nishings supplied during the time he was owner, and owner for the purpose of paying his debt? I cannot hold that. Nobody can strip another of all he possesses and invest himself, and then say that anyone furnishing supplies in ignorance of that arrangement is to proceed against the divested debtor, and have no claim against the person behind simply because he was ignorant of the arrangement.

On the whole matter I agree that the pursuers must have decree against Mr Scott.

LORD CRAIGHILL — I concur. I think the present case is easily distinguishable from all the cases referred to by the Lord Ordinary. The elements of distinction are the lease and possession following on it, together with the acquisition of all the personal property. I think the pursuers are entitled to decree.

LORD RUTHERFURD CLARK—I also think the pursuers are entitled to decree. I think the case presents to us merely a question of fact—the question whether the accounts were incurred by Mr Maclean as agent for Mr Scott. I am of opinion that it is proved by the evidence in this case that this was the relation which subsisted between these two persons, and that Mr Scott therefore is liable as Mr Maclean's principal. That is, I think, sufficient for the decision of the case, and I do not think it necessary to go into any other matters.

The Court pronounced this interlocutor:—

"The Lords allow the minute of restriction annexed to the summons to be withdrawn, and the minute for the pursuers to be received, and having heard counsel for the parties on the reclaiming-note, Recal the Lord Ordinary's interlocutor, and decern against the defender Ebenezer Erskine Scott in terms of the conclusions of the summons, subject to the conditions set forth in the said minute."

Counsel for Reclaimers—Salvesen. Agents—Gill & Pringle, W.S.

Counsel for Respondents — C. N. Johnston. Agent—F. J. Martin, W.S.

Saturday, November 5.

OUTER HOUSE.

[Lord M'Laren, Ordinary.

UNION BANK *v.* GRACIE & OTHERS.

Presumption of Life Limitation (Scotland) Act 1881 (44 *and* 45 *Vict. cap.* 47)—*Multiplepoinding.*

In an action of multiplepoinding for the distribution of the moveable estate of a person deceased, the claimants were her next-of-kin, and were also the "persons entitled to succeed" under the Presumption of Life Limitation (Scotland) Act 1881 to a brother of the deceased in whose favour she had made a will. From the averments upon record there was a presumption that this brother had died, but under the 8th section of the statute the presumption was that he had died at a date before the succession to his sister opened.

The Lord Ordinary, without proof, ranked and preferred the claimants, for aught yet seen, subject to the declaration that in the event of a claim being established in the name of the brother, the claimants should be bound to repay.

This was an action of multiplepoinding for the distribution of the moveable estate of the deceased Miss Jane Ogilvy, consisting of a sum of £303, 2s. 5d., in which the nominal raisers were the Union Bank of Scotland; and the real raisers, defenders and claimants, were nephews and nieces of Miss Jane Ogilvy, and her next-of-kin.

The circumstances under which the action was brought were these—Miss Ogilvy died on 17th February 1883, leaving a will by which she made over her whole estate to her brother William Ogilvy, and in the event of his predecease, then to his lawful children. In the condescendence annexed to the summons it was stated that William Ogilvy went to South Africa in 1861, and had not, so far as the defenders knew, ever returned. The last letter from him was received on 15th April 1872, and stated that he was ill and in hospital at "Diamonds-fields, Colesberg," South Africa. He was at that date unmarried. The real raisers averred that careful inquiry was made by the representatives of a person who held a policy of insurance on William Ogilvy's life, but that they did not succeed in getting any information about him, and that the insurance company were satisfied that there was a reasonable presumption that William Ogilvy had died, and made payment accordingly.

There was also this averment—"Under the provisions of The Presumption of Life Limitation (Scotland) Act 1881, the defenders being the 'persons entitled to succeed' to the said William Ogilvy, would be entitled to ask the Court to grant authority to them to 'make up a title to receive and discharge, possess and enjoy, sell or dispose of' the moveable estate to which the said William Ogilvy became entitled under the settlement of the deceased Miss Jane Ogilvy, and which vested in him at her death on 17th February 1883. Under the 8th section of that statute, however, the said William Ogilvy must be presumed to have died on 15th April 1879, being the day which would complete a period of seven years from the time of his last being heard of. As the succession to Miss Jane Ogilvy did not open until 17th February 1883, the real raisers are not in a position to make application under the said Act for authority to make up a title to receive and discharge the said sum of £303, 2s. 5d., forming the fund *in medio* in the present action, and in these circumstances the present action has become necessary."

The Lord Ordinary (M'LAREN) on 5th November 1887, without proof, pronounced this interlocutor:—"Having heard counsel, and in respect no other claim has been lodged, and no objection stated, for aught yet seen, ranks and prefers the claimants Mrs Margaret Ogilvy or Gracie and others to the whole fund *in medio*, in terms of their claim, No. 6 of process, and decerns, subject to the declaration that in the event of a claim being hereafter successfully maintained in the name of William Ogilvy (alleged to be deceased) the

claimants shall be bound to repay the sum to such person or persons as the Court may direct."

Counsel for the Claimants (Mrs Gracie and Others) — Salvesen. Agents — H. B. & F. J. Dewar, W.S.

Agents for the Union Bank.—J. & F. Anderson, W.S.

Thursday, November 17.

SECOND DIVISION.

[Sheriff of Ross, Cromarty, and Sutherland.

ROBERTSON AND ANOTHER (MACKENZIE'S TRUSTEES) *v.* ROSS.

Retention—Factor's Right to Retain his Principal's Documents—Implied Contract.

A proprietor of heritable estate placed in the hands of his factor the documents necessary to enable him to collect rents, and generally to perform his duties as factor. The factor collected the rents and paid them over to his principal, thereby leaving his factorial account unpaid. His principal subsequently granted a trust-deed for behoof of his creditors, and the trustees called upon the factor to deliver up the documents belonging to the estate. The factor claimed a right to retain them until his factorial account was paid. *Held* that the factor was entitled to retain the documents on the ground of implied contract.

Meikle & Wilson v. *Pollard*, 8 R. 69, *followed.*

This was an actiou in the Sheriff Court at Dingwall, at the instance of James Alexander Robertson, chartered accountant, Edinburgh, and James Anderson, solicitor in Inverness, trustees acting under a trust-disposition and conveyance in their favour, dated 19th June 1886, by Sir James Dixon Mackenzie, Bart., of Findon and Mountgerald, in the county of Ross, against David Ross, bank agent, Dingwall, who had been, prior to the granting of the trust-disposition, factor for Sir James Mackenzie. The purpose of the action was to obtain delivery of the writs, titles, books, leases, plans, documents, papers, and evidents of every description in the defender's possession which belonged to Sir James Mackenzie, or related to his estates of Findon and Mountgerald, in the county of Ross.

In defence it was pleaded—"(1) The defender having acquired actual possession of the writs, books, and documents referred to, from the owner thereof, is entitled to retain possession of them until paid the amount due to him under his contract."

From the accounts as finally stated it appeared that the defender's claim was for a sum of £477, 13s. 9d., in respect of outlays in connection with drainage on the estates, and a further sum of £1661, 19s. 9d. in respect of a balance on general factorial outlays, being in all £2139, 13s. 6d.

After the defender's accounts had been lodged, the pursuers added these pleas—"(1) The defender as factor having admittedly received rents sufficient to meet his advances as factor, was bound to discharge all burdens affecting the estate out of such rents before making cash advances to the truster. (2) The defender having made cash advances to the truster while there were burdens undischarged, must be held to have made them on his own personal responsibility." The facts which raise these pleas are stated in the notes of the Sheriff-Substitute and Sheriff, of date 21st March and 8th April 1887, quoted *infra.*

On 8th November 1886 the Sheriff-Substitute (CRAWFURD HILL) found that the defender was in law entitled to retain the writs, books, and documents in his possession as factor until he was paid the balance due on his intromissions.

"*Note.*—That a factor has a lien over money or property of his principal, which may have come into his hands in the course of his employment, in security of what may be due to him by the principal, is undoubted. Bell, in his Commentaries (7th ed. vol. 2, p. 109) says, 'Both in England and in this country a general lien has been allowed to factors for the balance due on their general accounts with the principal. . . A lien is allowed to factors not only for their advances in the course of their employment, but also for their engagements and advances of cash to the principal. This is established by a number of decisions.' But it is maintained by the pursuers that there is no authority for saying that a factor on a land estate, as the defender was, is entitled to retain writs and documents belonging to the principal which may have come into his hands as factor. That, it is said, is a right which belongs only to a law-agent. The point does not appear to have been ever expressly decided in regard to a factor, but there seems to be no ground for making a distinction between the two. The foundation of all, then, is agreement, express or implied, and there is nothing peculiar in the relation of a law-agent towards his employer which should be held to create such implied agreement, and confer on him the right to retain papers which does not apply with at least equal force to the relation of a land-factor towards his principal. Both get into their hands papers belonging to their employer essential for conducting the business in which they are employed, and the one no less than the other is, the Sheriff-Substitute thinks, entitled to retain such papers till his business account is settled. Of course, the books or documents must be only such as the factor *qua* factor is entitled to have, and the right of retention will cover only such intromissions as were properly within the province of the factor. Both these requisites are satisfied here, and the Sheriff-Substitute has no hesitation in holding that the defender is entitled to retain possession of the books and papers in his hands till paid the balance found to be due on his account as factor. In the case of *Meikle and Wilson* v. *Pollard*, Nov. 6, 1880, 8 R. p. 69, in circumstances similar to the present, a firm of accountants was held entitled to retain documents till paid their business account on the ground of implied contract, and the opinions expressed by the Judges there seem to be quite applicable to the present case."

On appeal the Sheriff (CHEYNE), on 11th December 1886, pronounced this interlocutor—"Recals