seems to me very possible that the pursuer has paid what was really the defender's debt. But the defender, on the other hand, cannot be compelled to make good a debt which has not been proved. No evidence has been adduced of the damage for which he is said to be liable, and he is not bound by an agreement, of which he knew nothing, effected by persons whom he had not authorised to act for him.

The only remaining question is one of fact, on which I see no reason for interfering with the Lord Ordinary's judgment.

The LORD PRESIDENT and LORD M'LAREN concurred.

LORD ADAM was absent.

The Court adhered.

Counsel for the Pursuer — Salvesen — Sandeman. Agents—Snody & Asher, S.S.C.

Counsel for the Defender—C. N. Johnston—Abel. Agents—T. & W. A. M'Laren, S.S.C.

Wednesday, January 22.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

GIBSON'S TRUSTEES *v.* GALLAWAY.

Bill of Exchange—Promissory-Note—Proof of Extrinsic Agreement—Parole—Bills of Exchange Act 1882 (45 *and* 46 *Vict. cap.* 61), *sec.* 100.

Section 100 of the Bills of Exchange Act 1882 does not authorise the admission of parole evidence of an extrinsic agreement between the granter and payee of a promissory-note that the note should be renewed, subject to payment of interest, from time to time until the granter should be in a position to repay the principal sum, the effect of such evidence being to contradict the written obligation expressed in the note.

Opinion *reserved*, whether, if the agreement had been for a definite time, it would have been competent to prove it.

The late Mr Thomas Gibson of Bainfield advanced in loan to Mr William Harry Gallaway, merchant, Musselburgh, the sum of £200. In return for the loan Mr Gallaway granted a promissory-note in favour of Mr Gibson, which was renewed from time to time. On 1st June 1894 Mr Gallaway granted a renewal promissory-note in the following terms:—

"9 *Dock Place*,
"£200. *Leith, 1st June* 1894.

Three months after date, I, William Harry Gallaway, residing at Tusculum, Musselburgh, promise to pay Thomas Gibson, Esq., 35 Leamington Terrace, Edinburgh, the sum of two hundred pounds sterling, for value received.

(Signed) W. H. GALLAWAY."

Mr Gibson died in October 1894, and an action was raised against Mr Gallaway by his testamentary trustees concluding for payment of the loan of £200 with interest.

The defender averred—"(Ans. 2) Explained that under an arrangement between the defender and the said deceased, made on 1st June 1894, the said loan was to bear interest at the rate of 5 per cent. per annum, and the said promissory-note was to be renewed when due, and from time to time thereafter, until the defender should be in a position to repay same without detriment to his business engagements. The defender was assured by the deceased that the date of repayment would be left to himself so long as interest was paid, and Mr Gibson further undertook that this arrangement would subsist even after his death. The defender has understood, since this arrangement was come to, that the contract could be terminated only on his initiative."

The Lord Ordinary (KINCAIRNEY) on 27th November 1895 allowed the parties a proof of their averments.

The pursuers reclaimed, and argued—There was no relevant defence. An agreement such as that averred by the defender that he was to pay when he pleased would altogether nullify the promissory-note. The effect would be to substitute a parole agreement directly contradictory of the written contract. Section 100 of the Bills of Exchange Act did not authorise such a substitution, and the written obligations could only be modified by writ—*National Bank of Australasia* v. *Turnbull & Company*, March 5, 1891, 18 R. 629, at p. 634.

Argued for respondent—The Lord Ordinary was right in allowing an inquiry *quo animo* the loan had been made and the promissory-note granted. The 100th section of the Bills of Exchange Act was specially directed to meet a case like this, and the facts, which the defender desired to prove, being essentially "relevant to any question of liability thereon," might be proved by parole evidence. The opinions of Lord Adam and Lord Kinnear in *The National Bank of Australia* favoured this view.

At advising—

LORD M'LAREN — This is an action by testamentary trustees on a promissory-note for £200 granted by the defender to the truster, which, according to its terms, is payable three months after date. The defence is contained in the answer to the second article of the condescendence, in which the defender admits the advance of £200, and states—[*reads*]. It is not easy to reduce this statement to a definite proposition, and the difficulty is probably due to the inherent indefiniteness of the arrangement described rather than to any want of care or precision on the part of the defender's legal advisers. It appears to me that the statement can only have two meanings; either it means that the defender was not liable in payment of the principal sum in the bill, but was only to pay an annuity to his creditor equal to the interest on that sum, or it means that Mr Gibson having made this advance as a favour to the defender, represented to him that he should not

press him for payment at the end of the three months, but would expect the defender to pay interest on the loan.

On the first hypothesis I think that the defence is irrelevant because it is contradictory of the defender's written obligation, and it is an established rule of pleading that a party cannot avoid his written obligation by merely averring and offering to prove that it was not binding on him. The second alternative amounts to this, that Mr Gibson was willing to give his debtor indulgence. But such an arrangement not reduced to writing, and especially when it is wholly inadequate as to time, is not binding on executors, whose duty is to ingather the estate which they are administering with the least possible delay.

To say that the arrangement was to bind the executors, and that the loan could only be terminated on the defender's initiative, is just another way of saying that the defender was not legally compellable to pay his bill, and for the reason stated I think that this is an inadmissible defence.

I do not think it is necessary to consider the provisions of the Bills of Exchange Act as to the admissibility of parole evidence to prove facts relevant to the defender's liability.

The question may hereafter arise whether it would be open to an obligant to prove a verbal agreement that a bill should be renewable for a definite time or that the debt should subsist for a definite time, the bill being treated as a mere security for its ultimate payment. I offer no opinion on the competency of proving such an agreement qualifying the obligation on the bill. But on the most liberal reading of the enactment it cannot be held to authorise the admission of proof to set aside the bill altogether, which, as I think, is the effect of this defence. I am accordingly of opinion that the Lord Ordinary's interlocutor allowing a proof should be recalled; that the defence should be repelled, and that decree should be granted in favour of the pursuer for the principal sum and interest at the rate of 5 per cent., no higher rate of interest being now asked.

The LORD PRESIDENT, LORD ADAM, and LORD KINNEAR concurred.

The Court recalled the interlocutor of the Lord Ordinary, repelled the defences, and granted decree in favour of the pursuers.

Counsel for the Pursuers—Clyde. Agent—Andrew Gordon, Solicitor.

Counsel for the Defender — Anderson. Agent—G. Brown Tweedie, Solicitor.

Thursday, January 30.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

SKERRET *v.* OLIVER AND OTHERS.

Church — United Presbyterian Church — Minister — Sentence of Deprivation — Status — Patrimonial Interest — Restoration—Damages.

Courts of law take no concern with the resolutions of voluntary associations except in so far as they affect civil rights.

An action at the instance of a minister of the United Presbyterian Church, who had been suspended from the ministry and deprived of his charge, concluded (1) for declarator that what was charged against him was not an ecclesiastical offence according to the law of the church, and that this being so, the prosecution was illegal; (2) for reduction, "in case it may be necessary," of the sentence of suspension and deprivation; (3) for interdict against his charge being treated as vacant, and filled up by the appointment of another minister.

At the hearing of the case in the Inner House the pursuer did not insist in the conclusions for declarator or interdict but only in the conclusion for reduction.

Held that the action was irrelevant in respect (1) that the conclusion for reduction was ancillary to the other conclusions of the summons which had been abandoned; and (2) that the reduction of the sentence would not *per se* reinstate the pursuer, or result in the establishment of any patrimonial right, and that no further remedy was asked.

Held (by the Lord Ordinary, Kincairney) that the professional status of a minister of a voluntary church, although giving rise to no legal claim for any stipend or emolument is a patrimonial interest, but that the appropriate remedy for the illegal deprivation of this status is damages as for breach of contract, and not specific performance by restoration.

Process — Church — United Presbyterian Church — Synod — Title to Sue and be Sued.

Held (by the Lord Ordinary, Kincairney, and acquiesced in) that in an action by a minister of the United Presbyterian Church, who had been suspended and deprived of his charge, for restoration of his status and emoluments, it was sufficient to call as defenders (1) the prosecuting members of the presbytery, (2) the members of a commission to whom the decision of the case had been remitted by the Synod, and by whom the sentence against the pursuer had been pronounced, and (3) the Synod as represented by its office-bearers.

This was an action at the instance of the Reverend Joseph Skerret, designed in