

letter which appears in the correspondence between the parties, Robert Paterson wrote to Gladstone and enclosed a bill for £15 which he requested him to discount, and after referring to some other matters he added—"I would not have troubled you, but I find I cannot want the money myself. . . . You may rest assured, however, it will be met when it falls due. When sending me your cheque you can just retain the discount from it. Of course this is strictly confidential between you and I."

It is to be observed that while in this first transaction Robert Paterson is seeking an advance on his own behalf, when he next returns to borrow from Gladstone it is ostensibly on behalf of his firm that he does so; and it is at this stage of the proceedings that I think the money-lender begins to be in fault, for he must have had his suspicions aroused that things were not all right when a firm of builders in good repute required to borrow at 40 per cent., and he must have known that it was impossible for them to continue carrying on business upon these conditions.

Gladstone might by a little inquiry have found out whether Robert Paterson was dealing fairly with him and with his fellow-partners; but he seems to have abstained from all such inquiry, and accordingly the question which arises in the present case is, with whom does the fault lie which enabled this fraud to be committed? Unquestionably a fraud, and a bad fraud, has been committed, and if it could have been shown that the firm of Paterson Brothers had in any way derived benefit from the fraud, then assuredly they would have been liable; or if it could have been shown that the firm had enabled Robert Paterson to commit the fraud, their liability would in these circumstances have also been established.

But the firm not only derive no benefit from what has been done, but they knew nothing about these transactions until a charge upon the four bills in question was threatened. If we contrast this with the state of knowledge of the respondent Gladstone, it will not be difficult to determine upon whom the loss must fall.

He knew or must have suspected the real state of matters, and if he had only made reasonable inquiry, no loss would have resulted to anyone.

I am therefore of opinion that Gladstone was in fault, and that upon him the loss must fall.

I am therefore for adhering to the Lord Ordinary's interlocutor.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

Counsel for the Complainers—M'Kechnie—Watt. Agents—Martin & M'Glashan, S.S.C.

Counsel for the Respondent—Jameson—Law. Agent—Alex. Campbell, S.S.C.

Friday, February 21, 1890.

OUTER HOUSE.

[Lord Kincairney.
COUNTESS OF ELGIN AND OTHERS,
PETITIONERS.

Curator bonis—Appointment of Peer.

On the petition of the Dowager-Countess of Elgin and a son and daughter, the Earl of Elgin was appointed *curator bonis* to another son of the Dowager-Countess who was of unsound mind and incapable of managing his own affairs.

Counsel for the Petitioners—Gillespie.
Agents—Thomson, Dickson, & Shaw, S.S.C.

Tuesday, January 20, 1891.

SECOND DIVISION.

[Sheriff of Aberdeen.

LITTLEJOHN v. STIVEN.

Bankruptcy—Consignation—Preference—Act 1696, c. 5—Bankruptcy Act 1856, sec. 12.

A firm of merchants brought an action for £79, 16s. 2d. as the balance of an account due to them, and used arrestments on the dependence. Upon the alleged debtors consigning £100 in the hands of the Sheriff-Clerk the arrestments were loosed. Within sixty days of the use of arrestments the estates of the debtors were sequestrated. The depending action was intimated to the trustee in bankruptcy, but he failed to assist himself, and decree was pronounced by default in favour of the pursuers, who claimed a right to receive the sum found due to them out of the said £100. The trustee claimed the said sum as part of the sequestrated estates, and maintained that it was only a deposit, not a consignation, and that in any case as a security granted within sixty days of bankruptcy it fell to be reduced.

Held that consignation had been made in due form, and as being equivalent to payment, was not reducible. *Diss.* Lord Rutherford Clark, who held that the consignation being merely a *surrogatum* for the arrestment conferred no preference.

Upon 18th March 1889 Charles Reynolds & Company, warehousemen, London, brought an action in the Sheriff Court at Aberdeen against John Grieve & Company, auctioneers there, for the sum of £79, 16s. 2d., being the balance of a mercantile account, and upon 20th April 1889 used an arrestment on the dependence of the action in the hands of the Town and County Bank, Limited, Aberdeen, to the extent of £100.

Upon 27th April 1889 Messrs Grieve & Company entered into an arrangement with