[HEARD 19*th*.—JUDGMENT 27*th March*, 1849.]

MESSRS. KENNETH MATHESON and SON, Contractors at Dullatur, *Appellants*.

ALEXANDER ROSS, Contractor at Cumbernauld, *Respondent*.

Appeal.—It is competent to appeal against an interlocutor upon a question as to admissibility of evidence reserved at a trial by jury for the opinion of the Court.

Stamp Act—Evidence.—An unstamped receipt used to prove a matter collateral to proof of payment of the money mentioned in it, is admissible evidence, unless the collateral purpose is to be established by proof of the particular payment. In such a case it will be inadmissible.

THE Respondent brought an action against the Appellants for payment of two sums of money, one of 143*l*. 3*s*. 11*d*., as the balance of the contract price of work performed for them, and the other of 662*l*. 15*s*. 4*d*., as the price of certain extra work.

The Appellants pleaded in defence that accounts had been adjusted between them and the Respondent, before the work done by him had been measured, and that after crediting him with sums amounting to 1,250*l*. 1*s*. 4*d*., and debiting him with payments amounting to 1,181*l*. 12*s*., there remained a balance of 68*l*. 9*s*. 4*d*., which had been paid to the Respondent on the 17th January, 1842; that the work had been afterwards measured, and then it was discovered that the Appellants still owed the Respondent 34*l*. 17*s*. 3*d*., to account of which they paid him 25*l*. on the 2nd April, 1842, leaving a final balance of 9*l*. 17*s*. 3*d*., which they were ready to pay.

The cause went to trial upon two issues, whether the Appel-

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lants were due and indebted to the Pursuer the two sums sued for.

The Respondent, in support of his case, tendered as evidence a "note of the payments received from Messrs. Matheson "and Son, for the Easter contract, at Dullatur," in which there was the following entry:—"1842, January 14, cash received, "68*l.* 9*s.* 4*d.*"

The Appellants, among other evidence, tendered the following document:—

State of Settlement with A. Ross, 13th January, 1842.

ALEXANDER ROSS.

Dr.				*Cr.*			
1841.				1841.			
Aug. 7.	Cash	£240	0 0	Aug. 7.	Pay-bill	£305	14 9
Sep. 4.	Do. £230 and £4	234	0 0	Sep. 4.	Do.	277	0 3
Sep. 11.	Do.	50	0 0	Oct. 2.	Do.	280	3 9
Oct. 2.	Do. Horses	17	2 0	Oct. 30.	Do.	202	4 2
Oct. 2.	Do.	210	0 0	Nov. 27.	Do.	139	14 9
Oct. 30.	Do.	155	10 0	Dec. 11.	Do.	45	3 8
Nov. 1.	Do.	20	0 0				
Nov. 5.	Do.	10	0 0				
Nov. 13.	Do.	20	0 0				
Nov. 17.	Do.	20	0 0				
Nov. 27.	Cash	100	0 0				
Dec. 4.	Do.	20	0 0				
Dec. 11.	Do.	40	0 0				
Dec. 21.	Do.	20	0 0				
1842.							
Jan. 13.	Do.	25	0 0				
		£1181	12 0			£1250	1 4
	Balance	68	9 0				
		£1250	1 4			£1250	1 4
Jan. 17.	To cash	£68	9 4	Jan. 13.	By Balance	£68	9 4

They also tendered a piece of paper which had originally been part of that on which the account was written, and which contained the following writing:—

"*Dullatur*, 17*th Jan.*, 1842.

"I acknowledge having received from K. Matheson "68*l.* 9*s.* 4*d.* sterling, being balance amount of pay-bills paid "from 7th August to 11th December, both inclusive.

"(Signed) ALEX ROSS.

"£68. 9*s.* 4*d.*"

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An objection was taken by the Respondent to the admissibility of this latter document as a receipt to prove the payment of the sum mentioned in it; but no objection on that ground was taken to its admissibility as a document to prove the state of the account: it was therefore received, subject to all objections; but afterwards, the Judge presiding reserved right to the Appellants to get it stamped, if they thought it required a stamp for the particular use they proposed to make of it.

The jury, under the direction of the Court, returned a verdict for the Respondent, with leave to the Appellants to apply to the Court to enter up a verdict for them. The Appellants moved the Court accordingly, when the Respondent argued, that the document, purporting by its term, to be a receipt for 68*l.* 9*s.* 4*d.*, and tendered by the Appellants, not for the purpose of proving the receipt by the Respondent of that money, but of shewing the state of the account between the parties at the particular date, could not be received in evidence for any purpose whatever, as it did not bear a stamp. The Court ordered minutes of debate upon this question to be laid before the whole Court for its opinion.

The consulted Judges, by a majority of six to three, were of opinion that the paper could not be received in evidence, and the division of the Court, (the second) before which the case depended, concurring in that opinion by a majority of three to four, pronounced the following interlocutor :—

" In respect of the opinions of a majority of the consulted " Judges, refuse the motion for the defenders to direct the " verdict to be entered up for them, and find the pursuer entitled " to the expenses incurred by him in this discussion, subject to " modification."

Sir F. Kelly and Mr. Anderson for the Appellants.—The document upon which this question arises was tendered in evidence, not to shew the receipt of 68*l.* 9*s.* 4*d.*; that was wholly unnecessary, for the Respondent had himself proved that

payment by the "note of payments," which he himself produced in evidence. The only use which the Appellants desired to make of the document was, to shew the acknowledgment in it that 68*l.* 9*s.* 4*d.* was "the balance of pay-bills paid from 7th "August to 11th December both inclusive," and thereby to confirm and establish the "state of settlement," of which the evidence shewed that this receipt originally formed a part, for this purpose they tendered, what is now two documents, but was originally only one, as if it existed in its original condition, in order that the signature of the part at the foot of the document might be connected with the account, but in doing so, they disclaimed all use of the words of acknowledgment, as much as if they were *non scripta*.

This purpose was one wholly collateral to and independent of evidence to show payment of the money mentioned in the receipt. The Stamp Act declares that all notes, memorandums, or writings whatever, given "for or upon the payment of "money," shall be construed to be receipts, which by another part of the statute, must have a stamp impressed upon them. But the statute nowhere declares that a paper, shewing the close of a variety of transactions, must, if used to prove the state of these transactions, have a stamp upon it. The fact of payment of the 68*l.* 9*s.* 4*d.*, which the document acknowledges no doubt, was wholly immaterial to the Appellants, as immaterial as if, instead of using it to shew the account, they had produced it merely to shew that the Respondent could write. What is important for them is, to shew by the signature of the Respondent, that he acknowledged the correctness of the accounts. Although the signature is at the receipt, yet the account and the receipt being on one paper, there cannot be a question that the signature applied equally to the account as to the receipt. It may be said, certainly, that using it for the purpose for which the Appellants tender it, the receipt is used to prove the payment of the different sums at the Respondent's debit

in the account; but still that is collateral to proof of the payment of 68*l.* 9*s.* 4*d.*, of which sum alone the document purports by its terms to have been given "for or upon the payment of." If this form of the objection were to be given effect to, it would amount to this, that there must be a receipt for every individual payment on the debit side of an account, however numerous they may be; but nothing so preposterous was ever attempted before. Where an entry is made on an account immediately upon the receipt of money, it cannot be read, because that is a palpable evasion of the stamp laws. Wright *v.* Shawcross, 2 *B. & Ald.* 502. But where the entries in a fitted account are made long after the actual payment, there is no authority for saying that a stamp receipt, for each payment, is necessary to support the account. If such a rule were to be laid down, it would be impossible for trade to go on. In Wellard *v.* Moss, 1 *Bing.* 134, an account of sums advanced to, and disbursements made for, the Plaintiff, and containing these words, "I acknowledge the above account being correct, and "am fully satisfied therewith," was received as evidence of the advances and disbursements, although there was no stamp upon the paper. In Clark *v.* Hougham, 3 *Dow. & Ry.* 322, which was an action by a tenant to recover from his landlord various surcharges which the landlord had made upon the tenant, under a stipulation in a lease, that the tenant should reimburse the landlord for taxes paid by him various accounts of taxes paid, which had been, from time to time, rendered by the landlord to the tenant, having the word "paid" at the foot, in the writing of the landlord, were received as evidence to prove the surcharge. In Terbutt *v.* Ambler, 2 *Car. & P.* 60., a "Memorandum, 30th April, 1836, settled all accounts of law "business up to this day, and will give a receipt in full of all "demands when called for," with an agreement stamp upon it, was received, although it had not any receipt stamp. In Brooks *v.* Davies, 2 *Car. & P.* 186, a writing by the acceptor

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of a bill, in the form of an account charging the drawer with the price of a piece of cloth exceeding the amount of the bill, and giving him credit for the amount of the bill, signed by the acceptor, "received J. Davies," was received as evidence of the delivery of the cloth, and of the state of account between the parties, "because, a paper not put in as a receipt, does not "require a stamp." And in Dibdin *v.* Morris, 2 *Car. & P.* 44, a receipt for 52*l.* 10*s.*, upon 1*s.* 6*d.* stamp, which contained these words, "which sum, together with 100*l.* already received, "is in satisfaction of all my claims," was received in defence to an action of assumpsit for work and labour, although it was objected that it should have had a stamp, corresponding to that required for a general discharge, or for the sum of 152*l.* 10*s.*, because it was "only a receipt for 52*l.* 10*s.*, and though it "mentions the previous receipt of the other sum, it is not at all "given as receipt for that sum."

In that case the paper was admitted to prove, by the signature of the party to it, the statement in it, that a previous payment of 100*l.* had been made, and that all claims had been satisfied by the payment of 52*l.* 10*s.*, although the stamp covered only 52*l.* 10*s.* In short, the fact of the paper being a receipt for a particular sum, was not allowed to defeat its effect for other purposes, so here the fact of the paper containing a receipt, cannot defeat its use for other purposes, than to prove the payment of the particular sum it purports had been paid. And in Bennie *v.* Mack, 10 *Sh.* 255, an unstamped paper, bearing, "I have this day got bills and cash from you to the amount "of 55*l.* 4*s.* 6*d.*" was received as evidence of a payment by bills to the amount of 26*l.*, although the paper purported to be a receipt for money.

Mr. Wortley and *Mr. A. M'Neill* for the Respondent.—It is not competent for the Appellant to bring the question raised by the Appeal before the House. The jurisdiction of the House

in Appeals is the creature of statute, and, therefore, unless the Appeal is sanctioned by the statutes it is incompetent. By the 6th sect. of the 55 Geo. III. cap. 42, the Appellants might have applied for a new trial, on the ground of rejection of evidence; and the Interlocutor, upon such an application, could not have been appealed; or by the 7th sect. of the same statute, they might at the trial have excepted to the direction of the Judge, as to the admissibility of evidence; and if their exception had been disallowed, the verdict would have been final. But there is no provision by the statutes admitting of appeal upon the decision of the Court on a question reserved for its decision at the trial, which does not appear, either by the verdict or by a bill of exceptions, but on the notes of the Judge alone, which are no part of the record. The proceeding, though not in form, is in substance, a motion for a new trial, on the ground of undue rejection of evidence, and the judgment of the Court upon it is final, and not subject to appeal.

With regard to the merits, the enactment of the Stamp Act is, that no receipt "shall be pleaded or given in evidence in "any court, or admitted in any court to be good, useful, or "available in law or equity," unless it shall be marked with a lawful stamp. This enactment does not say that the receipt shall not be admitted to be good, useful, or available, to prove the receipt of the particular sum, but generally that it shall not be good, useful, or available for any purpose whatever. The document in question, in the present case, is in express terms a receipt; and though it may not be necessary for the party's purpose to use it to prove payment of the sum mentioned in it, it is equally to defeat the policy of the statute to allow him to use it for the larger and more available purpose of showing the correctness of the sums in the account. He can only do so by reading the receipt, for there is no separate acknowledgment of the correctness of the account; that is only shown by inference from the acknowledgment in the receipt of

payment of a particular sum, "being balance of amount of "pay-bills." It is impossible, therefore, for the party to prove his case, without using the receipt as such, in direct opposition to the enactments of the statute. To disconnect the receipt from the account and read only the signature, as if it were at the foot of the account, does not mend the matter; that is only another way of attempting the same evasion; for there is no signature except at the foot of the receipt, and plainly it was intended to be only there. Still less is it in the power of the party to disconnect the parts of the receipt itself, and to try to read only that part which acknowledges that a payment made was a balance, discarding that part which acknowledges the payment.

All the cases establish that a receipt, not properly stamped, cannot be used for any purpose beneficial to the party producing it, whatever that purpose may be. In Scott *v.* Burd, 8 *Bell & Mur.* 25, an unstamped receipt was not allowed to be used, to prove against one of two debtors in favour of the other that he had paid the debt, so as to entitle him to contribution. That was a much more favourable case than the present, for the use attempted was not against the original creditor, to show that he had received his money, but against a third party, to show by whom it had been paid. The King *v.* Inhabitants of Castle-morton, 3 *Bar. & Ald.* 588, was a case of a similar nature; there an unstamped lease was not allowed to be read, although the purpose was merely to show the value of the premises let, in a question with the parish as to settlement or no settlement, and not to make the instrument available as a lease against either of the parties to it. So in Hawkins *v.* Warre, 3 *Bar. & Cres.* 690, unstamped receipts for rent were not allowed to be read to prove a tenancy, in defence to an action for alleged illegal seizure of corn for payment of rent. In the King *v.* Hall, 3 *Starkie*, 68, an unstamped receipt produced, not for proving receipt of the money against the party entitled to

receive it, but against a party who had feloniously received and appropriated it, was not allowed to be read. In Jardine *v.* Payne, 1 *Bar. & Ad.* 670, correspondence proved an admission of liability for payment of 57*l.* 10*s.* to the holder of a bill for that amount, and an unstamped bill was then tendered, to show that the Plaintiff was the holder, but it was not allowed to be received.

LORD CHANCELLOR.—The question in this case was, whether a document which was stated to be a receipt of payments, making a balance of 68*l.*, was a receipt, which purported to be a receipt for that sum of 68*l.*, the balance of an account, and whether it was receivable in evidence in a contest between the parties, not being tendered for the purpose of proving the payment of the 68*l.*, but being tendered for the purpose of proving the state of the account as set out in the papers, bringing out a balance of 68*l.*, for which a regular receipt was given.

My Lords, it is contended that inasmuch as this was a document which purported to be a receipt for 68*l.*, it could not be received, not having a proper receipt stamp. On the other hand, it was contended that the document, though not receivable as a receipt, for the purpose of showing the discharge of the 68*l.*, yet inasmuch as it was available for other purposes, unconnected with the fact of 68*l.* having been paid, was not vitiated by the receipt for the 68*l.* having been written on it, and was receivable therefore for the purpose of showing the state of the account as it stood before the receipt for the 68*l.*

Now, my Lords, upon a consideration of the cases that were referred to, both in this country and in Scotland, but particularly in this country, I find that they are so very inconsistent with one another, and they seem, in most instances, to be so little regulated by any fixed rule or principle, that it would be a hopeless task to endeavour to reconcile them. But it does appear to me, that from all the cases a certain principle may be

extracted, which seems to have regulated the minds of the judges who decided those cases, although questions may be raised, undoubtedly, upon many of them, as to the mode in which that principle is to be applied. Now, my Lords, it is perfectly obvious that there are three descriptions of documents upon which this question may be raised. First, a mere discharge for a debt is of course directly within the meaning of the Stamp Act; about that no question can be raised. Another class of cases is where it becomes necessary to prove payment, not for the purpose of showing a discharge as between debtor and creditor, but for what is called a collateral purpose. Now that expression "collateral purpose" seems to me to have been very much misunderstood, and to have led to a great deal of the confusion to be found in the cases. It certainly is a collateral purpose if you produce a receipt, not to show a discharge as between debtor and creditor, but for the purpose of establishing some other fact collateral to the question of payment, as in one of the cases I recollect with regard to the payment of rent by a tenant, where a receipt purporting to be a receipt for former rent, was produced, not for the purpose of showing the discharge of that particular rent, but for the purpose of establishing the fact of tenancy. That is quite collateral to the fact of payment, no doubt, and the receipt was a document used, not for the purpose of showing that the particular sum specified in the receipt had been paid, but for the purpose of shewing, through the means of that receipt, by the fact of money having been paid, that there was the relation of landlord and tenant existing between the parties. My Lords, it appears to me that the great majority of the cases go to shew this, that if in a case the matter to be proved be the payment of money, and the receipt of the money so paid is proved by a document, the Stamp Acts do immediately apply to the document produced for such a purpose, whether it is for a direct purpose as between debtor and creditor, or whether it is for a purpose collateral, that where

a matter collateral is to be proved by the proof of the fact of payment, and that fact of payment is established by a receipt, the receipt is within the provisions of the Stamp Act. That, however, is not the present case: but it does tend very much to reconcile many of the cases which have been referred to, and which at first sight appear difficult to bring within any principle. But, my Lords, there is another class of cases, within which it appears to me the present falls; where the document is indeed a receipt, and purports upon the face of it to be a receipt, but also purports something else, that is to say, as in the cases where an account of debtor and creditor appears set out between the parties, making a certain balance due, and the paper contains a receipt for that supposed balance, whether that balance was paid or not. If the object of the parties be not to prove the fact of that particular balance having been paid, but merely to shew that the parties to the account acknowledge the state of account, as appears by the account, the receipt may be proved for the purpose for which it is produced, whether that balance had been paid or not. It is true, supposing the account stood without any receipt or payment, supposing a balance had not been paid, and the parties had arranged between themselves to ascertain, and settle, how the account stood, or was to be rendered; supposing the items of the account had exactly balanced one another, then there would be no payment, there might be the signature of the parties to the documents, but there would be nothing like a receipt, and nothing to require a stamp. That is exactly the present case, excepting this, that this which is, and also purports to be a receipt for a balance, does not find its way into such a case as that, because there had been no payment and nothing received. But why, because a paper purporting to be a receipt, cannot be used for the purpose of proving that receipt without a stamp, should not be used for another purpose equally apparent upon the face of the paper which does not require a receipt, is a proposition which it seems

to me it is extremely difficult to support by any argument, certainly not by any language to be found in the Stamp Acts, or, I believe, by any authority, although there are some which it might be difficult to deal with.

Now, my Lords, this debtor and creditor account, as it stands upon the face of it, must of course be taken from books. If the party had signed a book instead of signing a paper, could anybody doubt that that would be evidence against the party signing it, as shewing the state of the account? Because the items of payment in the account do not require a stamp—no one contends that they do. It is an acknowledgment of the parties that the account stands as it appears on the face of the book, or as it appears on the face of the paper which is signed. This document made out, and recognised, and acted upon, and signed by the parties, is good evidence of the state of the account for that purpose and that purpose only.

My Lords, without attempting to go through the variety of cases which have been referred to, it does appear to me that this principle will be found to reconcile a great many of them, (although with respect to others there is some difficulty in reconciling them,) as it steers entirely clear of the Stamp Acts, which beyond all doubt it is the duty of all Courts to support, so far as the Legislature intended they should be supported, but which all Courts must be anxious to keep within their proper limits, in order not to deprive parties of evidence of their rights on account of some difficulty supposed to arise from the Stamp Acts. And it is, therefore, the duty of the Court to see that its decisions are kept within the proper bounds. It does not appear to me at all to infringe upon the Stamp Acts, to hold this document admissible for the purpose of evidence, so far as it contains matter not connected with the receipt of money; and, therefore, that the Court below have erred in not permitting this document to be received.

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LORD BROUGHAM.—My Lords, it is undoubtedly the duty of all Courts, as my noble and learned friend has justly observed, to protect the revenue, and to see that the intention of the Legislature is carried into effect, which requires certain documents when produced in evidence for certain purposes, to have a stamp, whereby the revenue has so much gain. But it is not the duty of the Courts to strain the construction of these Stamp Acts, so as, without regarding the object of the Legislature, to deprive parties of the means of evidence, whereby they might maintain on the one side or the other their different contentions before the Courts. This would be to make the Courts instrumental in levying many duties which were not intended to be imposed upon the subject, and would be adding a grievance to that grievance which I am much afraid we must admit that all taxes naturally impose, be they ever so closely kept to their original intention, and be the law imposing them ever so equitably or even mildly administered. Therefore, this being the rule, that we ought only to regard the intention of the Legislature, and not to strain it, giving a larger scope to what is enacted than the Legislature intended should be given, this being the general rule, we come to consider whether the present case has not gone to the outside of that rule and erroneously imposed the obligation of putting a stamp upon an instrument used, not as a receipt but for another purpose. I looked very carefully, as my noble and learned friend near me did, into the different cases which were cited on either side, and which have been cited and very diligently examined, I must say, both by the counsel and the judges in the Court below, and to reconcile all these cases I found to be absolutely hopeless; some of them are Nisi Prius cases, as for instance, The King *v.* Hall, tried before Mr. Justice Bayley, and another on the other side, of Brooks *v.* Dunn, I think tried before Lord Wynford, and also Terbutt *v.* Ambler, which was tried I think before Lord Denman, and reported in *Carrington & Payne.* There are other cases,

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Horne *v.* Redfearn, in the Common Pleas, reported in *4th Bingham*; The King *v.* The Inhabitants of Castlemorton, in *3rd Barnewall* and *Alderson*; and Hawkins *v.* Payne, in the King's Bench; Jardine *v.* Payne, also in the King's Bench; Goodyear *v.* Simpson, I recollect was cited and commented upon; I have not got the reference.

Now, my Lords, all these eight cases I have examined, and have found that it is not possible accurately to reconcile them altogether; one or two of them stand out a good deal in one direction, and one or two as much in the other, and an attempt to reconcile them all would be vain; at the same time, my opinion coincides with that of my noble and learned friend, whom, indeed, I communicated with before, that the rule which we are disposed to follow in this case, and from which I think the Court below has somewhat departed, goes as nearly as possible in the circumstances to a reconcilement of the cases, and leaves very few of them, not perhaps above one or two beyond the scope of it, and not reconcileable by means of it. That rule, I take to be clearly this, that where a document is used for the purpose of proving a receipt of money in any way, it requires a stamp, and when it is said, that if it is used for a collateral purpose it may be given without a stamp, in the case I put, where it is used as evidence of payment of money in any way, it is a receipt used as a receipt, and requiring a receipt stamp before it can be so used, and when the cases as some of them do lay it down, that where it is used for a collateral purpose, it does not require a receipt stamp, I do not think that that is a perfectly accurate, and not always a very intelligible expression; because it may be for a collateral purpose, and yet if it is used in a way to mix up with it the receiving or paying of money, so that upon the whole, a receipt of money is the matter for which, or in respect of which, or connected with which, the document is used, it requires past all doubt to have a stamp, because it is in one

way or another used as a receipt. But if the same document is used for a totally different purpose, it is to me perfectly clear that it is not to be regarded as a receipt. It is not used as a receipt, and therefore the Legislature never intended that it should bear a stamp as a condition precedent to receiving it in evidence. Now suppose an account is produced, in which payments are made on the one side by the party tendering the account, and debiting the party to whom the account is tendered, and in which credits are given on the other side to the same party sought to be charged by the debit side of the account, is it to be said that every entry of a credit, though without question in that case, that entry debits the person making it in favour of the person to whom he gives in the account, the banker or agent, who says, "I have received so "much money to your account," is it to be said that that account is to have a receipt stamp to every one of the entries of payment? Most certainly not. Then suppose the whole balance of account is given at the end, and the account is drawn up in such a way as to shew that balance by comparing the right and left-hand sides thereof together, it is not to be said that because that states a balance against the party, if it is on one side of the account, and in favour of the party, if it is on the other side, it is not to be said that that requires a stamp, or that that is a receipt, and also, in the case put, if an account is tendered with the debit side tallying exactly with the credit side, so that there is no balance, there are a great number of receipts all on one side as receipts, and all on the other side as payments. But nobody would say that that requires a receipt stamp. Now one test whether it is used as a receipt or not is this, would not a document of account between the parties have been a perfectly rational and intelligible account, and a good document to prove the case? Suppose you had with a pair of scissors cut off the receipt altogether, cut off the names, and cut off the receipt, most undoubtedly it would. I think still, with

all regard for the learned counsel who found it necessary to use the receipt that as at present advised, though I have great respect for the very learned counsel who conducted the cause, I should have thought twice before I gave in the receipt, for the purpose of not raising this question, if I possibly could have done without it. It is possible that I may have omitted some considerations which justified them in putting in the receipt. But of this I am perfectly certain, that they did not use it as a receipt, but they used it for another purpose. They did not use it as a receipt, and consequently, as a receipt it was not to be considered, and therefore a stamp was unnecessary. On the whole, therefore, I am clearly of opinion that there has been a miscarriage in the case, though it has been very carefully considered in the Court below, and therefore I come with reluctance to this conclusion.

LORD CAMPBELL.—My Lords, upon the first question raised on this appeal at your Lordships' bar I entertain no doubt at all, and I have entertained no doubt since I first made myself master of the arguments on both sides.

It is strenuously contended on the part of the Respondent that this appeal is incompetent, and that the interlocutor is final, precluding any further proceeding. Now, my Lords, it is quite clear that in the general case, there is an appeal from the Court of Session to your Lordships' House. The *onus*, therefore, lies upon the Respondent to shew how the appeal is taken away in this case, and the Respondent relies upon four sections of the 55 Geo. III., cap. 42. But when those sections are examined, it will be found that it is impossible by any reasoning to say that they bear such a construction as that attempted to be put upon them by the Respondent. The sixth section which is relied on applies exclusively to new trials. Now that is prohibitory. That gives a power to apply to the division of the Court of Session from which the issue is directed for a new

trial, in respect to what may have taken place when the cause was tried, and prohibits any appeal whatsoever to this House or even by way of a reclaiming petition, or in any shape whatever: therefore, where there is an application for a new trial, undoubtedly your Lordships' jurisdiction is abolished.

Then comes the next section, section 7, which admits of bills of exceptions, but there is nothing turning upon that; and it is perfectly consistent that the same question of law may be raised in two different forms, either by tendering a bill of exceptions, or by reserving the point which is in the nature of special case, and although there is a mode expressly given of raising it by a bill of exceptions which clearly may be brought by appeal to this House, that does not at all prevent the other mode by reserving the question for the opinion of the Court, and then the Court determining how the matter shall be dealt with.

Then comes the 8th section, which is likewise expressly confined to a new trial.

Then the 9th section, instead of taking away your Lordships' jurisdiction *ex abundanti cautelâ* preserves it, for it provides " That in all cases whereon the Court shall pronounce a judgment in point of law as applicable to or arising out of the finding by the verdict, it shall be lawful and competent for the party dissatisfied with the said judgment in point of law, to bring the same under review either by representation or reclaiming petition, or by appeal to the House of Lords."

Here the point of law was reserved as to the admissibility of this evidence. The Court have determined how that point of law in their opinion stands, and the right to take the opinion of your Lordships upon that point of law is expressly reserved.

My Lords, clearly the scope of legislation upon this subject was that the determination of facts should be final, but that still there should be the right for the protection of the parties,

and for the uniformity of the law, to take the opinion of your Lordships upon any point of this sort that might arise; therefore, my Lords, there seems to me to be no doubt whatever upon the competency of your Lordships in this case.

With respect to the question of evidence, I must confess that I have in the course of the argument entertained very serious doubt. This being an action brought to recover the balance of an account, *primâ facie* the document called a receipt if stamped would be admissible in evidence to prove that a sum of money had been received. My opinion is that if a document purporting to be a receipt, but unstamped, is offered in evidence for any purpose during a trial, if it would be evidence when stamped as a receipt to establish any point that is litigated between the parties, it cannot be received for a collateral purpose, merely by the parties saying, "I offer it for a collateral purpose, and let "the receipt part be taken *pro non scripto.*" I think, my Lords, you cannot abstract a part of the document in this manner and give the rest in evidence. The criterion, therefore, seems to me to be not whether the party seeks to make use of it as a receipt, but whether it can be made use of as a document to settle any question litigated between the parties, and, my Lords, had this sum of 68*l.* 9*s.* 4*d.* been in dispute, I should have thought that this document would not have been receivable in evidence for any collateral purpose. For only see the danger that would arise. Can the jury be told "You are to discharge from your minds every "thing that applies to the receipt—that is not upon stamped "paper, and therefore it is not in evidence—but you are "to look to the other part of it, and that you are to apply to "another and a collateral purpose?" I think this would be a dangerous doctrine; I find no case that has gone so far; because although the language of the Judges is that it may be given in evidence for a collateral purpose, if you look at the various cases that have been cited, you will find in those cases

it could not have been used as a receipt to prove any issue taken between the parties.

I am very glad, therefore, my Lords, to find that consistently with the notions that I have entertained, as to the rule that ought to guide the Judges in their direction in such cases this document was receivable in evidence, because it is quite clear that the justice of the case requires it, and I should have deeply deplored the necessity of thinking that it ought not to have been admitted.

My Lords, I find that looking at the statement which we have from the learned Judge who presided at the trial, and to which our attention was exclusively directed, he says that "On "the part of the Defenders it was contended that as the "payment of the particular sum of 68*l.* 9*s.* 4*d.* had been "admitted, and as that sum is not included in the demand "made, the paper in question was in no sense whatever used or "required by them as a voucher to instruct payment of that "sum, the payment of that sum not being a matter in dispute "among the parties." I feel myself authorized to come to this conclusion that the payment of that sum was wholly immaterial—was not a question between the parties—and that therefore, if the receipt had been stamped it would have been of no avail whatsoever as a receipt. That being the case it comes within the rule which I think is a sound rule to be laid down upon this subject, that it could not have been used if stamped; and it is not left merely to the party to say, "I do not use it "for this particular purpose."

Under those circumstances, my Lords, I am glad that I quite concur with my noble and learned friends, I think that this document although it contains a receipt for this sum the balance of 68*l.* 9*s.* 4*d.*, as it could not have been used for any effectual purpose respecting that sum ought to have been received for the collateral purpose of identifying the state of the accounts. Under these circumstances I concur with my noble

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and learned friends in advising your Lordships that this judgment should be reversed.

Ordered and Adjudged, That the interlocutors of the 25th of June, 1847, and of the 8th (signed 10th) of July, 1847, complained of in the appeal, be reversed, and that the verdict in the action in the Court below be entered up for the Appellants, and that the said Appellants be assoilzied from the conclusions of the said action. And it is further Ordered, That the Respondent do pay to the said Appellants the costs incurred by them in the Court of Session in the said action. And it is also further Ordered, That the cause be remitted back to the Court of Session in Scotland, to do therein as shall be just and consistent with this judgment.

W. O. & W. HUNT—DAVID BARTIE, Agents.