

agreement or bond. I am of opinion that it is not a promissory-note. I am also of opinion that it is not a receipt or an agreement or a bond. Of course I mean that it is none of these things within the meaning of the Stamp Act. I am further of opinion that it does not require any stamp. What its force may be as establishing a debt against the bankrupt's estate I do not know. I have not to form any judgment or express any opinion on that point. It may or it may not establish the claimant's claim of debt in whole or in part. All I can give an opinion upon is that it ought not to be rejected because it has not a promissory-note or a receipt or an agreement or bond stamp upon it. I think the Sheriff-Substitute's interlocutor should be adhered to. It decides nothing more than that this document is to be received as an item of evidence in support of the claim. I say nothing for or against the contention that it is sufficient to establish the claim. We cannot be called upon to decide that question, for it has not been decided by the trustee. I therefore suggest that we should refuse the appeal with expenses.

LORD TRAYNER—I agree. I think the grounds on which the trustee proceeded in rejecting this claim are untenable. If it be the case, as the trustee understands, that the claimant and the bankrupt are conjunct and confident, that will afford a good reason for the trustee exercising his right to call for further evidence or explanation before admitting this claim to a ranking. But it is not a ground for rejecting the claim *de plano*.

LORD MONCREIFF—I am of the same opinion. I think this document is neither a promissory-note nor a receipt nor an agreement within the meaning of the Stamp Act. It is plainly only a jotting or note showing the state of account between the parties, written a long time after the loan was made. It may or may not of itself be conclusive evidence of the subsistence of a debt, but I agree that that is a matter which the trustee must decide for himself. All we decide is that the writing is competent evidence of loan, and should be received and considered though unstamped. I think we should sustain the judgment of the Sheriff-Substitute and remit the case to the trustee.

The LORD JUSTICE-CLERK was absent.

The Court pronounced the following interlocutor:—

“Dismiss the appeal and affirm the interlocutor appealed against: Find the appellant liable in expenses, and remit the same to the Auditor to tax and to report to the Sheriff, to whom remit the cause, with power to him to decern for the taxed amount of said expenses.”

Counsel for the Appellant (the Trustee)—  
Craigie. Agents—Carmichael & Miller,  
W.S.

Counsel for the Claimant and Respondent  
—Crole. Agent—W. B. Rainnie, S.S.C.

VOL. XXXIV.

Wednesday, July 14.

FIRST DIVISION.  
SCHOOL BOARD OF CRIEFF,  
PETITIONERS.

*Trust—Mortification—Petition for Amendment of Scheme by Recipients—Objection by Governor—Competency.*

The School Board of C, owing to changes made by the Boundary Commissioners, became the natural recipients of a grant made annually out of the funds of a mortification to the School Board of M, and presented a petition, with the approval of the governors of the mortification and the School Board of M, craving the Court to amend the scheme of administration, by substituting their name for that of the School Board of M, as the recipients of the grant, and to reduce the amount payable from £15 to £10 per annum, on the ground that the latter sum would be sufficient for the expense of carrying out the purposes for which the grant was made. The proposed scheme was remitted to a reporter. One of the governors of the mortification lodged a minute craving the Court to consider the question as to whether payment of any part of the grant should be made to the present petitioners, and to remit back to the reporter for that purpose. The Court held that this question was not appropriately raised under the petition, and granted the prayer of the petition.

A petition was presented by the School Board of the parish of Crieff “to amend or alter the present scheme for the administration of the Innerpeffray Mortification, approved by Order of the Privy Council of date 19th August 1889.”

By the clause proposed to be amended the governors of the Innerpeffray Mortification had power to grant the use of the school and teacher's house at Innerpeffray to the Muthill School Board, and to pay the board an annual sum of £15 under the condition of its keeping up the house and school, and maintaining a school there. The Boundary Commissioners having transferred to Crieff from Muthill that part of the parish where Innerpeffray School is situated, the petitioners presented this petition for the purpose of having the administration of the school handed over to them, and both the School Board of Muthill and the governors of the mortification declared their willingness to agree to the transfer.

The petitioners stated that they were willing to restrict the payment to be made to them under the section before mentioned to the sum of £10 per year, which sum had been found sufficient to pay the charges of the school. Accordingly the alteration which they craved the Court to make in the scheme of administration was to substitute their name for that of the School Board of

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Muthill, and to change the amount payable from £15 to £10.

The petition was remitted to Mr Bremner P. Lee, advocate, to report "upon the regularity of the procedure, and upon the proposed alteration of the scheme."

Mr Lee reported that he had been called upon by one of the governors of the mortification, who objected to the annual payment of £10 to the petitioners, and who desired him to report fully on the question as to whether that payment should be made, but that the petition being merely one for removing an administrative difficulty, he had not considered it his duty to enter into this inquiry.

A minute was presented by the governor in question craving the Court "to remit back the petition to the reporter to report upon the question whether any part of the grant of £15 per annum . . . should be paid to" the petitioners.

The petitioners opposed the remit, and argued that it was incompetent in this petition to object to the scheme as at present existing.

**LORD PRESIDENT**—The petition in this application is not by the governors of the Innerpefferay Mortification, but by the School Board of the parish of Crieff. Owing to the change made by the Boundary Commissioners the School Board of the parish of Crieff, instead of the School Board of Muthill, is the natural recipient of the grant from the Innerpefferay Mortification. I say the natural recipient according to the arrangement embodied in the scheme settled in 1889. Now, the petitioners say that they do not require £15 a-year, but that £10 is enough for their needs, and accordingly their present proposal is that we should make the requisite change in the recipient of the grant, and limit the amount to their avowed requirements. Now, the minuter takes the occasion of this change being made to say that he is very much dissatisfied with the scheme, because in his view none of the money should go away from the library. That question may be an appropriate subject for another application to the Court, but what we do to-day, if we affirm the report and grant the application, will not affect the reconsideration of the question whether any of the money should be kept for the school, or whether all of it should be applied to the library. That question does not form the subject of this application, and has not been submitted to the Scotch Education Department, or anything of the kind, and I think we cannot entertain it.

**LORD ADAM, LORD M'LAREN, and LORD KINNEAR** concurred.

The Court approved of the report, and altered the scheme of administration as craved in the prayer of the petition.

**Counsel for Petitioners**—Clyde. Agents—Drummond & Reid, S.S.C.

**Counsel for the Minuter**—Grainger Stewart. Agents—W. & F. Haldane, W.S.

Wednesday July 14.

## SECOND DIVISION.

[Lord Kincairney, Ordinary.]

### BAIKIE v. WORDIE'S TRUSTEES.

#### *Reparation—Negligence—Landlord and Tenant—Defective Drainage.*

A tenant is not entitled to damages against his landlord for loss resulting from the insanitary condition of the premises let unless he proves that their insanitary condition was known to the landlord, or that he was otherwise in fault.

A tenant, in an action of damages against his landlord for injury to health and loss resulting from the defective drainage of the subjects let to him, averred that the buildings were old, and that the drains had not been examined for seven years. He further averred, with a view to showing that the defender knew of the condition of the drains before the beginning of the tenancy, that "complaints have been made to the defenders by previous tenants regarding the insanitary condition of the premises." *Held* that these averments were irrelevant—the latter for want of specification.

*Opinion reserved* whether the tenant of insanitary premises is entitled to recover from his landlord the expense incident to his removal to other premises.

This was an action at the instance of William Baikie, bird dealer and grocer, Leith, against the trustees of the late William Wordie of Millersneuk, Lenzie. The pursuer sought damages for the loss and injury caused to him through the insanitary condition of a house and shop let to him by the defenders at a rent of £16, 10s. per annum, for the period from Whitsunday 1886 to Whitsunday 1897.

The pursuer averred—" (Cond. 2) . . . For many years prior to the pursuer's occupation the premises had been occupied by different tenants as a house and shop. Complaints have been made to the defenders by previous tenants regarding the insanitary condition of the premises. (Cond. 3) The pursuer took possession of the said premises on 28th May 1896, and placed in the shop his stock-in-trade, consisting of, *inter alia*, a number of fancy birds which were of considerable value. No sooner were the birds placed in the said premises than they began to droop and pine away. In a few days all the birds had died. The pursuer informed the defenders of what had occurred, and they sent a plumber who examined and made some repairs on the gas pipes in the premises. (Cond. 4) When the plumber had finished his work the pursuer got another lot of birds, but they also drooped and died in the same way, and in about the same length of time as the first lot. This happened about the end of June 1896, and the pursuer again informed the