the business and also to pay back all that was put into the partnership, viz. £500, with five per cent. interest at the end of five years if desired. Mr Dickson proposed to treat these as two separate and distinct matters, but I do not agree with that, because both obligations are concerned with only one thing, namely, the proposed partnership. They do not therefore fall under section 8, for they do not relate to several distinct matters, but to one and the same subject-matter.

I entirely concur in what your Lordship says about the receipt. It appears to be produced and founded on for no other purpose than to prove the payment and receipt of money.

LORD M'LAREN—It is objected to the document dated 10th November 1885, that it contains the words "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"—that this is equivalent to a promise or obligation to pay money, and that the document is therefore liable to stamp-duty as a promissory-note. It has been pointed out that the definition of "promissory-note" for revenue purposes is more comprehensive than that contained in the Bills of Exchange Act or the common law notion of a promissory-note. The reason is obvious enough, for otherwise it might well be that a document, which in truth and substance was a promissory-note, might by the insertion of an unimportant condition be taken out of the category of promissory-notes with the view of evading the payment of stamp-duty. For that reason the Revenue authorities spread their net wider than at first sight might seem to be necessary. Perhaps, as Lord Moncreiff says in the case of *Welsh's Trustees* v. *Forbes*, 12 R. 860, "the Revenue Acts are conceived in phraseology of studied ambiguity," but that is to prevent evasion, and with the intention that the ambiguity may be cleared and a reasonable meaning ascribed to the clause by the Court.

Now, whether this document be a proposal for a partnership—and on that point as at present advised I should agree with your Lordship that it is in a form common in such instruments and that such is its meaning—or whether the Solicitor-General will convince us that it is a loan, in neither view is it a promissory-note. If the primary purpose of the contract is something different, and the promise to pay is only the recognition of a legal obligation resulting from the contract, then the document falls outside the definition of a promissory-note. In my view 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. But that is not the character of this instrument.

On the other document to which objection has been taken, my opinion is that it is a receipt for money, and the circumstance that the object for which the money was paid is announced in the document makes no difference. This is no more a qualification than if the receipt were appended to an account for advertising. The schedule imposing the duty on receipts shows that it is not confined to receipts for payment of debt, but that, subject to certain defined exceptions, every receipt for money is subject to stamp-duty.

LORD KINNEAR—I agree with your Lordship on both points.

The Court found that the document dated 10th November 1885 might be legally stamped, and the pursuer having paid £11, 0s. 6d. into the hands of the Clerk of Court, that the said document might be now regarded; and that the document dated 1st October 1886 might not now be legally stamped, and was not to be regarded.

Counsel for the Pursuer—Sol.-Gen. Shaw, Q.C.—Horn. Agents—Simpson & Marwick, W.S.

Counsel for the Defender—C. S. Dickson—Dundas—Sym. Agent—David Turnbull, W.S.

Friday, October 26.

SECOND DIVISION.

[Sheriff of Lanarkshire.

PATON *v.* THE UNITED ALKALI COMPANY, LIMITED.

Reparation — Precautions for Safety of Public—Unfenced Pond.

The pursuer sued the defenders for damages on account of injuries sustained by him in consequence of his having fallen into a pond which was situated on their property at a distance of 265 yards from the public road. He averred that a private road led from this public road to the vicinity of the pond, that he was going along the public road on a dark night, and, having turned by mistake into the private road, fell into the pond; that the first part of the private road was causewayed, and that it appeared to a person unacquainted with the district, as he was, to be the true continuation of the public road; that the defenders had been warned that the pond was a danger to the public, and that the accident had been caused by their negligence in having failed to fence it. The Court *held* that there was no duty laid upon the defenders to fence the pond, and *dismissed* the action as *irrelevant*.

Prentice v. *Assets Company, Limited*, February 21, 1889, 17 R. 484, *followed*.

This was an action of damages raised in the Sheriff Court at Glasgow by William Paton against the United Alkali Company, Limited. The pursuer claimed reparation for injuries sustained by him in consequence of his having fallen into a pond near the defenders' chemical works, used by them as a settling-pond.

The following narrative of the case stated by the pursuer on record is taken from the Sheriff-Substitute's note—"This is an action of damages for certain injuries sustained by the pursuer on the night of 17th March 1893. He was going along the Fountainwell Road, which is about half-a-mile in length, and runs in a north-westerly direction from Springburn Road to Keppochhill Road. For a distance of 76 yards along the south side of Fountainwell Road, measuring from Springburn Road, there is a macadamised roadway and concrete footpath. Then for a distance of 69 yards there is a footpath of earth, and at the end of the 69 yards the road divides. The public road goes to the right, being the continuation of Fountainwell Road, and to the left there is a road which is not said by the pursuer to be a public thoroughfare, but which is said to belong to the defenders. This road to the left is causewayed and has a footpath for 140 yards, and it then opens on to a flat and well-made road 125 yards in length, which terminates in an incline 50 feet wide leading to a pond. This pond therefore is at least 265 yards from the public road. The pursuer fell into that pond on the night in question. He says he had been once before on the Fountainwell Road, and when he came to the division of the roads he found his recollection at fault and hesitated which road he was to follow.

"At the adjustment of the record the pursuer added certain statements to the 7th article of his condescendence, founding upon the private road appearing to be the natural continuation of the public road to a person unacquainted with the locality, and upon the alleged fact of the defenders' having been warned of the danger."

The pursuer pleaded — "The pursuer having been injured through the fault or negligence of the defenders, or those for whom they are responsible, in failing to have the said pond fenced or enclosed, or otherwise in failing to fence off the road leading to said pond, so as to prevent members of the public being deceived into following its course, the defenders are liable in damages."

Upon 23rd January 1894 the Sheriff-Substitute (BALFOUR) dismissed the case as irrelevant.

"*Note.*—[*After narrating the facts averred by the pursuer*]—The question therefore is, whether assuming the road to the left to be a private road (which the pursuer admits), the defenders are bound to fence a pond 265 yards along that private road and distant to that extent from the public road.

"The most recent case on the subject is *Prentice* v. *Assets Company, Limited*, 17 R. 484. In that case a person on a dark night left the public road, and was found in the morning at the bottom of a disused quarry 18 feet deep. The quarry was more than 150 yards from the nearest point of the public road. A private road, which eight years before had served as an access to the quarry, left the public road about 200 yards from the quarry and continued towards the quarry, but it was overgrown with long grass. A path which had been occasionally used against the remonstrances of the proprietor and his tenant passed within 6 yards of the quarry face. The Court held, after a jury trial, that the evidence disclosed no fault on the part of the defenders. The Lord President stated that he could not understand upon what ground it could be maintained that the disused quarry, not near a public road, must of necessity be fenced to prevent people who lose their way and wander about falling into it, and he said that there was no such duty imposed on the landowner. Lord Shand reviewed the English cases on the subject. According to English law the true test of liability is whether the excavation be substantially adjoining the public way, so that the use of the way is made dangerous, but, when the excavation exists at some distance from the way and the person falling into it would be a trespasser upon the defender's land before he reached it, the case is different.

"Lord Shand adopts that view as applicable to Scotland, and he says further that, even where an owner of property has given the public a right of access over his private property for a short cut or for the enjoyment of walking, if they take advantage of the privilege, and a certain danger attaches to it, they must take the peril along with the advantage, so that, even if the pursuer in this case had had permission to walk along the private road to the left, he must take the advantage along with the risk which he ran of walking into the pond. Lord Adam agreed with these views, and the result of the decision is that the obligation to fence only arises where the excavation complained of is in immediate proximity to the public road. It may be that our law does not coincide with the English law in regard to the question of trespass—that is to say, in holding that a person wandering off the public road is a trespasser, but the decision of the present case does not depend upon that element.

"The same law was laid down by the Lord President in *Watson* v. *Baird & Company*, 5 R. 87. The Lord President stated the law in the following terms at p. 94—'It is very true that a dangerous piece of property in the immediate neighbourhood of a highway which is not fenced, and against the danger arising from which the public are not in some way protected, has been made in various cases the ground of subjecting the owner of that dangerous piece of property in damages, but it is an essential condition of that common law liability that the danger shall be so near the highway as to create a great risk of persons or of cattle by wandering a little from the highway encountering the danger.'

"I may observe that the defenders deny that they are proprietors of the road to the left. The northern boundary of their property is distant 100 yards from the Fountainwell Road, so that there is a stripe of ground 100 yards broad lying between that road and their boundary. This has been made quite clear by the production of their title.

"This action is founded not only on an

alleged obligation to fence the pond, but upon an alleged obligation to fence off the road leading to the pond. But as the road leading to the pond for a distance of 100 yards after it leaves the public road does not belong to the defenders, there can be no obligation on them to fence it at its junction with the public road.

"The following cases were referred to by the pursuer:—*Brady* v. *Parker*, 14 R. 783; *Smillies* v. *Boyd*, 14 R. 150; *Gavin* v. *Arrol*, 16 R. 509; and *Hurst* v. *Taylor*, L.R., 14 Q.B.D. 918; but these cases appear to me to have very little bearing on the present case. They either relate to the liabilities of persons inviting customers into their premises, or to the obligations of contractors who form new roads or new works and allow the public to use old footpaths close to cuttings without taking proper measures to warn them from the cuttings. The pursuer in this case founded his claim upon an implied invitation on the part of the defenders to him to use the private road to the left. But (apart from the fact of the whole road not belonging to the defenders) the circumstance of the pursuer wandering along the road in question does not, according to *Prentice's* case, entitle him to complain of a pond at the end of it, and situated 265 yards from the public road.

"The accident to the pursuer has arisen from the misadventure caused by his mistake in choosing to take the road to the left on a dark night, and the defenders cannot be held to blame for it.

"At the adjustment of the record the pursuer added certain statements to the seventh article of his condescendence, founding upon the private road appearing to be the natural continuation of the public road to a person unacquainted with the locality, and upon the alleged fact of the defenders' having been warned of the danger. These statements do not affect the question of the defenders' liability in the circumstances narrated."

The pursuer appealed, and argued—The Sheriff-Substitute gave a fair statement of the case, and it was admitted that this case must be differentiated from that of *Prentice* cited *supra*, if the pursuer was to succeed, but there were two differences between the cases. In the case of *Prentice* it was proved that the pursuer had been walking on grass, so that he must have been aware he was not on a high road, whereas here the pursuer was admittedly on a road which led to the pond; and secondly, the case of *Prentice* had been decided after inquiry.

Counsel for the defenders were not called on.

At advising—

LORD JUSTICE-CLERK—The pursuer was going along the public road, and when he came to a particular point he turned a corner into what was really an unformed street. It was paved for some distance where he turned into it, but it afterwards went over open ground without any road at all. He went a considerable distance over this open ground, and it must have been quite plain to him that he was not upon the public road, and after going on for some time he fell into a bog.

In my opinion, the case falls quite within the principle of the case of *Prentice* v. *The Assets Company, Limited*, 17 R. 484, and the pursuer has not stated a case that can go to trial.

LORDS YOUNG, RUTHERFURD CLARK, and TRAYNER concurred.

The Court dismissed the appeal.

Counsel for Pursuer—A. S. D. Thomson—Deas. Agent—A. B. Kinnison, S.S.C.

Counsel for Defenders — Jameson — Macphail. Agent—F. J. Martin, W.S.

Tuesday, October 30.

FIRST DIVISION.

TURNER *v.* BOARD OF TRADE.

Ship—Shipping Casualty Appeal—Procedure before Court of Investigation—Duty of Board of Trade.

In an investigation held at the instance of the Board of Trade into the stranding of a vessel, the court of inquiry found that the master had been in default in neglecting to verify his position by the use of log and lead, and suspended his certificate for six months.

On appeal the Court (*diss.* Lord Adam) *reversed* the decision of the court of inquiry, *holding* that, it being a question of circumstances whether or not in omitting to use log and lead the master had been guilty of neglect warranting the suspension of his certificate, the Board of Trade had failed to possess the Court fully of the circumstances leading to one conclusion or the other, in respect (1) that, having examined the master as a witness, they had failed to question him as to his reason for omitting to use log and lead; and (2) that they had failed to produce reliable evidence as to the state of the weather, although it was in their power to have done so.

At an investigation under the Merchant Shipping Acts 1854 to 1887, held at Glasgow before the Sheriff-Substitute (BALFOUR) assisted by two nautical assessors, into the circumstances attending the stranding of the s.s. "Samara" of Glasgow, on or near Cannon Rock, County Down, on 1st August 1894, the Court of Inquiry reported as follows:—"The Court . . . finds that the stranding of the 'Samara' was caused by the master shaping too fine a course from the Codling Light-vessel, neglecting to verify his position by the log and lead, and failing to make sufficient allowance for tide. The Court therefore finds the master, John