not, you would probably not have much difficulty in inferring from the internal evidence of the letters themselves a pretty clear proof of the spirit in which they were written; for it is impossible that any human being, male or female, in whatever condition of life he or she may be, could have put such expressions on paper without the most determined malice against the persons to whom these letters were written. But, gentlemen, it is my duty to tell you in point of law that that is not the question for your consideration at all. The writing or sending of letters expressed in these terms is in itself in the eye of the law a crime, no matter what the motive. Supposing it be perfectly true that all that was designed was frolic, the writing and sending of such letters as these would still be a crime, and the counsel for the prisoner seriously misunderstood the true and proper meaning of those words which express the quality of the act charged against the panel, that she did wickedly and feloniously write and send these letters. Every crime is wicked and felonious, and the moment you arrive at the conclusion that the act charged against the prisoner is a crime, that of itself is sufficient proof of wicked and felonious intent. The words mean no more than that the act is criminal. If the act is shown to be criminal, from the nature of the act itself there is no necessity for any proof of malice as regards any of the ordinary crimes of law known to the prosecutor. Just consider the ordinary case of any other crime. A person is charged with an act of theft or swindling and obtaining money under false pretences. It is proved that a person enters my house and carries off part of my property, do I require to prove malice? Does the prosecutor require to show an intent? That was never heard of in the criminal law of Scotland. The commission of an act in itself criminal is sufficient proof of itself of the wicked and felonious character of the act. Therefore, gentlemen, if you find it proved that letters containing threats against the life and property of the persons addressed have been written and sent by the accused, you have no alternative but to find the prisoner guilty of the offence itself. The question whether there was a very deeply-seated malice or purpose in committing an act of this kind may have a serious effect on the question of punishment, but does not in the slightest degree touch the question of fact you have to try—namely, whether a letter answering the description of a threatening letter, containing threats of death to a party and of setting fire to his dwelling-house, has been written and sent by the person charged. That is the simple issue of fact you have to try, and you will be kind enough now to consider what your verdict is.

The jury, after an absence of about ten minutes, returned a verdict unanimously finding the prisoner guilty as libelled, and she was sentenced to penal servitude for five years.

COURT OF SESSION.

Tuesday, Jan. 16.

FIRST DIVISION.

MUNRO *v.* CALEDONIAN BANKING CO.
MACKINTOSH *v.* CALEDONIAN BANKING CO.

Reduction—Suspension—Cash-Credit Bond—Issue.

A bank is not responsible for fraud committed by a party, to whom they agree to grant a cash-credit, upon persons whom he induces fraudulently to sign the bond of caution for its payment, and issue to prove such fraud in an action against the bank *disallowed.*

Counsel for Suspenders—The Solicitor-General and Mr Watson. Agent—Mr L. M. Macara, W.S.

Counsel for Respondents—Mr Gordon and Mr Millar. Agents—Messrs Adam & Sang, S.S.C.

These were two suspensions of charges by the Caledonian Banking Company, the one to James Munro, tenant, Kincardine, and the other to John Macintyre, farmer, Drummuie, near Golspie, to pay the sum of £200 contained in a cash-credit bond granted by the bank to Robert Macintyre, parochial teacher and inspector and collector of poor-rates, Kincardine. There was also in each case a summons of reduction, which was held as repeated.

The suspender John Macintyre averred that in 1858 he had become cautioner to the Parochial Board of Kincardine for the intromissions of his son Robert, who in 1860 came to him and told him that as a new chairman had been elected by the board it was necessary for him to sign a new bond for the same amount as the old one. Robert then produced a document, which he pretended was the new bond referred to, and the suspender, upon the faith of his son's representations to that effect, signed the document without reading it or hearing it read, and in the belief that it was a document of the character and to the effect represented by his son.

The suspender Munro averred that in 1860 Robert Macintyre asked him to become cautioner along with his father for a sum of £40, which he proposed to borrow on the security of his life insurance policy, and that he agreed to do so. Robert Macintyre thereupon took him to the office of the respondents' agent at Bonar Bridge, where there was a bond already signed by John Macintyre and Robert Macintyre. The suspender seeing these names at once signed the document without having read it or heard it read over, and in the belief that he was signing a bond for £40 to an insurance office.

Both suspenders averred that if the signatures to the bond charged on were theirs, they must be the signatures which were obtained from them in the fraudulent manner described by each of them. They also averred and pleaded that the bank had entrusted the bond to Robert Macintyre in order to its execution, and had in this way become responsible for the fraud committed by him. They also pleaded that in the event of one or other of them being liberated by reason of Robert Macintyre's fraud or otherwise, the other was entitled to be free also. The case of Paterson *v.* Bonar, 9th March 1844 (6 D. 987), was referred to in support of this plea.

Another ground of suspension and reduction was that in each case the bond was not subscribed in presence of the alleged instrumentary witnesses, and was therefore invalid.

The suspenders proposed two issues, the first putting the question, "Whether the pursuer was induced to subscribe the bond by the false and fraudulent representations of the defenders or those for whom they are responsible;" and the second, in regard to the instrumentary witnesses. The second issue was not objected to by the defenders, but they objected to the first on the ground that there was no allegation of fraudulent representation by them, or by anyone for whose proceedings they were responsible. It was urged for the suspenders, on the authority of Paterson *v.* Bonar, that when a party procures the signatures of cautioners to a cash-credit bond, the bank is liable for any deceit practised on the cautioners. They also proposed a third issue in each case in order to keep open their plea as to the one being free if the other was liberated, but it was admitted by the defenders that this plea would be quite open after a verdict.

The Court allowed the second issue, which was not objected to, and disallowed the others with expenses. The Lord President observed that the present cases were different from that of Paterson *v.* Bonar. In that case one of the cautioners had not subscribed the bond. Here what is alleged is that the party for whose benefit the bond was obtained had defrauded the cautioners. It seems to be quite a novelty to say that a bank is liable for such a fraud. Such a doctrine would make bonds of caution of no use at all. It is the duty of the party obtaining the credit to furnish a sufficient bond, and it would never do to hold that a bank was liable for

the fraud of a person whose representations had been trusted to, but whose fraud would have been at once discovered if the parties had taken the trouble to read over the document before signing it.

MP.—NIVEN *v.* STOCKS AND OTHERS.

Trust Settlement—Construction—Intestacy. It is no part of the duty of the Court to make a provision in regard to a truster's estate which he has not made himself, and therefore the fee of his estate which he had not destined to anyone in an event which did occur, held (alt. Lord Ormidale) to be intestacy, and to belong to his heir-at-law.

Counsel for Niven—Mr Gordon and Mr John Hunter. Agent—Mr W. N. Fraser, S.S.C.

Counsel for Stocks—Mr Patton and Mr Mackenzie. Agents — Messrs Morton, Whitehead, & Greig, W.S.

This was an action of multiplepoinding and exoneration raised by Mr Niven, C.A., as judicial factor on the trust-estate of the deceased William Kirkland, innkeeper at Kinross. The question involved had reference to the construction of Mr Kirkland's deed of settlement and certain codicils thereto.

By the deed of settlement, dated in 1825, it was provided that after the death of the truster's widow the estate should be held by the trustees for the purpose of paying over the yearly produce thereof to his only child Mary Kirkland or Stocks, and in the event of her death that the trustees should denude and make over the whole estate to her issue, if only one child, on his or her attaining the age of twenty-five, and if more than one, on the youngest attaining majority or being married. In the event of the truster's daughter dying without lawful issue, or her only child (James Stocks) dying before attaining twenty-five years without issue, the truster directed his trustees to sell the whole estate and pay over the residue to his brothers and sisters in equal shares. By a codicil dated in 1831 the truster so far altered his settlement as to declare that in the event of his daughter having no other child than the said James Stocks, he should, even though he shall have attained the age of twenty-five years of age, have no more than a liferent interest in the estate, unless he married and had lawful issue, on the occurrence of both of which events the trustees were to denude in his favour.

The truster died in 1836. His widow died in 1842. His only child, Mary Kirkland or Stocks, died in 1863, leaving only one child, James Stocks, who now claimed the whole fund *in medio*. He is a widower, but has never had issue, and therefore is excluded from the fee of the estate by the terms of the codicil. He maintains, however, that as the conditions on which the truster provided that his estate should be divided among his brothers and sisters can now never occur, he being now forty years of age he is entitled to the fee as his grandfather's heir-at-law and sole next-of-kin, the succession having by force of circumstances become intestacy. The judicial factor, with concurrence of the representatives of the brothers and sisters of the truster, opposed this claim, and contended that James Stocks was only entitled to a liferent, and had no right to the fee, in respect one of the conditions on which he was to succeed thereto, namely, his having lawful issue, had not been fulfilled. He also pleaded that in the event of the liferent lapsing by the death of James Stocks without having lawful issue, the residue fell to be divided among the brothers and sisters of their descendants.

The Lord Ordinary (Ormidale) held that James Stocks was entitled under the codicil to no more than a liferent. He also indicated an opinion that on Mr Stocks' death without issue the brothers and sisters would be entitled to succeed, but he held that it was premature to decide this matter as Mr Stocks might yet have issue. He thought any other view was inconsistent with the plain intention of the truster. Mr Stocks reclaimed; and the Court to-day unanimously altered Lord Ormidale's interlocutor.

The LORD PRESIDENT said—The deed of settlement here, taken by itself, is not difficult of construction. The trustees were to denude in favour of the only child of the truster's daughter on his attaining the age of twenty five; and in the event of his dying before twenty five, and leaving no issue, they were to denude in favour of the Kirklands. But the question is whether the alteration in the codicil had the effect of not only limiting Mr Stocks to a liferent unless he married and had issue, but also of giving the fee, in that event, to the Kirklands. This is a trust-deed, and these codicils and writings must be read as instructions to the trustees. Such instructions do not require to be expressed in formal words of conveyance. The truster had perfect power to deal with his estate as he pleased; and he has provided, in regard to the fee, for the event of James Stocks dying without issue before twenty-five; but for the event of his attaining twenty-five, but not marrying or not having issue, there is no provision. The original deed did not say that in the latter event, which has occurred, the Kirklands were to get the fee. Does the codicil say so? It does indeed contemplate such an event and on its occurrence deals with the liferent; but it does not say what is to be done with the fee. Now, it is a settled principle that the Court cannot interfere either in the way of instructing trustees or otherwise, in order to do what the truster has not done. The estate in such a case became intestacy. I am therefore of opinion that the heir's legal rights must prevail.

The other Judges concurred, and the claim of Mr Niven was accordingly repelled, and that of Mr Stocks sustained.

SECOND DIVISION.

SCEALES *v.* SCEALES AND OTHERS.

Practice. Motion by defenders in a declarator of marriage that the pursuer should be ordained to furnish them with her present address or place of residence (alt. Lord Ormidale, diss. Lord Cowan), *refused.*

Counsel for Pursuer—Mr Scott. Agent—Mr Scotland, S.S.C.

Counsel for Defenders—The Solicitor-General and Mr Monro. Agents—Messrs Melville & Lindesay, W.S.

This is an action of declarator of marriage, at the instance of Ellen Darsie or Sceales, who is designated in the summons as "residing in London, widow of the deceased Stewart Sceales, formerly of Customs, Leith, latterly residing in Aberdeen." The pursuer alleges that she became acquainted with Mr Sceales about the end of 1852, while she was in the service of his sister; that he then commenced a courtship, and afterwards made her a promise of marriage, upon the faith of which she allowed him to have carnal connection with her. The pursuer alleges further that a child was born of the marriage, and that in 1860 she separated from her husband, who had delayed to make a declaration of his marriage, *in facie ecclesiæ*, from fear of his relatives. Between the period of her first acquaintance with Sceales and her separation from him in 1860, she says that they lived as man and wife in different places in Scotland and in England. Sceales is dead, but his representatives and others who defend this action deny the promise of marriage, and say in answer to one of the pursuer's statements, that "before her intimacy with Stewart Sceales, and during and after that intimacy, the pursuer led a loose and irregular life."

A motion was made in the Outer House by the defenders that the pursuer should be appointed to state her present residence or give her address, and