"It only remains to notice that a large transaction in cod liver oil (which is proved to have been represented to the appellant as the object of the advance) can scarcely be said to be outside the ordinary line of business in which druggists carrying on an extensive retail trade might fairly be presumed to engage."

The trustee appealed.

Lord Advocate (Gordon) and Mackenzie for him.

Shand and W. M. Thomson in reply.

2 Bell's Com., 615, 616; *Dewar*, M., 14,569; Lindsay on Partnership, i, 274; Ersk., iii, 3, 20, were cited.

Lord President—This is a case depending very much on a variety of circumstances, and not involving any question of principle. At the same time it must be decided with reference to well established principles in the law of partnership.

The claim made by Robertson was *prima facie* a claim not well supported by vouchers; because, the sequestration having been awarded on 10th January 1865, the affidavit was only accompanied by a bill dated 31st December previous; and, *prima facie*, a bill of that date could not be held to prove its own consideration, and inquiry became indispensable. The account Robertson gave of it was, that that represented an advance made by him in August preceding, an advance to the firm of Grant & Donald for a purpose intimately connected with the carrying on of their business as chemists and druggists in Aberdeen. It has been said that the transaction as alleged was not of a nature falling within the general scope of that business, because it was an investment to the amount of £400 in the single article of cod liver oil, whereas their business was a retail business only. I am not satisfied that it was retail only; but it is clear that it was extensive, because the trustee admits that they carried on an extensive business in Aberdeen, and we have evidence of that before us, and that it was to some extent a wholesale business, and that they sold to other druggists, chiefly in the country. Therefore, a party acquainted with the nature of their business, and knowing that they carried on an extensive business as druggists in Aberdeen, would not be startled by hearing that they were going to make an investment to the amount of £400 in cod liver oil. That is Robertson's case, and he says, that believing that, and that the firm wanted money, he advanced the sum by means of an accommodation bill, which he afterwards retired. This sum was advanced to one of the partners, Grant, and the mandate implied in partnership, if all the other circumstances were favourable, would probably be sufficient to justify the claimant in dealing with one. But the case is somewhat stronger, for it is proved that Grant was the cashier of the firm, and transacted the whole of that business, and that Donald never interfered. That being so, I think that a party in Robertson's situation, dealing with Grant as cashier of the firm and receiving from him the statement I have mentioned, was entitled to believe that in making this loan to Grant he was making it for behoof of the firm, particularly as he got at the same time from Grant a back letter, written indeed by Grant, but signed by the firm, that the bill was granted for their accommodation. There are some things in the statements of Grant not very creditable, and there is no reason to shut our eyes to the fact that some of the money was not used for firm purposes; but if Robertson dealt in good faith, I think the firm are bound, even though one of the partners committed a misappropriation of part of the money. I think the interlocutor of the Sheriff-substitute is very well conceived, and puts the judgment on the right ground.

Lord Curriehill concurred.

Lord Deas—I am of the same opinion. It is clear that this bill was for a sum of money which had been advanced to Grant. The question is, Was it for behoof of the firm? I think it very likely that Grant misappropriated a great part of the money; but that only leaves the question, Who is to suffer? Is it the creditor who lent the sum, or the estate of the firm? I think it is to be here the estate of the partners; for Donald tells us that Grant was sole cashier of the firm; that he accepted all the bills, and conducted all the cash transactions; so that his statements come to this, that he allowed Grant to conduct the business as he liked, and that he never looked into the books to see whether Grant was conducting it honestly or no. That being so, I have no doubt that Robertson got this money on the faith that it was for behoof of the company. If he had advanced the money in bad faith, that would be an end of the case, but we have nothing to show that. According to Donald's own statement the business was partly wholesale. That being so, Does it show that Robertson gave this money in bad faith, that he was told it was to be employed in the purchase of cod liver oil? This case raises no important question in the law of partnership; the statements before us are quite sufficient to show that, though Grant may have misappropriated the money, the estate must suffer.

Lord Ardmillan concurred, resting his judgment on this, that the trustee had not proved sufficient for his purpose, and that though it was probable that Robertson thought it was not an advance for the company, there was no sufficient proof of that in law so as to entitle the trustee to succeed.

Adhere, with expenses.

Agents for Trustee—Hill, Reid, & Drummond, W.S.

Agents for Claimant—Renton & Gray, S.S.C.

Tuesday, November 19.

MAGISTRATES OF INVERARY *v.* ARGYLESHIRE ROAD TRUSTEES.

Interdict—Statutory Trustees—Excess of Powers. Statutory trustees, having power under statute to regulate ferries, passed certain rules relating to a ferry within their county. In a suspension and interdict at the instance of the proprietors of the ferry, complaining of the rules as *ultra vires* of the trustees and prejudicial to the public,—note passed to try the question, but interim interdict *refused.*

This was a note of suspension and interdict presented by the Provost and Magistrates of Inverary against the Argyleshire Road Trustees, asking to have the respondents interdicted from enforcing certain regulations recently passed by them relating to a steamer plying on Loch Fyne between Inverary and St Catherines.

By section 75 of the Argyleshire Roads Act 1864, the Trustees are empowered "to regulate the rates

and other matters connected with the ferrymen in the county in such manner as the situation of such ferries respectively shall appear to them to require," adopting certain procedure set forth in the section before making the rules. On 1st May 1867, the Trustees, at a meeting held at Inverary, issued the rules and regulations now complained of. The Magistrates of Inverary, proprietors of the ferry between Inverary and St Catherines, and claiming to have managed the ferry from time immemorial, now objected to these regulations on various grounds. The rules enacted, *inter alia*, that if a steamer be employed on the said ferry, the fare chargeable therein shall be one shilling for each passenger, and also that the said steamer shall leave Inverary twice in the day, viz., at 10·30 A.M. and 2·30 P.M. The complainers alleged that if these regulations were enforced, it was impossible that the said steamer could any longer be maintained on the ferry. The steamer would have to leave Inverary at a certain fixed hour; and the owner would be prevented from making any arrangement with coaches so as to lessen his expenses, and would otherwise be subjected to pecuniary loss. The complainers contended that the Trustees, in issuing these rules and regulations, had exceeded their powers under the Act 1864; that they had acted irregularly; and that the rules and regulations were to the prejudice of the public. They accordingly craved interdict.

The Lord Ordinary (MURE) passed the note of suspension, but refused interim interdict, adding this note to his interlocutor:—

"The power to regulate rates and other matters connected with ferries in question, even with the proprietors of those ferries, conferred on the respondents by section 75th of the Argyleshire Road Act, is very broad; and the Lord Ordinary, as at present advised, does not see that, when passing the rules and regulations in question, the respondents have, *ex facie* of the proceedings, failed to comply with the requirements of the statute as to the manner in which such rules and regulations are authorised to be passed, or have in that respect committed any excess of power. Whether they have interfered with the privileges of the complainers, as reserved by section 58th of the Act, depends upon the terms of their charter of erection; and the possession which they may be able to instruct has followed thereupon, and will be tried under the passed note. But while the Lord Ordinary has passed the note to try that question, he does not think it would be expedient to interdict the respondents from, in the meantime, carrying out the rules and regulations, which appear to be reasonable in themselves, as establishing uniformity of rates, and are alleged by the respondents to be necessary for the protection of the public, and must, *hoc statu*, it is thought, be presumed to have been adopted for their benefit."

The complainers reclaimed.

LANCASTER for them.

RUTHERFURD, for respondents, was not called on.

LORD PRESIDENT—I think the Lord Ordinary has disposed of this quite properly. There is a question behind, on which I not only give, but on which I have, no opinion, for it is a question of considerable difficulty under the Act of Parliament, and that will be tried under the passed note. But when we find statutory trustees acting as here, it would be unprecedented to grant interim interdict against these rules while the question of their legality is under discussion. The Lord Ordinary has not only done right as to this case but he has followed a good general rule.

The other Judges concurred.

Adhere.

Agents for Complainers—Murray, Beith & Murray, W.S.

Agents for Respondents—Maclachlan, Ivory, & Rodger, W.S.

Tuesday, November 19.

SECOND DIVISION.

MONEY *v.* HANNAN AND KERR.

Master and Servant—Contract of Service—Remuneration for extra Work. Circumstances in which *held* (Lord Neaves dissenting) that a clerk was not entitled to remuneration as for extra work, he having contracted to give his whole attention to the business of his master, and the work for which a claim was made falling within the contract of service.

In this action the pursuer sues Messrs Hannan, Kerr, & Co., of Glasgow, for £300 as remuneration for work performed for them abroad in the following circumstances:—In 1860 the pursuer entered into the defenders' service as clerk, cashier, and book-keeper, at a salary of £90 per annum. The engagement was made by letter, and the stipulation contained in it was—"It is understood that your whole attention is to be devoted to our business, and that you shall not have any other business to attend to." The pursuer continued in their service until March 1862, when he left Glasgow for Bergen, at the desire of Hannan, Kerr, & Co., to conduct an investigation for them at that place of the affairs of a firm which embraced the same partners. The defenders paid him his expenses to and from Glasgow, and a considerable sum to account of his expenses there. He returned to Glasgow in August 1862, and resumed his duties as clerk, book-keeper, and cashier, and he continued there until October 1862. He now claims £250 in this action, raised in January 1866, as remuneration for the extra work performed by him in January. In October 1862 the pursuer became clerk to the other defenders Kerr, Wilson, & Co., at a salary of £2, 2s. a week, and while in this service he was sent to London to arrange a lawsuit against the firm, and, on several other occasions, to pay debts and settle claims there; for these extra services he claims £50.

The Lord Ordinary dismissed the action, on the ground that the statements of the pursuer were not relevant or sufficient to infer the conclusions of the action. His Lordship added the following note to his interlocutor:—

"On 31st December 1860 the pursuer entered into the service of Messrs Hannan, Kerr, & Co., as clerk, cashier, and book-keeper, at a salary of £90 per annum. The period of service was indefinite. The engagement was made by letter, bearing date 8th November 1860, and the letter expressly stipulated—'it is understood that your whole attention is to be devoted to our business, and that you shall not have any other business whatever to attend to.'

"The pursuer was continuing in this service on 27th March 1862, when he left Glasgow for Bergen, on an employment described in a letter of that date, addressed to him by the Company, and running thus:—'You will proceed to Bergen, and there,