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PRESENT,

LORDS CHIEF COMMISSIONER AND MACKENZIE.

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DOUGALL v. RENFREWSHIRE BANK.

DOUGALL  
v.  
RENFREWSHIRE  
BANK.

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1830.  
July 26.

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THIS was a multiplepounding brought in name of the defenders for the purpose of trying the validity of an order, without a stamp, granted by the late Captain Dougall for the sum of L. 900.

An heir claiming from a banker a sum of money paid on an unstamped order by his ancestor, must prove that the banker knew that the place at which the order was dated was more than ten miles from the bank.

ISSUE.

“ It being admitted that the pursuers are  
“ representatives of the late Captain James  
“ Dougall of Gourock,—

“ Whether, on or about the 28th day of July  
“ 1827, there was, in the bank of the defend-  
“ ers at Greenock, on deposit-account, the sum  
“ of L. 900, the property of the late Captain  
“ James Dougall ; and whether the defenders  
“ are indebted, and resting owing to the pur-  
“ suers in the said sum of L. 900 ?

*Wood* opened for the pursuer and said,—The question is, whether the defenders are due L. 900 which they paid on an unstamped order,

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dated more than ten miles from their place of business. By 55 Geo. III. c. 184. § 2, such an order is declared null, and we are entitled to payment, unless the Bank discharge themselves.

*Hope, Sol.-Gen.*—This is a question on the construction of the statute, and we wish the opinion of the Court on the first and second sections. We do not admit, that giving the money on this order was payment.

LORD CHIEF COMMISSIONER.—Does not the case depend on the *scienter*? In considering it, my attention was drawn to § 13, which refers to an order *known* to be issued beyond the ten miles.

*Jeffrey, D. F.*—They state that this is a document requiring a stamp, and that it is not stamped. If any question is to be raised as to the payment of the money, I must then withdraw my admission that it was in the Bank. But they admit on record that it was paid, and are not entitled to cavil as to there being no voucher. They wish to drop § 13 of the statute.

LORD CHIEF COMMISSIONER.—It appears to

me, that the question is for paying the money on an order without a stamp; that the Bank paid in their own wrong; and that the pursuers were entitled to claim as if the money was still in the Bank. The defence of the Bank is, that, though beyond the ten miles, they did not know it.

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The two questions are, Whether this is a probative instrument? And Whether, if probative, the Bank knew it to be dated more than ten miles from their place of business? On the first I am bound to decide on the view of it, that this is a probative instrument without a stamp, and having it before us, we get to the other question.

The pursuer failed to prove the knowledge of the Bank, and gave up the case.

**Verdict—For the defender.**

*Hope, Sol.-Gen., and A. Wood, for the Pursuer,  
Jeffrey, D. F., Robertson, Scott, Dunlop, and Aytoun for the  
Defender.*

*(Agents, Robert Welsh, s. s. c. Pearson, Wilkie, and Robertson, w. s.)*