transferred if it was intended to make a transfer taking immediate effect.

"Applying these principles to the present case, it appears to me that we have, in addition to evidence of the intention, all those ceremonial requisites to which I have referred. It is true that the lady was not under any immediate apprehension of death when she told her daughter what she wished to be done with her money, but she was suffering from an infirmity from which she could never recover, because she was eighty-five years of age; and I think that great age combined with infirmity is enough as regards the gift being *mortis causa*. Then I think that you have, both in form and in substance, a gift of the fund deposited. You have the names of the donees inscribed in the deposit-receipts, and this with endorsation in blank, and accompanied by the expression of intention to the daughter, who was to be the lady's chief executor and trustee, is sufficient. And then we have also delivery *longi manu*, because the daughter saw the receipts, and had them pointed out to her, and knew where they were to remain in safe custody until her mother's death.

"On these grounds I am of opinion that the case for the claimants has been made out; and I do not see any reason for making a distinction between the different persons and objects that have been represented."

Counsel for Trustees of Mrs Martin—Readman. Agents—Adamson & Gulland, W.S.

Counsel for Schemes of U.P. Church—Comrie Thomson—Shaw. Agents—J. & A. Peddie & Ivory, W.S.

HOUSE OF LORDS.

Tuesday, February 15.

(Before Lord Chancellor (Halsbury), Lords Bramwell, Herschell, and Macnaghten.)

AULD *v.* GLASGOW WORKING MEN'S BUILDING SOCIETY.

(*Ante* vol. xxii., p. 883, and 12 R. 1320.)

Building Society—Withdrawing Member—Resolution of Society to Reduce Sum at Credit of Unadvanced Members Invalid.

The rules of a benefit building society incorporated under the Building Societies Act 1874 provided that any unadvanced or investing member might withdraw the whole or any portion of the sum at his credit in the society's books after giving certain notice. At the annual general meeting the society approved by a majority of a report by the directors recommending that as the property over which the society held securities had fallen in value, a sum of 7s. 6d. per £1 should be deducted from the amounts at the credit of the members, and placed to a suspense account. There was no rule of the society regulating the manner in which losses were to be borne. *Held* (*rev.* judgment of the Court of Session) that the resolution was *ultra vires*, and that an unadvanced member who subsequently gave notice of withdrawal was entitled to be paid the whole amount at his credit.

This case is reported *ante*, vol. xxii., p. 883, and 12 R. 1320.

The pursuer appealed.

At delivering judgment—

Lord Chancellor (Halsbury)—My Lords, in this case I confess I am unable to share the doubts which appear to have existed in the minds of the learned Judges in the Court of Session.

This contract between the parties is a contract to be judged of by the ordinary rules, and the society or association which has made this contract with one of its members is precisely in the same contractual relation with its member as if it was with a stranger. The association itself is what it is. It is not a partnership at common law; it is not a joint-stock company. Associations of this character have been under the consideration of your Lordships' House before—*Russell* v. *Brownlie*, 8 App. Cas. 235; *Walton* v. *Edge, in re Blackburn Building Society*, 10 App. Cas. 33; *Tosh* v. *North British Building Society*, 11 App. Cas. 489. The result of those simple propositions is this, that the pursuer here had a right to enforce the contract between himself and the association of which he was a member. If the alteration, against the will of one of the contracting parties, which is insisted on here as within the competency of the other were valid and effectual, I do not really know why the association should not have made a rule preventing withdrawal altogether, because it was inexpedient and contrary to their interests that anybody should withdraw, or a rule that if anybody did withdraw he should forfeit all interest whatsoever. The truth is, that when once it is ascertained that this is a contract which is to be kept between the parties, all the observations of the learned Judges, appropriate and reasonable enough if they were dealing with the relations between two copartners at common law, and that which should regulate the division of profits between them, become absolutely inappropriate and entirely beside the question when the consideration is whether or not a contract which has been made is to be kept.

I observed that Sir Horace Davey felt of course the pressure of the observation, and endeavoured so to construe the contract between the parties as to bring the respondents' contention within the language of the contract itself, and accordingly, instead of reading the rules of this association, which in truth constituted the contract between the parties, in their ordinary and natural sense, he ingeniously suggested that the words "the sums standing to the credit of the withdrawing member" would mean, not the sums as they actually do stand and as they have been actually ascertained and signed by the proper officer of the society (which according to the rules is to be binding between the society and its members), but that they should mean that sum which, taking the true value of the assets and liabilities of the society, should be the sum appropriated to the particular member. My Lords, it appears to me not only that that is not the language of the rule, but also that it is not the meaning and intent of the rule. The meaning and intent of the rule seem obvious enough, namely, that when once

the sum subscribed by the member has been handed to the society, with interest upon it according to the arrangements which also have been made, that sum shall be the ascertained sum which shall stand (and which in this case did properly stand) to the credit of the member in the books of the association.

My Lords, I do not think it necessary to proceed to show that if this alleged construction of the rule, and the principle founded upon that construction, were applicable, it would be possible to turn a realised share—that is to say, a fully paid-up share—into one not fully paid-up by some resolution of the society. I say that I do not think it necessary to consider that point, because after all it is only a more striking mode of illustrating the proposition that the society can of its own motion and without the consent of both the contracting parties alter the contract between the parties. The cardinal vice which runs through the reasoning used to support such a proposition is, that it is within the competency of one of the contracting parties to alter the terms of the contract. My Lords, it appears to me that it is utterly unarguable and impossible to insist that any such power exists. A bargain is a bargain, and must be kept. And for these reasons I move your Lordships that the interlocutors appealed from be reversed, and that the interlocutor of the Sheriff-Substitute be restored, and that the respondents do pay to the appellant the costs both here and below.

Lord Bramwell—My Lords, I am entirely of the same opinion. The pursuer has entered into a bargain with others which gives him certain rights, and amongst them this, that on giving notice he should be repaid whatever stands to his credit as soon as the society is in funds to do so. That is the bargain he has entered into. A majority of those with whom he has made that bargain have thought fit to say that it shall not be performed, that it shall be set aside, and that in lieu of it another arrangement shall be made—that is to say, on account of the probable poverty of the society each member shall receive something less than two-thirds of what stands to his credit. Now, there is nothing in the bargain which authorises them to do that. If there were it would be a conditional bargain, and the bargain would be complied with, but there is nothing in it which authorises them to do it. There is no necessity which compels them to break their bargain, because if ever the time shall arrive when they have money enough to pay him his £97 they can do it.

That being the case, I protest I will not discuss whether the proposal is an equitable one or not. It seems to me so utterly wrong when people have entered into a defined bargain that it should be set aside upon some more or less fanciful notion of equity or right that I will not discuss it. I will say, "Hold to your bargain." I suppose the proverb is as true in Scotland as it is in England, and true universally, that a bargain is a bargain, as the Lord Chancellor has said, and should be observed.

I really cannot but express a respectful surprise that the learned Judges of the Court of Session should have held otherwise, and I think it particularly mischievous that any notion of that sort should be countenanced now-a-days when there is such a disposition—and such a foolish, stupid disposition—on the part of people to think they can make better arrangements for those who have made their own, and that it is right to set aside a particular and distinct bargain that has been entered into.

Lord Herschell—My Lords, I am entirely of the same opinion. I do not for a moment doubt that the resolution come to at a meeting of the members of this society was arrived at in perfect good faith, and not in the slightest degree under the impression that they were altering the bargain between the parties. I have no doubt they were under the impression that the true constitution of a society of this description was such that the members of the society were so interested in the funds of the society as that a loss of any of the funds of the society properly fell to the lot of all. Notwithstanding that, I think they were entirely under a misapprehension with regard to what was the bargain and what is the nature and constitution of societies of this description. Nine of the shares, amounting in all to £90, had been realised long before this resolution was arrived at, and, as far as appears, many, if not all, of them before the losses occurred which led to the resolution of the society. From the moment that each share was realised an absolute right vested in the holder of that realised share to give notice to the society, and, when he had given notice, to be paid at once if there were funds and no other member had given notice, to be paid in rotation if other members had given notice. How anything that subsequently happened deprived him of that right, or turned a realised share into an unrealised share, or justified the society in refusing to carry out their 12th rule, I am utterly at a loss to see; indeed, Sir Horace Davey admitted that this seemed to have been overlooked by the learned Judges in the Court below, and that he was not able to suggest how he could support the judgment as regards the realised shares, having in view the 12th rule. My Lords, I entertain no greater doubt as regards the other matter, the proportion of the shares unrealised, or, if you like, the whole £97 under the 10th rule. That gives a member a right in respect of the amount standing at his credit. The whole fallacy of the argument on the part of the respondents appears to me to rest in supposing that the amount standing at his credit does not mean, as it seems to me obviously to mean, the amount standing at his credit by reason of the moneys which he has paid, but that by some strange process of reasoning you are to come to the conclusion that the amount standing at his credit depends upon the mode in which the society has invested the funds out of which he is to be paid the amount standing at his credit. It seems to me that the two matters have nothing whatever to do with one another. The society may have badly invested their funds, and therefore have a difficulty in obtaining the means of paying the amount standing at any member's credit, but that cannot alter the amount standing at his credit, or justify the society in saying that what did stand at his credit no longer stands at his credit.

Upon these grounds, my Lords, I entirely concur in the judgment which has been proposed.

Lord Macnaghten—My Lords, I entirely agree in the proposed judgment.

In societies of this sort the rules form the contract between the members and the society, and that contract can only be altered in the mode prescribed by the Act of Parliament. In this case the respondents have attempted to alter the contract in a manner which appears to me not to be justified or authorised by anything in the Act of Parliament. I therefore entirely agree in the motion which has been made.

Interlocutors appealed from reversed; interlocutor of the Sheriff-Substitute restored; respondents to pay the costs in the Court below and the costs of the appeal.

Counsel for Pursuer (Appellant)—Rhind—R. Wallace. Agent—Andrew Beveridge, for William Officer, S.S.C.

Counsel for Defenders (Respondents)—Sir H. Davey, Q.C.—Haldane. Agents—Hartley, Ross, & Abdale, for Carment, Wedderburn, & Watson, W.S.

COURT OF SESSION.

Friday, April 22.

OUTER HOUSE.

[Lord Kinnear.

THE EARL OF GLASGOW *v.* THE ROYAL BANK OF SCOTLAND.

Bankruptcy—Retention—Compensation—Entail—Consigned Money.

Held (by Lord Kinnear, Ordinary, and *acquiesced* in) that a bank in whose hands money was consigned, being the price of part of an entailed estate taken by corporate bodies under compulsory powers, was not entitled to oppose a petition by the heir of entail in possession of said estate, who was notour bankrupt, for authority to uplift the said money and apply it in payment of unredeemed rent-charges affecting the estate, to the effect of retaining the consigned money in payment of an overdrawn account which the petitioner had with the said bank, but that they were entitled so to retain the interest already accrued thereon.

The Earl of Glasgow was heir of entail in possession of the entailed lands and estate of Hawkhead and others when portions of the said estate were on several occasions compulsorily acquired by incorporated bodies under statutory powers.

In 1879 the Magistrates and Council of the city of Glasgow, as Water Commissioners of the city, acquired a piece of ground forming part of the said estate, and the price as fixed by arbitration, viz., £132, 9s., was on 4th March 1879 consigned on deposit-receipt in the Royal Bank of Scotland, the receipt bearing that the said sum "has been paid into this bank, to the intent that the same shall be applied under the authority of the Court of Session in terms of the Lands Clauses Consolidation (Scotland) Act 1845, the interest on the said sum being payable to the said Earl and his successor in the said estate until the same shall be so applied."

In 1883 the Glasgow and South-Western Railway Company acquired about 10½ acres of the said estate for the purposes of their undertaking, and a sum of £2885, 7s. 6d., being the price as fixed by arbitration, was consigned in the said bank, the deposit-receipt being substantially in the same terms as that above quoted, and "declaring that the said bank have no concern nor interest in the above statements," *i.e.*, those as to the nature and origin of the consigned fund, "and incur no further liability than to hold the amount deposited as above." In 1886 the said railway company acquired certain further portions of the estate, and the price, being £2857, 14s. 3d., was consigned in the said bank on a receipt similarly expressed.

Lord Glasgow thereafter presented a petition for authority to uplift the said sums, amounting in all to £5875, 10s. 9d., and apply them in repayment *pro tanto* of certain rent-charges which affected the fee of the said estate to the extent of over £8000; and further, to have the interest accrued on the said sums paid over to the petitioner himself. The petitioner set forth the 67th and 68th sections of the Lands Clauses Consolidation (Scotland) Act 1845.

The said Royal Bank of Scotland lodged answers to the petition, setting forth as follows—"The petitioner is notour bankrupt, and the respondents are creditors on two separate credit accounts opened with them by him in 1879 and 1883 respectively, the total amount of the balance due by the petitioner, exclusive of interest, being £6840. The respondents claim to be entitled to retain the moneys now sought to be uplifted, with the interest which has accrued and will accrue upon them, to the extent of the interest which the petitioner as heir of entail has in these moneys, and relative interest, but to no further extent." They further explained that the said lands and estate of Hawkhead and others had been sold by authority of the Court, "and the price which has been obtained therefor is more than sufficient to pay off the heritable debts affecting the same and the rent-charges mentioned in the petition." They submitted that in view of their claim of retention the prayer of the petition should be refused.

It was argued for the petitioner—The principle of retention, or of balancing of accounts in bankruptcy, did not here apply. There was no true relation of debtor and creditor between the parties such as would introduce that principle. The money was consigned for certain definite statutory purposes. The petitioner was only nominally creditor, and when he sought to uplift he was only setting in motion statutory machinery for working out a contract to which the purchaser of the land, the bank, and the entailed estate were the parties. He was a trustee in the matter for the entailed estate. As to the argument that the petitioner had here an interest to some extent in the fund as an individual, it was answered (1) that in point of fact it was not so, the whole price being required to pay off the debts affecting the estate; (2) that in any view, that question was one which could not be tried in the present petition. It was conceded that the bank might retain any interest already accrued on the money in satisfaction of their debt.