

the branches are the common property of the Union. The liability of the Union for the obligations properly incurred by a branch to its law agent is in no different position from other liabilities which such a branch may incur, e.g., for rent of the premises in which it carries on its functions, and it appears to me to be *prima facie* impossible to limit the financial responsibility of the Union for obligations incurred by the branches in promoting its objects, either by reference to the extent of the obligation or the business of the person to whom it is incurred. The rules and the evidence which have been led in this case show that the branches are just the constituent members of the Union, and carry on its sole business subject only to a general control by the Executive, and I entertain no doubt that the Union is answerable for all obligations properly undertaken by the branches in connection with the objects of the Union in so far as these are not contrary to its rules. I therefore reach the same conclusion as the Lord Ordinary, and substantially on the same grounds.

I would only add on this, the leading part of the case, that I am satisfied Mr Sexton, the General Secretary of the Union, knew and approved of the appointment of the pursuer as law agent of Branch No. 12, and had general knowledge of the terms of the letter of 25th February, whether or not he received a copy of it. It is further apparent that the funds of the Union were frequently expended by the Executive in paying law costs incurred by the branches, and I cannot accept Mr Sexton's unsupported statement as proving the fact he alleges, that the Executive were always consulted before such costs were incurred. His statement that he informed the pursuer that the practice of the branches was to pay the costs if the rule (by which, I suppose, he meant Rule XII (10)) was complied with, is unintelligible as it stands, and is, I think, entirely disproved by the other evidence.

With regard to the minor questions argued, (1) that the "guaranteed costs" must be construed as meaning outlays only, I agree with the Lord Ordinary that such a construction is untenable. I am further of opinion (2) that the pursuer had implied power under his employment as law agent to employ Edinburgh solicitors to conduct an action which, in the knowledge of the Branch officials and with their approval, was raised in the Court of Session, and that under the assignation by these agents in his favour he is entitled to recover their costs in the present action.

LORD ARDWALL was absent.

The Court pronounced this interlocutor—

"Recal the said interlocutor reclaimed against: Find in fact (1) that the document No. 6 of process was granted to the pursuer by authority of the officials of No. 12 Branch of the National Union of Dock Labourers of Great Britain and Ireland; (2) that in so granting it the said officials did not

act *ultra vires*; (3) that the pursuer was expressly instructed by the said officials to act in the case of *Bowden v. Spencer & Co.*, and in the cases to which the other accounts sued for refer; (4) that the pursuer was entitled to employ Paterson & Salmon as Edinburgh agents in this case of *Bowden v. Spencer & Co.*; and (5) that the funds of the said Union are liable in payment and satisfaction of the accounts sued for in so far as the same are properly charged: Therefore repel the 2nd, 4th, 6th, 7th, and 8th pleas-in-law for the defenders; remit the account sued for to the Auditor of Court to tax and to report; and decern," &c.

Counsel for the Pursuer—Moncrieff—Macdonald. Agents—Paterson & Salmon, Solicitors.

Counsel for the Defenders—Aitken, K.C.—C. H. Brown. Agents—J. & J. Ross, W.S.

Thursday, June 16.

OUTER HOUSE.

[Lord Skerrington.

MACADAM *v.* FINLAY.

Prescription—Vicennial Prescription—IOU—Proof of Debt—Receipt for Interest Granted within Prescriptive Period—Admissibility of IOU as Evidence of Debt—Statute 1669, cap. 9.

The Statute 1669, cap. 9, enacts—"Holograph missive letters and holograph bonds and subscriptions in compt books without witnesses, not being pursued within twenty years, shall prescribe in all time hereafter, except the pursuer offer to prove by the defender's oath the verity of said holograph bonds and letters and subscriptions in compt books..." In an action for the recovery of a debt, the pursuer produced and founded on an IOU for the sum sued for granted more than twenty years previously, together with four receipts for payment of interest on the same, the latest of which was dated less than twenty years before.

Held (per Lord Skerrington) that the IOU had prescribed and was not admissible as evidence of the debt unless it were first proved to be genuine by the oath of the defender.

This was an action at the instance of Alexander Macadam, pawnbroker, Glasgow, as an individual, and also as executor-nominate of the deceased Christina M'Kirdy, against Mrs Mary M'Kirdy or Findlay, which concluded, *inter alia*, for payment of £100 alleged to be due to the pursuer on an IOU granted in 1888.

The defender pleaded, *inter alia*—" (2) The pretended IOU founded on by the pursuer is prescribed under the Statute 1669, cap. 9."

The circumstances of the case and the arguments of parties sufficiently appear from the opinion of the Lord Ordinary.

LORD SKERRINGTON—"In this case the pursuer sues both as an individual and also as executor-nominate of a Miss M'Kirdy, who died on 10th April 1908, and he seeks to recover from the defender payment, in the first place, of a sum of £100 which he alleges was due to him as an individual by the deceased Miss M'Kirdy. The ground on which he maintains that the defender is liable is that she was the *mortis causa* disponee of the deceased's heritable estate. The pursuer alleges that the moveable estate was insufficient to pay his debt, and he maintains that the defender is accordingly liable to him to the extent to which she was *lucrata* by the succession. Various questions were discussed at the debate, but I think it now appears that the first question which ought to be determined is whether the pursuer is in a position to show that he was a creditor of the deceased Miss M'Kirdy by production of an IOU signed by her, and which is No. 15 of process. This IOU bears no address and no date, and it is not alleged that any money was paid by the pursuer to Miss M'Kirdy in return for it. The pursuer's case as presented in the argument was that the IOU was holograph and therefore binding *per se*, and that it was delivered to him by Miss M'Kirdy in the year 1888 for the purpose of vouching previous advances made by him to her. The defender pleads that, assuming this document to be holograph, it is struck at by the Statute 1669, cap. 9, and that the pursuer can make no use of it as a document of debt unless he begins by proving its genuineness by the oath of the defender. The Act in question seems to be perfectly decisive; it enacts that 'holograph missive letters and holograph bonds and subscriptions in compt books without witnesses not being pursued within twenty years shall prescribe in all time thereafter, except the pursuer offer to prove by the defender's oath the verity of the said holograph bonds and letters and subscriptions in compt books.' It has been decided that the expression 'holograph bonds' applies to informal documents such as the one under consideration. In these circumstances, as it is common ground that this IOU has not been pursued for within twenty years from the date when it was delivered, it seems plain upon the terms of the statute that the pursuer must prove the verity (*i.e.*, genuineness) of the IOU by the oath of the defender. If it had not been for the Act the pursuer could have proved that fact by parole testimony, but the Act says that in the circumstances that are before us the proof shall be limited to the oath of the defender. The answer which the pursuer's counsel made to this argument was that he was prepared to prove that subsequent to the delivery of the IOU in 1888 its genuineness had been acknowledged by Miss M'Kirdy, in respect that she had paid various sums of interest to him, and in support of that statement

the pursuer produced four receipts for interest dated between 15th May 1889 and 13th November 1891. The defender's counsel maintained that these receipts did not instruct in a competent manner that interest had been paid upon the debt in the IOU, because they made no reference to the IOU, and he argued that it was incompetent to connect these receipts with the IOU by a proof at large. I reserve my opinion upon that question, because I think the case may be disposed of upon the assumption that these four payments were payments of interest upon the sum in the IOU. Assuming that to be the case, there is great force in the argument that payment of interest was by implication an acknowledgment by the debtor of the verity of the IOU, and that she having made that acknowledgment by the very fact of paying interest, it was unnecessary for the creditor to establish the verity of the IOU either in the ordinary manner by parole, if that were competent, or in the special manner pointed out by the Act of Parliament, *viz.*, the defender's oath. In support of that argument the learned counsel referred to a passage in Professor More's Notes to Stair, vol. 1, p. cclxxi, which goes very far to support the view that the Act of 1669, c. 9, ought to be construed equitably, and that equipollents for the 'pursuit' required by the statute ought to be admitted by the Court. Professor More goes so far as to say that 'it is generally agreed that to keep alive a holograph bond or other deed it is not necessary that any action or diligence should be raised upon it within the twenty years, provided it has all along been acted upon and recognised as a binding obligation by the payment of interest or otherwise.' He gives no authority for that view, and I can find no justification for it in the Act of Parliament. He then states another question, which he says has never been determined, *viz.*, 'Whether, if interest should be paid upon a holograph bond for a few years and should then stop, the prescription would run under the statute from the last of such payments or from the date of the bond, or whether any such payment or recognition of the bond by the debtor would take it entirely out of the statute?' The question raised by Professor More is the very question we have to consider in this case. He suggests three alternative answers. The one is that the payment of interest subsequent to the date of the holograph writing should elide altogether the application of the Act. The second alternative is that the *terminus a quo* of the twenty years should be postponed to the date of the last payment of interest. Either of these solutions would suit the case of the pursuer, as the last payment of interest took place within twenty years of the raising of the action. But then Professor More suggests a third alternative, which to my mind is the most satisfactory, *viz.*, that notwithstanding any such payments of interest the statute must still take effect according to its terms, and that if twenty years have run from the date of the holograph writ-

ing, it will lie upon the pursuer to prove the verity of the writing by the defender's oath. If there had been any authority over and above this opinion of Professor More in favour of giving to the Act in question what one may call a reasonable and equitable interpretation I should have been glad to follow it, but I do not think that more than 200 years after the Act of Parliament became law I can give for the first time effect to equitable considerations which ought to have been, and perhaps were, considered by the Legislature before passing the Act.

"I accordingly sustain the defender's second plea-in-law and continue the case. That will leave it open for the pursuer either to take this judgment to review or, if he acquiesce in it, to put in a minute of reference to the oath of his adversary. Thereafter the remaining questions can be disposed of without much difficulty."

The Lord Ordinary sustained the defender's plea-in-law that the I O U had prescribed, and continued the case.

Counsel for the Pursuer—Black. Agents—Macpherson & Mackay, W.S.

Counsel for the Defender—Paton. Agents—Inglis, Orr, & Bruce, S.S.C.

Saturday, November 5.

SECOND DIVISION.

[Sheriff Court at Edinburgh.]

MARTIN (ROBERTSON'S TRUSTEE)
v. RIDDELL.

Proof—Admissibility of Parole Evidence to Explain Written Document—Ambiguity—Assignment in Security of Advances—Assignee Acting as Individual or as Agent.

Robertson granted an assignment of two policies of insurance on his life in favour of "James Riddell, agent, Clydesdale Bank, Leith Walk, Edinburgh." The assignment was *ex facie* absolute, but it was accompanied by a letter addressed by Robertson to Riddell which bore that the assignment was granted in security of advances made or to be made by Riddell to Robertson. Robertson subsequently conveyed his estate to a trustee for behoof of his creditors. The trustee brought an action to have Riddell ordained to re-transfer the policies to him. Riddell averred that the assignment was granted to him as agent of the bank, and that advances had been made by him as agent to Robertson on the faith of the assignment, and he maintained that he was entitled to hold the policies until the debt due to the bank had been repaid.

The Court allowed a proof *pro ut de jure* (per the Lord Justice-Clerk, Lord Ardwall, and Lord Dundas & Lord

Salvesen reserving his opinion) on the ground that the assignment and back-letter were ambiguous, and that Riddell was entitled to prove the facts averred by him with a view to showing that the assignation was granted in his favour as agent of the bank, and (*per* Lord Salvesen) on the ground that Riddell was entitled to retain the policies until all advances made by him on the faith of the assignation were repaid, whether the advances were made by him out of his own funds or out of the funds of the bank.

In May 1910 William Martin, C.A., trustee for behoof of creditors of the estate of Alexander Robertson, dairyman, 37 Lorne Street, Leith, brought, in the Sheriff Court at Edinburgh, an action against James Riddell, The Clydesdale Bank, Ltd., Leith Walk, Edinburgh, to have him ordained to assign and deliver to the pursuer two policies of insurance conveyed by Robertson to Riddell by assignation dated 22nd December 1900.

The assignation was as follows:—"I, Alexander Robertson, . . . for certain good and onerous causes and considerations, do hereby assign unto James Riddell, agent, Clydesdale Bank, Limited, Leith Walk, Edinburgh, his executors, administrators, and assignees, the following policies of assurance on my life granted by the Norwich Union Life Insurance Society, videlicet:—(1) policy numbered 61854, dated the 18th day of September 1894, for £250 sterling, and (2) policy numbered 61855, dated the 18th day of September 1894, for £250 sterling: Together with the said assured sum of £500 sterling, and all bonus additions accrued or that may accrue thereon, and my whole right, title, and interest therein, with full power to the said James Riddell and his aforesaid to sell, assign, or surrender the same at pleasure, to uplift and recover the proceeds thereof, and generally to do everything in relation to the said policies of assurance and sums therein contained which I could have done before granting hereof . . ."

This assignation had been accompanied by the following letter:—

"Edinburgh, 22nd Dec. 1900.

"Sir,—I beg to hand you herewith:—

"(1) Policy of assurance on my life granted by the Norwich Union Life Insurance Society, numbered 61854, endowment insurance with profits, dated 18th September 1894, for £250 sterling.

"(2) Policy of assurance on my life granted by the Norwich Union Life Insurance Society, numbered 61855, endowment insurance with profits, dated 18th September 1894, for £250 sterling, together with assignments thereof in your favour, which please have intimated, and thereafter hold the said policies and assignments as a general security for any advances or obligations I, or any company or firm of which I am or may become a partner—however the same may for the time be constituted—may at present or at any future