credibility, and we are left in the position of having the pursuer's evidence amply corroborated while no regard falls to be paid to the counter-evidence of the defender.

I have therefore no doubt that the pursuer has proved her case, and indeed there are few occasions in which I have felt more confidence that the legal result at which we have arrived corresponds with the truth and justice of the case.

LORD GUTHRIE was absent.

The Court recalled the interlocutor of the Sheriff-Substitute and granted decree in terms of the conclusions of the initial writ.

Counsel for the Pursuer and Appellant —A. A. Fraser. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defender and Respondent —Lippe. Agents—Douglas & Miller, W.S.

Thursday, June 19.

FIRST DIVISION.

(EXCHEQUER CAUSE.)

HENDERSON'S TRUSTEES *v.* INLAND REVENUE.

Revenue—Stamp Duty—"Deed"—Minute of Acceptance of Office of Trustee—Stamp Act 1891 (54 and 55 *Vict. cap.* 39), *First Schedule*

The First Schedule of the Stamp Act 1891 specifies amongst the several duties to be charged the following:—"Deed of any kind whatsoever not described in this Schedule. . . . 10s."

Held that a minute of acceptance by trustees of the office of trustee conferred upon them by a trust-disposition and settlement, engrossed at the end of the trust-disposition and settlement and signed by the trustees before witnesses subscribing, was not liable to be assessed with 10s. or any other duty.

George Duke M'Nicoll, solicitor, Kirriemuir, and others, the trustees acting under the trust-disposition and settlement of the late Mrs Eliza Lennox Fraser or Henderson, who resided at 10 Queen's Gate, Dowanhill, Glasgow, *appellants*, and the Inland Revenue, *respondents*, brought a Stated Case.

The appellants had presented a minute of acceptance by themselves of the office of trustee, conferred upon them under the trust-disposition and settlement, to the Commissioners of Inland Revenue, and had required them in terms of section 12 of the Stamp Act 1891 (54 and 55 Vict. c. 39) to express their opinion as to whether the minute was chargeable with any duty. The *minute*, which was engrossed at the end of the trust-disposition and settlement, was in the following terms:—"We, George Duke M'Nicoll, solicitor, Kirriemuir, . . . do hereby accept the offices of trustee and executor conferred upon us by the foregoing trust-disposition and settlement. In witness whereof this minute written by William Nicol, clerk to Baird Smiths, Muirhead & Guthrie Smith, writers in Glasgow, is subscribed by us all at Glasgow on the fourth day of August Nineteen hundred and ten, before these witnesses, the said William Nicol and William John Wilson, commissionaire to the said Baird Smiths, Muirhead & Guthrie Smith. (Signed) George D. M'Nicoll. . . . William Nicol, *witness*; W. J. Wilson, *witness*." The Commissioners were of opinion that the minute was chargeable under heading "Deed of any kind whatsoever not described in this schedule" in the First Schedule to the Stamp Act 1891, and assessed it to the duty of 10s., and required payment of that duty. The trustees thereupon paid the duty, but being dissatisfied with the assessment, required the Commissioners to state a Case.

The *question of law* for the opinion of the Court was—"Whether the said instrument is liable to be assessed and charged with the said duty of 10s.; or, if not liable to be assessed with that duty, with what other stamp duty, if any, is it liable to be assessed and charged."

Argued for the appellants—The word "deed" in the Stamp Act 1891 was "deed" in the English sense of the word. It was a term of art and did not apply to a writing such as the present. The present writing lacked all the requirements necessary to make it a deed—Stroud's Judicial Dictionary *sub voce* "Deed"; Bell's Lectures on Conveyancing (3rd ed.) p. 205; *Fleming* v. *Robertson*, June 17, 1859, 21 D. 982; *Regina* v. *Newton*, April 26, 1873, L.R. 2 Crown Cases Reserved, 22; *Smyth* v. *Latham*, April 23, 1833, 9 Bingham 692, *per* Tindal C.J., at p. 709; *Routledge* v. *Thornton*, November 28, 1812, 4 Taunton 704; *Commissioners of Inland Revenue* v. *Angus*, 1889, L.R., 23 Q.B.D. 579. "Deed" as a term of art was a writing by which some obligation was set up or under which rights passed. Here the acceptance in itself established no rights or obligations, it was merely a record of something that had been done.

Argued for the respondents—Any instrument executed with certain formalities which established a relationship in law, creating, altering, or terminating rights, was a deed in the sense of the Act and liable to duty. The acceptance by the trustees was such an instrument. It established a jural relationship, or at least completed one partly established by the trust-disposition and settlement.

At advising—

LORD PRESIDENT—This is an appeal as to an assessment of stamp duty of 10s. which was made in respect that upon a trust-disposition and settlement there was engrossed an acceptance of trust by two of the trustees who had been named in the trust-disposition and settlement, which acceptance was signed and tested. The

ground on which the Inland Revenue attempt to justify the assessment is the part of the schedule of the Stamp Act which says "Deed of any kind whatsoever not described in this schedule, 10s.'

Now the Stamp Act does not define what a deed is, and I think it unnecessary to consider whether the word "deed" is there used as a term of art, because in any case it is only in England that it is so used. I am quite content to take "deed" as being used in the popular sense. The statute has not defined what a deed is, and I am not tempted to define it either; but I am certainly clearly of opinion that, whatever is a deed, this acceptance of trust is not, and I do not suppose that anyone could be found in the legal profession who would ever dream of calling it any such thing.

The acceptance by trustees, in usual practice, is made by the first minute in the trust sederunt book. Here they thought it would be a good thing to write it on the trust settlement, and in order, I suppose, to allow the trustees not to have the trouble of writing it holograph, it was signed and tested. To engross it in the manner I have described upon the trust-disposition was quite unnecessary but quite innocuous; and to suppose that that constituted the acceptance a deed is contrary to ordinary common sense and common parlance.

An attempt was made—as an attempt, of course, had to be made—by the learned counsel arguing for the assessment to say that this was a deed because it was something which constituted a new legal relation. Well, it did constitute a legal relation. But that attempted definition will never do. According to that you could not endorse an ordinary bill of exchange without a 10s. stamp, because you undoubtedly constitute a new legal relation when you endorse a bill of exchange. And many other examples might be suggested. According, to that argument, if you wrote a letter accepting sombody else's offer, you would have to put a 10s. stamp, on it, for it would constitute a new legal relation.

I am of opinion that the assessment is wrong, and that the appeal should be allowed.

LORD KINNEAR—I am entirely of the same opinion, and I agree with your Lordship that for the purpose of this case the word "deed" is a word of ordinary language because it is not in our system a term of art. I agree also that it is unnecessary to attempt any exact definition of what the word "deed" means; but I take the definition which was suggested in the ingenious argument for the Inland Revenue, in which it was said that a deed was any formal—instrument which creates a legal relation. Now this writing is certainly formal—indeed it is unnecessarily formal and cumbrous for the purpose for which it is made, but it does not by itself create any legal relation whatever. Taken by itself it is nothing; it has no effect or meaning at all. Its whole force depends upon its reference to the foregoing trust-disposition and settlement, which is undoubtedly a deed in the ordinary sense in which we use the word. It is an acceptance of the office conferred by the trust-disposition and settlement. It is a mere note of acceptance which might have been made in any form, or which might have been dispensed with altogether if the persons named as trustees were willing to act, because their attendance at meetings and a note to the effect that they had been present was quite enough.

It is true, of course, that the trust-disposition does not in itself constitute the particular persons as trustees until they do accept; but, so far as anything like a deed is concerned, it is that instrument, and that instrument alone, which creates the trust. The fact of acceptance may be proved by writing or by parole, and if by writing, by any informal note under the hand of a trustee or by any note made by the agent of the trust at a meeting of the trustees.

I therefore agree with your Lordship that the assessment here was wrong and that the appeal should be allowed.

LORD MACKENZIE—I am entirely of the same opinion.

LORD JOHNSTON was not present.

The Court pronounced this interlocutor—

". . . Sustain the appeal . . . : Find the instrument in question is not chargeable with any stamp duty: Order the said Commissioners to repay to the appellants the sum of ten shillings, being the amount of the duty paid by the appellants. . . ."

Counsel for the Appellants—Clyde, K.C.—Macquisten. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Respondents—Solicitor-General (Anderson, K.C.)—J. A. T. Robertson. Agents—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Thursday, June 19.

SECOND DIVISION.

[Sheriff Court at Glasgow.

M'GOWAN *v.* CITY OF GLASGOW FRIENDLY SOCIETY AND ANOTHER.

Friendly Society—Arbitration-Jurisdiction—Dispute between Member and Society—Friendly Societies Act 1896 (59 *and* 60 *Vict. cap.* 25), *sec.* 681.

The Friendly Societies Act 1896 enacts:—Section 68 (1)—"Every dispute between (*a*) a member . . . and the society . . . shall be decided in manner directed by the rules of the society or branch, and the decision so given shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction; and application for the enforcement there-