

that loss upon the appellant, who had as little personal interest in the matter as the respondent, but, unlike the respondent, had no power either to prevent such an investment of Mrs Sinclair's legacy or to protect herself from its consequences.

In the Court below the Lord Justice-Clerk decided in favour of the respondent, solely on the ground that the calls made by the liquidators of the City Bank constituted a debt of the truster Mrs Fraser, and if that assumption had been well founded it appears to me that the judgment of the Second Division would have been right. But it seems clear that these calls were never in any sense, a debt due by the truster or by her estate. The claim of the liquidators was a claim against the trustees personally, arising out of that course of administration by which they became and continued to be partners of the bank. But if any doubt could be raised on this point it is completely disposed of by the judgment of Lord Eldon in *ex parte Garland*, 10 Vesey 119.

I therefore concur in the judgment proposed by your Lordship.

Interlocutors appealed from reversed, and interlocutor of the Lord Ordinary restored.

Counsel for Appellant—Balfour, S.-G.—F. Moncreiff. Agents—Holms, Anton, & Greig—Alexander Morison, S.S.C.

Counsel for Respondents—Chitty, Q.C.—Pearson. Agents—Martin & Leslie—Davidson & Syme, W.S.

Tuesday, May 17.

(Before Lord Chancellor Selborne, Lords Blackburn and Watson).

MACDOUGALL v. LORD BREADALBANE.

(*Ante*, p. 40, 8 R. 42.)

*Superior and Vassal—Non-Entry—Superior's Title.*

*Held* (*aff.* judgment of the Court of Session, and following *Innes v. Gordon*, Nov. 20, 1844, 7 D. 141) that in an action by a superior for payment of a casualty against the singular successor of a vassal who has recognised the superior's predecessors by taking entry from them, it lies upon the defender to establish that the superiority lies with some other than the pursuer if he denies the title of superiority.

This case was reported in the Court of Session of date Nov. 4, 1880 (*ante*, p. 40, 8 R. 42). The defender appealed to the House of Lords, and their Lordships without calling on the respondent's counsel dismissed the appeal.

Counsel for Appellant and Defender—Davey, Q.C.—Grosvenor Woods. Agents—William Robertson—H. & H. Tod, W.S.

Counsel for Respondent and Pursuer—Balfour, S.-G.—Young. Agents—R. S. Taylor, Son, & Humbert—Davidson & Syme, W.S.