any absolute rule can be laid down for their decision.

LORD KINNEAR concurred.

The Court pronounced an interlocutor in the following terms:—

"Find in fact (1) that the only title of possession proposed by the defender is the probative lease; (2) that the ground now in dispute was not occupied by James Brown mentioned in the lease; (3) that within the farm as occupied by James Brown, the field No. 763 was at the date of the lease rough pasture land lying towards the Millstone Hill, and had no boundary fence; (4) that the fence which has been interfered with does not encroach on the farm as occupied by James Brown: Find in law that the defenders have no right to interfere with or injure the said fence: Sustain the appeal: Recal the interlocutors of the Sheriff-Substitute and of the Sheriff dated 17th February and 22nd March 1897 respectively: Interdict the defenders in terms of the prayer of the petition," &c.

Counsel for the Pursuer — Guthrie — Wilson. Agents—Somerville & Watson, S.S.C.

Counsel for the Defenders—Watt—A. S. D. Thomson. Agent—Andrew Urquhart, S.S.C.

Wednesday, July 14.

SECOND DIVISION.

[Sheriff of Perthshire.

WOOD *v.* TODD.

Stamp—Promissory-Note—Receipt—Agreement—Stamp Act 1891 (54 *and* 55 *Vict. cap.* 39), *secs.* 33 (1), 101 (1), *and First Schedule voce Agreement.*

In support of a claim lodged in a sequestration, the claimant produced the following document, which was stated to be holograph, and was signed by the bankrupt:—"Borrowed from [here followed the name of the claimant] £67 Pounds, July 1878. Paid back £5 Pounds, May 1885. Leaving a balance of £62 Pounds to pay still." It was neither dated nor stamped. *Held*, without pronouncing any opinion as to the validity of the document in establishing a claim of debt, that it was neither a promissory-note, a receipt, nor an agreement within the meaning of the Stamp Act 1891, sections 33 (1), or 101 (1), or first schedule *voce* agreement, and that it did not require any stamp.

Mrs Ann Caird or Todd, widow, Cowhill, Rickarton, lodged a claim in the sequestration of John Douglas, builder, Perth. The claim was for the sum of £96, 2s., of which sum £62 was stated to be the balance of a sum lent to the bankrupt in May 1885, and the balance was interest on that sum to 23rd October 1896. In support of her claim Mrs Todd produced the following document, which was stated to be holograph, and was written in pencil:—

"Borrowed from Mrs Todd £67 Pounds, July 1878.
Paid back £5 Pounds, May 1885.
Leaving a balance of £62 Pounds to pay still.
"JOHN DOUGLAS."

The Bills of Exchange Act 1882 (45 and 46 Vict. cap 61) enacts as follows:—Section 3 (4) "A bill is not invalid by reason (*a*) That it is not dated." Section 10 (1) "A bill is payable on demand. . . . (*b*) In which no term for payment is expressed." Section 83 (1) "A promissory-note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future term, a sum certain in money, to or to the order of a specified person or to bearer." Section 89 (1) "Subject to the provisions in this part, and except as by this section provided, the provisions of this Act relating to bills of exchange, apply, with the necessary modifications, to promissory-notes."

The Stamp Act 1891 (54 and 55 Vict. cap. 39) enacts as follows:—Section 33 (1) "For the purposes of this Act, the expression 'promissory-note' includes any document or writing (except a bank note) containing a promise to pay any sum of money." Section 101 (1) "For the purposes of this Act, the expression 'receipt' includes any note, memorandum, or writing 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 or deposited or paid." . . . First schedule—"Agreement, or any memorandum of an agreement, made in England or Ireland under hand only, or 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—6d."

On 6th May 1897 the trustee in the sequestration, Mr Wood, accountant, Perth, issued the following deliverance on Mrs Todd's claim:—"In respect that the acknowledgement of the loan is neither dated nor stamped, and that no information is supplied as to the alleged loan by the claimant, who is, the trustee understands, related to the bankrupt, the trustee rejects the same."

Against the deliverance the claimant appealed to the Sheriff of Perthshire.

On 28th May 1897 the Sheriff-Substitute (GRAHAM) issued the following interlocutor:—"The Sheriff-Substitute having heard parties' procurators upon the appeal of Mrs Ann Caird or Todd against the deliverance of date 6th May 1897, pronounced by William James Wood, trustee on the sequestrated estates of John Douglas, rejecting the claim of the appellant to be ranked as a creditor on said estate for the sum of £92, 2s. (which she alleges to be due

to her by the bankrupt, and in support of which she produces the document No. of process), on the ground that the acknowledgment of the loan is neither dated nor stamped, and that no information is supplied as to the alleged loan by the claimant, who is, the trustee states, related to the bankrupt: Finds that said document not being an agreement or bond, or other document requiring to be stamped, but being a mere acknowledgment of debt, is, though unstamped, to be received as an item of evidence, which entitles the appellant to obtain an opportunity of adducing further evidence in support of her alleged debt: Therefore recals said deliverance of the respondent, and remits to him to take such further evidence as the appellant may wish to adduce in support of her said claim: Finds the respondent liable in £3, 3s. of expenses, and decerns.

Note.—"The proper course to be taken by the trustee in regard to the case in question appears to me to be to receive the document of alleged debt which the appellant has produced with her claim as being in itself a valid item of evidence, and to allow her an opportunity for adducing such further proof as she may offer in support of her claim. The document in question appears to me to be a mere acknowledgment of debt which requires no stamp. In the case of *Welsh's Trustees* v. *Forbes*, March 18, 1885, 12 R. 851, a document very similar to the one in question was, no doubt, dealt with under the judgment of a majority of the Judges of the Second Division of the Court of Session as being an agreement, and was accordingly stamped before it was given effect to; but in the judgment given in that case there were decided differences of opinion on the part of the Judges as to the actual legal character of the document—Lord Rutherfurd Clark holding that it should be dealt with as a receipt, while Lord Young held that it was a mere acknowledgment of debt, and the Lord Justice-Clerk and Lord Craighill being of opinion that it was an agreement or bond. The judgment pronounced by the Court in giving effect to the document before them, which was an unstamped document in the following terms—'Received from Thomas Welsh, Esquire, on loan, £400.—R. Thomson Forbes, 10th November 1881,' cannot, I think, be held to have authoritatively determined what the legal character of the document was. The judgment of the Court did not give any express finding as to the character of the document, but was merely to the effect 'that counsel for the pursuer having stated they were willing to treat the document as an agreement, and the stamp duty of sixpence and the penalty of £10, together with the sum of £1, having been consigned in the hands of the Clerk of Court in terms of the statute, the Court repelled the defences.' Lord Young, while concurring in the judgment of the Court, said—'If this document had contained an obligation to pay, it would have been a bond and would have required a bond stamp. My opinion is that it requires no stamp that it is a mere acknowledgment of debt, which may be conclusive or not according to circumstances.' Lord Young's opinion appears to me to apply equally to the document in the present case, and in recalling the deliverance of the respondent I have proceeded upon the ground that that learned Judge's opinion sets forth the true character of such a document as the one now in question and the effect which the appellant is therefore entitled to claim for it as an item of evidence in support of the claim which she makes for a ranking on the bankrupt's estate."

The trustee appealed to the Court of Session, and argued—This document was not admissible in respect that it was not stamped. (1) It was a promissory-note within the meaning of the Bills of Exchange Act 1882, section 83 (1). When no date was expressed for payment, payment on demand was implied. Bills of Exchange Act 1882, section 10 (1) (b).—That section applied to promissory-notes as well as bills. Bills of Exchange Act, section 89 (1).—A bill was not invalid by reason of not being dated. Bills of Exchange Act 1882, section 3 (4) (a).—In *Vallance* v. *Forbes*, June 27, 1879, 6 R. 1099, it was held that a document similar to the present was a promissory-note. (2) Even if this was not a promissory-note within the meaning of the Bills of Exchange Act 1882, it was a promissory-note within the meaning of the Stamp Act 1891, section 33 (1) (3) *Alternatively*, this was a receipt within the meaning of the Stamp Act 1891, section 10 (1)—see *Welsh's Trustees* v. *Forbes*, March 18, 1885, 12 R. 851, *per* Lord Rutherfurd Clark at page 860. The Stamp Act 1870, section 120, upon which that opinion proceeded, was in practically the same terms as the Stamp Act 1891, section 10 (1) (4) *Alternatively*, this was an agreement or bond within the meaning of the Stamp Act 1891. First Schedule *sub voce* Agreement, and could not be received unless a 6d. stamp were affixed to it, and a penalty of £10 paid—*Welsh's Trustees* v. *Forbes*, *cit.*

Counsel for the respondent was not called upon.

LORD YOUNG—I think we can only deal with this case in so far as it has been decided upon by the trustee. The trustee rejected the claim on the ground "that the acknowledgment of the loan is neither dated nor stamped, and that no information is supplied as to the alleged loan by the claimant, who is, the trustee understands, related to the bankrupt." The Sheriff-Substitute recalled that deliverance and found that said document not being an agreement or bond, or other document requiring to be stamped, but being a mere acknowledgment of debt, is, though unstamped, to be received as an item of evidence, which entitles the appellant to an opportunity of adducing further evidence in support of her alleged debt. The argument against the Sheriff-Substitute's finding and in support of the trustee's deliverance is that the document produced is either a promissory-note, a receipt, or an

agreement or bond. I am of opinion that it is not a promissory-note. I am also of opinion that it is not a receipt or an agreement or a bond. Of course I mean that it is none of these things within the meaning of the Stamp Act. I am further of opinion that it does not require any stamp. What its force may be as establishing a debt against the bankrupt's estate I do not know. I have not to form any judgment or express any opinion on that point. It may or it may not establish the claimant's claim of debt in whole or in part. All I can give an opinion upon is that it ought not to be rejected because it has not a promissory-note or a receipt or an agreement or bond stamp upon it. I think the Sheriff-Substitute's interlocutor should be adhered to. It decides nothing more than that this document is to be received as an item of evidence in support of the claim. I say nothing for or against the contention that it is sufficient to establish the claim. We cannot be called upon to decide that question, for it has not been decided by the trustee. I therefore suggest that we should refuse the appeal with expenses.

LORD TRAYNER—I agree. I think the grounds on which the trustee proceeded in rejecting this claim are untenable. If it be the case, as the trustee understands, that the claimant and the bankrupt are conjunct and confident, that will afford a good reason for the trustee exercising his right to call for further evidence or explanation before admitting this claim to a ranking. But it is not a ground for rejecting the claim *de plano*.

LORD MONCREIFF—I am of the same opinion. I think this document is neither a promissory-note nor a receipt nor an agreement within the meaning of the Stamp Act. It is plainly only a jotting or note showing the state of account between the parties, written a long time after the loan was made. It may or may not of itself be conclusive evidence of the subsistence of a debt, but I agree that that is a matter which the trustee must decide for himself. All we decide is that the writing is competent evidence of loan, and should be received and considered though unstamped. I think we should sustain the judgment of the Sheriff-Substitute and remit the case to the trustee.

The LORD JUSTICE-CLERK was absent.

The Court pronounced the following interlocutor:—

"Dismiss the appeal and affirm the interlocutor appealed against: Find the appellant liable in expenses, and remit the same to the Auditor to tax and to report to the Sheriff, to whom remit the cause, with power to him to decern for the taxed amount of said expenses."

Counsel for the Appellant (the Trustee)—Craigie. Agents—Carmichael & Miller, W.S.

Counsel for the Claimant and Respondent—Crole. Agent—W. B. Rainnie, S.S.C.

Wednesday, July 14.

FIRST DIVISION.

SCHOOL BOARD OF CRIEFF, PETITIONERS.

Trust—Mortification—Petition for Amendment of Scheme by Recipients—Objection by Governor—Competency.

The School Board of C, owing to changes made by the Boundary Commissioners, became the natural recipients of a grant made annually out of the funds of a mortification to the School Board of M, and presented a petition, with the approval of the governors of the mortification and the School Board of M, craving the Court to amend the scheme of administration, by substituting their name for that of the School Board of M, as the recipients of the grant, and to reduce the amount payable from £15 to £10 per annum, on the ground that the latter sum would be sufficient for the expense of carrying out the purposes for which the grant was made. The proposed scheme was remitted to a reporter. One of the governors of the mortification lodged a minute craving the Court to consider the question as to whether payment of any part of the grant should be made to the present petitioners, and to remit back to the reporter for that purpose. The Court *held* that this question was not appropriately raised under the petition, and granted the prayer of the petition.

A petition was presented by the School Board of the parish of Crieff "to amend or alter the present scheme for the administration of the Innerpeffray Mortification, approved by Order of the Privy Council of date 19th August 1889."

By the clause proposed to be amended the governors of the Innerpeffray Mortification had power to grant the use of the school and teacher's house at Innerpeffray to the Muthill School Board, and to pay the board an annual sum of £15 under the condition of its keeping up the house and school, and maintaining a school there. The Boundary Commissioners having transferred to Crieff from Muthill that part of the parish where Innerpeffray School is situated, the petitioners presented this petition for the purpose of having the administration of the school handed over to them, and both the School Board of Muthill and the governors of the mortification declared their willingness to agree to the transfer.

The petitioners stated that they were willing to restrict the payment to be made to them under the section before mentioned to the sum of £10 per year, which sum had been found sufficient to pay the charges of the school. Accordingly the alteration which they craved the Court to make in the scheme of administration was to substitute their name for that of the School Board of