difficulty exists. And it is a difficulty which does not perhaps admit of being quite satisfactorily solved. Each case must largely depend on its own circumstances. For my own part, all that I should be disposed to say is that the statute is not contravened by the infliction of pain for an object which a man of ordinary humanity might reasonably consider adequate, the operation, whatever it is, being performed in a proper manner, and with a due regard to the infliction of as little pain as possible. It is not, however, necessary for the purposes of the present case to lay down any general principle. It is enough that upon the facts as found by the Sheriff-Substitute, and upon any construction of the statute which has been or can be reasonably suggested, the operation here complained of was not within the statute.

LORD JUSTICE-CLERK—As your Lordships are aware, I have no vote in deciding this case unless there should be an equality of opinion among your Lordships, when I have a casting vote in order to make a majority. Your Lordships are all agreed as to what the judgment in this case should be, and there is therefore no duty upon me to express my opinion, but in the circumstances I may be allowed to say that the view I take of the case is entirely in consonance with the opinions which your Lordships have expressed. Where pain is inflicted, it may be inflicted as deliberate and wanton cruelty for no purpose at all except for the infliction of pain. There may also be the infliction of pain for another purpose altogether, not of cruelty, but still so inflicted as to amount to an offence against the statute. It is quite plain that the verdict in such a case must be a verdict of opinion, not of opinion whether certain facts are proved, but whether certain facts being proved, cruelty in the sense of the statute had been established as matter of opinion. I agree in the opinions expressed by your Lordships, that that can only be decided by the opinion, the reasonable opinion, of ordinary humane men, or of a jury, if such a question could come before a jury on the facts.

It appears to me that where we are dealing with a case of pain undoubtedly inflicted not for a wanton and cruel purpose but for the ultimate purpose of advantage to the owner of an animal, or to the animal itself, or to both, three elements must be present to free the party from a charge of cruelty under the Act. In the first place, the purpose must be reasonable; in the second place, the mode of carrying out the purpose must be a reasonable mode; and in the third place, I think the manner of carrying out the operation under that mode must be reasonable. But all these questions are questions of fact. As regards the first, the fact that it possibly improved the value of the animal itself—improved its marketable value—may be a reasonable purpose. I think that prevention of injury to other animals with which it is enclosed may also be a reasonable purpose. As regards the mode adopted of carrying it out, I do not think there is any suggestion that the mode of carrying it out in this case was not as skilful as could be, and therefore reasonable, if the act of removing horns was to be effected. Lastly, as to the manner of carrying it out in this particular case, I think that not only was the mode adopted skilful, but the mode in which it was carried out by the operator was skilful, and therefore it appears to me we have all the three elements, one of which must be negatived before a case of infliction of pain could be shown for which there could be a conviction. I think the findings of the Sheriff-Substitute amount to this, that the accused here did with skill in the usual manner an operation customary, and which has not been pronounced illegal, but on the contrary, has been pronounced legal by the Supreme Court in Scotland.

I therefore entirely concur in thinking that the acquittal by the Sheriff-Substitute on the facts he found proved was right.

The Court dismissed the appeal.

Counsel for the Appellant — Wallace — Chisholm. Agent—James Auldjo Jamieson, W.S.

Counsel for the Respondent — Comrie Thomson — Orr. Agent — W. J. Lewis, S.S.C.

COURT OF SESSION.

Tuesday, March 17.

SECOND DIVISION.

[Lord Wellwood, Ordinary.

MUIRDEN *v.* COWIE.

Personal or Real—General Disposition—Annuity Declared to be a Real Burden—Completion of Title by Notarial Instrument—Titles to Land Consolidation Act 1868 (31 *and* 32 *Vict. c.* 101), *sec.* 19, *and Schedule L.*

In a general settlement a testator conveyed to his son his whole estate, heritable and moveable, "but declaring that this disposition and conveyance is granted and is to be accepted of under the following burdens, . . . which are hereby declared to be real burdens on the estate hereby conveyed." These burdens included, *inter alia*, an annuity of £35 in favour of the disponee's sister. The disponee completed his title by notarial instruments (in terms of Schedule L, sec. 19, of the Titles to Land Consolidation Act 1868), each of which, after setting forth the conveyance in the general disposition, and describing the several subjects in which the disponer was infeft, narrated at length the clause declaring the said annuity to be a real burden. These notarial instruments were duly recorded.

Held (*diss.* Lord Rutherfurd Clark)—following *Williamson* v. *Begg*, May 12, 1887, 14 R. 720—that neither a general disposition without a description of the lands conveyed, nor a notarial instrument following thereon in terms of Schedule L of the Titles to Land Consolidation Act 1868, can create a real burden on the lands.

The late Thomas Cowie, starch maker, Montrose, who died on 29th April 1881, conveyed by *mortis causa* disposition and settlement to his son Alexander Cowie in general terms his whole estate, heritable and moveable, real and personal, of which he should die possessed, "but declaring that this disposition and conveyance is granted and is to be accepted of under the following burdens, conditions, obligations, and declarations, which are hereby declared to be real burdens on the estate and effects hereby conveyed, viz., . . . Further, in the event of Jane Cowie, my daughter, surviving me and her mother, the said Alexander Cowie . . . shall be bound and obliged to pay to my said daughter a free annuity of £35 sterling per annum." . . . .

In 1882 the said Alexander Cowie completed his title to the heritable subjects in which his father was infeft by notarial instruments, which described the several subjects in which his father was infeft, and set forth the disposition and settlement. Each of these notarial instruments set forth specifically and at length, *inter alia*, the clause declaring the annuity of £35 in favour of Miss Jane Cowie to be a real burden, and these notarial instruments were duly recorded in the appropriate registers.

Mr Cowie died in December 1882, and for several years thereafter Miss Jane Cowie's annuity of £35 was annually paid to her by her nephew. He, however, became bankrupt, and his estates were sequestrated in 1886.

In March 1890 his trustee in bankruptcy—Alexander Muirden junior, agent North of Scotland Bank, Limited, Montrose—brought an action of reduction against the said Miss Jane Cowie to have it found and declared that the said annuity had not been validly or effectually constituted a real burden on the heritable subjects disponed by the said late Thomas Cowie, and formed a part of the sequestrated estate of the said Alexander Cowie.

The defender pleaded that "(3) the said annuity having been validly constituted a real burden by the foresaid disposition and settlement over the subjects described in the summons, the defender is entitled to absolvitor, with expenses;" and that "(4) the said annuity being narrated at length in the notarial instruments as aforesaid, and having entered the records, affects and runs with the subjects in question."

The 19th section of the Lands Clauses Consolidation (Scotland) Act 1868 provides—"When a person shall have granted or shall grant a general disposition of his lands, whether by conveyance *mortis causa* or *inter vivos*, or by a testamentary deed or writing, within the sense and meaning of the 20th and 21st sections of this Act, and whether such general disposition shall extend to the whole lands belonging to the granter or be limited to particular lands belonging to him, with or without full description of such lands, and whether such general disposition shall contain or shall not contain a procuratory or clause of resignation, or a precept of sasine, or an obligation to infeft, or a clause expressing the manner of holding, it shall be competent to the grantee under such general disposition to expede and record in the appropriate register of sasines a notarial instrument in, or as nearly as may be in, the form of Schedule L hereto annexed."

Schedule L contains the form of notarial instrument in favour of a general disponee, or his assignee, &c., in which occurs the following—"[*If the deed be granted under any real burden, or condition, or qualification, add here*—but always under the real burdens, &c.]"

Upon 15th November 1890 the Lord Ordinary (WELLWOOD) repelled the defences, and found and declared in terms of the declaratory conclusions of the summons.

"*Opinion*—This is a hard case for the defender, but I am of opinion that the annuity provided to her by the disposition and settlement of Thomas Cowie has not been validly constituted a real burden on the heritable subjects described in the summons. Thomas Cowie's disposition and settlement was a general disposition. He thereby conveyed his whole estate, heritable and moveable, to his son Alexander Cowie, without specifying any particular lands. The mixed estate was conveyed 'under the following burdens, conditions, obligations, and declarations, which are hereby declared to be real burdens on the estate and effects hereby conveyed.' One of those was an annuity of £35 to the defender.

"I am of opinion that the annuity was not validly constituted a real burden by the disposition and settlement of Thomas Cowie, because the deed does not specify the lands upon which it is to be a real burden. In order to constitute a real burden I think it is necessary, not only that the amount of the burden and the creditor in it should be named, but that the lands over which it is to be created a burden should be specified. The law is thus stated by the Lord President in the recent case of *Williamson* v. *Begg*, 18th May 1887, 14 R. 720-23—'A general conveyance of all the granter's lands without specifying any lands—which is what is generally understood by a general disposition—cannot possibly create a real burden, because in order to create a real burden there must not only be a very precise specification of the amount and nature of the burden which is to be created, but also as precise a specification of the lands over which it is to extend.' And on p. 724 Lord Mure expresses himself to the same effect—'It is better, I think, that this case should be decided upon the broader ground, and I

am also of opinion that the payment of the legacy in question was not effectually created a real burden by the testator. There is, no doubt, a declaration to that effect in the deed, and there may have been a personal obligation imposed on the disponee to pay the debt, but the deed is a general conveyance of heritage, without any special conveyance of any particular estate, with directions that the legacy should be secured as a real burden over it. That being so, it is clear that, under the rules of law which were in operation at the date of the passing of the Titles to Land Consolidation Act 1868, no real burden was constituted, and I see nothing in the provisions of that statute which can be said to have relaxed or altered these rules.' It may be that there were other grounds sufficient to support that decision; but the passages quoted are authoritative, and even if I did not concur in them, I could not regard them as simply *obiter dicta*.

"Further, it is said that the annuity has been validly created a real burden by being narrated at length in the notarial instruments expede by Alexander Cowie; these are notarial instruments by which he made up a title to the various heritable subjects in which his father died infeft. Now, I think that if the annuity was not well created a real burden by the disposition and settlement, the defect could not be cured by the terms of the notarial instruments. The direction in Schedule L. of the Conveyancing Act 1868 merely authorises the notary to insert those real burdens which are duly created by the deed; but it does not authorise him to insert burdens which have not been so created. The Lord President in *Williamson* v. *Begg*, p. 723, states particularly the province of the notarial instrument, of which the form is given in Schedule L. of the Act of 1868, and I need only refer to that statement. The notarial instruments in this case are, therefore, not conform to their warrant. In the whole circumstances, I think the pursuer is entitled to the declarator which he asks, but that no expenses should be found due."

The defender reclaimed, and argued—The clause of burden having entered the record, creditors and intending purchasers were warned, and all the other requisites of real burden being present, the intention of the testator must rule. There was sufficient specification of the subject burdened. The general settlement and notarial instruments must be read as one deed, the description of the subjects and the executorial clauses being read into the general settlement. The description of subjects burdened in the settlement was not vague; it meant all heritage belonging to the testator at the date of his death as shown by his titles, and was now equivalent to a description by reference. This method of constituting real burden by general disposition was contemplated by the Titles to Land Consolidation Act 1868, sec. 19, Schedule L. It was possible to convey in this way, and therefore to burden, for conveying was a higher faculty. The case of *Williamson* v. *Begg*, *infra*, did not apply. The grounds of judgment there were, that there was no contract between the parties, and that the clause of burden was not in the dispositive clause and did not enter the record.

Argued for the respondent—The law in the question in dispute was fully laid down by the Lord President in the case of *Williamson* v. *Begg*, May 12, 1887, 14 R. 720, which ruled the present case.

At advising—

LORD JUSTICE-CLERK—The question in this case is, whether or not a legacy left to the defender in the case has been validly constituted a real burden on the estate of the testator? The question arises in this way. The testator left the defender as legacy an annuity which the person who succeeded to his estates has annually paid. It was quite right that he should do so, as being under a personal obligation to pay the annuity, but the question is whether his trustee can get rid of the obligation to pay. The ground of his objection is that the testator, although he directed the annuity to be a burden on his estate, did not do so in such a manner as to make it a burden on his successor, because he left his property without any description of it by a general disposition, and did not specify the lands on which the annuity was to be a real burden.

I do know how I should decide the point if we were considering it for the first time. I think in that case I should be inclined to hold that such a legacy did constitute a real burden on the heritable estate of the testator. But I am of opinion that the question is not open, as the case of *Williamson* v. *Begg* is as nearly on all fours with this case as one case can possibly be with another, and that the question has been authoritatively settled by the first division. On the authority of that case I think the interlocutor of the Lord Ordinary is right, and should be adhered to.

LORD RUTHERFURD CLARK—The case of *Williamson* v. *Begg* is directly in point, and if your Lordships think it right to follow it, as I believe you do, the interlocutor of the Lord Ordinary must be affirmed.

But I am not satisfied with that decision. In my opinion it should be reconsidered, and as the question is one of very general importance, I think it right to explain the views which I entertain upon it.

We have here a general conveyance by Thomas Cowie of his whole estate, heritable and moveable, in favour of his son Alexander. That the disposition contains moveable estate is to my mind immaterial. It is not the less a conveyance of the heritable estate, and the legal effect of it and of the title made under it is the same as if it had conveyed the heritable estate alone.

Taking the disposition in that light I find that the heritable estate was conveyed to the disponee under certain burdens which were declared to be real burdens on the estate so conveyed. Some of these burdens were of such a nature that they could not

be made real. I am not concerned with them. But one of them was an annuity of £35 in favour of the defender, and it cannot be disputed that such an annual payment may be lawfully constituted a real burden. It was maintained, however, that a real burden could not be constituted by a general conveyance, and by an infeftment taken by a notarial instrument in the manner provided by the Act of 1868. It is this question which I desire to examine.

Under the old law it was impossible to make up a title under a general conveyance, because it did not specify the lands which were conveyed and could not therefore contain any effectual precept of sasine. But it was the warrant for an action of adjudication in implement, and the charter of adjudication would convey the specific lands adjudged on the conditions and under the burdens contained in the general disposition. If this course had been followed in the present case, I cannot doubt that when infeftment was expede on the precept contained in the charter, the annuity in favour of the defender would have been validly created a real burden on the lands.

Of course the disponee, if he were the heir of the disponer, which I assume to be the fact in this case, might neglect the general disposition and make up his title as heir. If he had done so, there might have been difficulty in getting the annuity made a real burden. But it is not necessary to consider what remedies would in that event have been open to the defender, though it is right to notice that the same difficulty would have occurred if the disposition had been special. For it is equally open to the heir to neglect a special disposition. It is sufficient, however, that the heir, so far from neglecting the general disposition, made up his title under it, and that in the infeftment which he took by recording the notarial instrument expede in virtue of the 19th section of the Act of 1868 the annuity was declared to be a real burden on the lands in which he was so infeft.

I have always understood that the new form of title introduced by this section was to enable the conveyancer to dispense with the cumbrous adjudication in implement followed by a charter of adjudication, and that it took the place of the old form with precisely the same legal effect. But if the judgment in *Williamson* v. *Begg* and that which we are now going to pronounce are sound, it is the necessary consequence that the conveyancer cannot use the new form except in those cases in which the estate is conveyed without conditions or burdens, or in which he means to neglect them. I cannot bring myself to think that this can be the true construction of the Act.

The purpose of the statute was, in my opinion, to enable a title to be completed under the general conveyance, and it seems to me that by adopting the statutory form the general conveyance is itself feudalised. Its defect at common law was that it did not specify the lands. The statutory remedy is that the disponee who makes up his title under it is required to produce to the notary the disposition in favour of the disponer and the infeftment following thereon, from which the notary inserts in the notarial instrument the description of the lands. The instrument then recites the general conveyance, and proceeds—"Whereupon this instrument is taken in the hands of" the notary "in terms of the Titles to Land Consolidation Act 1868." It may then be recorded in the appropriate register of sasines, and on this being done the 19th section declares that the grantee under the general disposition shall be in the same position as if a conveyance of the lands contained in the notarial instrument had been executed in his favour by the granter of the general disposition, and as if such conveyance had been followed by an instrument of sasine in favour of such grantee, expede and recorded in the appropriate register of sasines. In other words, the general conveyance by the adoption of the statutory form is equivalent to a special conveyance of the lands described in the notarial instrument, and infeftment is taken under it as the disposition conveying these lands. It thus forms the disposition on which the lands are held, and on which infeftment is taken. The grantee is infeft under the general conveyance thus made specific.

But what about the burdens? The Schedule (L) furnishes the answer. It directs that if the deed is granted under any real burden or condition, the following words shall be inserted in the notarial instrument —But always "under the real burdens," &c. I am of opinion that these words refer to the burdens and conditions contained in the general conveyance, and intended by that deed to affect the lands thereby conveyed. The language of the schedule is express. If the deed—that is to say, the general conveyance—is granted under any real burden or condition, the burdens and conditions are to be inserted in the instrument. For what purpose? In order that they may enter the sasine and so be made real on the lands, or in other words, that the general conveyance may be feudalised under the burdens which the granter desired to impose on the lands. This is necessary in order to complete the system of making up titles introduced by the Act of 1868. For if the burdens contained in the general conveyance are not made real by being set forth in the recorded instrument, it follows that by adopting the statutory form the grantee will be infeft in an unburdened estate, and that the purpose of the granter will be defeated.

The statute declares that by expeding a notarial instrument the grantee shall be in the same position as if a conveyance had been executed in his favour of the lands contained in the instrument. But when it also prescribes that the burdens contained in the general conveyance shall be inserted in the instrument, I cannot read it as meaning anything else than the supposed special conveyance shall be a conveyance under these burdens. The legal conditions

on which burdens may be made real are therefore completely satisfied. For there is a special conveyance under burdens, and when the instrument is recorded in the register of sasines, the effect is declared to be the same as if infeftment had been taken under such a conveyance.

In the case of *Williamson* v. *Begg*, the Lord President, after reciting the clause in which certain legacies were declared to "form real burdens over the heritable estate hereby conveyed," says, "If the effect of that clause was to create the legacies real burdens on the estate, the making of the title under the general disposition should have been so arranged as to feudalise the estate subject to the burdens." But looking to the deed, I am of opinion that this declaration is of no avail to create a real burden. . . . His Lordship further says that a general conveyance cannot create a real burden, because "in order to create a real burden there must not only be a very precise specification of the amount and nature of the burden which is to be created, but also as precise a specification of the lands over which it is to extend."

I agree with his Lordship in thinking that the legacies could not be created real burdens by the general conveyance, and that if a real burden is to be constituted, it must be constituted over specific lands. But it must be added that no burden can be made real by any disposition. It must enter the infeftment. But I do not agree in the opinion that a burden is ineffectual and cannot be made real because it is contained in a general disposition. Such a deed is as ineffectual to convey lands as it is to create a burden, and in precisely the same sense. For under the old law a general conveyance could not form any part of the feudal progress, inasmuch as the lands were not described, and as it could not be feudalised, it followed that no real burden could be created under it. It was merely a warrant for making up a title to the lands conveyed by means of an adjudication in implement, and a charter of adjudication following thereon, but subject to the burdens contained in the general conveyance. For the granter could use it only to take up the estate which was conveyed to him—that is to say, to take up the estate under the burdens which the granter had imposed. His title was completed by taking infeftment on the charter, but by the very fact of taking infeftment the burdens were made real. The statute introduced a new form of completing a title under a general conveyance, and we are considering the effect of a title completed according to that system.

I have shown that under that system the general conveyance is part of the feudal progress. It is recited as such in the notarial instrument, and the statute declares that that instrument shall have the same effect as if a conveyance of the lands contained in the instrument had been executed in favour of the grantee by the granter of the general disposition. But are we to assume that this conveyance is to be unqualified? I see no reason for such an assumption. The statute provides a form of completing a title in conformity with the general conveyance, or in other words, under the burdens and conditions therein contained. The statutory form of making up titles would be very incomplete if it did not. Hence in my opinion the conveyance which the statute conceives to be executed in favour of the grantee is a conveyance under the burdens contained in the general disposition. But an infeftment on such a conveyance makes these burdens real. The notarial instrument is equivalent to a conveyance of specific lands under the burdens contained in the general conveyance, and the recording of the instrument completes the infeftment on the supposed conveyance.

The Lord President considers the question whether the legacy could be made a real burden by means of the notarial instrument. I agree that it could not, unless there were a warrant for the insertion of it flowing from a person infeft in the lands. It is, of course, necessary in order to the constitution of a real burden that the lands shall be disponed under it. Without such a disposition there would be no warrant for inserting the burden in the notarial instrument. But here the necessary warrant exists. For the lands were disponed by an owner infeft, under the real burden of the annuity, and I think that there was not only a warrant for the insertion of it in the instrument, but that the notary would not have been following the directions of the statute if he had omitted it.

His Lordship then examines the schedule. After reciting it he says—"That shows that a notarial instrument may be recorded under Schedule L upon a general disposition containing a full description of the lands conveyed to the general disponee, and there is no doubt that by such a deed a real burden may be effectually created. Accordingly, the words of the schedule which I have quoted above are completely satisfied by referring them to such notarial instruments as may be executed in creating real burdens where these have been properly constituted. The argument upon that section accordingly fails."

The 19th section applies to all general dispositions whether they shall extend to the whole lands belonging to the granter, or be limited to particular lands belonging to him "with or without full description of such lands." I do not pause to consider for what purpose the Legislature has comprehended these different forms of disposition under one common term. I take the meaning of the Lord President to be that when the general disposition contains a full description of certain lands the notarial instrument may set out the burden under which they are conveyed, and that in these circumstances the burden will be made real by recording the instrument. I understand him to hold that the direction of the schedule with respect to the insertion of

burdens applies to this case alone. It seems to me that on that construction of the schedule a general direction is dealt with as exceptional. I see no warrant for it. The section is universal. It applies to all general dispositions, and the schedule is given as the form under which all such dispositions without exception may be feudalised subject to the burdens therein contained. I do not think that the words of the schedule are satisfied by referring them to a particular class of notarial instruments. In my opinion they cannot be satisfied without referring them to every notarial instrument which can be expede under the 19th section. Lord Shand seems to proceed on the ground that the grantee was under no obligation to create the legacy a real burden, and that in consequence it had not been made effectual. I should hesitate to adopt this view of the position of the disponee. But it is not necessary to consider it. In this case, as well as in the case of *Williamson*, the grantee accepted the estate on the conditions in which it was conveyed to him. He made up his title in such a form as he thought would be effectual to make the burden real. The question is, whether the form was sufficient for that purpose, and that question cannot in my opinion depend on the rights or obligations of the grantee, but on the legal effect of the title which he has actually made up.

Apart from the decision in the case of *Williamson* v. *Begg*, I should have no difficulty in deciding in favour of the defender. But considering the weight of authority against me I can feel but little confidence in the opinion which I have expressed. I cannot however bring myself to think that I am wrong, and I have thought it right to express my opinion at some length, in case the question should ever come to be reconsidered.

LORD TRAYNER—I agree with the Lord Ordinary. I think the question here raised is not an open question, but has been decided by the case of *Williamson* v. *Begg* to which the Lord Ordinary refers. For my own part, I see no reason to doubt the soundness of that decision. On the contrary, I concur in the decision and agree with the views expressed by the Lord President and Lord Shand.

LORD YOUNG was absent at the hearing.

The Court adhered.

Counsel for the Pursuer and Respondent—Strachan—Wilson. Agents—Welsh & Forbes, S.S.C.

Counsel for the Defender and Appellant—Greenlees. Agent—A. Laurie Kennaway, W.S.

Thursday, March 19.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

THOMSON AND OTHERS (DUNLOP'S TRUSTEES) *v.* THE CLYDESDALE BANK, LIMITED.

Banker—Stockbroker—Overdrawn Account—Payment by Stockbroker into his Own Account of Proceeds of Sale of Shares belonging to Clients.

A stockbroker sold bank shares for certain clients for £2900, and received from the buying broker, in accordance with the usage of the Stock Exchange, a cheque for that amount in his favour. This cheque he lodged with his bankers, £2000 being put to his own account, which was at that time overdrawn to the extent of £6200, and a draft upon the bank's branch in London, where he had an account being given him for £900. He shortly thereafter absconded.

Held that everything having been done in the ordinary course of business, the broker's clients had no claim against the bank for repayment of the sums contained in the cheque, which had properly been applied to reduce the broker's indebtedness—*diss.* Lord Young, who was of opinion that in the circumstances the bank had good grounds for suspecting that the money represented by the cheque belonged to some client of their customer, and accordingly were not entitled to use it for the purpose of reducing his personal indebtedness to them.

James Robert Thomson, manager of Parr's Bank, Chester, Mowbray Douglas, C.A., Edinburgh, and John Ross, W.S., Edinburgh, trustees of the late Thomas Dunlop of Carndonach, Donegal, Ireland, upon 28th February 1890 instructed David Bryce Thomson, stockbroker, Edinburgh, to sell 50 shares of the Commercial Bank of Scotland, Limited, belonging to the trust-estate under their management. Upon 7th March Thomson sold said shares to Mr H. W. Hislop, stockbroker, Edinburgh, for £2906, 5s. On 19th March, in return for a duly prepared transfer, he received Mr Hislop's cheque in his favour for £2921, 10s. 6d. (being the price of the shares, together with the stamp-duty and the fee payable to the Commercial Bank in respect of said transfer), and on the same day he received instructions from the said trustees to reinvest the proceeds of the Commercial Bank shares in deposits with certain Colonial banks. On receipt of said cheque he paid it into his own account with the Clydesdale Bank, George Street, Edinburgh, which was at that time overdrawn to the extent of £6270, but against which the bank held two guarantees from his father amounting together to £4100. Of the sum of £2921, 10s. 6d., £2000 was placed to Thomson's credit, while he received a draft on London for £900, and the remainder in cash.