THE COMMERCIAL BANK OF SCOTLAND, APPELLANTS.
RHIND, ... RESPONDENT.

1860.
Jan. 31st, and Feb. 1st and 10th.

Banker and Customer.— Weight attaching to the Pass-Book. —Held, by the House of Lords (reversing the decision below), that in an action by the customer against his banker for an alleged balance appearing by the pass-book, evidence *prout de jure*, showing error or mistake, is admissible *ope exceptionis* as a defence.

Per the Lord Chancellor: The entries in the pass-book are only *primâ facie* evidence against the banker; p. 652.

Per the Lord Chancellor: I am clearly of opinion that the account on which the action is brought is not probative. It is an open or current account, as distinguished from a fitted or settled account; p. 650.

Per the Lord Chancellor: This action is brought to recover no particular deposit, but a balance appearing by the pass-book, which even the Judges of the Court below admit is not absolutely conclusive; for they allow that, by bringing a reduction, all the entries may be questioned, and *prout de jure* proved to be erroneous; p. 652

Per the Lord Chancellor: A banker's pass-book is not within the category of probative writs, under the Act, 1681; p. 650.

Per Lord Cranworth: The pass-book, as an account current, is not of itself a probative document, and there can be no reason why the Appellants should not be at liberty, *ope exceptionis*, to defend themselves by showing its errors; p. 653.

Per Lord Chelmsford: Although the Bank refuses to recognize any receipt not initialed, this does not mean that whatever is initialed shall be absolutely binding on them, and subject to no ordinary exception; p. 655.

THE principle established by the decision of the Court of Session in this case was represented as one of great importance to bankers and their customers.

COMMERCIAL BANK OF SCOTLAND v. RHIND.

The Respondent, a farmer in Ross-shire, had been a customer of the Commercial Bank of Scotland at their Invergordon Branch for some years prior to 1855, when the action was commenced. He had been supplied with the usual pass-book. The account between him and the Bank was balanced on the 31st of October in each year.

The Respondent alleged that from the 31st of October 1854 to the 21st of July 1855 his payments to the Bank amounted to 683*l.* 3*s.* 4*d.*, while the sums received by him from the Bank during the same period amounted to no more than 616*l.* 14*s.* 6*d.*;—thus, as he averred, leaving a balance in his favour of 66*l.* 8*s.* 10*d.* For this sum of 66*l.* 8*s.* 10*d.*, with legal interest thereon, he brought his action against the Bank; stating by his condescendence that in his pass-book were entered the "various payments and receipts occurring between him and the Bank of the respective dates of which these were made, the said payments being duly acknowledged, by the agent and accountant of the Bank appending their initials opposite to the sums so entered."

The Bank by their answer averred that in the pass-book there "was a double entry on the 6th of June 1855, of the sum of 80*l.* credited to the Respondent on the preceding day namely the 5th of June, which *by mistake* was *twice* entered to his credit in the pass-book by the Bank accountant."

The Bank further alleged that, so far from their being debtors to the Respondent, he was, in fact, indebted to them to the amount of 13*l.* 11*s.* 2*d.*, with the legal interest thereof.

The following were the pleas in law of the Respondent (Pursuer):—

1. The Bank pass-book produced by the Pursuer affords sufficient evidence, *scripto*, of his claim against the Bank, and no further *onus probandi* lies upon him.

2. At any rate, the Pursuer is entitled to supplement the said pass-book with his own oath, in order to substantiate his claim.

3. It is not competent for the Defenders to cut down, contradict or explain the Bank pass-book otherways than *scripto vel juramento.*

4. The account libelled on being correctly stated, and the payments made by the Pursuer into the Defenders' bank duly acknowledged and vouched by them in their own book, as kept between them and the Pursuer, in the usual form for authenticating and vouching such transactions between the Bank and the public, and no fraud being alleged against the Pursuer with regard to the said written voucher, he is entitled to decree as concluded for, with expenses.

On the other side the Bank put in the following pleas in law :—

1. The Bank is entitled to *absolvitor*, with expenses, in respect, that, so far from there being any sum due to the Pursuer, he is indebted to the Bank.

2. In the circumstances the Bank pass-book does not afford sufficient evidence to substantiate the Pursuer's claim, and the *onus* of proving the verity of the said claim lies upon him.

3. There are no grounds, either in fact or in law, which can entitle the Pursuer to his oath in supplement.

4. In any view of the case, the Defenders are entitled to prove their averments by proof *prout de jure.*

The *Lord Ordinary* (Ardmillan) pronounced the following Interlocutor :—

December 9, 1856.—The Lord Ordinary finds that this action has been instituted to enforce payment of an alleged balance arising on an account-current with the Defenders; that in order to bring out such balance, the Pursuer takes credit for two sums of 80*l.*, said to have been paid into his account; and that the pass-book has been produced by the Pursuer to support the averments on which the action rests: Finds that the said pass-book is not *per se* probative and conclusive of the truth of the Pursuer's averments, although it is a competent and important adminicle of evidence in support thereof: Finds that the grounds of action, not being conclusively instructed by the mere production of the pass-book, the Pursuer must support his claim, and the facts of the case must be investigated: Therefore repels the third plea in law for the Pursuer, and appoints the Pursuer to lodge such issues as he proposes within ten days, and the Defenders to lodge counter issues by the box-day in the vacation, if so advised.

COMMERCIAL BANK OF SCOTLAND v. RHIND.

To this Interlocutor the *Lord Ordinary* annexed the following explanatory Note :—

The Lord Ordinary does not think that the Pursuer is entitled to stand on this pass-book as conclusive proof of his claim, and excluding all inquiry into the facts.

Apart from all agreement or explanation, the entries in the pass-book are not, *sua natura*, necessarily probative; and the Defenders' averments of fact, and particularly of error in one of these entries, in support of which they refer to the regular books of the Bank, and offer proof *prout de jure*, cannot, *in hoc statu*, be held as irrelevant.

The Pursuer, who alleges that he personally paid in both sums, is a competent witness; his own books may afford confirmation of his statements, or the reverse. The practice in regard to paid-in slips—the manner in which the Pursuer spent the 5th June, as bearing on his averment of two separate visits to the Bank on that day (*a*), may all be important subjects of inquiry in the investigation which is necessary to get at the truth of the case.

There has been no settlement of accounts. There is no document necessarily and conclusively probative. The pass-book is admitted only under explanation, and subject to the Defenders' denial of its correctness in regard to the disputed sum; and the Lord Ordinary has not been referred to any authority for the proposition maintained by the Pursuer, that, under such circumstances, the pass-book must be taken *pro veritate*, and all investigation shut out. In the absence of direct authority applicable to the facts, the Lord Ordinary cannot hold the investigation which the Defenders crave to be here excluded. An error is alleged by the Bank, and an explanation, not perhaps very satisfactory, but not impossible, is offered. Suppose it had been on the other side—suppose that the Pursuer alleged he had paid in 80*l*., and only 60*l*. had been entered in the pass-book, while the paid-in slip supported the averment that 80*l*. had really been paid, could inquiry have been excluded? Suppose 80*l*. had been entered in the pass-book, and 60*l*. had appeared on the relative paid-in slip, could inquiry have been excluded? It is thought that, except where the document founded on is in itself probative and conclusive, there is no rule of law to preclude an investigation into the facts where error is alleged; and since the Pursuer, himself personally cognizant of the whole truth, is now a competent witness, the justice and equity of opening the door to inquiry is more abundantly manifest.—*Cowper* v. *Young*, 28th November 1849; *Grant* v. *Johnson*, 7th February 1844; *British Linen Company* v. *Thomson*, 25th January 1853.

(*a*) The Respondent in his condescendence asserted that he had been twice at the Bank on the 5th June 1855.

Against this Interlocutor the Respondent presented a reclaiming note, and, on considering the same, and hearing parties, the Lords of the Second Division of the Court of Session pronounced the following Interlocutor :—

Edinburgh, 24th February 1857.—The Lords having advised the reclaiming note for John Rhind, against Lord Ardmillan's Interlocutor, and heard counsel for the parties, alter the Interlocutor complained of: Find, in point of fact, that the entries admitted to be genuine, and subscribed by the officers of the Bank in the pass-book, as to the sums deposited, are the holograph acknowledgments and writ by the Bank of the amount of the sums therein stated by them to have been received from and for the Pursuer; and therefore, in point of law, find that the claim insisted in in this action is legally and sufficiently proved, and must be given effect to in this action: Find that no defence relevant to be proponed in this action has been stated on record: Therefore, repel the defences: Find that the Defenders are liable in payment of the sums concluded for in this action, and therefore decern against the Defenders for payment of the sum of 66*l.* 8*s.* 10*d.* sterling, with interest due thereon, in terms of the conclusions of the summons: Find the Defenders liable in expenses of process; reserving to the Defenders to institute any action they may be advised to bring to set aside the entries in question, and to claim repetition of the sums now decerned for.

Against this judgment the Bank appealed to the House, having for their Counsel the *Attorney-General* (*a*) and Mr. *Anderson.*

On behalf of the Respondent there appeared Mr. *Rolt* and Mr. *Napier.*

At the close of the argument the House took time to consider of its judgment. On the 10th February the following opinions were expressed by the Law Peers.

Lord Chancellor's opinion.

The LORD CHANCELLOR (*b*):

My Lords, this is certainly an important case, but its importance has, I think, been considerably exaggerated. The appeal raises a question of *procedure*

(*a*) Sir Richard Bethell. (*b*) Lord Campbell.

COMMERCIAL BANK OF SCOTLAND *v.* RIIND.

Lord Chancellor's opinion.

rather than of *principle.* The Appellants admit that the entries in the pass-book are *primâ facie* evidence against them, and the Respondent admits that these entries are not finally conclusive (*a*). The only dispute at present is, as to the time and manner in which the Appellants may impeach the accuracy of these entries, the Appellants contending that they are entitled to do so *ope exceptionis* as a defence to the present action, and the Respondent contending that this can only be done by bringing a cross action, namely an action of reduction.

It would, indeed, be a reproach to the law of Scotland, if, there being satisfactory evidence that by the mistake of a clerk there had been in the pass-book a double entry of the same sum to the credit of the Respondent, the mistake could in no way be shown by the Bank, and if he were entitled fraudulently to extort from them 80*l.* beyond the amount of what is justly due to him. But it is conceded that if in the present action the Bank should be precluded from any defence, except *scripto vel juramento, i.e.* by written documents, or by the Pursuer in this action being put upon his oath, and confessing the scandalous fraud with which he is charged, if the Bank were to bring an action for reduction they would be permitted *prout de jure, i.e.* by any credible evidence, to prove that the Pursuer had paid into the Bank only one sum of 80*l.*, that this sum was by mistake twice entered to his credit, that in his dealings with the Bank the balance was against him, and that the present action having been suspended, the judgment in favour of the Bank in the action of reduction would then be a complete defence to the present action brought to recover the balance claimed.

(*a*) By his second plea in law the Respondent claimed liberty to "supplement the pass-book by his own oath." See *suprà*, p. 645.

COMMERCIAL BANK OF SCOTLAND v. RHIND.

Lord Chancellor's opinion.

Although I may venture to say that the more expedient course would be to admit proof of the mistake and fraud as a defence to the present action, if the rules of Scotch procedure would allow this course to be adopted, yet by these rules we are bound in this appeal from the Court of Session in Scotland. There is no doubt, that in Scotland by the Act of 1681 deeds when executed with certain solemnities, and, by the common law, certain mercantile writings, such as receipts, are denominated *probative*, and are to be received in evidence without proof that they are genuine, and that when sued upon as genuine they cannot be redargued in that suit, except *scripto vel juramento*.

We are to consider whether this action is brought on a *probative* instrument. The summons says, "that the Defenders should be ordained to make payment to the Pursuer of the sum of 66*l.* 8*s.* 10*d.* sterling, being the balance due to the Pursuer *on a current cash account* between the Defenders and Pursuer, the first item of which is dated the 31st day of October 1854, and the last item the 21st day of July 1856, conform to the said account itself which will be produced at the calling thereof, and is hereby specially founded upon with the sum of 16*s.* 8*d.*, being the interest due on the said account at the rate allowed by the Defenders on current cash accounts."

In his condescendence the Pursuer states, "that he was supplied by the Defenders with a pass-book, in which were entered the various payments and receipts occurring between him and the Bank of respective dates of which these were made." He afterwards adds, "that the payments made by him according to the pass-book amount to 683*l.* 3*s.* 4*d.*, while the sums received by him and charged against him by the Defenders amount to 616*l.* 14*s.* 6*d.*, leaving a balance

COMMERCIAL BANK OF SCOTLAND v RHIND.

Lord Chancellor's opinion.

due to him of 66*l.* 8s. 10*d.*, conform to the said account or pass-book herewith produced."

Accordingly, the pass-book is produced, and is in evidence, and the part of it relied upon, between the 31st of October 1854, and the 12th of July 1855, is set out in the Appendix to the Appellants' Case. It is headed—

"Dr. the Commercial Bank of Scotland in account with Mr. John Rhind, Cr."

It contains sixteen items on the debtor side, and twenty-five items on the creditor side, those on the debtor side being initialed by the agent and accountant of the Bank. There is no balance struck, and no signature at the foot of the account. Including the double entry of 80*l.* on the debtor side, the balance of 66*l.* 8s. 10*d.* is in favour of the Pursuer as he alleges, but striking out one 80*l.* there is a balance of 13*l.* 11s. 2*d.* in favour of the Defenders.

The Defenders by their pleas in law insisted that they were entitled *prout de jure* to prove that there had been the double entry of a sum of 80*l.*, first on the 5th of June, and again on the 6th of June, the mistake having arisen from the payment having been made late on the 5th, after banking hours.

Now, I am clearly of opinion that the account on which the action is brought is not probative. Erskine says that "fitted accounts" are probative. But the Respondent's Counsel admit that this is not a "fitted account," it is an "account current," not signed, not settled; an open or current account is used in opposition to a fitted or settled account. The proposition is too monstrous to be hazarded, that this document as a whole is probative, so as, like the Great Seal of England, to prove itself.

The Respondent's Counsel therefore were driven to contend that all the creditor side of the account was

to be discarded, and that each of the sixteen items on the debtor side was to be taken separately as a probative writ. But this seems to me to be inadmissible. The account cannot thus be bisected vertically. The Pursuer himself treats it as one entire document, and for the purpose of making out his balance of 66*l.* 8*s.* 10*d.*, uses as evidence the whole of the creditor side. Can the proposed conversion of the debtor side into sixteen separate and independent receipts be allowed? Take the two entries respecting the 80*l.*, and what do they indicate? "June 5th, eighty pounds A. M. c MacG. 80. 0. 0." "June 6th, eighty pounds A. M. c MacG. 80. 0. 0." These are supposed to be two perfect writings *in re mercatoriâ*, which tell their own story, and do not require any the smallest adminicle of evidence, and which can only be impugned *scripto vel juramento.*

An accountable receipt for a deposit with a banker in the usual form may well be probative; for, giving faith to it, the story which it expressly tells is complete, and it is deliberately given, to be used by itself as a proof of the deposit. But these entries in the pass-book, whether on the debtor or creditor side, are merely items in an account current afterwards to be examined, adjusted, and "fitted." According to the mode of operating proposed, the customer might take a pair of scissors, and, cutting off all the items in which the bankers take credit for payments, give in evidence the other side of the account, and so make at least a *primâ facie* case against the bankers to recover the full amount of all his payments into their hands.

Considering that this pass-book (as its name indicates) is a book which passes between the bankers and their customer, being alternately in the custody of each party, on proof of its having been in the custody

COMMERCIAL BANK OF SCOTLAND *v.* RUIND.

Lord Chancellor's opinion.

of the customer, and returned by him to the bankers without objection being made to any of the entries by which the bankers are credited, I think such entries may be *primâ facie* evidence for the bankers as those on the other side are *primâ facie* evidence against them.

Having come to the conclusion that this action is brought to recover no particular deposit, but a balance alleged to be due, as appears by the pass-book, and that the pass-book is not *probative*, and that the pass-book is only *primâ facie* evidence, liable to be rebutted *prout de jure*, I do not deem it necessary to examine the cases cited, in which on a charge of fraud evidence has been admitted for the Defendent *ope exceptionis* without an action for reduction. It is conceded that this may be done in all actions on negotiable securities though *probative;* and there seems great difficulty in seeing why the same liberty should not be given with respect to other mercantile instruments, although it may be properly withheld where the action is brought on a deed probative under the Act 1681, by which the deed is required to be executed with such solemnities that it may be considered to be in the nature of a record. But the pass-book not being within the category of probative writs there is no ground for contending that an action of reduction is necessary for letting in proof of error in any of its statements.

I do not understand the great alarm said to have been excited in Scotland by this doctrine (*a*). The customer still proves his deposit by the initialed pass-book, and this pass-book, according to the learned Judges who reversed the Interlocutors of the *Lord*

(*a*) Mr. Napier, in course of his able argument, said that to reverse the decree appealed from would be to destroy the *golden rule* of Scotch law.

Ordinary, is not absolutely conclusive, for they allow that by bringing an action of reduction all the entries in the pass-book may be questioned, and *prout de jure* proved to be erroneous.

COMMERCIAL BANK OF SCOTLAND *v.* RHIND. — *Lord Chancellor's opinion.*

I will only further observe that in my opinion an unmerited stigma has been attempted to be thrown on the bankers for defending this action. In my opinion if they were convinced that the Pursuer was knowingly trying to avail himself of the mistake of a double entry, they acted meritoriously in seeking to resist and to expose the fraud of which he was guilty.'

Upon the whole I must advise your Lordships to reverse the Interlocutor appealed against, and to remit the cause to the Court of Session with directions to admit the Appellants to proof *prout de jure* of their defence.

Lord Brougham's opinion.

Lord BROUGHAM:

My Lords, I entirely agree with my noble and learned friend in the course which he recommends your Lordships to take in this case.

Lord Cranworth's opinion.

Lord CRANWORTH:

My Lords, I have only a very few words to add, concurring as I do entirely with my noble and learned friend. The entries in the pass-book whereby the Appellants charge themselves are, in the mode in which they are entered, sufficient to enable the customer to charge them; but when he sues, as substantially he does, on the pass-book as a current account, it must surely be open to the Appellants to show that they are entitled to add to their credit, on the side of the account opposite to that in which they are charged, a sum of 80*l*., as due to them for any reason from the Respondent. The pass-book as an account current is not of itself a probative document, and not being so, there can be no reason why the Appellants should not

COMMERCIAL BANK OF SCOTLAND v. RHIND.

be at liberty *ope exceptionis* to defend themselves by showing the error according to the fact.

Lord Chelmsford's opinion.

Lord CHELMSFORD :

My Lords, I entirely agree in the view of this case which has been taken by my noble and learned friend the *Lord Chancellor*. It is admitted that the mistake (if it be a mistake) of the entry of the same sum twice over in the Respondent's pass-book, may be corrected in some other proceedings. But it is said that the entries being of the character of probative writings no defence can be allowed in the present action, which is not founded upon proof *scripto vel juramento*. It appears to be conceded that if this were an account current of an ordinary description, it would be open to any species of proof to establish its incorrectness; and the *Lord Justice Clerk* observes that "the effect of the entries cannot be got rid of in the short and easy way of treating it as a mere account current, or copy of one;" thereby, as it seems to me, conceding that if it could be treated as a mere account current, the effect of the entries might be got rid of.

Now, it is impossible to deny that this account was a current account as contradistinguished from a fitted or settled one; for the Pursuer in his summons proceeds for the balance of an account which he expressly calls, "a current cash account," and which account, he says, "will be produced, and is hereby specially founded upon."

But it is said that although the account may be a current account, yet it is one not of an ordinary character, and that from the peculiar nature of the entries of the sums paid into the Bank, each entry is equivalent to an accountable receipt, and is in itself a probative writing; and in support of this argument the printed rules of the Bank were referred to, by one

of which it is declared, that "for money paid into the account the entry in the pass-book must be initialed by both the agent and accountant, to make the receipt complete and binding on the Bank." The object and effect of this rule appear to me to be, that the Bank will refuse to recognize any receipt of money which is not vouched in a particular manner, but not that, if it is so authenticated, it shall be taken to be conclusive and subject to no ordinary exception. This provision for the security of the Bank, therefore, does not appear to me to change the character of the account from an ordinary banking account to one of such an extraordinary and unusual description as to justify the assertion of the Respondent that it would be competent to him to cut off the side of the account which vouches the payments made to him, and to found himself solely upon the entries in his favour or upon any one of them which he might choose to select and which would be probative against the book.

I should have had very great doubt whether, if the action had been brought to recover the exact sum of 80*l.* upon which the dispute arose, it would have been treated as an insulated transaction, unconnected with the rest of the account, and so entitled to whatever character would have belonged to it, if it had stood alone. But the nature of the action appears to me to preclude the view taken by the Respondent. It is founded on the whole account, expressly described as a current account. The account itself is brought by the Pursuer before the Court, and it would be unreasonable as well as unjust to say that the different sides of such an account should have a different effect, when the balance which is claimed can only be arrived at by a due investigation of the whole account.

The passages cited from Erskine and from Stair, to show that the testimony of witnesses is not admissible

COMMERCIAL BANK OF SCOTLAND *v.* RHIND.

Lord Chelmsford's opinion.

to prove a borrowing, and that payment cannot be established without a voucher, do not apply, as this is neither a case of lending, nor a defence of payment. It is the claim of a balance, the existence of which depends upon the fact of the deposit of a particular sum of money, which is met by the denial of such a deposit having been made. If the bankers had given an accountable receipt for the 80*l.*, that would have been a privileged mercantile writing which by the law of Scotland would be probative, and if the authenticated entries in the pass-book could have been assimilated to such a receipt they would have been entitled to the same weight. But for the reasons which I have already given, I think that the whole account must be looked at in the same manner, and that being open and unsettled it must be subject in this action to every description of proof by which its accuracy and correctness can be impeached. For these reasons, I am of opinion that the Interlocutor appealed from ought to be reversed.

Mr. *Attorney-General:* My Lords, we have paid costs in the Court below, those of course will be directed to be returned; and your Lordships will give us, I have no doubt, the cost of the reclaiming note presented by the present Respondent, on which the erroneous Interlocutor, now reversed, was pronounced. If so, the order will be: Reverse the Interlocutor appealed from; refuse the reclaiming note of the Respondent with expenses; and order the costs paid by the Appellant to be returned; and then remit to the Court below, with the direction stated by my *Lord Chancellor*.

Mr. *Rolt:* Your Lordships will leave the expenses in the Court of Session to be dealt with by the Court of Session.

The LORD CHANCELLOR: We ought now to pronounce the decree which we think ought to have been pronounced by the Court of Session. The only doubt I have is as to the costs of the reclaiming note.

Mr. *Attorney-General:* The *Lord Ordinary's* Interlocutor tallies with what your Lordships are now pleased to say was right. From that Interlocutor the present Respondent presented a reclaiming note to the Court of Session, and on that application the Court of Session made the present erroneous order. What the Court of Session ought to have done was, as I humbly submit, to refuse that reclaiming note with expenses; and what they ought to have done, I humbly ask your Lordships now to do.

Mr. *Rolt:* We went with a reclaiming note to the Court below, and we thought that we went there rightfully. There was sufficient doubt upon the question to entitle us to do so; and we submit that your Lordships ought not to give the expenses in the Court of Session against us, it having been an unanimous judgment.

The LORD CHANCELLOR: If those expenses ought to have been given by the Court below, we ought to give them now.

Mr. *Rolt:* My controversy is, that they ought not to have been given there; even assuming the judgment which the House has now given.

Lord CHELMSFORD: Ought they not to have refused the reclaiming note with expenses?

Mr. *Attorney-General:* The costs must follow the event.

The LORD CHANCELLOR: If it would have been in the discretion of the Court below to refuse or allow the costs of the reclaiming note, it may be open to a question; but if *de jure* the costs would have followed

COMMERCIAL BANK OF SCOTLAND v. RHIND.

the decision in favour of one party, then those costs ought to be given now.

Mr. *Rolt:* It is not a matter of course to give costs in refusing a reclaiming note; the Court may determine to refuse a reclaiming note without costs.

The LORD CHANCELLOR: The general rule is that if the Court of Appeal affirms what has been done below, it affirms with costs.

Lord CRANWORTH: Lord *Cottenham* was quite right in laying down that the giving of costs ought not to be treated as punishment, but only as saying that the party is wrong, and must pay the expenses.

Mr. *Attorney-General:* Nothing is more to be deprecated than a discretionary power.

The LORD CHANCELLOR: The return of costs to the Appellant, I suppose, would follow the judgment as a matter of course; but there will be no objection to include that in the order.

Mr. *Attorney-General:* Your Lordships must make an order for it.

Lord CRANWORTH: The House will declare that the Court of Session ought to have pronounced an Interlocutor dismissing the reclaiming note with expenses, and that the money paid by the Appellants ought to be returned; and with that declaration the cause will be remitted to the Court of Session.

The LORD CHANCELLOR: The Clerk of Parliaments will draw up the order in proper form.

LOCH AND MCLAURIN—ROBERTSON AND SIMSON.