tion that the money was intended for the drawer's own use; but if there is, it must yield to parole evidence of the contrary. If we believe Miss Bryce, it is entirely removed, and all the facts and circumstances tend to corroborate her story.

LORD DEAS—This case involves very delicate questions. The great objection made is that donation cannot be proved by parole. To put the rule of law so is putting it rather broadly. Suppose that, in place of handing this draft, the deceased had handed to Miss Bryce the money in bank-notes, I am not of opinion that the rule of law would exclude parole evidence of all the facts and circumstances connected with the handing over. I think such proof would be competent. The great difficulty here is whether we have an equally completed transaction. The document is a cheque drawn on the bank in favour of Miss Bryce herself. There is some difference, in regard to this matter, betwixt a cheque and a deposit-receipt. In some respects there is more difficulty in saying that a donation has been made of a deposit-receipt; in other respects there is less. A deposit receipt is a document intended to be kept. It is a more permanent document; therefore a person who gets such a document, and keeps it without uplifting it till after the death of the donor, is in a more favourable position than a person who gets a cheque. I hold that the possession of a bank cheque does not raise much presumption either one way or another. I think there may always be a proof of *quo animo* it was handed over. There may be questions of *onus*, and the *onus* may be very easily shifted. In the case of a clerk, the moment the fact that the alleged donee is so appears, the presumption would be against him. On the other hand, in the case of a tradesman it would be all the other way. It is not necessary here to go into these questions of *onus*, because the Solicitor-General very candidly admitted that Miss Bryce was telling the truth. I don't think the admission was an improper one, or could well have been withheld, because I agree that there is proof of facts and circumstances which are corroborative of her story. In addition to those already alluded to, there is proof of an engagement on the part of the deceased to marry Miss Bryce, which was not implemented solely on account of the state of his health. Another difficulty raised is that the cheque being a mandate *in rem suam*, it fell on the drawer's death. But to a great extent it was not *in rem suam*, and it cannot well be said of a mandate that one part of it fell, and the other did not. I think there is great difficulty in holding that. Altogether, I look on this case as a very special one, our decision of which does not trench on the authority of any previous cases.

LORD ARDMILLAN—Donation is not to be proved by parole evidence; but that is not the prominent part of this case. We have here proof of a number of facts and circumstances clustering round a written document. I think this case is different from that of a deposit-receipt. The presumption in favour of the holder of a bill of exchange is so strong that it can only be removed by writ or oath. I don't say the same presumption exists in favour of the holder of a cheque, but there is a presumption of the same kind differing only in degree. The thing is examinable. I don't think, as was contended, that there is a presumption either way which cannot be removed by evidence. All I say is, that the matter is examinable. Evidence is necessary. Well, we have here the parties living in the same house—all respectable—engaged to be married —board to some extent proved to be due—a cheque granted by a man when he supposed he was dying—disposing of all his available property— given as a gift to somebody, not for his executors, because he had made a will, but said by the deceased's father to have been given to him. The question therefore is, are we to believe old Young or Miss Bryce? I am happy to find the former saying twice over that his memory is not so good as it once was. On that ground I prefer to believe the story of Miss Bryce.

ANDERSON *v.* SCOTTISH NORTH-EASTERN RAILWAY COMPANY.

Cedent and Assignee—Title to Insist. In an action for reduction of an arrestment of a share in a railway company, a party who was sisted as assignee of the share *pendente processu* held entitled, after the action was dismissed, in so far as the pursuer was concerned, to insist in it for his interest, although the action itself was not assigned.

Companies' Clauses Act. Held that the provision of the Companies' Clauses Act excluding action for dividends, &c., where the party is not registered, does not apply to an action by a party against the company itself, it refusing to register him.

Counsel for Watt—Mr Patton and Mr Thoms. Agent—Mr W. Officer, S.S.C.

Counsel for Defenders—Mr Clark and Mr Birnie. Agents—Messrs Webster & Sprott, S.S.C.

In June 1863, John Anderson, coal merchant, sometime residing in Forfar, raised an action against the defenders to have it declared that an arrestment of one share of the company's stock belonging to him—which had been used by the defenders themselves in their own hands in execution of a decree which they had obtained against the pursuer —was an inhabile or improper diligence to attach the said share, or the dividends which had become due, or might become due, thereon. There were also conclusions for reduction of the arrestment, and for payment of bonuses, dividends, and profits.

In November 1863 the pursuer assigned his said share to Alexander Watt, accountant, in Edinburgh, who in January 1864 raised an action against the secretary of the company to have it declared that he was bound, in virtue of the assignation, to register him in the register of transfers as proprietor of said share. This action was defended on the ground that the company had a lien over the share for the debt due to them by Anderson, which they had secured by arrestment before the date of the assignation to Watt. The Court, on 22d March 1865, dismissed this action, in respect the company had not been made a party to it (3 Macp. 730).

Watt also, on 16th December 1863, asked the Lord Ordinary, in respect of the assignation, to sist him as a party in Anderson's action, "as in right of the stock;" and on 15th January 1864 he was accordingly sisted as a party in terms of his minute.

Anderson having been sequestrated, intimation was made to his trustee, who declined to sist himself; and Anderson having failed to find caution for expenses, the action was dismissed "so far as the said pursuer is concerned." Watt then proposed to insist in the action as assignee, which the Lord Ordinary disallowed, in respect the assignation on which he founded contained no assignation of the action; and farther, he dismissed the action in respect of Watt's failure to obtain himself registered as a shareholder in the railway company, holding that under sections 14 to 17 of the Companies' Clauses Act, a party cannot demand a decree for bonuses, dividends, or profits, accruing on the stock until he is so registered. Watt reclaimed; and the Court to-day unanimously altered the Lord Ordinary's interlocutor, and remitted to him to proceed with the cause.

The LORD PRESIDENT said—This interlocutor is rested on two separate grounds. It is said that the assignation to the stock contains no assignation to this action. It appears to me that it gives Mr Watt a title to maintain that the arrestment of the stock which the company have used in their own hands is ineffectual. I think the assignation to the stock implies that. It might have been a good objection to Anderson insisting in the action that he had assigned to Watt. But this objection was not taken, and Watt was sisted as a party. His direct and palpable interest is to relieve the stock

from the only difficulty which stands in the way of his enjoyment of it. It is said he was only sisted for his interest. The interlocutor does not say so, but he has the very material interest which I have explained. I think therefore that the assignation fairly carries a right to maintain this action. The Lord Ordinary has stated another reason for dismissing the action. He says that under the statute such an action as this cannot be sued unless the party is registered as a holder of stock. The company refuses to register him, but is he not entitled to have the question betwixt him and it fully considered? It has not been made quite clear to me that he cannot maintain that the company have no right to throw this obstacle in his way. The disabilities referred to in the statute do not, I think, contemplate a case of this kind.

Lord CURRIEHILL concurred.

Lord DEAS said—The whole question is, whether the railway company's arrestment or Mr Watt's assignation is preferable. The latter surely has a right to try that in this action in which he has been sisted as a party. The general rule undoubtedly is that additional pursuers cannot be introduced without the consent of the defender. I don't know that that rule applies to the case of cedent and assignee; but here the thing has been done. He has been sisted "as in right of the stock." He might have tried the question in a separate action. Why not in this? The Companies Clauses Act does not touch this case.

Lord ARDMILLAN—The assignation to the stock without the right to clear it would not be worth having. As to the other point, surely the assignee of the stock cannot be turned out of Court merely because his opponent, the company, chooses not to register him? I think that, except in very exceptional cases, an assignation of a claim implies an assignation of an existing suit. Besides, here the party has been sisted.

SUSP.—MORGAN *v.* MORGAN.

Promissory-note—Stamp. Terms of two documents which held (aff. Lord Kinloch) not to be promissory-notes.

Counsel for Suspender—Mr Clark and Mr Birnie. Agents—Messrs G. & J. Binny, W.S.

Counsel for Respondent—Mr Adam. Agent—Mr Alexander Howe, W.S.

The question in this case was, whether the following two documents were promissory-notes. It was pleaded that they were, and could not therefore now be stamped. Lord Kinloch held that they were not promissory-notes, but that they were documents requiring to be stamped, and he sisted process that this might be done.

The one document is in the following terms:—

"Dear Will,—I have borrowed from you one thousand pounds sterling, which I hereby bind and oblige myself to repay to you at Whitsunday next, with interest at the rate which shall be paid on money lent upon first heritable security. And I also engage to grant you, if required, satisfactory heritable security for the above sum.—I remain," &c.

And the other is as follows:—

"Dear Will,—I was favoured with your letter of yesterday prefixing letter of credit on the Western Bank for three hundred and ninety-seven pounds, which, with the interest due to you at last Whitsunday by the Mumrill's family, and the interest thereon since that date, makes up five hundred pounds which I have received in loan from you, to be repaid in December next, but hope you wont be too strict as to the time of repayment, as it will depend much upon the price of Clydesdale Bank stock, as I am averse to sell at present prices.—Yours truly."

The suspender reclaimed, and argued that the documents had all the requisites of promissory-notes—viz. (1), a promise to pay; (2) the name of a payee; and (3) a definite term of payment. The case of Macfarlane *v.* Johnstone and others, 11th June 1864 (2 Macph. 1210), and other cases, were founded on.

The Court adhered.

The LORD PRESIDENT said—We must look at the whole character of these documents, and, doing so, it appears to me that neither of them was given as a promissory-note. They are acknowledgments of debt with an obligation to repay.

Lord CURRIEHILL—I am very clear that the first of these two documents is a bond, and not a promissory-note. It requires a bond stamp. The question about the other is more nice, but I think it is just an acknowledgment of a loan. The true import of the letter is that the writer of it will repay the loan "in December next," if he could not agree with his creditor that the period of payment should be extended. There is, however, a proposal that the term should be extended, and that takes from the document the character of a promissory-note, which is a liquid document. This letter contemplated a future agreement.

Lord DEAS also concurred as to both documents. What he proceeded upon in the case of the second was the fact that there was not in it a definite period of payment. There was no day in December named. When, therefore, could it be protested? It was quite true that in Macfarlane *v.* Johnstone and others, the period of payment was just as indefinite; but his Lordship thought that this fact must have been overlooked in the decision by the Judges, because the Lord Justice-Clerk distinctly laid down that one of the essentials of a promissory-note was that it should be payable "at a particular date," and Lord Neaves in the same way said that it was necessary that the time of payment must be "definitely ascertained or ascertainable from the document itself." But farther, the letter is one acknowledging receipt of a letter of credit, and could never be held to have the privileges of a promissory-note, in respect of which privileges the stamp duty is imposed.

Lord ARDMILLAN concurred. The first document was a personal obligation, with an intrinsic engagement to convert it into an heritable security. The second was not a promissory-note, because it had no definite date.

Tuesday, Jan. 23.

FIRST DIVISION.

PROUDFOOT *v.* LECKY.

Reparation—Relevancy. Issue to prove that a defender, took possession of property belonging to the pursuer, whom he had dismissed from his service, and which were in the defender's own premises, *disallowed.*

Counsel for Pursuer—Mr Clark, and Mr A. Moncrieff. Agents—Messrs Wilson, Burn, & Gloag, W.S.

Counsel for Defender—The Lord Advocate and Mr Pattison. Agent—Mr R. P. Stevenson, S.S.C.

George Proudfoot, merchant in London, sued Francis Boyce Lecky, linen merchant in Glasgow, for damages for having wrongfully and illegally dismissed him from his service on 5th August 1864. He proposed an issue to try this question, which was not objected to. But he proposed another issue in these terms—"Whether, after the dismissal of the pursuer by the defender, the defender, by another acting on his instructions, wrongfully took possession of certain property belonging to or in the possession of the pursuer, then in the business premises of the defender in London—to his loss, injury, and damage?" Lord Barcaple reported this proposed issue, expressing a doubt as to whether the mere taking possession of the articles referred to was a relevant ground for a claim of damage, and the Court to-day unanimously disallowed it. The defender could not lock up his premises without taking possession of the pursuer's effects which were there.