obligation which no doubt could have been enforced against him during his life—and, as it appears to me, altogether adverse to the notion that the truster intended that the provisions in question should be revocable.

To say that these provisions were gratuitous and were made solely out of favour and affection will not of course make them revocable—the deed having been a delivered deed. On a sound construction, therefore, of the trust-disposition and assignation it was not revocable either in whole or in part by the granter.

I think, accordingly, that this case is ruled by the cases of *Turnbull*, 1 W. & S. 80, and *Smitton*, 2 D. 225, and that the effect of the deed and of the infeftments and intimated assignations following thereon in favour of the trustees was absolutely to divest the truster of the trust property, and to invest the trustees therewith, who were bound to hold and administer it for the purposes of the trust. One of the trust purposes was the payment of £500 to the pursuer out of the proceeds of the policies, if he should survive the period of payment. The pursuer has survived that period, the trustees have received the proceeds of the policies, and I think they are bound to fulfil that purpose.

It was maintained, however, that because of the clause in the deed which declares that none of the provisions made in favour of anybody should become vested interests in such persons until the terms of payment thereof, the truster had power to revoke the provision in favour of the pursuer at any time before the date of payment, in respect he had no vested interest therein. It is true that the pursuer had no vested right but he had a contingent right to the provision, which is a right known to and recognised by the law. But if I am right in thinking that the truster was absolutely divested of the estate, and that the trustees were bound to hold and administer it for the trust purposes, then I think they were bound to hold the estate until it should be seen whether the contingency would be justified, and whether the pursuers would become absolutely entitled thereto. Had the pursuer predeceased the term of payment the result would have been, not that the truster would have right to the £500, but that the £500 would have fallen into residue and have been administered under the ninth and last purposes of the trust. I do not see that the truster had power to revoke or deal with it to any effect.

I accordingly think that the Lord Ordinary's interlocutor is right and should be adhered to.

LORD M'LAREN, LORD KINNEAR, and the LORD PRESIDENT concurred.

The Court adhered.

Counsel for Pursuer and Respondent—Burnet. Agents—Clark & Macdonald, S.S.C.

Counsel for Defenders and Reclaimers—Shaw—Guy. Agents—Ronald & Ritchie, S.S.C.

Tuesday, June 7.

FIRST DIVISION.

CHAPMAN *v.* SULPHITE PULP COMPANY.

Company—Shareholder—Application for Shares—Acceptance—Withdrawal—Notice of Allotment.

Where a person applies for shares in a company, and shares are allotted to him, it is not necessary in order to constitute him a member of the company, that a formal notice of allotment should be sent to him, provided he is made aware that the company have accepted his application.

C having applied for shares in a company, withdrew his application some months later, in respect that he had received no intimation of allotment.

In a petition by C to have his name removed from the register of members it appeared that before he withdrew his application he had received a circular calling a meeting of shareholders, and that his wife having called at his request upon the secretary of the company in reference to the shares, had been informed that her husband's application had been accepted, and that his name was upon the register. The Court, without deciding the question whether or not a notice of allotment in the usual form had been sent to the petitioner, *refused* the petition, *holding* that the petitioner had been adequately informed that his application had been accepted.

On 26th November 1890 Samuel Chapman applied for twelve shares in the Sulphite Pulp Company, Limited, and deposited with the Royal Bank of Scotland the amount payable on application, in conformity with the conditions contained in the company's prospectus. On 12th January 1891 he made a further application for twelve additional shares, and again made the necessary deposit.

On 7th August 1891 Chapman's agents wrote to the secretary of the company saying "As Mr Chapman has received no intimation that these shares or any portion of them, have been allotted to him, nor indeed any other communication concerning them, he instructs us to write you withdrawing unconditionally his application for the shares referred to. Be good enough therefore to hand us your cheque for £120, in repayment of the sums paid by Mr Chapman as deposits."

The company having failed to comply with this request, Chapman presented a petition to the Court for rectification of the register by deletion of his name, and for repayment of the sums paid by him upon application.

Answers were lodged for the company in which it was averred "that the company duly sent to the petitioner allotment letters

for the twenty-four shares applied for by him, and that the petitioner had personal knowledge that the shares had been allotted to him."

Proof was allowed, the result of which appears sufficiently from the opinion of the Lord President.

Argued for the petitioner—1. The result of the evidence was to show not only that no notices of allotment had been received by the petitioner before the withdrawal of his applications, but that no such notices had ever been posted by the company to his proper address, and the petitioner was therefore entitled to have his name removed from the register. In *Redpath's* case, 1870, L.R., 11 Eq. 86, it had been laid down that where an applicant for shares denied that he had received any notice of allotment, the *onus* was on the company to prove the contrary. The general application of the rule there laid down had been limited by later decisions, and the rule had been adopted that if an application for shares was made through the post, it was sufficient for the company to prove that a notice of allotment had been posted, properly directed, to the applicant, it being held that an applicant by applying through the post authorised the company to reply to him by the same channel, and that the post must in such a case be looked upon as the common agent of the parties. In the later authorities, however, the case of applications made personally was distinguished from the case of applications made by post, and the rule of *Redpath's* case still held as to the former; and at all events, to bind the applicant the acceptance must be properly directed to him—*Household Fire Insurance Company* v. *Grant*, 1879, L.R., 4 Exch. Div. 216, *per* Lord Justice Baggallay, 224; Bell's Comm. i. 343-4; *Thomson* v. *James*, November 13, 1885, 18 D. 1, *per* Lord President, 11; *Mason* v. *Benhar Coal Company*, June 2, 1882, 9 R. 883, *per* Lord Shand, 890. 2. It was not proved that the petitioner had ever been informed by the secretary to the company that shares had been allotted to him, and that he was on the register. If that had been proved, probably the mere omission to send a letter of allotment would not entitle him to have his name removed from the register.

Argued for the respondents — 1. The petitioner was not entitled to succeed, as it was proved that letters of allotment, properly directed, had been posted in answer to his applications. There was no obligation on a company to see that letters properly posted were delivered — *Harris'* case, 1872, L.R., 7 Ch. 587; *Household Fire Insurance Company*, *supra*. 2. At all events, the petitioner had received information that the shares had been allotted to him, and was thus barred from insisting on the removal of his name from the register—*Gunn's* case, 1867, 3 Ch. App. 40; *Levita's* case, 1867, 3 Ch. App. 36.

At advising—

LORD PRESIDENT—It is not disputed that the petitioner applied for twenty-four shares of this company; it is certain that they were allotted to him, and that he was put on the register as holder of those shares. Most of the evidence which has been taken relates to the questions whether or not he was at the time informed by the company of the allotments, and whether allotment letters were sent to him and received by him.

The respondents' counsel stated that they did not impugn the credibility of the petitioner and of his wife, and I should have found difficulty in arriving at a conclusion on the questions which I have stated; but a much simpler ground of judgment is presented somewhat incidentally in the evidence. On two occasions in spring 1891, after he had been put on the register, Mr Chapman was in communication with the officials of the company regarding those shares, and I think the result of the evidence is, that apart altogether from the disputed letters, he was then sufficiently apprised that the company had accepted him as a shareholder in terms of his application. On one of those occasions the petitioner's wife went, as arranged with the petitioner, to see the secretary of the company, and unquestionably was in law his agent. Now, Mr Dempster says he told her that Mr Chapman was on the register. His words are—"I said I was very sorry, but that I could not help it, because his name was now on the register, and the shares could only be taken over by transfer." Mrs Chapman is asked about this, and to the question, "Did Mr Dempster explain to you that he could do nothing now, as Mr Chapman's name was on the register for the twenty-four shares, and that they could not be taken off except by transfer?" she replied, "I don't remember that at all." It is not unnatural that Mrs Chapman should not remember this, for apparently she did not know the importance of registration. On the other hand, it is certain that Mr Dempster knew that Mr Chapman had had shares allotted to him and was on the register, and it is therefore highly probable that he made this statement. I hold therefore that on this occasion Mr Chapman's agent was informed that his name was on the register.

The other fact to which I refer is, that he being on the register, the company sent to the petitioner a circular calling him to a meeting of shareholders. This was, unless explained away, an intimation that the company treated him as a shareholder. Now, Mr Chapman says that after receiving that circular he saw Mr Dempster, and taking his own account of the conversation, it certainly did not result in any disclaimer of him as a shareholder by Mr Dempster, and his evidence rather reads as if he understood that only some formal evidence of his membership yet remained to be given him.

In my opinion, therefore, it is proved that in March 1891 the company had adequately informed the petitioner that he had been accepted as a member, and from

that time therefore he was not entitled to resile.

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

The Court refused the petition.

Counsel for the Petitioner — Young — Macaulay Smith. Agents — Emslie & Guthrie, S.S.C.

Counsel for the Respondents — Shaw — Craigie. Agents—Menzies, Bruce-Low, & Thomson, W.S.

Tuesday, June 7.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

NATIONAL BANK OF SCOTLAND, LIMITED *v.* CAMPBELL.

Cautionary Obligation—Letter of Guarantee—Improbative Writ—Rei Interventus—Writing in re mercatoria.

A bank handed a letter of guarantee to M, the person whose credit was to be guaranteed, for the purpose of obtaining the signature of the granter. After the granter had signed, and outwith his presence, M got two persons to adhibit their signatures as witnesses to the subscription, presented the writ to the bank with the testing clause filled in, and received the advance guaranteed.

In an action raised after M's bankruptcy, at the instance of the bank, it was *held* that they were entitled to recover the sum contained in the letter of guarantee from the granter thereof, and that as the advance had been made on the faith of his signature, he was barred by *rei interventus* from pleading the improbative condition of the writ when it left his possession.

Question whether a letter of guarantee is a writ *in re mercatoria.*

In October 1891 the National Bank of Scotland, Limited, brought an action against John Campbell, shipmaster, Park Cottage, Oban, for payment of £200, being the amount contained in a letter of guarantee, dated 28th February 1888, granted by the defender to the pursuers, in consideration of which they had advanced that sum to Messrs M'Dougall & M'Coll, builders, Oban, who had since become bankrupt.

The letter of guarantee, which was produced, was partly written and partly printed, and contained a testing clause, which bore to be signed by John Campbell, whose signature was apparently duly attested, but the pursuers admitted that the witnesses had neither seen him sign nor heard him attest his signature.

They pleaded—"(1) The defender being due and resting-owing to the pursuers, under the guarantee libelled on in the summons, the principal sum sued for, decree should be pronounced against him as concluded for, with expenses. (2) The said guarantee is valid and effectual in respect, 1st, it was granted in *re mercatoria;* 2nd, it was followed by *rei interventus.*"

The defender averred that he had not subscribed the said guarantee, and pleaded —"(1) The pursuers' material averments being unfounded in fact, the defender is entitled to absolvitor, with expenses. (2) *Esto* that the defender signed the said guarantee, it is not binding upon him, in respect it is neither holograph nor tested, and was not followed by *rei interventus.*"

A proof was allowed, from which it appeared that the pursuers prepared the letter of guarantee and sent it to their agent in Oban, who gave it to Mr Angus M'Dougall, of the firm of M'Dougall & M'Coll, to obtain the defender's signature. Mr Angus M'Dougall deponed that the defender had signed the letter of guarantee in his office; that after the defender left he had got his son and one of his joiners to affix their signatures as witnesses of the subscription; that he returned the letter of guarantee to his Edinburgh law agents, with information to enable them to fill up the testing clause before sending it to the bank; and that on the faith of the guarantee his firm had received an advance of £200.

A letter from the bank's agent in Oban to Mr Campbell, dated 24th December 1890, was produced. It was in the following terms:—"Messrs M'Dougall & M'Coll having been sequestrated, I beg to request payment from you of the sum of £200, being the amount guaranteed by you in your letter of guarantee, dated 28th February 1888." And was answered as follows—"*Stornoway, 2nd January* 1891.—Received your letter of 24th ult. to-day. I am on my way to Tobermory with the vessel for to lay up, waiting favourable winds, and hope to be in Oban soon, and will try and arrange matters."

The defender denied ever having signed any letter of guarantee in M'Dougall's favour except one in 1887, which he knew had been spoilt by his adding certain qualifying words. He deponed that he had that guarantee in his mind when he wrote to the bank agent on 2nd January 1891; also that he was at Tobermory continuously from 20th February to 19th March 1888. He admitted receiving a letter from M'Dougall upon 4th January 1891, informing him that the witnesses to his signature had neither seen him sign nor heard him acknowledge his signature, and suggesting that he might escape liability on that ground.

Upon 6th February 1892 the Lord Ordinary (KYLLACHY) assoilzied the defender.

"*Opinion.*—In this case the National Bank of Scotland seek to enforce against the defender, who is a shipmaster in Oban, an alleged letter of guarantee for the sum of £200, said to have been granted by the defender in security of an advance made at the bank's Oban branch to the late firm of M'Dougall & M'Coll, builders in Oban. The guarantee bears to be signed by the defender and two witnesses, and bears a