in holding that the execution of the subsequent and probative disposition satisfied the requirements of the Stamp Acts. It could not cover the missives. The true test was, what value would these missives, in their unstamped state, have had in a court of law between 15th April 1880 and 1st Jan. 1881. (2) As it appeared from the disposition in favour of Ruickbie that William Renwick's title was not granted till 11th March 1881, the offer and acceptance passing between Ruickbie and Renwick on 31st December 1880 could confer no right of property on Ruickbie, and until then, the granting of the disposition in Ruickbie's favour on 15th April 1881, or, at all events, till the passing of the disposition in Ruickbie's favour on 11th March 1881, Ruickbie had no written title, and was not in law proprietor.

Ruickbie replied—That it was perfectly competent to found on the missives of sale to show the date of the contract of sale. It was *pars judicis* to see that the documents relied on as constituting the title, and which required to be stamped, bore the stamps prescribed by law; otherwise they could not be looked at. Where, however, the document was unstamped when executed, the objection on that ground might be removed either by getting it stamped or by referring to it in a probative and stamped deed executed at any time before the Sheriff considered the claim. (2) It was incompetent to dispute the validity of the title of Ruickbie's author. This being so, it was sound law to say that the disposition here covered the missives of sale—Nicholson on Elections, 69; Cay's Scottish Reform Act, 154, 155; 33 and 34 Vict. cap. 97, secs. 15 and 16; *Balfour* v. *Lyle*, July 23, 1822, 10 S. 855.

At advising—

Lord Mure—[Who delivered the opinion of the Court]—In this case we have had a very distinct argument on the different points raised, but the main question is as to the effect of the want of stamps on the missives of 31st December 1880, by which documents the transaction for the acquisition of the property was first reduced to writing. The disposition of the subject, in which the date of entry is declared to have been 1st January 1881, was not granted till the 15th April 1881, and it is argued that although that disposition may prove the party to have been proprietor at the time it was granted, it proves nothing more, and that as there is no writing which can be looked at as evidence to instruct proprietorship prior to that date, the name should be deleted from the roll. That argument depends upon the objection taken to the want of stamp upon the missives of the 31st of December, for it was not disputed, I think, that if these missives could be looked at as evidence, they were sufficient to prove a purchase at that date. Now, the answer made to this objection is, that the sale was regularly carried out as at 15th April by a disposition duly stamped; and that as the claims of the Inland Revenue for stamp-duty upon the sale of the property were satisfied by payment of the *ad valorem* stamp upon the transaction, the missives might be looked at to show the date at which the transaction was entered into, and that in that case the proof of ownership was complete. The Sheriff has held that by the granting of the duly stamped disposition the objection has been obviated, and from that ground of judgment I am not prepared to differ. The question is a nice one, and has for long given rise to occasional discussion in Registration Courts with various results. But the preponderance of the decisions appear to me to go to this, that wherever the deed completing the transaction is duly stamped, that is sufficient to entitle the Court to look at prior documents relating to the same agreement, although they may not be stamped, upon the ground that the later stamps must be presumed to have satisfied the Revenue and to cover the want of stamps on the earlier missives. There is authority for that doctrine, moreover, in an opinion of Lord Mackenzie, concurred in by Lord Medwyn, in the case of *Balfour* v. *Lyle*, July 13, 1822, 10 S. 855. There a notarial instrument of intimation of the assignation of a lease, but extended on an inadequate stamp, was produced, and objection was taken to its being received. Another instrument recently extended upon an appropriate stamp was then produced and founded on as obviating the objection. Lord Mackenzie said—"The first instrument appears to be receivable as a written memorandum made by the notary at the time, and sufficient subsequently to warrant the extending of the second instrument. It is unstamped, and it is not received as a legal instrument in itself; but the stamp in the second instrument entitles the Court to receive the first to the effect now mentioned." On the authority of this decision I am of opinion that the objection has not been made good, and no evidence has been adduced to show that the Inland Revenue would not be satisfied with the later stamp only. As regards the third objection, I think it is pretty well settled that parties are not entitled, except in very special cases, to raise questions as to the claimant's author's title, but assuming that they were, it appears to me that the objection taken here is not well founded. There was a missive of sale of the subjects between Renwick and the claimant on 31st December, and although Renwick's title may have been insufficient at that date, he had admittedly a valid title in March 1881, which I am disposed to think accrued to Ruickbie as at the date of the sale.

The Court therefore sustained the appeal.

Counsel for Appellant—Darling. Agent—John Gillespie, W.S.
Counsel for Respondent—Brand. Agent—W. Archibald, S.S.C.

COURT OF SESSION.

Wednesday, July 20.

FIRST DIVISION.

WYSE (ABBOTT'S TRUSTEE), PETITIONER.

Trust—Assumption of Trustees—Powers of a Quorum.

Held that the assumption of new trustees by two out of three acting trustees, without notice thereof given to the third, and without

his knowledge, is incompetent, and the assumption is void.

This was a petition presented by Mr G. B. M. Wyse, who designed himself as the only accepting and surviving trustee of Mrs Elizabeth Cranfield or Abbott, for appointment of a judicial factor on the trust-estate of Mrs Abbott.

Mrs Abbott died on 23d August 1876 leaving a general disposition and deed of settlement, by which she appointed her two sons Dr Richard Theophilus Abbott, and William John Cranfield Abbott, merchant in Leith, and her two sons-in-law, the petitioner Mr Wyse and Mr Herdman, to be the trustees and executors of her will. Mr Cranfield Abbott, Dr Abbott, and the petitioner Mr Wyse acted as trustees and executors, but Mr Cranfield Abbott resigned the office of trustee and executor on March 7, 1881, and Dr Abbott died on April 11, 1881, thus leaving the petitioner Mr Wyse as sole remaining trustee and executor.

Mr Cranfield Abbott was placed on the list of contributories of the City of Glasgow Bank, and assigned to the liquidators of the said bank his individual interest in his mother's settlement, and on July 1, 1881, the liquidators of that bank raised an action of declarator of their rights against Mrs Abbott's trustees.

Mr Wyse thereafter presented this petition, and averred that about May 12, 1881, a document prepared by the agents of the trust had been subscribed by Dr Abbott along with Mr Cranfield Abbott, purporting to assume as trustees under the late Mrs Eliza Abbott's settlements two additional trustees; and these were, Mrs Elizabeth Fraser Watson or Abbott, residing in Edinburgh, wife of the said William John Cranfield Abbott, and Mr Robert Macdonald, Solicitor before the Supreme Courts, Leith, the personal law agent of Mr Cranfield Abbott, and a partner of the firm who for about two years past had been the law agents in Mrs Eliza Abbott's trust. This deed of assumption was executed, he alleged, behind his back, and without either his knowledge or consent.

The petitioner prayed the Court "to find that the said Mrs Elizabeth Fraser Watson or Abbott and the said Robert Macdonald are not and never have been trustees or executors of the said Mrs Eliza Cranfield or Abbott, or otherwise to remove them from these offices; and further and in any event, to nominate and appoint such person as your Lordships may think proper to be judicial factor upon the trust-estates, heritable and moveable, of the said deceased Mrs Eliza Cranfield or Abbott, and to administer the trusts created by her foresaid testamentary writings, as in room of the testamentary trustees and executors nominated by her as aforesaid, with the usual powers."

The petition was served upon the alleged assumed trustees and Mr Cranfield Abbott, and answers were lodged for Mrs Abbott and Mr Macdonald. They stated, *inter alia*—"Mr Cranfield Abbott and Dr Abbott did not consult the petitioner regarding this deed of assumption, nor did they consider themselves bound to do so, as he had refused to act with them as a trustee in the ordinary way, or to have any communication regarding trust matters except through a firm of law agents unconnected with the trust. . . . The respondents, the assumed trustees, respectfully refer to the Act 24 and 25 Vict. cap. 84, sec. 1, and 30 and 31 Vict. cap. 97, sec. 11, by which statutes power of assumption of new trustees is conferred upon a quorum. They respectfully submit that the powers thereby conferred have been validly exercised in the present instance, and that there have not been alleged, nor do there exist, any grounds for removing the assumed trustees, or subjecting the estate to the expense of a judicial factory. They are now, and have all along been, ready and willing to act in a cordial and friendly manner with the petitioner in the management of the trust; any difficulties that have hitherto arisen in the trust management have been due to the unfortunate ill-feeling which apparently exists in the mind of the petitioner towards Mr Cranfield Abbott." The respondents accordingly submitted that the prayer of the petition ought to be refused.

At advising—

Lord President—[in delivering the judgment of the Court]—In November 1880 the trust consisted of Mr Abbott, Dr Abbott, and Mr Wyse. At that time two of the three trustees, viz., Mr Abbott and Dr Abbott, executed a deed by which they assumed two persons as additional trustees, and afterwards Mr Abbott resigned. The result intended was that the trust should consist of four persons, viz., Mr Abbott's wife and Mr Macdonald, the law agent of the trustees, who had been assumed by this deed, Dr Abbott and Mr Wyse. Dr Abbott died in April 1881, and thereafter the trust would have consisted of three persons. Now, all this was brought about by the execution of a deed of assumption in November 1880, without any intimation to Mr Wyse, and without its being brought to his knowledge till six months after.

The question we have to decide is, whether this is a good nomination? I can have no doubt that it is bad. No two trustees can do a trust act without consultation with their co-trustee. They are bound to see that their co-trustee has notice of their intention to nominate trustees, and has an opportunity of stating his views upon the subject. It is of the essence of such a body that they should meet and exchange views on all trust questions. The excuse they make is that Mr Wyse had been disagreeable, and had refused to sign a transfer of bank stock. But that very disagreement rendered it all the more imperative that Mr Wyse should have an opportunity of stating his views, and the omission of notice is enough to make the appointment of new trustees ineffectual.

The case of *Reid* v. *Maxwell*, 14 D. 449, cited by the petitioner's counsel, may with advantage be quoted as of universal application:—"At advising it was observed by some of their Lordships that in the administration of a trust, and especially in the exercise of so important a power as that of assuming new trustees, it is essential that the utmost fairness and openness should be observed among the trustees to each other, that ample time and opportunity for deliberation should be afforded, and that if any concealment or underhand dealing or any misleading or deception in order to carry a measure by surprise should appear, the Court, as a Court of equity, would be entitled and bound to control and restrain trustees in such abuse of their powers." This seems directly applicable to

the present case. If the consequence be that the trust cannot go on because Mr Wyse is the sole trustee, and he does not desire to act because some of the parties connected with the trust have no confidence in him, the only remedy seems to be the appointment of a judicial factor. It is said that such an appointment would be a heavy burden on the trust. That burden may be avoided if the parties can agree among themselves. But failing their agreement I fear there is no other course.

The Lords pronounced this interlocutor:—

"Find that the respondents have not been validly assumed as trustees under the trust-disposition and settlement of the deceased Mrs E. Cranfield or Abbott; nominate and appoint Mr Robert Cameron Cowan, C.A., to be judicial factor on the estate of the said deceased Mrs E. Cranfield or Abbott, with the usual powers, he finding caution before extract; and decern," &c.

Counsel for Petitioner—Robertson—Darling. Agents—H. B. & F. J. Dewar, W.S.

Counsel for Respondents—Jameson. Agent—J. H. Jameson, W.S.

Tuesday, November 15.

SECOND DIVISION.

THE NEWCASTLE CHEMICAL MANURE COMPANY *v.* OLIPHANT & JAMIESON.

Agent and Principal — Assignation — Right in Security—Implied Credit.

A firm of solicitors having discharged certain arrears of rent due by the tenant of a farm to his landlord, received from him, with his landlord's consent, an assignation of the lease in security of the debt till repaid, together with a power to possess and sell the subjects at their discretion. The tenant thereafter continued in the possession and management of the farm, but subject to their directions, they from time to time making disbursements to enable him to pay accounts connected with the management of the farm. In an action raised against them for the price of goods furnished to the order of the tenant for the farm, the Court *held* that the defenders were merely secured creditors, and therefore not liable for the price of the goods supplied to the order of the tenant.

Messrs Andrew and James Ashton Hain were tenants of the farm of Carnbee, near Pittenweem, Fifeshire. In the end of the year 1879, having fallen into arrear with payment of their rents, their landlord presented an application to the Sheriff of Fife for sequestration of the crop, stock, and bestial on the said farm in security and for payment of the said rents. An arrangement was ultimately made, under which the landlord agreed to accept a renunciation of the lease in 1880 on certain conditions, amongst which was one that the tenants should find security for the rents that had still to fall due. To enable them to do this they entered into an agreement with Messrs Oliphant & Jamieson, solicitors, Anstruther, whereby it was stipulated that the latter should pay the said arrears of rents, and guarantee payment of the rents for the crops of 1879 and 1880, on condition that the former should grant in their favour the following assignation, which was dated 19th January 1880:—"We, Andrew Hain and James Ashton Hain, tenants of the farm of Carnbee, considering that Messrs Oliphant & Jamieson, solicitors, Anstruther have agreed to settle the arrears of rent at present due by us for said farm, and have agreed to guarantee the rents thereof for crops 1879 and 1880; and seeing that it is expedient in the circumstances that the presents underwritten should be granted: Therefore we, for further security and more sure payment to them of the sums for which we now are or may hereafter become indebted to them, do hereby assign and dispone to the said Oliphant & Jamieson, and their successors and assignees, the whole crops, grain, cattle, horses, and bestial stock and other produce, and the whole implements of husbandry and other effects of every description belonging to us on our said farm, and more particularly the horses, cattle, and crops described in the inventory taken in the sequestration at the landlord's instance against us, or such other crops, bestial, and effects as shall be on the said farm at any time at or prior to the term of Martinmas next 1880: Declaring that we hold the said crops, bestial, and effects in trust for the said Oliphant & Jamieson till they be paid the sums of money above referred to, with interest on their advances and disbursements during the non-payment; and if we sell any part of the said crops, bestial, and effects, we hereby bind and oblige ourselves to account to them for the same; with full power to the said Oliphant & Jamieson to intermeddle with, take possession, sell, and dispose of said subjects when they may consider same necessary without any other warrant than this conveyance, they being bound to hold just count and reckoning with us or our foresaids for their intromissions therewith, and to impute, *pro tanto*, in extinction of the sums before referred to, and interest thereon as aforesaid, whatever sum or sums they may recover in virtue of this assignation, and to pay to us or our successors any balance thereof which shall remain after deducting the said sums and interest, and all necessary charges and expenses incurred or to be incurred by or to them, as the same shall be ascertained, and in that case, or upon us or our foresaids making payment to them of the said sums of principal, interest, charges, and expenses as aforesaid, to retrocess us at our expense in our right of the said whole effects hereby assigned in so far as unsold or not disposed of."

In consequence of this arrangement the process of sequestration instituted by the landlord was not prosecuted. Subsequently to the date of this assignation the farm was managed by the brothers Hain, who ordered such seeds, manures, and other articles as were necessary for its proper cultivation and management. The crops of 1879 and 1880 were sold by Messrs Oliphant & Jamieson, who received payment therefor, and made the various disbursements necessary for carrying on the farm, in particular paying fire insurance premiums, assessments, &c. On the 20th February and 26th April 1880 James Ashton Hain ordered from the Newcastle Chemical Manure Company certain