sustained as a valid claim upon the estate. The demand of the assignee, and the allowing of his claim to be so sustained without objection, were inconsistent with the exercise of the power afterwards. Besides, the right of the assignee to a share of the estate was recognised for a series of years afterwards, and the trustees could not then turn round and repudiate their dealings with the assignee on the footing that he had a completed absolute right. I think, therefore, that, in these circumstances, the trustees have not *tempestivè* exercised their power, and that the pursuers are entitled to decree in terms of their summons. The Lord Ordinary's interlocutor, however, will fall to be recalled, as it is put on the erroneous ground that the trustees' power could only be exercised during the widow's lifetime.

Lords Benholme and Cowan concurred, the Lord Justice-Clerk not being present.

On the pursuers' motion for expenses, the defenders objected to the trustees being found personally liable. The real question which was discussed and decided between the parties in the Outer-House was, whether the power could be exercised after the death of the widow; and, accordingly, that was the only question which was decided by the Lord Ordinary. The defenders have been successful on that question before the Court, and as it was a question which arose upon the construction of the truster's settlement, the trustees were, according to the settled rule, justified in trying the question at the expense of the trust-estate. The judgment of the Court is now put on a ground which only came to have prominence and importance in the present discussion, and as the defenders had been successful upon what was previously regarded as the true question between the parties, they submitted that they should not have personal liability for expenses imposed upon them.

The Court pronounced an interlocutor recalling that of the Lord Ordinary, and finding that the trustees' power had not been exercised *tempestivè* after the death of the liferenter, and finding the trustees personally liable in expenses.

Counsel for the Pursuers—The Solicitor-General, Mr Young, and Mr Adam. Agents—Messrs Adam, Kirk, & Robertson, W.S.

Counsel for the Defenders—The Dean of Faculty and Mr Nevay. Agents—Messrs Scott, Moncreiff, & Dalgetty, W.S.

Tuesday, November 19.

FIRST DIVISION.

EDMOND *v.* ROBERTSON.

(*Ante*, vol. ii, p. 31.)

Bankruptcy—Partnership—Implied Mandate—Company Business—Accommodation Bill—bona fides.

G, partner of a firm, and manager of all its cash transactions, applied to R for an advance of money, alleging that it was to be applied towards a purchase by the firm in the line of its business. R advanced the money, and got a bill signed by the firm. The firm shortly after became bankrupt. R claimed to rank on the estate in respect of the bill. *Held*, on a proof, (the trustee rejecting the claim on the ground that the advance was not a company transaction but solely for behoof of G) that the trustee had failed in his proof, and that the creditor was entitled to rank.

This was an appeal by James Edmond, trustee on the sequestrated estates of Grant & Donald, druggists in Aberdeen, against an interlocutor of the Sheriff-substitute of Aberdeenshire. Alexander Robertson claimed to be ranked as a creditor on the bankrupt's estate in respect of a bill for £368, drawn by him upon and accepted by them shortly before their bankruptcy. The trustee rejected the claim, and Robertson appealed to the Sheriff. Minutes were lodged by the parties in terms of the Act. The trustee averred that Grant & Donald received no value for the bill, and that it was not a company transaction, but simply concerned Grant, one of the partners. Robertson denied this, and a proof was allowed by the Sheriff-substitute. Disputes arose in the course of the proof, and the case came before the Court on appeal against interlocutors of the Sheriff-substitute. The Court recalled the interlocutors, and remitted to the Sheriff to allow the books of the bankrupt to be produced, and to allow additional proof to both parties. Proof was led, and thereafter the Sheriff-substitute (J. Comrie Thomson), recalling a deliverance of the trustee, pronounced this interlocutor:—

"Having resumed consideration of this cause, Finds it admitted that the bill, in respect of which the appellant claims, was accepted by a partner of the firm of Grant & Donald, subscribing the Company name thereto: Finds it proved that the said partner who so accepted the bill—viz., John Smith Grant—acted as cashier of the firm, and managed their bill and other money transactions: Finds that the letter No. 14 of Process refers to a previous bill, of which the bill on which the appellant now claims is a renewal: Finds that the respondent has failed to prove the fifth statement in his revised minute, of which he was allowed a proof: Therefore sustains the appeal: Recals the deliverance appealed against; and remits to the trustee to rank the claimant on the estates of the firm of Grant & Donald, and the individual partners of that firm, in terms of his claim: Finds the appellant entitled to expenses; but in respect of the judgment of the Lords of the First Division of the Court of Session, of date 25th May 1866, Finds that the expenses fall to be modified: Allows," &c.

"*Note.*—The appellant's position in this matter is not free from suspicion; and the Sheriff-substitute is of opinion that the trustee, in the performance of his duty to the other creditors, was justified in making very full inquiry before sustaining the claim.

"But no evidence has been led to show conclusively why the appellant should have been willing to accommodate one partner only, or that he was aware that the firm had no interest in the transaction. It is certainly not enough to defeat such a claim as the present that one of the partners should depone, as Donald does here, that the firm had not, to his knowledge, any transactions with the appellant; because it is abundantly proved that Grant took charge of *all* their cash dealings; while, even if it were proved that Grant had improperly concealed from his partner the fact of the advance made to him by the appellant, yet, if the respondent fails to show that there was not a *bona fide* belief on the appellant's part that the transaction was for behoof of the company, the Sheriff-substitute is of opinion, in point of law, that the company's estate would be liable.

"It only remains to notice that a large transaction in cod liver oil (which is proved to have heen 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