him £520, of which the amount sued for was still unpaid.

The defender denied indebtedness.

The pursuer was allowed a proof of her averments *habili modo*, and the defender a conjunct probation.

On 9th January 1894 the Lord Ordinary decerned against the defender for payment to the pursuer of £387, 14s. 4d.

The defender reclaimed, and at the hearing in the Inner House it was noticed by the Court that certain of the documents founded on by the parties were unstamped. The case was accordingly continued in order that the parties might consider whether these documents might be legally

stamped after execution, and which of them they desired to tender in evidence.

Upon the case being again called, the pursuer stated that she desired to tender two unstamped documents in evidence.

The first of these documents was a holograph letter dated 10th November 1885, addressed by the defender to the pursuer's husband, which the pursuer alleged expressed the understanding upon which she had advanced money to the defender. It was in these terms—"I would like if you could let me have £50 within the next week, as everything is now ready for advertising, and it must be gone ahead with at once. I would propose you pay £50 in two instalments, and after ten instalments of £40. This will give you one-fifth of the interest in the liniment, and I will agree to pay you back all you put into the company, with 5 per cent added at the end of five years if you desire it, which I am very certain you will not. There is a clear profit of 9d. on each bottle. Yours sincerely, ROBERT BELL."

The second document was in these terms —"1st October 1886. Received with thanks, £500 in all for advertising Ertell's Liniment. ROBERT BELL."

The defender objected that these documents could not legally be stamped after execution, and being unstamped, could not be received in evidence.

The Stamp Act 1870, section 8, provided—"Except where express provision to the contrary is made by this or any other Act, (1) An instrument containing or relating to several distinct matters is to be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of such matters."

Section 49 provided—"(1) The term 'promissory-note' means and includes any document or writing (except a banknote) containing a promise to pay any sum of money. (2) A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed, for the purposes of this Act, a promissory-note for the said sum of money."

By section 53 it was provided (1) that where a promissory-note had been written on material bearing an impressed stamp of sufficient amount but improper denomination, it might be stamped on certain conditions, but (2) that except as aforesaid no promissory-note should be stamped with an impressed stamp after execution.

Section 120 enacted—"The term 'receipt' means and includes any note, memorandum, or writing whatsoever whereby any money amounting to two pounds or upwards, or any bill of exchange or promissory-note for money amounting to two pounds or upwards, is acknowledged or expressed to have been received, deposited, or paid, or whereby any debt or demand, or any part of a debt or demand, of the amount of two pounds or upwards is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgment." . . .

Section 122 provided that a receipt given without being stamped might be stamped with an impressed stamp within fourteen days upon certain conditions, and after fourteen days but within a month upon certain other conditions, but in no other case.

The schedule to the Act imposed a duty of 6d. in the case of an "Agreement or any Memorandum of Agreement . . . made in Scotland without any clause of registration, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract, or obligatory upon the parties from its being a written instrument."

Section 14 of the Stamp Act 1891 (54 and 55 Vict. cap. 39), which substantially re-enacts the provisions of section 16 of the Act of 1870, provides—"(1) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in any part of the United Kingdom . . . notice shall be taken by the judge . . . of any omission or insufficiency of the stamp thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of court whose duty it is to read the instrument, . . . of the amount of the unpaid duty, and the penalty payable on stamping the same, and of a further sum of one pound, be received in evidence, saving all just exceptions on other grounds."

Section 15, which substantially re-enacts the provisions contained in section 15 of the prior Act, provides—"(1) Save where other express provision is in this Act made, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof on payment of the unpaid duty and a penalty of ten pounds." . . .

Argued for the defender—(1) The document dated 10th November 1885 was a promissory-note in the sense of section 49 of the Stamp Act 1870. For revenue purposes the definition contained in that section took the place of the definition of a promissory-note contained in section 83 of the Bills of Exchange Act 1882 (45 and 46 Vict. cap. 61). The writer of the letter promised or agreed to pay on demand a definite sum of money, and the document thus contained all the essentials of a promissory-note. It was not an agreement, for it was a unilateral document binding the party to whom it was addressed to nothing. On the most favourable construction for the pursuer the document was composite, containing another undertaking in addition to the promise to pay, but the only effect of that was that it should have had another stamp besides the stamp for the promissory-note—Stamp Act 1870, section 8. So far as it was a promissory-note it could not legally be stamped after execution, and being unstamped could not be received in evidence. (2) The other document was clearly a receipt in the sense of section 120 of the Act of 1870, and could not therefore be after-stamped. The adjection of the words "for advertising Ertell's Liniment," ex-

plaining the object for which the money had been received, did not change the character of the document, which was nothing else than an acknowledgment of money received. The section was clearly not restricted in its application to receipts granted for money paid in discharge of debt. The case of *Welsh's Trustees* v. *Forbes* relied on by the other side was not an authority to the contrary, for the terms of the document there under consideration were different, and it was treated as a mere acknowledgment of indebtedness. Further, that decision was only supported by the authority of three judges against two.

The pursuer argued—(1) The letter of 10th November 1885 was not a promissory-note. It did not fall within the definition contained in section 49 of the Act of 1870, unless its contents consisted substantially of a promise to pay a definite sum of money—*Mortgage Insurance Corporation* v. *Commissioners of Inland Revenue*, 1888, L.R., 21 Q.B.D. 352. Here the money which the writer undertook to pay was not a definite sum, and the promise to pay was merely incidental to the main purpose of the document, which was a proposal for a partnership. If section 49 were construed in the literal sense contended for by the defender, it might be made to include such documents as bonds and marriage-contracts containing an undertaking to pay money, which would be absurd. (2) The other document was not a receipt, but was an agreement to the effect that the money advanced should be expended solely in advertising the liniment. The definition of "agreement" in the schedule to the Act of 1870 was wide enough to include the document. At any rate, the document might be so construed, and the Court would not be inclined to reject the construction when the only alternative was to hold the document of no avail—*Tomkins* v. *Ashby*, 1827, 6 B. & C. 541. If stamped as an agreement, the document would not require to be further stamped as a receipt—Schedule to Act of 1870. If the document was not an agreement, it was at all events evidence of a contract which limited the defender's power of spending the money, and the pursuer was entitled to produce it for that collateral purpose *in modum probationis* without a stamp.—*Welsh's Trustees* v. *Forbes*, March 18, 1885, 12 R, 857, and cases there cited. *Haldane* v. *Spiers*, March 7, 1872, 10 Macph. 537, 44 Scot. Jur. 305.

At advising—

LORD PRESIDENT—On the first question raised, viz., as to the document dated November 10, 1885, my opinion is that it is not a promissory-note in the sense of the statute. The document is an offer or proposal that certain parties should stand in a certain relation. No doubt the mere fact that it contains a reference to a contingency is not sufficient to take it out of the definition of promissory-note, because the definition expressly provides to the contrary. But when we have the document before us the question is this — Is it in substance a promise that money having been advanced shall be repaid at a certain time, or is the promise to pay money not merely an incident of a different bargain or relation? Now, being required to consider and determine this question, I have come to the conclusion that the letter is in substance a proposal for a partnership or joint-adventure, while as an incident of the contract it is proposed that the party putting his money "into the company" shall be entitled, if he so chooses, to go out at the end of five years taking his capital with him and five per cent interest. Well then, does this clause turn this proposal for a partnership or joint-adventure into a promissory-note? Now, if that were so, then every agreement would be a promissory-note which in certain events contains an undertaking to pay a sum of money. I think the English case of the *Mortgage Insurance Corporation* affords a reasonable ground upon which that question may be answered in the negative in complete harmony with the section in the Stamp Act. I may add that I cannot assent to the view which the Solicitor-General has advanced for the purposes of this discussion on stamping, that we can escape the consequence of his argument when we come to consider the case on its merits. The ground of my judgment on the present question is that the letter is a proposal for a partnership or joint adventure. If the Solicitor-General has brought me to a conclusion adverse to his argument on the merits, that is his affair.

With regard to the document dated 1st October 1886, my view is that it is a receipt pure and simple. The purpose for which it is tendered is to prove the receipt of £500. The mere statement of the object for which the money was received seems to me to furnish no ground at all for taking the document out of the very extensive terms of the Act. The exceptions stated in the exemption clause facilitate this conclusion, but I rest my judgment on the main enactment, and it is sufficient to say that, assuming the writ to have the intention which has been ascribed to it by the pursuers, it still is, in my view, in substance and on the face of it, a receipt.

LORD ADAM—I am of the same opinion. With reference to the document dated November 10th 1875, it appears to me that that is a proposal for a partnership. That is the real nature of the document. It is true that it contains an agreement or promise to make certain payments of money, but that does not force us to treat it as a promissory-note in the sense of the Revenue Act. As has been remarked by way of illustration, bonds and dispositions in security and also marriage-contracts as a rule contain promises to pay, and yet no one says that these deeds are equivalent to promissory-notes, and to be treated as such in a question under the Stamp Acts.

But I think further that the document does not contain a promise to pay any definite sums of money. It contains a promise to pay one-fifth of the profits of

the business and also to pay back all that was put into the partnership, viz. £500, with five per cent. interest at the end of five years if desired. Mr Dickson proposed to treat these as two separate and distinct matters, but I do not agree with that, because both obligations are concerned with only one thing, namely, the proposed partnership. They do not therefore fall under section 8, for they do not relate to several distinct matters, but to one and the same subject-matter.

I entirely concur in what your Lordship says about the receipt. It appears to be produced and founded on for no other purpose than to prove the payment and receipt of money.

LORD M'LAREN—It is objected to the document dated 10th November 1885, that it contains the words "I will agree to pay you back all you put into the company with 5 per cent. added at the end of five years if you desire it"—that this is equivalent to a promise or obligation to pay money, and that the document is therefore liable to stamp-duty as a promissory-note. It has been pointed out that the definition of "promissory-note" for revenue purposes is more comprehensive than that contained in the Bills of Exchange Act or the common law notion of a promissory-note. The reason is obvious enough, for otherwise it might well be that a document, which in truth and substance was a promissory-note, might by the insertion of an unimportant condition be taken out of the category of promissory-notes with the view of evading the payment of stamp-duty. For that reason the Revenue authorities spread their net wider than at first sight might seem to be necessary. Perhaps, as Lord Moncreiff says in the case of *Welsh's Trustees* v. *Forbes*, 12 R. 860, "the Revenue Acts are conceived in phraseology of studied ambiguity," but that is to prevent evasion, and with the intention that the ambiguity may be cleared and a reasonable meaning ascribed to the clause by the Court.

Now, whether this document be a proposal for a partnership—and on that point as at present advised I should agree with your Lordship that it is in a form common in such instruments and that such is its meaning—or whether the Solicitor-General will convince us that it is a loan, in neither view is it a promissory-note. If the primary purpose of the contract is something different, and the promise to pay is only the recognition of a legal obligation resulting from the contract, then the document falls outside the definition of a promissory-note. In my view nothing can be a promissory-note except a unilateral obligation which becomes effectual on delivery, and requires nothing done on the other side to make it operative. But that is not the character of this instrument.

On the other document to which objection has been taken, my opinion is that it is a receipt for money, and the circumstance that the object for which the money was paid is announced in the document makes no difference. This is no more a qualification than if the receipt were appended to an account for advertising. The schedule imposing the duty on receipts shows that it is not confined to receipts for payment of debt, but that, subject to certain defined exceptions, every receipt for money is subject to stamp-duty.

LORD KINNEAR—I agree with your Lordship on both points.

The Court found that the document dated 10th November 1885 might be legally stamped, and the pursuer having paid £11, 0s. 6d. into the hands of the Clerk of Court, that the said document might be now regarded; and that the document dated 1st October 1886 might not now be legally stamped, and was not to be regarded.

Counsel for the Pursuer—Sol.-Gen. Shaw, Q.C.—Horn. Agents—Simpson & Marwick, W.S.

Counsel for the Defender—C. S. Dickson—Dundas—Sym. Agent—David Turnbull, W.S.

Friday, October 26.

SECOND DIVISION.

[Sheriff of Lanarkshire.

PATON *v.* THE UNITED ALKALI COMPANY, LIMITED.

Reparation — Precautions for Safety of Public—Unfenced Pond.

The pursuer sued the defenders for damages on account of injuries sustained by him in consequence of his having fallen into a pond which was situated on their property at a distance of 265 yards from the public road. He averred that a private road led from this public road to the vicinity of the pond, that he was going along the public road on a dark night, and, having turned by mistake into the private road, fell into the pond; that the first part of the private road was causewayed, and that it appeared to a person unacquainted with the district, as he was, to be the true continuation of the public road; that the defenders had been warned that the pond was a danger to the public, and that the accident had been caused by their negligence in having failed to fence it. The Court *held* that there was no duty laid upon the defenders to fence the pond, and *dismissed* the action as *irrelevant.*

Prentice v. *Assets Company, Limited*, February 21, 1889, 17 R. 484, *followed.*

This was an action of damages raised in the Sheriff Court at Glasgow by William Paton against the United Alkali Company, Limited. The pursuer claimed reparation for injuries sustained by him in consequence of his having fallen into a pond near the defenders' chemical works, used by them as a settling-pond.