Tuesday, June 21.

SECOND DIVISION.

[Sheriff Court at Aberdeen.

PATRICK *v.* PATRICK'S TRUSTEES.

Loan—Proof of Loan—Holograph Letter of Alleged Debtor in which he Certified that Alleged Creditor "Lent me" Money—Relevancy.

In an action in which the pursuer sought to recover a sum of £350 alleged to be resting-owing to him by the trustees of his deceased father, the pursuer averred that he had "lent his father a considerable sum" to assist him in connection with the building of a certain house, the erection of which cost at least £700. The only writ on which the pursuer founded in proof of the alleged loan was a holograph letter addressed to him by his father in the following terms, *inter alia*:—"I do hereby sertify that my son" (the pursuer) "lent me the half of the money to build" the house referred to, "and have willed it to him and his brother." *Held* that this letter was not an unqualified admission of existing indebtedness, and was therefore insufficient to prove the alleged loan, and the defenders *assoilzied*.

In this action, which was raised in the Sheriff Court at Aberdeen, Robert Patrick, butcher, Greyville Butchery, Durban, Natal, South Africa, sought to recover a sum of £350 from the trustees of his father, the deceased James Patrick, ironmoulder, 2 Hunter Place, Aberdeen, who died on 4th May 1903.

The pursuer's claim was founded on a holograph letter addressed to him by his father on 11th November 1901 in the following terms, *inter alia*:—"I, James Patrick, do hereby sertify that my son Robert Patrick, at present living in Durbon, Netal, South Africka, lent me the half of the money to build the huse in 122 Park Street I have willed it to him Robert Patrick and his brother William Freter Patrick. If any of there brothers or sisters disputs the Will they have no clame. It was by my endustery, and my sone Roberts."

The pursuer averred—"(Cond. 2) In the year 1876 the deceased James Patrick and James Anderson, engineer, who resided at No. 36 Frederick Street, Aberdeen (now deceased), jointly feued a piece of ground in Park Street or Park Road, Aberdeen. . . . On said piece of ground the said deceased James Patrick and James Anderson, at their joint expense, erected and completed certain dwelling and other houses, known as 122 Park Street. . . . . (Cond. 5) The cost of the erection of said dwelling and other houses at No. 122 Park Street amounted at least to £700 sterling, and the pursuer lent his father the said deceased James Patrick a considerable sum at or before the commencement of building operations, and also sent home regularly from South Africa moneys on loan to his father to help him with the payment of instalments on advances obtained by him from the Aberdeen Property Investment Building Society. . . . (Cond. 6) On 11th November 1901 the said deceased James Patrick sent to the pursuer a letter in which he, *inter alia*, said (the terms of the letter are quoted above). The total cost of the erection of said dwelling and other houses at No. 122 Park Street as before mentioned amounted to at least £700 sterling, and in terms of said letter the said deceased James Patrick acknowledges that he received on loan from the pursuer half the money to build said houses, amounting accordingly to £350, being the sum sued for. The said letter is herewith produced. Said letter, being holograph of the said deceased James Patrick, and being a bare acknowledgment by him of money lent him, does not require to be stamped. The said letter is equivalent to an I O U, and does not require a stamp."

The pursuer pleaded—"(3) *Separatim*. It is open to the pursuer to prove his averment by competent evidence other than the writ of the deceased."

The defenders pleaded—"(1) Pursuer's averments are irrelevant and insufficient to support the conclusions of the action."

On 15th March 1904 the Sheriff-Substitute (ROBERTSON) sustained the defenders' first plea-in-law and dismissed the action.

The pursuer appealed to the Court of Session, and argued—The letter founded on contained an unqualified acknowledgment of money lent, and imported an obligation to repay. The pursuer was entitled to an opportunity of proving his averments as to the amount of the sum resting-owing—*Paterson* v. *Paterson*, November 30, 1897, 25 R. 144, 35 S.L.R. 150; *Thiem's Trustees* v. *Collie*, March 14, 1899, 1 F. 764, 36 S.L.R. 557; *Allan* v. *Murray*, June 13, 1837, 15 S. 1130.

Argued for the respondents—What the letter relied on contained was a mere historical narrative of the reason why a share in the house in question was left to the pursuer; it contained no acknowledgment of debt. The pursuer's averments were irrelevant, and the action should be dismissed.

At advising—

LORD JUSTICE-CLERK—The pursuer demands payment from the executors of the late James Patrick, his father, of the sum of £350, being the alleged amount of a debt due to him by the deceased at the time of his death, which took place in May 1903. The only evidence which he founds upon is a letter addressed to him by the deceased on 11th November 1901, in which these words occur:—"I, James Patrick, do hereby sertify that my son Robert Patrick, . . . lent me the half of the money to build the huse in 122 Park Street. I have willed it to him Robert Patrick and his brother William Freter Patrick." The pursuer now maintains that he can establish that the

deceased expended at least £700 on the house in question, and makes claim for one-half of that amount. His case is rested solely on the document. There is no averment setting forth what were the sums he alleges he advanced to his father from time to time, and when the advances were made.

I am of opinion that the document upon which the pursuer founds cannot be held to be a document of debt as admitting an unqualified loan and a present indebtedness. It in no way acknowledges the existence of outstanding debt, either of the amount claimed by the pursuer or of any other amount. The purpose of referring to the fact that the pursuer had made advances to his father seems to be simply to lead up to his leaving to his son the one-half of the property for the building of which he had given assistance. But it in no view can be held as acknowledging a present debt, and certainly could not be read as indicating a debt of any fixed amount.

I would therefore move your Lordships to affirm the judgment of the Sheriff-Substitute.

LORD YOUNG concurred.

LORD TRAYNER—This is an action in which the pursuer seeks to recover from his deceased father's trustees a sum of money which the pursuer avers he gave to his father in loan, and which has never been repaid. The Sheriff-Substitute has dismissed the action as irrelevant.

It may be observed, in the first place, that the pursuer does not aver that he lent his father the sum of £350 for which he seeks decree, but merely that he lent him "a considerable sum of money," which I regard as an irrelevant statement, and one which could not be remitted to probation, as being too vague—that is, wanting in specification. Accordingly, as the record stands I think the Sheriff was right in sustaining the defenders' first plea-in-law. If that was the only, or indeed the real point in the case, an amendment of the record could easily obviate the objection. But the question argued before us was whether the letter of the deceased Mr Patrick was sufficient evidence of the alleged loan, and as I suppose the pursuer has no further or other writ of his deceased father to produce in support of his loan, the determination of that question will settle whether the pursuer can succeed in his claims. If that writ is insufficient to establish loan, then the defenders will be entitled to absolvitor.

The pursuer maintains that the letter he founds upon contains an unqualified admission of loan, and that being so, the only answer which can be made to his demand is that the admitted loan has been repaid or discharged. I agree in the law of this proposition if the fact is as stated. But in judging whether the letter in question contains an unqualified admission of loan, we must look not only to the words said to contain the admission but their context. As the Lord President said in the case of *Muirhead* (8 Macph. 461, 7 S.L.R. 273), "a holograph writing, so far as regards its import and effect, may be much influenced by the company in which it is found." Now, it appears to me that the letter founded on does not amount to an unqualified admission of loan. It may certainly be taken as an admission that at some time previous to its date the pursuer "lent" some money to his father, but it is not an admission of loan which necessarily or reasonably implies an admission of present indebtedness. I think the writ to prove a loan must be so expressed as to imply existing indebtedness. To illustrate what I mean, take the case of an I O U; the mere language (or the letters used in place of words) implies that the granter of it *owes* to the grantee the sum therein named. But in contrast, take the case of one friend writing to another, or a son to his father, "I never can forget, or cease to be grateful to you, for the money you lent me ten years ago when I was so hard pressed." From such an acknowledgment, *per se*, I would not infer a continuing and present indebtedness. The letter now founded on seems to me to belong to this latter class. The purpose of the writer was not to acknowledge any debt, but to indicate a certain action which he thought called for, or might call for, some explanation. I agree in the view expressed by the Sheriff-Substitute as to the meaning and effect of the letter in question, and would therefore grant the defenders absolvitor.

LORD MONCREIFF was absent.

The Court recalled the interlocutor appealed against, and assoilzied the defenders.

Counsel for the Pursuer and Appellant—M'Lennan. Agents—Wallace & Guthrie, W.S.

Counsel for the Defenders and Respondents—M'Clure. Agents—Macpherson & Mackay, S.S.C.

Thursday, June 23.

FIRST DIVISION.

MURRAY AND OTHERS, PETITIONERS.

Public Records—Probative Writ—Registration—Deed Lodged for Registration per incuriam without Witnesses having Adhibited their Names—Act 1685, *c.* 38—*Writs Registration (Scotland) Act* 1868 (31 *and* 32 *Vict. c.* 34), *sec.* 1.

A trust-disposition and settlement, which had been prepared by the law-agents of the testatrix in accordance with her instructions, was signed by the testatrix in presence of the law-agent and his clerk, and delivered by her to the law-agent. Subsequently the testing clause was filled in, bearing that the testatrix subscribed in presence of the law-agent and clerk as