

of the complainer to perform the duties of the office which he held. I am of opinion that in these circumstances, and having regard to the fact that this was a burgh school, and not one of the parochial schools, the respondents were entitled to dismiss the complainer, and that he is not entitled to the interdict which he here asks.

LORD PRESIDENT—I concur entirely in the opinion of Lord Mure, and I abstain from giving any opinion on the question whether the 60th section of the statute applies to those higher class public schools which are specially dealt with in the 62d and 63d sections, and some of which, including this school of Elgin, are specified in Schedule C attached to the Act. We adhere.

The Court refused the reclaiming-note and adhered to the interlocutor of the Lord Ordinary except as to expenses; found no expenses due either in the Outer or Inner House, in respect the point on which the respondents ultimately succeeded was not stated in their answers.

Counsel for Complainer—Pearson—Dickson. Agents—Carment, Wedderburn, & Watson, W.S.

Counsel for Respondents—Mackintosh—Guthrie—Orr. Agents—Phillip, Laing, & Co., S.S.C.

Friday, June 1.

SECOND DIVISION.

[Lord Kinnear, Ordinary.]

PATTISON v. MACINDOE AND OTHERS.

Property—Title.

In 1790 the proprietor of the lands of D. disposed a small portion of these lands. Through the lands so disposed there ran the tail-race of a mill which was situated on the lands of B. In 1832 a succeeding proprietor of D. purchased the lands of B., and some months afterwards he reacquired part of the portion of D. previously disposed, which was of small extent, but contained the tail-race already mentioned. Under this proprietor's trust-settlement the estates of B. and D. were destined to different series of heirs, and the heir entitled to the estate of B. claimed the portion formerly belonging to D., and rejoined to it in 1832, on the ground that it had been intended by the proprietor that it should be regarded as a pertinent of B., as being essential to the beneficial use of B., and of no value to the estate of D. He also founded on a charter of *novodamus* granted by the heir who had succeeded to D., and who was superior of his estate of B. *Held* (1), on a construction of the deeds granted by the proprietor of the two estates, that he did not intend to attach to B. the piece of ground in question; (2) that it was not attached to B. by the charter of *novodamus*, and therefore that it belonged to the estate of D.

William Dunn of Duntocher by disposition and deed of settlement in 1830 conveyed his whole estate, heritable and moveable, after his death to Alexander Dunn, his brother. William Dunn was then, and at the time of his death, proprietor of (1) the lands of Dalmuir, which he had acquired in 1828, (2) the superiority of the adjoining lands of Boquhanran acquired in 1826, and (3) the *dominium utile* of Boquhanran acquired in April 1832. This settlement contained a destination (which was to take effect in the event of Alexander Dunn's dying intestate, without heirs of his body, and without altering the destination) by which he provided that his "lands of Mountblow and Dalmuir, and the superiority of that part of the lands of Boquhanran feued out by the late Sir Charles Edmonstone to Edward Collins of Dalmuir, with the feu-duty of three hundred pounds sterling, and casualties of superiority thereto attached, shall fall and devolve to the eldest lawful son of" Mrs Pattison, his niece, whom failing to certain other heirs. He also provided that the residue of his estate, heritable and moveable, should fall and devolve to, and be divided equally or share and share alike among, the whole lawful children of his nieces Mrs Pattison, Mrs Macindoe, and Mrs Black, including and comprehending their eldest sons or daughters who might succeed to the portions of his estates therein specially before mentioned.

The pursuer of the present action, Alexander Dunn Pattison, was the only son of Mrs Pattison.

William Dunn died in 1849, and was succeeded in his whole estates by his brother Alexander Dunn, in virtue of his settlement. Alexander Dunn, who made up his title by service as heir-at-law of William Dunn, died on 15th June 1860, leaving a trust-disposition and settlement dated 11th June of that year, by which he attempted to alter the destination of the lands in favour of Alexander Dunn Pattison contained in William Dunn's settlement, by conveying them to certain trustees. Alexander Dunn's settlement was, at the instance of Alexander Dunn Pattison, so far as affecting his interest in the lands destined to him by William Dunn, reduced *ex capite lecti* by decree of the Court of Session in March 1866 (March 9, 1866, 4 Macph. 555), affirmed by the House of Lords in July 1868 (July 23, 1868, 6 Macph. (H. of L.) 147). In order to make up a title through the heir-at-law of Alexander Dunn, who was under personal obligation as such heir-at-law to make over the lands to him, Alexander Dunn Pattison then raised against William Park of Boquhanran, nephew and heir-at-law of Alexander Dunn, an action of adjudication in implement of the personal obligation incumbent upon him under William Dunn's settlement. In this action he obtained decree in February 1869. The decree of adjudication contained a special description of certain pieces of ground included in the contract of excambion after mentioned.

In or about the year 1790 the company of proprietors of the Forth and Clyde Navigation had acquired from the then proprietor of the lands of Dalmuir certain portions of those lands. The ground so acquired consisted of the part on each side of the canal which had been cut up and used in the formation of its banks, and which

were known as "back-cuttings." The canal, the line of whose course lay east and west, or nearly so, was crossed from north to south on the lands of Dalmuir by the Dalmuir Burn, which flowed through a stone culvert underneath the canal. The boundary between the estates of Dalmuir and Boquhanran also crossed the canal from north to south some short distance east of the Dalmuir Burn. This burn supplied water to a mill on the estate of Boquhanran to the east of the burn and north of the canal by means of a lade, which left the burn still further to the north. The water, after being used in the mill, was carried southward by a tail-race situated to the east of the line of the burn, and running westward and southward till it rejoined the burn. Previous to 1792 the tail-race crossed the canal by a culvert of its own, eastward of the main culvert which carried the burn under the canal, but in that year its course was changed, and the old culvert ceased to be used, and the tail-race was carried westward along the north side of the canal and discharged into the burn at the north end of the main culvert. A subsequent increase in the volume of water in the tail-race rendered it dangerous, in the view of the Canal Company, to the safety of the canal that the old culvert should be re-opened.

In October 1832, and therefore some months after he had acquired Boquhanran, as already stated, William Dunn entered into a contract of excambion with the Canal Company, by which, on a narrative of these facts concerning the ground, burn, and tail-race, and of a desire on the part of the company that he should renounce right to re-open the disused tail-race and culvert, and of a desire on his own part to acquire the ground on each side of the canal called the "back-cuttings," formed by forming part of Dalmuir, he renounced for himself, and his heirs and successors in the lands of Dalmuir, all right to the disused culvert, and all right or claim of resuming possession of or re-opening the former tail-race, or for opening any other tail-race for the purpose of carrying the water through the smaller culvert; and bound and obliged himself that the water from the tail-race should in future be carried through the main culvert. He then disposed to the company, "in excambion and exchange for the said pieces of ground called back-cuttings, and for the stripes or slips of ground herein conveyed to him by the said company of proprietors," a house and some ground situated close to the canal. The company, on the other part, in consideration of the first party's renunciation of right in regard to the tail-race and culvert, and in excambion for the house, disposed to him certain pieces of ground delineated on a relative plan, and, *inter alia*, "All and whole that piece of back-cutting on the north side of the canal bank, situated to the east of Dalmuir Burn, through which back-cutting the present tail-race runs towards the larger aqueduct, and which piece of ground is marked *d d d*, and contains one rood and nineteen falls, bounded on the south by a dotted line marked on the plan 'Brink of Back-cutting';" and another piece of back-cutting on the other side of the canal immediately opposite, marked *f f* on the plan.

The decree of adjudication by which Alexander Dunn Pattison obtained, as above mentioned, the land to which he had right under

William Dunn's settlement, from Alexander Dunn's heir-at-law, contained a special description of certain pieces of ground conveyed to William Dunn by the contract of excambion, but did not include a special description of these two pieces of back-cutting contained in the contract of excambion, and referred to as marked *d d d* and *f f*, situated on either side of the canal, and which lay between the boundary of Boquhanran on the east and Dalmuir Burn on the west.

After William Dunn's death Alexander Dunn had completed a title to the back-cuttings conveyed in the contract of excambion by special service and instrument of sasine in 1852. William Park, who succeeded as his heir-at-law to the *dominium utile* of Boquhanran, had expedite a general service in that character.

In 1871 Alexander Dunn Pattison, as superior of Boquhanran, granted a charter of *novodamus* in favour of William Park of the lands of Boquhanran, and, *inter alia*, of the mill and pertinents to which water was supplied by the lead from the Dalmuir Burn, and carried back to it by the said tail-race, and which were there described as follows—"All and whole that mailing of land in Balquhanran, with the houses, barnyard, and pertinents, which were sometime possesst by John Denny; and likewise all and whole the corn mill of Balquhanran, with the mill-dam and paffle of land, with houses, buildings, yards, and pasturage, and whole pertinents whatsoever pertaining to the said mill and paffle, which was sometime possessed by Robert Lang and John Miller, millers there; as also all and whole the barley mill lately built upon the said lands of Balquhanran, which formerly was a mill for carrying on a pot manufactory, with the yard thereto, adjacent houses, and whole privileges and pertinents thereto belonging, all which were afterwards possesst by Matthew Bogle, merchant in Glasgow, William Robb, merchant there, Thomas Scott, baxter there, and John Telfer, silversmith there, all in company and partners for carrying on a barley manufactory, and which subjects were converted into a bleach-field, bleaching mills, paper mill and farm by Edward Collins, the said Edward Collins' grandfather, with the respective water-wheels and other wheels, and whole other machinery of whatever nature, belonging to the said several mills, together with the dam dykes or breastwork across the burn of Dalmuir above the said mill leads or aqueducts, watergangs and sluices, all belonging thereto, with the said burn and water itself, in so far as the said Sir Charles Edmonstone had right to use the said water or burn himself, but without any recourse on Sir Charles in regard to the said water or burn, the said William Park taking everything in regard to the right upon himself."

William Park died intestate in 1880. At his death the pursuer, Mr Black of Auchentoshan, and George Park Macindoe and others, representing his three sisters, succeeded as heirs-portioners to his estates, and took steps to make up their titles thereto. Alexander Dunn Pattison raised the present action against Mr Black and George Park Macindoe and the other heirs-portioners (including the pursuer himself), for declarator that he had the sole right of property in these back-cuttings *d d d* and *f f*, and to have the defenders ordained, on their title being completed, to con-

vey them to him in order to his making up a title to them as heir of provision under William Dunn's settlement, and therefore for adjudication of them in implement of the obligation of the defenders as heirs-at-law of William Park and of Alexander Dunn. He averred that he had when the previous adjudication was raised omitted to adjudge these back-cuttings, and that it was only when the titles of William Park's heirs-portioners came to be made up that he became aware that there were any back-cuttings at these points, they having long been occupied as part of the property of Dalmuir to which they belonged. The defenders denied that the back-cutting *d d d* (through which the tail-race ran) had been occupied as part of Dalmuir, and maintained that it formed part of the lands of Boquhanran, having been exclusively used and possessed as a pertinent of the same since the date of the excambion, and therefore belonged to Park's heirs-at-law. They stated that the titles of the heirs-portioners of William were in course of being made up, and that it was proposed to include in them the back-cutting *d d d*, which they averred the pursuer, after deliberately excluding from his title at the time of the adjudication, now claimed for the first time.

The pursuer pleaded—“(1) The pursuer having been found, by the judgments referred to, to be heir of provision of Alexander Dunn in the lands of Dalmuir and others, and entitled to adjudge the same in implement of his disposition and settlement, decree ought to be pronounced as concluded for. (2) The defenders, as representing the said William Park, having no right or title to the subjects libelled under the settlement of Alexander Dunn or otherwise, the pursuer is entitled to have decree as concluded for. (3) The statements for the defenders to the effect that the back-cutting *d d d* is or has become part of the lands of Collins Boquhanran being unfounded, the pleas stated for them ought to be repelled.”

The defenders pleaded—“(1) No title to sue. (4) The defenders as the heirs-at-law with the pursuer of the deceased William Park, are entitled to the property of the back-cutting *d d d*, so far as the same is situated on the east of the Dalmuir Burn, in virtue of the titles, and, *separatim*, as parts and pertinents of the lands, in virtue of the said titles and the possession following thereon. (5) The said back-cutting, if it ever formed part of the lands of Dalmuir, having ceased to do so prior to 1792, and having been used subsequent to that date up to 1832 in connection with the lands of Boquhanran, became, on the execution of the said excambion in the latter year, part of the said lands, and now belongs to the defenders as heirs-at-law of William Park, proprietor of the same. (6) The claim of the pursuer set forth in the present action cannot be maintained, because it is inconsistent with the terms of the said charter of *novodamus*, and, *separatim*, because the said tail-race is necessary to the beneficial enjoyment of the subject of the said grant.”

The Lord Ordinary, after proof, granted decree in terms of the conclusions of the summons.

“*Opinion*.—It is admitted that the piece of ground in dispute was originally a part of the Dalmuir estate, being on the Dalmuir side of the march between that estate and Collins Boquhan-

ran. At the date of the execution of the *mortis causa* conveyance under which the pursuer has right to the lands of Dalmuir, it belonged to the Forth and Clyde Canal Navigation Company, having been acquired by that company for the purposes of their undertaking. But before that conveyance came into operation by the death of the granter, the late William Dunn, it had been restored to the estate under a contract of excambion in 1832 between him and the Canal Company. It is not disputed that other pieces of ground in the same position which were re-acquired under the same contract of excambion were carried to the pursuer by the conveyance of Dalmuir in his favour; and I do not think it doubtful that the terms of that deed are apt and sufficient to carry the whole estate of Dalmuir as it stood at the date of the granter's death. But at the date of the excambion Mr Dunn was proprietor not only of Dalmuir but also of Collins Boquhanran; and it is said that the ground in dispute must now be held to form part of that property, because it is essential to its beneficial use, and has been occupied only in connection with that estate. But the use which the proprietor of Boquhanran had and may still have in the piece of ground in question is not inconsistent with a right of property either in the proprietor of Dalmuir or in some other proprietor of that particular piece of ground; and it is therefore impossible to infer from the mere fact of the use that Mr Dunn intended to annex it to the estate of Boquhanran, or to except it from the conveyance of the estate of Dalmuir. I am therefore of opinion that it must be held to be included in the conveyance of Dalmuir, since it is admitted that the boundary between that estate and Collins Boquhanran is well ascertained. It was for a time a portion of that estate in the hands of the Canal Company, and when they re-sold it to the owner of Dalmuir it still remained (in his hands) a portion of that estate. He might, if he had thought fit, have given that particular portion of the Dalmuir estate to the present proprietor of Boquhanran. But he did not do so in terms, and there is nothing in the conveyance granted by him to indicate an intention to do so. It appears to me that his conveyance to the pursuer carried the estate of Dalmuir as it stood in his person at the date of his death; and as this piece of ground was admittedly a part of that estate, and as it certainly belonged to Mr William Dunn at the date of his death, it follows that it now belongs to the pursuer.

“If the pursuer has right to it under William Dunn's conveyance, I think it clear that he did not abandon his right and convey it to the defenders by the charter of *novodamus* of 1871. It was no doubt competent for him, if he had intended to do so, to have enlarged the estate of his vassal in Collins Boquhanran by throwing into the charter of *novodamus* an additional piece of ground of which he then held the *dominium utile*. But there is nothing in the terms of the *novodamus* to indicate such an intention, and I see no reason for holding that the *novodamus* gave any right in Dalmuir which had not been already given out to the vassal by the earlier charters.

“If the pursuer has right to the property of the ground in dispute, it was admitted that he is entitled to decree in terms of the conclusions of the summons. It was conceded that no reserva-

tion was required in order to protect any servitude right which the defenders may have in the subjects; and I shall accordingly give decree as sought in the conclusions of the summons."

The defenders reclaimed.

Authorities—*Bank of Scotland v. Ramsay*, M. 16,404; *Ersk. ii.* 6, 5; *Castle v. Fox*, L.R., 11 Eq. 542.

Defenders' counsel were not called upon.

At advising—

LORD JUSTICE-CLERK—Mr Guthrie has done his best for his case, and it is one of some complication and difficulty owing to the matters which have been introduced into it from some previous litigations. But the state of the matter, divested of those extraneous considerations, is simply this—The ground in question is unquestionably part of the estate of Dalmuir, which belonged to William Dunn of Duntocher. That part of the estate, and some other portions of it, he made over to the Canal Company—the Forth and Clyde Canal Company—in 1792, but in 1830 he obtained a reconveyance to the particular portion we are now speaking about. That that was a part of the old estate of Dalmuir is quite certain, but a reconveyance was contained in a contract of excambion by which there was conveyed to or allowed the Canal Company to remain in possession of certain portions of their land for their navigation. On the other hand, they conveyed to William Dunn, in terms which I shall refer to, the particular portion of ground which is the matter in dispute. That particular portion of ground contains within it, and did contain at that time, the tail-race of a mill-race which was of material importance for a mill not situated at Dalmuir, but on the adjoining estate of Boquhanran. William Dunn was proprietor of Boquhanran at the date of the contract of excambion, and of course he had the interest connected with the mill which was on the lands of Boquhanran, as well as in the tail-race that ran through his lands of Dalmuir. Now, that was the condition of matters when the company came to reconvey this particular portion of ground. That it had been part of the estate of Dalmuir is certain. The old titles of Dalmuir were the titles in favour of the Canal Company as far as this ground was concerned, and now the question is, Was it part of Dalmuir when the ground was so given out? I have no doubt on that question whatever, and I have in vain endeavoured to find even a plausible ground for doubting upon it. I do not mean to go into the terms of excambion, the interests to be regulated by which are quite manifest, nor to comment on the clear and obvious interest of the Canal Company in striving to prevent their banks from being damaged, nor do I think it necessary to inquire what induced Mr Dunn to obtain a reconveyance of so much of his property. But there is this much clear, that the obligations incumbent on William Dunn and his heirs and successors are clearly set forth as regards those lands—the lands as a part of the Dalmuir estate before they were conveyed to the Canal Company. I have no doubt whatever, in the absence of anything like an express declaration to the contrary, that William Dunn meant to take back the lands precisely in the position in which they had been before. It is said that they were possessed as a

pertinent of Boquhanran. I do not think that anything that has been shown to us indicates possession of this ground as a part of the estate of Boquhanran. Indeed, Mr Guthrie's own statement shows that it was not. It was possessed as a part of Dalmuir, but doubtless William Dunn had Boquhanran also, and had the opportunity of using the lands, and did use the lands, of Dalmuir for the beneficial occupation of both. That that could make the slightest difference of title now that they have been separated I cannot conceive for a moment. And that really seems to me the whole case. When William Dunn came to make his will he gave Boquhanran to one set of heirs and Dalmuir to another, and the question is, To which of these sets of heirs this pendicle given out in 1792 and conveyed back in 1832 is to belong? It appears to me that it belongs to the successor in the lands of Dalmuir, and that the obligations transmit against him, and not against the heirs in the estate of Boquhanran.

On these grounds I think the Lord Ordinary is perfectly right.

As to the residuary clause, it comes to the same question. If this was a part of the estate of Dalmuir, and carried under that destination—which I do not doubt—I do not see that the residuary clause can by possibility affect this question.

These are, shortly, my views on this question. I cannot say that I entertain any doubt upon it.

LORD YOUNG—I am entirely of the same opinion, and I do not know that it is becoming to say a word in addition to what your Lordship has said. I should like to say just this, that the question appears to me to be exactly the same as it would have been had Mr Dunn not acquired Boquhanran in 1832. The piece of ground in dispute was sold to the Canal Company in the end of last century as part of the estate of Dalmuir. It was just a bit cut out of that estate. It was restored to that estate by a contract of excambion, which is just a reconveyance, in October 1832. It so happens that Mr Dunn acquired Boquhanran in March 1832, a few months before he had reacquired the property in dispute. But suppose he had not acquired Boquhanran at that time, but had just bought back the bit of ground he had formerly given out by that contract or conveyance—(it was immaterial that it was by contract of excambion, for that was just another form of conveyance in consideration of something different from a money price)—suppose that had been so, where would have been the pretence for saying that this reconveyance did not just rejoin the property to the estate from which it had been temporarily severed. It had been severed for the purposes of canal embankment for a good many years. But the question would not have varied in the least if it had been as many months or weeks. It was simply separated and conveyed to the Canal Company for some purpose of theirs, and when that purpose was served at the end of a period—be it years, months, or weeks—it was reconveyed to the proprietor from whom it had been obtained, and just became part of the property from which it had been severed—I mean, of course, in the absence of anything to the contrary, for no doubt the proprietor reacquiring could have employed such terms as would have effectually carried it away in another direction from the property from which it had been severed.

But in the absence of anything to the contrary it is just a restoration of things to the condition in which they were. Now, it so happened—and I think it was an accident—and an accident immaterial to anything we have to consider here—that the proprietor of the adjoining estate of Boquhanran had a right to have a tail-race to his mill running through the adjoining lands of Dalmuir—so long as this ground in dispute was part of Dalmuir—and through the adjoining lands of the Canal Company when it was their separate property; but that was just a right—a privilege no doubt, perhaps a servitude—which the estate or mill of Boquhanran had over the adjoining lands of Dalmuir, and it would be the adjoining lands of Dalmuir even while in the hands of the Canal Company, although you might not apply that name to it then. But what has that to do with the property? And if he had acquired it before he had acquired Boquhanran he would just have acquired the property of the piece of ground as he had had it before, and the proprietor of Boquhanran would have his tail-race running through his lands of Dalmuir as before instead of running through the Canal Company's lands during the period when they had possession. That surely would have been all quite clear. Then, suppose he buys Boquhanran some months or some years after, how would that transfer the property of this piece of ground to Boquhanran, or the purchase of Boquhanran to him? I put it to Mr Guthrie, Would not the case be the same if he had sold Boquhanran after he had acquired this? and he said, "Oh! yes; and it would then in respect of the tail-race as a servitude on it have become the property of the proprietor of the dominant tenement who had the right to this tail-race servitude." That is as extravagant an argument as could well be stated on a matter of probable title, but it is the whole argument stateable here.

For these reasons I am of opinion with your Lordship and the Lord Ordinary.

LORD CRAIGHILL—I am of the same opinion. In the first place, I think it perfectly clear that by the clause under the excambion of 1832 the estate of Boquhanran was not at that time enlarged. There is nothing in the evidence to show that the ground in question was thrown into Boquhanran, nor is there anything to show that at that time, with reference to what occurred on the part of those acquiring, it was thought that Boquhanran might be enlarged. No doubt it might have been shown, if it was competent to show, that Boquhanran, as that word was used in the settlement, included not merely the original property but the original property *plus* the part in dispute. But there is no proof whatever that the word Boquhanran is used there to express anything but what had been the description of the property before this ground was given off from Dalmuir. With regard to the contention of the pursuer that Dalmuir is to be held to carry not that which was the estate prior to the excambion in 1832, but that estate with the addition of the excambed ground, your Lordship has expressed my views. I also agree with what the Lord Ordinary has said in support of his conclusion.

LORD RUTHERFURD CLARK concurred.

The Court adhered to the Lord Ordinary's interlocutor.

Counsel for Pursuer (Respondent)—Keir—Mackintosh. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Defenders (Reclaimers)—Robertson—Guthrie. Agents—J. & J. Ross, W.S.

Wednesday, June 6.

FIRST DIVISION.

[Sheriff of Dumfries and Galloway.

BRITISH LINEN CO. BANK v. CARRUTHERS
(FERGUSSON'S TRUSTEE).

Bank—Cheque for Value—Assignment—Effect of Presentation of Cheque where Funds in Drawer's Account are insufficient to meet it.

A cheque granted for value, when presented at the bank on which it is drawn, constitutes an intimated assignment of the drawer's funds to the amount of the value of the cheque; and if the cheque be for a larger amount than is at the drawer's credit with the bank, it nevertheless operates as an assignment of such funds as are at his credit.

David Fergusson, farmer, Goosehill, Sanquhar, had an account-current with the British Linen Company at their bank at Sanquhar. On the 30th October 1881 he purchased from John Fergusson, Tobermory, a number of sheep, which were duly delivered to him, and in payment for which he on 30th December 1881 granted a cheque for £161. This cheque was drawn on the British Linen Company at their Sanquhar branch, and John Fergusson paid it into his own bank account. It was presented for payment at the British Linen Bank at Sanquhar, through his banker, on 5th January 1882, but payment was refused on the ground of insufficient funds. It was again presented on 25th January 1882, but payment was for the same reason a second time refused. The amount at the credit of David Fergusson at this time was £135, 13s. 10d. It was afterwards increased by him to £156, 8s.

David Fergusson's estates were sequestrated on 22d April 1882, and Joseph Carruthers, solicitor, Sanquhar, who was also agent for the bank, was appointed trustee.

On the 30th June 1882 an action of multipointing was raised in the Sheriff Court at Dumfries in name of the British Linen Company, concluding that the bank should be found liable in once and single payment only of the said sum of £156, 8s. The real raiser of the action was Joseph Carruthers, as trustee on the sequestrated estate of David Fergusson. He claimed the whole fund for behoof of creditors, and pleaded that the cheque for £161 was ineffectual as an assignment of the amount at the credit of the account on which it was drawn, in respect that at the dates of presentation the amount at the credit of the drawer was insufficient