it was on receiving that letter from Peebles that Schulze sends the cheque of 1st March which has been retained by Peebles. Now I confess I have not the difficulty about this matter that the Lord Ordinary has. I think that the letter of 22nd February asking money was written by Clark & Macdonald to Peebles as agent for Mr Schulze and as country agent in the case and in no other capacity. I think that they just in the ordinary course of business, adopting the suggestion of Peebles, wrote to Peebles to get this money, and in so writing wrote to Peebles as Schulze's agent; and I think Schulze in sending that money by cheque to Peebles sent to him as his agent, depending upon him as his agent to transmit it to Clark & Macdonald.

I think therefore that in logic and law the pursuers are entitled to payment.

LORD M'LAREN—The question as I understand it is this, whether a sum of money sent by a litigant to his agent in the Court of Session through the country agent is a good payment to account, although in point of fact the sum of money never reached the Edinburgh agent. There can, I imagine, be no doubt that in this case Messrs Clark & Macdonald, the Edinburgh agents, were not sub-agents of the country agent Peebles, but that the direct relation of agent and client subsisted between Clark & Macdonald and Mr Schulze. That is the result of the section of the Law-Agents' Act to which we were referred, which says that where the name of the client is disclosed by the country agent the country agent shall not be responsible unless an express contract to the contrary be made. Now there was no express contract in this case, and it follows that Schulze was directly liable to Clark & Macdonald, and that he might have sent payment to them by post without the intervention of the country agent. I confess that when attending to what was said against the Lord Ordinary's interlocutor I was inclined to doubt its validity, on the ground that, as I then apprehended the facts of the case, the payment by a debtor to a creditor made through a channel pointed out by the creditor is a good payment although the money does not reach him. But my impression was completely altered by what Mr Hamilton pointed out in his very lucid opening, that the principle would not apply to a case where the channel of communication referred to is the debtor's own agent, because if a creditor writes to a debtor "Will you instruct your agent," or "Will you instruct your banker to pay me this sum," that is not pointing out a channel of communication which the creditor particulary desires. It is much the same thing as saying "Will you make payment to me in the manner most convenient to yourself." That being so, I think it makes no difference whether the suggestion of payment through an agent was made directly or indirectly. In the present case it was not made directly. I mean Clark & Macdonald did not write directly to Schulze saying "Pay us through your country agent." They wrote through the country agent "Will you let us have so much," which meant plainly "Will you get your client to send us £20." Now, looking to the fact that Peebles was undoubtedly the agent of Mr Schulze and the person who had introduced Clark & Macdonald into the business, I think that this request was the same in effect as if the letter had been addressed to Schulze himself. It was only sent through the agent as a matter of professional courtesy, and therefore I agree with your Lordship that this was not a case of a creditor prescribing a particular mode of payment, and that it would have been open to Mr Schulze to make the payment by cheque in favour of Clark & Macdonald transmitted either directly or through Mr Peebles. Mr Schulze having preferred to make payment through his agent, I agree that the loss must fall upon him. I am glad to think that the loss will be compensated, because Mr Peebles has not yet got payment of his own account.

LORD KINNEAR was absent.

The Court adhered.

Counsel for the Pursuers and Respondents—Graham Stewart—Hamilton. Agents—Party.

Counsel for the Defender and Reclaimer—Clyde K.C.—M'Lennan. Agent—George Matthewson, S.S.C.

Tuesday, January 21.

SECOND DIVISION.

Sheriff-Substitute at Glasgow.

COHEN & VAN DER LAAN *v.* HART.

Food and Drugs—Margarine—Margarine Register—Inspection by Officer of Board of Agriculture—Refusal to Permit Officer to take Notes from Register—Sale of Food and Drugs Act 1899 (62 *and* 63 *Vict. c.* 51), *sec.* 7.

The Sale of Food and Drugs Act 1899, sec. 7, enacts—"(1) Every occupier of a manufactory of margarine or margarine-cheese and every wholesale dealer in such substances shall keep a register showing the quantity and destination of each consignment of such substances sent out from his manufactory or place of business, and this register shall be open to the inspection of any officer of the Board of Agriculture. . . . Subsec. (3)—"If any such occupier or dealer . . . (*b*) refuses to produce the register when required to do so by an officer of the Board of Agriculture, . . . he shall be liable" to a fine of £10.

Held that the power of inspection above quoted entitles the officer of the Board of Agriculture to make notes of the contents of the register, and that a dealer who produced his register to the

officer, but refused to permit him to take notes therefrom, was rightly convicted of a contravention of the Statute, section 7 (3) (b).

Messrs Cohen & Van der Laan, wholesale margarine dealers, Glasgow, were charged in the Sheriff Court at Glasgow at the instance of James Neil Hart, Procurator-Fiscal of Court, on a complaint which set forth that the respondents, "being wholesale dealers in margarine, and having a place of business as such at 22 North Albion Street, Glasgow, did on 4th October 1901 in the said place of business refuse to produce to Mr Haygarth Brown, an officer of the Board of Agriculture, when required by him to do so, the register kept by them in terms of section 7 (1) of the Sale of Food and Drugs Act 1899, contrary to section 7 (3) (*b*) of said Act, whereby the said Messrs Cohen & Van der Laan are liable on summary conviction for said offence—which is a first offence—to a fine not exceeding £10."

The Sheriff-Substitute (FYFE), after evidence had been led, convicted the respondents, and imposed a fine of 10s.

The respondents appealed to the Court of Session upon a stated case.

The case set forth the following facts as proved:—"(1) That the appellants are a firm having a place of business in Glasgow, where they carry on the trade of wholesale dealers in margarine; (2) That they kept there the register required by section 7 of the Food and Drugs Act 1899; (3) That on 4th October 1901 an officer of the Board of Agriculture called at the appellants' premises to inspect this register; (4) That Mr Isadore Cohen, a partner of the appellants' firm, who was in charge of the Glasgow warehouse, placed the register open before the officer; (5) That the officer began to make notes of the contents of the register; (6) That thereupon Mr Cohen removed the register and declined to allow the officer to make notes."

The questions of law for the opinion of the Court were—"(1) Does the power of inspection conferred upon the officer by section 7 of the Food and Drugs Act 1899 entitle the officer to make notes of the contents of the register; (2) Is refusal to permit an officer so to make notes a contravention of the Statute, section 7 (3) (*b*)?"

The respondents' counsel stated that they had an objection to the competency of the appeal upon the ground that it should have been brought in the High Court of Justiciary and not in the Court of Session, but that they did not propose to press this objection because they wished to obtain a decision upon the merits.

Argued for the appellants—The Sheriff was wrong in holding that the appellants were bound to allow the officer to make notes of the contents of the register. Such inquisitorial powers had been very strictly construed, and the appellants had a good ground of refusal, viz., that the register disclosed their whole business transactions. It might be otherwise in criminal cases, but this was a civil matter—*Mutter* v. *Eastern and Midland Railway Co.* (1888), 38 Ch. D. 92, *per* Lindley, L.J. In the Companies Clauses Act 1845, section 122, special power was given to take copies, but where such power was not expressed it should not be inferred.

Counsel for the respondent were not called upon.

LORD JUSTICE-CLERK — I think this appeal must be dismissed.

We are here dealing with statutory provisions for enabling a public official to take such steps as may be necessary with a view to prosecution for contravention of the Act, or by inspection to deter those inclined to commit contraventions from doing so. That is a totally different thing from the right of private individuals to see wills or registers of shareholders in public companies. The purpose of the section of the Act is that the State may be informed with regard to that which is for the protection of the public.

When a public official comes, in virtue of powers conferred upon him by an Act of Parliament, and asks production of a register, that is in order that he may get from the register certain definite information. By looking over the register he may see that nothing requires to be noted, but if he thinks it necessary to note something in the register with a view to inquiry or prosecution I cannot see that there is any ground for holding that he is not entitled to take such a note. It is admitted that he may carry away such information as he likes to commit to his memory. Consider a case in which the purpose of taking a note is for a prosecution. The suggestion is that the official is to raise his prosecution on such information as he has carried in his memory, and proceed to show that his memory is right. Now, such a prosecution would be not unlikely to prove abortive, because the memory may easily make a mistake in figures or in names.

That an inspector under the Act may take a note for carrying out his statutory duty I have no doubt whatever. He is acting for a public department and under the confidentiality which is strictly observed in the public service. If anything was being done by him which was considered oppressive complaint might be made to his superiors.

Upon the general question, whether a prosecution may proceed against a party who has refused to allow an official to make notes from the register, I am of opinion that such a prosecution is competent on the footing that the party has failed to produce a register.

LORD YOUNG—I am of the same opinion, and I think this as clear a case as could be brought before the Court, The purpose of keeping the register is obvious on the face of the statutory requirement, which is to this effect — [*His Lordship quoted the clause*]. That is a requirement by statute that the quantity and destination of each consignment of margarine shall be shown to any officer of the Board of Agriculture, and it is further provided that if any dealer fails to keep such a register or refuses to produce it to such officer he shall be liable to

a penalty. The suggestion that the officer may look at the register but may not take a note of the quantity or destination of any margarine entered in it is untenable to the extent of being extravagantly ridiculous. I think there is no foundation in law or in sense for such a proposition. I do not see why he should not take a copy of any entry which he may think it in the interest of the public service to take. But the proposition is that he is not entitled to take a copy of all or of any entries. I am of opinion that the Sheriff most properly rejected that contention.

LORD TRAYNER—I agree.

LORD MONCREIFF was absent.

The Court dismissed the appeal and answered both the questions of law in the affirmative.

Counsel for the Appellants — Campbell, K.C.—T. B. Morison. Agents—Drummond & Reid, W.S.

Counsel for the Respondent — M'Clure, A.D.—A. O. M. Mackenzie, A.D. Agent—W. J. Dundas, C.S., Crown Agent.

Wednesday, January 22.

SECOND DIVISION.

POLLOK'S TRUSTEES *v.* ANDERSON.

Succession—Testament—Trust—Direction to convey Heritage "so far as the same shall belong to me at my death"—Subjects agreed to be sold after Notice given to take under Statutory Powers, but not disponed before death of Testator—Legacy—Special Legacy—Ademption.

A testator directed his trustees to convey to A certain heritable subjects, "so far as the same shall belong to me at my death, but under all burdens affecting the same." His settlement contained a residuary clause in favour of other parties. Prior to the testator's death notice to acquire certain of these subjects had been served on him by a corporation acting under statutory powers, and he had entered into an agreement to sell, but died before executing a conveyance of the property. After the testator's death his trustees conveyed this property to the purchasers in terms of the agreement. In a question between A and the residuary legatees regarding the right to the price, *held* that the property in question had belonged to the testator at his death; that A would have been entitled to have had it conveyed to him under burden of the agreement to sell; and that, as the trustees had conveyed it direct to the purchaser under the agreement, A was entitled to the price.

Heron v. *Espie*, June 3, 1856, 18 D. 917, *distinguished.*

Walter Whyte Pollok, sometime writer in Glasgow, died on 3rd September 1899, leaving a trust-disposition and settlement and codicils thereto.

By codicil dated 5th October 1895 the truster, in the second place, directed his trustees to dispone, convey, and make over to and in favour of his nephew John Anderson and the heirs-male of his body, whom failing, his nephew William Pollok John Anderson and the heirs-male of his body, certain lands and others "now belonging to me, so far as the same shall belong to me at my death, but under all burdens affecting the same, . . . and that with entry to said several lands, subjects, and others as at the date of my death." Amongst the subjects in the second place directed to be disponed was "that property in Saint Ninian's Street, Hutchesontown, Glasgow, which lately belonged to the said Robert Pollok."

The testator directed his trustees to convey and make over the residue of his heritable and moveable means and estate to other relatives in certain proportions.

Prior to his death the testator had received notice that the Corporation of Glasgow desired to acquire from him, under the Glasgow Improvements Act 1897, the property in St Ninian's Street above mentioned; and he had, by letters dated 18th and 22nd August 1899, entered into an agreement to sell the said property to the Corporation at the price of £1051, 10s. 4d., with entry as at Martinmas 1899. The testator died on 3rd September 1899 without having executed any conveyance of this property. Thereafter his trustees executed a conveyance of the subjects in favour of the Corporation, with entry as at Martinmas 1899, and received payment of the price, which amounted after adjustment to £1049, 6s.

Questions having arisen among the beneficiaries as to the right to the said sum of £1049, 6s., a special case was presented for the opinion and judgment of the Court.

The parties to the special case were (1) the testamentary trustees of the deceased, (2) John Anderson, (3) the residuary legatees.

The second party maintained that he was entitled to payment of the said sum of £1049, 6s., with the interest accrued thereon, on the ground that the said heritable subjects had not been conveyed by the truster to the Corporation of Glasgow as at the date of his death and that the property in them at that date was still in the truster.

The third parties maintained that the said subjects having been sold to the Corporation of Glasgow before the death of the truster, the price received for them became residue of the estate and fell to be paid to the third parties as directed by the truster in his codicil of 5th October 1895.

The questions of law for the opinion and judgment of the Court were:—"Are the first parties, as Mr Walter Whyte Pollok's trustees, bound in terms of the said codicil of 5th October 1895 to pay over the said sum of £1049, 6s., with the interest accrued thereon, to the second party as *surrogatum* for the said heritable subjects purchased by the Corporation of Glasgow? Or are