dence had been interrupted by three periods of absence. She had been absent with the family for two summer terms at Colvend in a different parish, and in the same way she had been absent with the family on one occasion during the winter months at Ryde in the Isle of Wight. The interruptions were of considerable duration, of five or six months at a time. Now, it would not, I consider, be maintainable on the decisions to say that these periods of absence would have been considered as interruptions of the continuity of residence of the master of the house. He had his home in the parish of Kelton, and the continuity of his residence was not interrupted by these absences.

The question then arises, Are they interruptions in the case of a servant in the family of the master of the house? I am disposed to think that it is part of the duty of the servant to go with the family to such places as these, to a seaside place for the summer and to a warm climate for the winter. I do not suppose that now-a-days at anyrate it is ever made matter of special contract that a servant shall go with the family to such resorts. I am disposed to think that there was a contract, that this woman should serve the family wherever they went, within some such limits as we have an example of here. At least she went as a servant with the family to these places upon a contract expressed or implied, and I am not disposed to think that these interruptions are of more importance in her case in breaking the continuity of her residence within the parish of Kelton, than they would have been in the case of one of her employer's family. I think that the continuity of residence by this pauper within the parish of Kelton was not broken by these interruptions, although I am alive to this, that there may be cases, where the absences are so long and the circumstances are such, that the absence of a servant with a family may interrupt the continuity of residence in a parish necessary to obtain a settlement. But, dealing with this question, as it ought to be dealt with, as a matter of fact, I am of opinion that the Sheriff's judgment is right and ought to be affirmed.

Lord Rutherfurd Clark—I confess I have some difficulty in this case, because the absences of the pauper from the parish of Kelton were of so long a duration. It is a very strong thing to say that in spite of these absences this woman had a continuous residence in Kelton, but probably your Lordships are following out the tendency of the previous decisions.

Lord Trayner—I think that the Sheriff is right. The pauper resided in the parish of Kelton for more than five years, and her absences from the parish during that period were in my opinion clearly incidental to her residence, and not of a character which, having regard to previous decisions of this Court, broke the continuity of her residence.

The Court pronounced this interlocutor:—

"Find in fact and in law in terms of the findings in fact and in law in the interlocutor appealed against: Therefore dismiss the appeal, of new assoilzie the defender from conclusions of the action, and decern."

Counsel for Appellant—C. S. Dickson—A. S. D. Thomson. Agents—Ronald & Ritchie, S.S.C.

Counsel for Respondent — Jameson — Salvesen. Agent — Thomas M'Naught, S.S.C.

Thursday, October 25.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

GIRDWOOD *v.* THE STANDING JOINT-COMMITTEE OF MIDLOTHIAN.

Reparation — Wrongous Acts of Police — Whether Standing Joint-Committee of County Responsible—County Police Act 1857 (20 *and* 21 *Vict. cap.* 72)—*Local Government Act* 1889 (52 *and* 53 *Vict. cap.* 50), *sec.* 18.

Held that the standing joint-committee of a county is not responsible for wrongous acts committed by police constables of the county when on duty.

This was an action of damages at the instance of Mrs Jessie Girdwood against the Standing Joint-Committee of the county of Midlothian, appointed in terms of the Local Government (Scotland) Act 1889, and the individual members of the Committee.

The pursuer averred that the Committee "employ and pay and have the administration and control of the police of the said county." She sought damages on the ground that upon 29th November 1893 two police constables "in the employment of the defenders" upon a false charge had taken her for several miles round the country for the alleged purpose of identification, and that she had suffered greatly in her character, reputation, feelings, and health. She averred that the police constables "in their reckless and oppressive conduct aforesaid acted maliciously and without probable or any cause."

The defenders averred—"The terms of the Police Act 1857 (20 and 21 Vict. cap. 72) are referred to. A police committee under that Act was not, and a standing joint-committee is not, liable for the actings of a member of the police force in the course of his employment. The committee has no power to raise money by rate or loan. It is not a body corporate, but simply a statutory board of managers, whose very limited functions are mainly advisary. The disposition and government of the members of the police force of the county are in the hands of the chief constable, subject to such lawful orders as he may receive from the sheriff, or from the justices of the peace in General or Quarter Sessions assembled, and to the rules estab-

lished for the government of the force by the Secretary for Scotland. The standing joint-committee is not vested with the actual control, management, or disposition of the county police force. The policemen are neither appointed nor dismissed by the committee, and are not its servants. The committee has no right nor power to interfere with the members of the police force in their actings, and is not responsible for the same."

The defenders pleaded, *inter alia*—"(3) The defenders should be assoilzied, in respect that the policemen named on record are not servants of the committee, and that the committee is not responsible for their actings."

Upon 7th July 1894 the Lord Ordinary sustained the third plea-in-law for the defenders, and assoilzied them from the conclusions of the action.

"*Opinion.*—The question in this case is, whether an action lies against the Standing Joint-Committee of the County of Mid-Lothian, or against the individual members of that Committee, for fault alleged to have been committed by police constables of the county acting within the scope of their duty, but not in furtherance of any special order issued by the Committee or by any of its members. I am of opinion that no action lies in these circumstances.

"The constitution and functions and relation to the county police of the standing joint committee of a county depend on the provisions of the Local Government Act and of the County Police Act.

"The standing joint committee is created by the 18th section of the Local Govern ment Act 1889. It is a joint committee of the county council and of the commissioners of supply, and consists of a certain number of county councillors and of commissioners of supply and the sheriff of the county. Certain duties are devolved on it with respect to capital expenditure by the county council, and it is provided that it is to be deemed the police committee under the Police Act 1857, and 'shall have all the powers of such committee, and be subject to all the provisions of that Act,' except so far as modified by the Local Government Act. It is not incorporated as, under section 72, the county council is, nor is there any provision that it may sue and be sued, as is provided by section 79 in reference to district committees. It has no funds.

"Turning to the County Police Act 1857 (20 and 21 Vict. c. 72), in order to find the powers of the Standing Joint Committee, it appears that the object of the Act was to secure an efficient police force throughout Scotland, and that with that view it is provided (section 1) that the Commissioners of Supply are to report to a Secretary of State the number of constables proposed by them as a sufficient police force, and the rates of pay which they deem expedient; and (section 2) that they are to appoint a police committee 'to manage and transact all and any matters which such police committee is hereby required or authorised to do, execute, or perform.' Section 3 provides that rules for the government of constables are to be made by a Secretary of State. By section 4 the police committee are required, subject to the approval of a Secretary of State, to appoint a chief constable.

"The most important section bearing on the government of police constables is the 6th, which provides that the chief constable 'shall, subject to the approval of the police committee, appoint the other constables; and that the chief constable may dismiss all or any of them, and that he, the chief constable, 'shall have the general disposition and government of all constables so to be appointed, subject to such lawful orders as he may receive from the sheriff or from the justices of the peace in General or Quarter Sessions assembled, and to the rules established for the government of the force in terms of this Act.' By section 15 it is provided that the police constables shall, in addition to their ordinary duties, perform all such duties connected with the police in their respective counties as the sheriff or the justices of the peace of the county may from time to time direct and require.' It thus appears very clearly that the county police were subject to the control and bound to obey the orders of the chief constable, the Sheriff, and the Justices of the Peace, and that they were not under the control or subject to the orders of the Police Committee, who were not magistrates *qua* members of the police committee, or entitled to interfere in any way with the police in the fulfilment of their duties. The charge of the peace of the county was not committed to the Police Committee. The duties of the police constables, however, are not only those which the chief constable, sheriff, or justices direct, but are embodied in the Act of Parliament. They are not the servants of the chief constable, sheriff, or justices, but of the State, with distinct duties imposed on them by statute.

"Now, the powers and duties of the new body, the standing committee, are those of the police committee under the County Police Act, and, therefore, it appears to me that, when the pursuer avers that the standing committee have the entire management and control of the police force, that is merely a somewhat reckless contradiction of the provisions of the statutes, and not an averment which can be remitted to probation.

"The standing committee have only statutory duties and statutory powers, and the control of the police is not one of them. They have under the statutes no control of the police; the relation of master and servant or of employers and employed does not subsist between the committee and the police, and there is therefore no legal ground on which either the committee or its members can be called on to answer for the errors of the police.

"It is now thirty-seven years since the County Police Act was passed, and no case has been found in which it was attempted to make a police committee liable for the faults of the police.

"Further, the Standing Joint-Committee

of the county of Midlothian is not a corporation, and is not, I apprehend, liable to be sued in that name, and I take it that it is manifestly extravagant to maintain that all or any of the individual members of the Committee can be made liable for acts which they did not order or authorise.

"Further, the counsel for the defenders directed attention to the fact that the Standing Joint-Committee do not possess or administer any funds whatever out of which the pursuer's claim could be satisfied, and that of itself seems also a conclusive answer to the action.

"I do not, therefore, find it necessary to consider whether fault by the police constables within the scope of their duty is relevantly averred, and I am of opinion, on the grounds explained, that the defenders' third plea-in-law should be sustained, and that they must be assoilzied."

The pursuer reclaimed, and argued—The Joint-Committee was the body which appointed the police and made the assessment by which they were paid; they were therefore responsible for the action of the police. They were liable to pay for damages occasioned by the actings of their subordinates out of public funds in their hands—*Young* v. *Magistrates of Glasgow*, May 16, 1891, 18 R. 825; *Leask* v. *Burt*, October 28, 1893, 21 R. 32.

At advising—

LORD JUSTICE-CLERK—In my opinion the case is quite clear, and we must adhere to the Lord Ordinary's interlocutor. I think the pursuer's case is hardly stateable.

LORD YOUNG, LORD RUTHERFURD CLARK, and LORD TRAYNER concurred.

The Court adhered.

Counsel for Reclaimer—Watt. Agents—Cuthbert & Marchbank, S.S.C.

Counsel for Respondent—Dundas. Agent—J. H. Balfour-Melville, W.S.

Friday, October 26.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

THOMSON *v.* BELL.

Stamp—Promissory-Note or Agreement—Stamp Duties Act 1870 (33 *and* 34 *Vict. cap.* 97), *sec.* 49.

In order that a document may be a promissory-note in the sense of section 49 of the Stamp Act 1870, its contents must consist substantially of a promise to pay a definite sum of money and nothing more.

In an action for recovery of money which the pursuer alleged she had advanced to assist the defender in promoting the sale of a patent liniment, the pursuer founded upon the following letter received from the defender in 1885, as expressing the terms upon which the money had been advanced—"I would propose you pay £50 in two instalments, and after ten instalments of £40. This will give you one-fifth of the interest in the liniment, and I will agree to pay you back all you put into the company, with 5 per cent. added at the end of five years, if you desire it." The document was unstamped.

The Court *held* that the document was in substance a proposal for a partnership, the promise to pay being merely incidental to its main purpose, and therefore that it was liable to stamp duty as an agreement, and not as a promissory-note, and might be legally stamped after execution, and *allowed* it to be received in evidence on payment of the prescribed duty and penalties.

Held further by Lord Adam that the document was not a promissory-note, in respect that it did not contain a promise to pay a definite sum of money.

Opinion by Lord M'Laren that nothing can be a promissory-note except a unilateral obligation which becomes effectual on delivery, and requires nothing done on the other side to make it operative.

Stamp—Receipt or Agreement—Stamp Act 1870 (33 *and* 34 *Vict. cap.* 97), *sec.* 120.

Thomson, in an action against Bell, founded upon an unstamped document granted by the latter in the following terms—"Received with thanks £500 in all for advertising Ertell's liniment. Robt. Bell."

Held that the document was not an agreement, but was a receipt in the sense of section 120 of the Stamp Act 1870, and could not be afterstamped or received in evidence.

This was an action at the instance of Mrs Margaret Thomson against Dr Robert Bell for payment of £426, as the unpaid balance of sums which she alleged she had lent to the defender.

The pursuer averred that the defender, who was the inventor of a patent liniment, had pressed her to become his partner in the sale of the liniment; that she had refused to enter into any such partnership, but had agreed to assist the defender with advances of money, and had lent him £520, of which the amount sued for was still unpaid.

The defender denied indebtedness.

The pursuer was allowed a proof of her averments *habili modo*, and the defender a conjunct probation.

On 9th January 1894 the Lord Ordinary decerned against the defender for payment to the pursuer of £387, 14s. 4d.

The defender reclaimed, and at the hearing in the Inner House it was noticed by the Court that certain of the documents founded on by the parties were unstamped. The case was accordingly continued in order that the parties might consider whether these documents might be legally