

“ Thomas Thomson, my son, *in liferent, for his liferent use*
 “ *allenary*, and to his heirs whomsoever to be lawfully pro-
 “ created of his body; whom failing him and his heirs, viz.
 “ the said Thomas Thomson’s heirs, arriving at majority or
 “ marriage, to the said Catherine and Elizabeth Thomson,
 “ my daughters, *in liferent, for their liferent use only*; and
 “ to their children procreate, or to be procreate, equally
 “ *among* them in fee, heritably and irredeemably.” The
 Lord Ordinary, Lord Justice Clerk M’Queen (14th Nov.
 1792), held that Thomas Thomson, the son, had only a life-
 rent, the fee being in the daughter’s children, and he there-
 fore sustained the defences, and assoilzied.

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The Inner House adhered to this interlocutor, on re-
 claiming petition; and, on appeal to the House of Lords, the
 appeal was dropped; but afterwards (February 1806) a new
 appeal was brought, whereupon, and after hearing counsel,
 the judgment of the Court below was affirmed.

For Appellant, *M. Nolan, A. Fletcher.*

For Respondent, *Wm. Adam, Mat. Ross.*

NOTE.—This case appears reported in Dow, (vol. i. p. 417), under
 an erroneous date, (14th Dec. 1813.)

(Fac. Coll. vol. xiii. p. 550 : et Dow, vol. i. p. 40.)

The GOVERNOR and COMPANY of the Bank of Scotland, and ROBERT FORRESTER, their Treasurer,	} <i>Appellants</i> ;
JAMES WATSON, Baker in Brechin,	
	<i>Respondent.</i>

House of Lords, 26th March 1813.

BANK AGENT—LIABILITY—DEPOSIT RECEIPT—STAMP.—(1). Messrs.
 Smith and Sons were agents in Brechin for the Bank of Scotland.
 It turned out that they also carried on business as bankers on their
 own private account. A deposit of money was lodged with them, and
 a deposit-receipt obtained, signed by them, not as agents for the
 bank, but in their own name. Held, on their failure, that the
 principal bank, for which they acted as agents, was liable for pay-
 ment. Reversed in the House of Lords. (2.) Also held it unneces-
 sary to decide the point as to the document or deposit-receipt
 wanting a stamp.

James Smith and Sons were the appointed agents of the
 Bank of Scotland in Brechin, carrying on at same time, on

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their own account, within the same premises, their own trade, as dealers in linen and flax. They became bankrupt in 1803, with the respondent's money in their hands, whereupon he raised action against the appellants, alleging *that the deposits were made with Smith and Sons in the character of their bank agents*, and, on the principle that the principals are bound by the obligations of their bank agents in the country, concluded for payment of the sums deposited.

The appellants having discovered, on examining into Smith and Son's bank affairs, that they had carried on the business of *private bankers*, by taking in money of people who chose to lodge it with them, returnable on demand, with interest at three or four per cent.; and as there were a great many deposits in the same way, the appellants were obliged to treat the question as one of serious moment, to prevent other like claims from being made.

The deposit receipt was in the following terms:—

“ £60. *Bank Office, Brechin, 25th March 1803.*

“ Received from Mr. James Watson, Brechin, Sixty
 “ pounds, at his credit, bearing interest at the rate of three
 “ per cent. on demand, or four per cent. if not retired in
 “ six months.

“ JAMES SMITH & SONS.”

In these circumstances, the appellants stated the following defences:—

1. That the document on which the demand rested was, by several statutes imposing the stamp duties, inadmissible in evidence in any court of law.

2. That even supposing it admissible, it did not purport to be a voucher or obligation granted by the Bank of Scotland, or by the subscribers as the agents of the bank; but had evidently been given and taken as the voucher for a loan made to Smith and Sons in their separate and private capacity.

3. That no evidence was offered, or could be given, of the money being applied to the use of the bank.

4. That Smith and Sons were limited agents, having power to transact business for the bank, in a form certain, prescribed, and well known, and particularly they had no power to take up money in this way, or to bind the bank by such a document as that produced, and, therefore, even granting that the respondent Watson believed that he was

transacting with the bank through their agents, which was very improbable, or that he was deceived by Smith and Sons, of which there was no evidence, he had himself to blame, and could not have recourse on the bank.

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The Lord Ordinary reported the case to the Court. At first, the Court of Session sustained these defences, but, on further reclaiming petition, the Court pronounced this interlocutor: "Having resumed consideration of this petition, and advised the same, with answers thereto, and minutes for the parties, and whole process, they alter the interlocutor reclaimed against, and decern against the defenders for payment of the principal sum and interest, in terms of the libel. Also find them liable to the pursuer in expenses, and ordain an account thereof to be given into Court."*

May 30, 1805.

May 15, 1806.

* Opinions of the Judges:—

LORD PRESIDENT CAMPBELL said,—“The question here is, whether the bank is liable for the money received at the bank office, upon receipt signed by the agents of the bank, not bearing expressly to be for the bank.

“This is a very important question. In general, the bank must be liable for all transactions at their known office, which relate to the common business of banking. Lodging money upon receipts at three or four per cent. interest, is of that nature. The bank is answerable to the public for the conduct of its servants in the operations of banking transacted at their office. Suppose one goes to a bank to purchase a bill on London, pays his money to a clerk, or other officer, standing at the table, and gets a false bill, has he no redress against the bank? or, Will the bank be entitled to say, look at our regulations, and our placards, and you will see, that this man had no right to receive money for us? The present case is the same. The bank must take care to employ honest people, or stand to the consequences. The plea of the defenders, in my opinion, resolves into a gross fraud against the public. In the case of the Bank of Paisley v. Yelton and Mill, &c., 28th February, and 20th June 1798, the bank was found liable for the frauds of their agent. Payments and remittances were made there to account of bills discounted, which Binnie, the agent, should have marked on the bills, or entered in the books of the bank, but failed to do so, and applied them to his own uses. The placards and regulations of the bank were referred to. This was sustained by the Ordinary, but altered by the Court, and the bank found responsible. This is not a common case of mandate, but an *institoria actio*. An agent of a bank is *præpositus negotiis* of his constituents in all matters relative to banking.”

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31 Geo. III.

§ 25.

37 Geo. III.

c. 136.

44 Geo. III.

c. 98.

Against this interlocutor the present appeal was brought by the defenders to the House of Lords.

Pleaded for the Appellants.—1. By the several statutes imposing the stamp duties, the document founded on cannot be pleaded as evidence, or admitted in any court to be useful or available in law or equity, as an acknowledgment of debt. If the appellants are right in this, there is an end to the cause. 2. As the receipt or document in question does not purport to be for money taken by or for account of the Bank of Scotland, or bear to be an acknowledgment by the bank, or its officers, or of any one authorized or acting for it, the person making a demand on the bank, as in virtue of that document, cannot prevail without further evidence. He must show that the money was applied to the use of the bank (which is not here pretended), or at least that it was *bona fide* given to, and taken by the person who signs the document, as the *agent of the bank*, or, in other words, that it was a transaction with the bank, and not with the person who signs in his private capacity, or a capacity different from that of the bank's agent. That the respondent gave his money to Smith & Sons, considering himself to be dealing

LORD JUSTICE CLERK (HOPE).—“ This is not a case of mandate, but of open shop. A trader is not entitled to say, this clerk, and not that clerk, has the power to bind. So in like manner with a bank, the principal bank is not entitled to ignore the deposits made with its agent.”

LORD HERMAND.—“ I think the interlocutor right.”

LORD CRAIG.—“ I think the interlocutor wrong.”

LORD MEADOWBANK.—“ From a certain period all the money paid in upon receipts taken by those agents themselves, although at the same interest that the bank itself gave, are presumed to be for the bank. If otherwise, it would be a gross fraud. The whole of this mass of people could not believe that they were preferring the credit of the Smiths to the credit of the bank. The question of law is difficult; but, upon the whole, I think the bank bound. The whole money found in Smiths' possession was seized by the bank.”

LORD BALMUTO.—“ Suppose the agent had forged the notes of the bank, the bank would not have been liable.”

LORD BANNATYNE.—“ I am of the same opinion.”

LORD WOODHOUSELEE.—“ I am for altering. This was a gross deception; and I have changed my original opinion.”

LORD GLENLEE.—“ I am of the same opinion. All vouchers must be presumed to be for their behoof.”

The interlocutor was altered, 15th May 1806.

with the bank, is mere assertion, which cannot be regarded, and it is contradicted by the tenor of the instrument he took, which bears no more relation to the Bank of Scotland than it does to the Bank of England. It is scarcely possible that any person would take such a document as that from the bank, or from Smith & Sons, in the capacity of agents, meaning to bind the bank. There is not a more settled and invariable rule of practice than that a receipt or obligation by one person for another, must in some way state who the principal is, and under whose character or authority the person signing acts. No man can be allowed so far to stultify himself as to pretend ignorance of this. So the case would have stood, if this had been the single instance of Smith and Sons giving such an acknowledgment for money received *privato nomine*; but when it is considered that they were in the daily practice of giving acknowledgments of the same tenor, and that the acknowledgments for money received by them on account of the bank, were of a tenor quite different, there is not even a presumption of the respondent's being deceived by his own ignorance, or that he was imposed upon by the Smiths. Supposing no document to have been given or taken, but the fact of a sum of money being deposited in that office proved or admitted, the case might have been attended with difficulty; but, in the actual one, there is no resisting the conclusion, from the tenor of the instrument, and the entries in the books of Smith and Sons, that they took the money *privato nomine*. But, 3. James Smith and Sons were not the general agents of the Bank of Scotland, acting in this instance within the scope of their authority. They had only a special and limited power to bind the bank in particular cases, and in a particular form, which was directly violated if the document in question was meant to bind the bank, or issued with a view to make the receiver believe that the bank was bound by, or had any concern with it. The nature of the agent's powers, and the extent of them, were notified to the public in every way that could reasonably be expected, by advertisement, by placards in the office, and by the general mode of transacting the business of the bank. Placards put up in the office are constantly received by the courts of law, and relied upon as a mode of notification to limit the general liability of carriers, &c., and to make a particular special contract, as between them and their employers, contrary to the general rule of law. An express notice of the mode of

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doing the business, is not required in each particular instance. As to the liability of principals to the contracts of their agents, and the distinction between general and special agents, the appellants beg leave to refer to the case of Fenn and Harrison, where the late Mr. Justice Buller laid it down:—"That if a person be appointed a general agent, "as in the case of a factor for a merchant residing abroad, "the principal is bound by his acts; but an agent, so constituted for a particular purpose, and under a limited and "circumscribed power, cannot bind the principal by any "act in which he exceeds his authority, for that would be "to say, *That one man may bind another against his consent.*" There is no difference between the law of England and Scotland in this respect. "A mandatory (says Mr. "Erskine) must follow the precise rules prescribed by his "employer, for all his power is from the commission, and "whatever he does *ultra fines mandati*, is without authority, and cannot bind his constituent." It is held, even in the case of a factor, that he cannot pledge the goods of his principal, because his duty is to sell and not to pledge; and so, in the present case, the employment and duty of Smith and Sons were, to issue sealed notes or obligations, in the name of the Bank of Scotland, and in a particular form.

Ers. B. iii.
tit. 3. § 35.

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Pleaded for the Respondent.—1. The appellants having established James Smith and Sons as their accredited agents in the business of banking, in all matters relative to such business transacted in the office of the Bank of Scotland at Brechin, under the acknowledged firm of the bank agents, the respondent and the public were entitled to rely upon the credit and security of the Bank of Scotland: and the transaction now in question was within the common and usual operations of a bank agent. 2d. Besides, the advertisements and placards, founded on by the appellants as narrowing the general agency of those accredited by them, could have no operation in this case. Not only had the respondent no ground of information with regard to the advertisement and first placard, and all knowledge of the second placard, such as it was, was withheld from him by the act of the bank's own agents; but even if such advertisements and placards had been directly and legally intimated by the appellants to the respondent, they contained nothing to put him in *mala fide* with regard to the transaction now in question. 3d. The respondent, therefore, *optima fide*, entered into the transaction in question, with the agents of the Bank

of Scotland, trusting to the security of the bank, without the knowledge of any specialties in the powers of the bank agents, or of the private business of banking, in which the appellants state them to have been engaged. 4. The form of the deposit receipt was such as to bind the appellants; it was within the common and usual powers of a bank agent, and contained, *in gremio*, not the slightest ground for suspicion that the agent did not mean thereby to bind his constituents; and it is not pretended by the appellants that any particular form was set out by them to the public, or even privately mentioned to their agents, in which receipts were to be granted. 5. And as to the want of stamp, it is, and has always been the practice of bankers in Scotland, to grant such receipts upon paper unstamped; and the exemptions from stamp-duties do clearly extend to the receipt in question.

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After hearing counsel,

LORD CHANCELLOR (ELDON) said,—

“ My Lords,

“ I shall trouble your Lordships very briefly on the subject of this case. It rises out of an action in the Court of Session, brought by James Watson, baker in Brechin, against the Bank of Scotland, concluding. (Here the Chancellor read the conclusions of the summons.)

“ Two questions occur in this cause :—1st. Whether the instrument founded on could be the subject of an action, the same being without a stamp? and, 2d. Whether the Bank of Scotland was bound to submit to the demand made upon them by the respondent, if the instrument upon which it was founded was not liable to stamp duty?

“ On the first of these questions, it was contended by the respondent, that no receipt for the deposit of money with any banker was liable to stamp duty. On the other hand, it was contended, that the instrument contained an agreement in writing, for the payment of the interest: and that it was something more than a receipt, and therefore required a stamp.

“ It was answered at the bar, that though it was a receipt containing a clause for the payment of interest, this was nothing more than a receipt according to the custom of banking in Scotland, such custom being to pay interest on the money deposited.

“ Whenever it may be necessary to decide upon this point, it will be necessary to inquire further into this custom, and what would have been the effect of the deposit without a written instrument?

“ It has not been correctly proved to us, that the interest in this case does not depend upon the written instrument. We see that the custom of the bank as to interest was variable from time to time.

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“ It was said, your Lordships should let the parties get the instrument stamped on payment of the penalty. It is not my intention to give any opinion as to that. If such a case had occurred in an English court, and if the court had considered that an action could not be maintained on the instrument without a stamp, the party would have been non-suited; and if he could have got the instrument stamped on payment of a penalty, he might have brought a new action.

“ It might be difficult to have this done, by any remit from this House. But I do not find it necessary to give any opinion on this point of the stamp.

“ On the second question, it is to be noticed, that this is only a case where £60 is at issue, in the case of an individual. The bank states that the respondent is a creditor for £300 or £400 more; and it has been stated to us that the present case will decide many others, in consequence of an agreement to that effect.

“ I don't know how that may be; if the principles in these other cases be the same with the principles here, the same rule will apply to all of them. But we have no cognizance of the agreement here. If the other cases are not the same with this, they will not be decided by the decision in this case.

“ We had the good fortune, in this case, to have the assistance of the Lord Chief Justice at the hearing; he is more conversant with cases of this nature than any other person. His own words were, that this case could not have occupied his court for more than a quarter of an hour.

“ The question here is, Whether an instrument, which makes no mention of the Bank of Scotland, (unless you shall hold the words, ‘ *Bank Office, Brechin,*’ to be such mention of the bank), and is merely signed ‘ James Smith and Sons,’ shall be held equivalent to an instrument bearing in the usual form ‘ Received for the Bank of Scotland,’ and signed by a person in the character of agent for the bank? And we are now called upon to deduce in law, from this state of the question, an obligation binding on their principals, without naming them.

“ I admit that an agent, acting expressly as agent, would bind his principal in this form.

“ But though these parties were agents, Were they disabled from contracting on their own personal liability? It might be very incautious in the Bank of Scotland to let these parties rival them, by carrying on business for themselves; but we cannot, by way of punishment, make them liable for having done so.

“ Put the case of any person going to a country bank, in this country, which might act as agents for the Bank of England; Would it be possible, upon an instrument like this, to hold that the Bank of England was bound?

“ All those of your Lordships' House who are conversant par-

ticularly in matters of this sort, concur in opinion, that you cannot import into this instrument a liability on the Bank of Scotland.

“ I shall therefore move that this judgment be reversed.”

LORD REDESDALE said,—“ As to the point upon the want of a stamp, I do not think it necessary to decide that.

“ The other question is simply this, Whether the agent shall be held to bind his principals, in an act where he does not profess to bind them ?

“ The instrument, so far from professing to bind the Bank of Scotland, does not mention it ; it is simply dated from the Bank Office, Brechin, and from thence it is inferred that the *Bank of Scotland* was bound. It is acknowledged that, in any transaction in the Linen Trade, these parties could not, by possibility, bind the bank.

“ The instrument, in this case, is signed simply James Smith and Sons, without purporting to be agents to any body.

“ Put the case, that the bank had become insolvent, and that Smith and Sons had continued solvent, could they have been heard to say, in any action upon this instrument, we were only agents ? I think they could not.

“ This appears to be decisive of this question—that they could not so discharge themselves of liability in any such question.

“ If the simple date shall be held to bind the bank in this case, it leads to very important considerations ; and all restraints on agents must be at an end.

“ The bank sets up certain safeguards and rules, both for the agent and for themselves,—namely, that the agents are to subscribe as agents,—that all their acts are to be controlled by another officer, &c. &c. If the respondent’s proposition were to be listened to, all these would be annulled.

“ Suppose any man constitutes an agent, with particular instructions, and the agent does not attend to those instructions, and does not profess to bind his principal, Would you hold the principal bound, merely because an instrument was dated from his house ? Certainly not.

“ Upon these principles, and chiefly because I think it manifest that it never could be held that Smith and Sons, as individuals, would not have been bound by this instrument if they had remained solvent. I am of opinion also, that the judgment must be reversed.”

It was therefore ordered and adjudged that the interlocutor complained of be, and the same is hereby reversed.

For Appellants, *Sir Sam. Romilly, John Clerk, V. Gibbs.*
For Respondent, *Henry Erskine, Thomas Plumer, J. Gordon, Wm. R. Robinson.*

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