clear that this bill does not disclose any matter over which the Court of Chancery has jurisdiction?

I think the learned gentlemen who have argued this case, with very great ability, were rather sanguine in almost assuming it as a postulate that the Duke of Cambridge might have been sued for this matter. I have most serious doubts upon that point, because even if he had been sued, it would equally have been a matter of state; the same questions would have been submitted to the Court of Chancery, namely, Whether the King of England as King of Hanover, and William, Duke of Brunswick, acting as sovereigns, had jurisdiction to do the acts which are impeached by this bill. The inclination of my opinion certainly is, that the Duke of Cambridge could not have been sued in a Court of Equity in respect of what he had done under this instrument. But when we find that the party sued is a Sovereign Prince, that he is King of Hanover, and an independent sovereign, then, at all events, it becomes indispensably necessary that the bill by which he is sued in an English Court of Equity should disclose matters over which that Court has jurisdiction.

It has been clearly stated by my noble and learned [27] friends that the question that is raised here is as to the validity of an act of sovereignty, because the bill would have been nothing without that allegation that the instrument was absolutely null and of no effect. But that instrument clearly professes to be made in the exercise of powers which those who were parties to it have as sovereigns, and the question of its validity must depend upon whether they have the power to do those acts of sovereignty which they profess to do. I am quite clear, therefore, that this is a matter over which the Court of Chancery has no jurisdiction, and that the demurrer was properly allowed.

I have the most sincere deference for the Court of Chancery, acting within its jurisdiction. I believe there never was a tribunal established in any country which is more entitled to respect, but still there are limits to its jurisdiction, it cannot do every thing. The Lord Chancellor, I presume, would not grant an injunction against the French Republic marching an army across the Rhine or the Alps. The Court of Chancery must be kept within its jurisdiction, and then I am sure it confers the highest benefits upon the community. I think it was by this bill called upon to exceed its jurisdiction, and that the Master of the Rolls was acting in conformity to the just principles of the law of this country in ordering the bill to be dismissed.

[It was ordered, that the appeal be dismissed, and the decree complained of be affirmed, with costs.]

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[28] EDWARD THOMAS FOLEY,—*Appellant;* THOMAS HILL and Others,—*Respondents* [July 31, August 1, 1848].

[Mews' Dig. i. 42, 1007; ix. 76; xi. 988. S.C. in 8 Jur., 347; 1 Ph. 399; 13 L.J. Ch. 182. On point as to relation between banker and customer, considered in *St. Aubyn* v. *Smart*, 1867, L.R. 5 Eq. 189; *A.-G.* v. *Edmunds*, 1868, L.R. 6 Eq. 390; *Moxon* v. *Bright*, 1869, L.R. 4 Ch. 294; *Summers* v. *City Bank*, 1874, L.R. 9 C.P. 587; *Marten* v. *Rocke*, 1885, 53 L.T., 1948. Distinguished on point as to limitation (1 Ph. 399; cf. 2 H.L.C. pp. 41, 42) in *In re Tidd* (1893), 3 Ch. 156, and in *Atkinson* v. *Bradford Third Equitable, etc., Society*, 1890, 25 Q.B.D. 381.]

Banker and Customer—Accounts not complicated, subject for action, and not for bill.

The relation between a Banker and Customer, who pays money into the Bank, is the ordinary relation of debtor and creditor, with a superadded obligation arising out of the custom of bankers to honour the customer's drafts; and that relation is not altered by an agreement by the banker to allow the interest on the balances in the Bank.

The relation of Banker and Customer does not partake of a fiduciary character, nor bear analogy to the relation between Principal and Factor or Agent, who is *quasi* trustee for the principal in respect of the particular matter for which he is appointed factor or agent.

Held, therefore, that an account between Bankers and their customer, not long

nor complicated, but consisting of a few items and interest, is not a fit subject for a bill in equity.

This was an appeal against an order of Lord Chancellor Lyndhurst, by which he reversed a decree of the Vice Chancellor of England, and dismissed the appellant's bill (13 Law Journ. 182, and 1 Phillips, 399).

In, and previously to, the year 1829, the appellant and Sir Edward Scott, owners of collieries in Staffordshire, kept a joint account at the respondent's bank at Stourbridge, in Worcestershire. In April 1829, a sum of £6117 10s. was transferred from that account to a separate account then opened for the appellant; and the respondents, in a letter inclosing a receipt for the sum so transferred, agreed to allow £3 per cent. interest on it. From 1829 to the end of the year 1834, when the joint **[29]** account was closed, the appellant's share of the profits of the collieries was from time to time paid by cheques, drawn by the colliery agents against the joint account. These cheques were, as the respondents alleged, paid in cash or by bills drawn by them on their London bankers in favor of the appellant, and none of them was entered in his separate account. The only items found in that account were the £6117 10s. on the credit side, and two sums of £1700 and £2000 on the debit side, both being payments made to or on behalf of the appellant in 1830. There were also entries, in a separate column, of interest calculated on the sum or balance in the Bank, up to the 25th of December 1831, and not afterwards.

The appellant filed his bill in January 1838, against the respondents, praying that an account might be taken of the said sum of £6117 10s., and all other sums received by the respondents for the plaintiff on his private account since April 1829, with interest on the same at the rate of £3 per cent. per annum; and also an account of all sums properly paid by them for or to the use of the appellant on his said account since that day, and that they might be decreed to pay the appellant what, upon taking such accounts, should be found due to him.

The defendants at first put in a plea of the Statute of Limitations (21 James 1, c. 16), supported by an answer; but the plea being overruled (3 Myl. and Cr. 475), they put in their further answer and claimed the benefit of the statute.

A schedule annexed to the answer set forth the separate account of the appellant from the bank book, containing the items and entries before mentioned.

The Vice-Chancellor, on the hearing of the cause, **[30]** decreed for an account as prayed, being of opinion that the respondents were bound in duty to keep the account clear; that they were to be charged according to their duty, the neglect of which could be no excuse, and that the agreement to allow the interest was in effect the same, in answer to the Statute of Limitations, as if the interest had been regularly entered or paid (13 Law J. p. 183).

Lord Lyndhurst, taking a different view of the case, upon appeal, held, first, that the Statute of Limitations was a sufficient defence; and, secondly, that the account, consisting of only a few simple items, was not a proper subject for a bill in Equity, but a case for an action at law for money had and received, and his Lordship reversed the decree, and dismissed the bill (*id. ib.;* and 1 Phill. 403).

Mr. Stuart and Mr. G. L. Russell for the appellant:

The judgment appealed from proceeded partly on the ground that the Statute of Limitations is a bar to the appellant's demand and partly on the ground that the account prayed for is a simple account of debtor and creditor, and, therefore, not a fit subject for a suit in Equity. The question is, what is the nature of the relation between a banker and those who deposit money with him, and who are called his customers. If it could be shewn that a banker is in the position of a trustee for those who employ him, that he is clothed with a fiduciary character in relation to them, and that there is a personal trust and confidence in him, then the Statute of Limitations would be inapplicable, and the second defence also must be held to fail.

The respondents were not in the relation of mere debtors to the appellant for the money deposited, **[31]** which, in ordinary cases, is considered to be a loan, and therefore a debt; *Carr* v. *Carr* (1 Meriv. 541 (note)), *Devaynes* v. *Noble* (*id.* 568), *Sims* v. *Bond* (5 Barn. and Ad. 392-3), *Potts* v. *Glegg* (16 Mees. and W. 321). The Chief Baron, in *Potts* v. *Glegg*, doubted whether in all cases there was not an implied contract between a banker and his customer, as to the money deposited, which

distinguishes it from an ordinary case of loan, but he yielded to the opinion of the other Judges, that it was a simple loan and debt.

It may be admitted that bankers are debtors, but debtors with various superadded obligations, as, for instance, to repay the money deposited, by honouring the depositor's cheques, *Marzetti* v. *Williams* (1 Barn. and Ad. 415), according to the custom of the trade; and in this case there was an additional obligation by the special contract to pay interest on the deposit.

It was the duty of the respondents to keep the accounts with the appellant clear and intelligible, to calculate the interest on the balances in their hands from time to time, to make proper entries of it in the account, and to preserve all vouchers and other evidence of their transactions with him. These duties and transactions constitute a relation more complex than that of mere debtor and creditor, and an account of them is a fit subject for a bill in equity, not only by reason of the admitted concurrent jurisdiction of Courts of Equity with Courts of law in matters of account, but also because the account here sought is of moneys received by the respondents, the receipt of which is within their own knowledge, and the entries and record of which they were bound to keep.

[32] The right to an account in equity does not depend on the number of items, and it is no answer to a bill for an account and payment of balances to say that they might be recovered in an action at law. Such a doctrine would supersede the long established equitable jurisdiction in the cases of stewards and agents and factors in relation to their employers and principals. There cannot be a distinction made between those relations and the relation of banker and employer or customer.

The respondents made entries of the interest in this account up to December 1831, from which time, for the purpose probably of taking advantage of the Statute of Limitations, they abstained, without notice to the appellant, from making any entry of interest in his account, contrary to their custom as bankers, and in violation of their special duty to the appellant. That constitutes a case of a fraudulent breach of duty, of which, although the bill does not contain any such charge, the Court may nevertheless take cognizance, where it finds the respondents broadly stating in their answer that they omitted to make the entries in order to avail themselves of the Statute of Limitations, a defence which was never before allowed in such a case as this. But the respondents do, however, admit in their answer several transactions in 1831, 1832, 1833, and 1834, connected with the appellant's account, in receiving cheques drawn in his favour, and which they say they paid to the person presenting them, either by cash or by bills on their bankers. Those admissions would take this case out of the statute, if otherwise pleadable; *Topham* v. *Braddick* (1 Taunt. 572), *Lady Ormonde* v. *Hutchinson* (13 Ves. 47), *Sterndale* v. *Hankinson* (1 Sim. 393).

[33] It is clear that the accounts sought here can best be discovered and examined in a Court of Equity; and the objection that an action at law is the proper course, not having been suggested in the answer of the respondents, took the appellant by surprise. The case of *Dinwiddie* v. *Bailey* (6 Ves. 136), cited on that point before the Lord Chancellor, is not applicable, because some of the matters of which the plaintiff there sought discovery, were, as Lord Eldon observed (*id.* 139), " rather in his own mind than in the defendant's; " and others were capable of proof in an action at law. Courts of Equity entertain jurisdiction in various matters, in which remedy might be had in the Courts of Law, as in bills for partition, assignment of dower, etc. (Mitf. Plea. 119) Lord Redesdale in his Treatise says (*id.*, pp. 120, 123), " in matters of account, which, though they may be taken before auditors in an action, etc., yet a Court of Equity, by its mode of proceeding, is enabled to investigate more effectually," etc. His Lordship laid down the same doctrine, judicially, in *O'Connor* v. *Spaight* (1 Sch. and Lef. 309), and it was adopted by this House in the late case of *The Taff Vale Railway Company* v. *Nixon* (1 H. of L. Cas. 121). In *The Corporation of Carlisle* v. *Wilson* (13 Ves. 278), which was a bill filed for tolls, the Lord Chancellor says " The principle upon which Courts of Equity originally entertained suits for an account when the party had a legal title is, that though he might support a suit at law, a Court of Law either cannot give a remedy, or so complete a remedy as a Court of Equity, and by degrees Courts of Equity assumed a concurrent jurisdiction in cases of account." **[34]** The same principle had been before recognized in *Barker* v. *Dacie* (6 Ves., p. 688), and afterwards in *Adley* v. *The Whitstable Com-*

pany (17 Ves., p. 324), *Ryle* v. *Haggie* (1 Jac. and W. 237), *Frietas* v. *Dos Santos* (1 You. and J. 574), and in numerous other cases.

Mr. Bethell, Mr. Kenyon Parker, and Mr. Craig, appeared for the respondents, but were not heard.

The Lord Chancellor.—My Lords, we do not think it necessary to call upon the learned counsel for the respondents to address your Lordships, the appellant not having succeeded in showing any ground for impeaching the decree which has been made in the Court of Chancery.

The bill in this case—as is usual in cases of this description where bills state matters of account, and where there is concurrent jurisdiction of law and equity—alleges that the account is complicated and consists of great variety of items, so that it could not be properly taken at law. If that allegation had been made out, it would have prevented the necessity of considering any part of the case. But that allegation has entirely failed of proof; for it appears that the account consisted of only one payment of £6117 10s. to a private account of the customer, and that against that sum two cheques were drawn and paid. That is the whole account in dispute as raised by these pleadings. Therefore there is certainly no such account as would induce a Court of Equity to maintain jurisdiction as if the question had turned entirely upon an account so complicated, and so long, as to make it inconvenient to have it taken at law.

[35] It has been attempted to support this bill upon other grounds, and one ground is, that the relative situation of the plaintiff and defendant would give a Court of Equity jurisdiction, independently of the length or the complexity of the accounts; although it is not disputed that the transactions between the parties gave the legal right, it is said a Court of Equity nevertheless has concurrent jurisdiction, and that is attempted to be supported upon the supposed fiduciary character existing between the banker and his customer.

No case has been produced in which that character has been given to the relation of banker and customer; but it has been attempted to be supported by reference to other cases supposed to be analogous. These are cases where bills have been filed as between principal and agent, or between principal and factor. Now as between principal and factor, there is no question whatever that that description of case which alone has been referred to in the argument in support of the jurisdiction has always been held to be within the jurisdiction of a Court of Equity, because the party partakes of the character of a trustee. Partaking of the character of a trustee, the factor—as the trustee for the particular matter in which he is employed as factor—sells the principal's goods, and accounts to him for the money. The goods, however, remain the goods of the owner or principal until the sale takes place, and the moment the money is received the money remains the property of the principal. So it is with regard to an agent dealing with any property; he obtains no interest himself in the subject-matter beyond his remuneration; he is dealing throughout for another, and though he is not a trustee according to **[36]** the strict technical meaning of the word, he is *quasi* a trustee for that particular transaction for which he is engaged; and therefore in these cases the Courts of Equity have assumed jurisdiction.

But the analogy entirely fails, as it appears to me, when you come to consider the relative situation of a banker and his customer; and for that purpose it is quite sufficient to refer to the authorities, which have been quoted, and to the nature of the connection between the parties (as to a banker's right to lien see *Brandão* v. *Barnett*, 12 Cl. and F. 787). Money, when paid into a bank, ceases altogether to be the money of the principal (see *Parker* v. *Marchant*, 1 Phillips 360); it is then the money of the banker, who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it. The money paid into the banker's, is money known by the principal to be placed there for the purpose of being under the control of the banker; it is then the banker's money; he is known to deal with it as his own; he makes what profit of it he can, which profit he retains to himself, paying back only the principal, according to the custom of bankers in some places, or the principal and a small rate of interest, according to the custom of bankers in other places. The money placed in the custody of a banker is, to all

intents and purposes, the money of the banker, to do with it as he pleases; he is guilty of no breach of trust in employing it; he is not answerable to the principal if he puts it into jeopardy, if he engages in a hazardous speculation; he is not bound to keep it or deal with it as the property of his principal, but he is of course answerable for the amount, because he has contracted, having received that money, to repay to the [37] principal, when demanded, a sum equivalent to that paid into his hands.

That has been the subject of discussion in various cases, and that has been established to be the relative situation of banker and customer. That being established to be the relative situations of banker and customer, the banker is not an agent or factor, but he is a debtor. Then the analogy between that case and those that have been referred to entirely fails; and the ground upon which those cases have, by analogy to the doctrine of trusteeship, been held to be the subject of the jurisdiction of a Court of Equity, has no application here, as it appears to me.

If that analogy fails, and we come to the mere contract, then the matter is not brought within the rules of a Court of Equity as in reference to the other matters of contract. I am surprised to find that this very well known analogy and established principle should be matter of doubt or discussion at this time. But as they have been, I will refer to one or two cases in which the rule and doctrine have been most clearly established, and that, although Courts of Equity will assume jurisdiction in matters of account, it is not because you are entitled to discovery that therefore you are entitled to an account. That is entirely a fallacy. That would, if carried to the extent to which it would be carried according to the argument at the bar, make it appear that every case is matter of equitable jurisdiction, and that where a plaintiff is entitled to a demand, he may come to a Court of Equity for discovery. But the rule is, that where a case is so complicated, or where, from other circumstances, the remedy at law will not give an adequate relief, there the Court of Equity assumes jurisdiction.

[38] Lord Redesdale's Treatise has been referred to. But, however valuable his treatise may be, it is much more satisfactory when we have, from the same eminent Judge, his opinion declared in the exercise of his judicial duties. For that purpose I will refer to the case of *O'Connor* v. *Spaight* (1 Sch. and Lef. 309), in which Lord Redesdale applies the rule. The subject-matter there was between a landlord and tenant. There the connection gave no original jurisdiction to the Courts of Equity, but complicated accounts had arisen between the parties, and Lord Redesdale thus expresses himself: "The ground on which I think that this is a proper case for Equity is, that the account has become so complicated that a court of law would be incompetent to examine it upon a trial at *Nisi Prius*, with all necessary accuracy, and it could appear only from the result of the account that the rent was not due. This is a principle on which Courts of Equity constantly act, by taking cognizance of matters, which, though cognizable at law, are yet so involved with a complex account that it cannot properly be taken at law, and until the result of the account the justice of the case cannot appear." Lord Redesdale there puts it upon the ground, that it is considered an established principle of the Courts of Equity that it is on account of the infirmity of the jurisdiction at law, for the purpose of taking an account, that a Court of Equity assumes jurisdiction.

Again, in the case of *The Corporation of Carlisle* v. *Wilson* (13 Ves. 276), referred to for another purpose (it was a case for tolls), the language of the Court is this: "The question is whether, upon the facts stated by this bill, this court ought to decree an account. The objection is, that the right to take these tolls is, undoubtedly, [39] a merely legal right, that the plaintiffs therefore may have a discovery, and, having obtained that, cannot also have relief, but should use the discovery in an action, which undoubtedly might be brought. The principle upon which Courts of Equity originally entertained suits for an account where the party had a legal title, is, that though he might support a suit at law, a Court of Law either cannot give a remedy, or cannot give so complete a remedy as a Court of Equity."

These are principles which those who are conversant with the proceedings of a Court of Equity imbibe from the earliest period of their legal education. It is a well known rule. The question is whether, in the present case, this demand by the plaintiff is brought within that rule. I am assuming, for the present purpose, that there is nothing in the relative situations of banker and customer which gives, *per se*, the right to sue in Equity; and that is proved, I apprehend, by the consideration

of the question, whether, if there had been no money drawn out at all, and simply a sum of money had been deposited with the banker,—I will not say deposited, but paid to the banker,—on account of the customer, a party could file a bill to get that money back again. The learned counsel judiciously avoided giving an answer to that question. But that tries the principle; because if it is merely a sum of money paid to a factor, or paid to an agent, the party has a right to recall it,—he has a right to deal with the factor or his agent in his fiduciary character. But the banker does not hold that fiduciary character, and therefore there is no such original jurisdiction; and if there be no such original jurisdiction growing out of the relative situations of the parties, then, to see if the account is of **[40]** such a nature that it cannot be taken at law, we are to look to the account itself, and not to the bill; we are to look to the facts as they exist. We find no complicated account at all here. There is merely a sum of money paid in on the one hand, for which there is a receipt, which receipt is the evidence of the party's title, and if there be any sum of money drawn out, it is no part of his title and no part of his case; but it is a part of his case to make that demand, and to shew that part of that money had not been repaid.

My Lords, that exhausts the case, with the exception of one argument, which your Lordships have heard, with regard to a supposed contract. Here it is a contract by the banker, who, it is said, so far divested himself of his original character as to give a Court of Equity jurisdiction over the subject-matter. What is that contract?

He agrees to pay £3 per cent. for the use of the money. Then it is said, those £3 per cent. ought to have been entered in the banker's books; that though there was no transaction between the principal and the banker during the lapse of eight years, the banker ought to have entered in his books the £3 per cent. annually or half yearly (it is not very easy to state what the period should be), and that not having done so, he therefore has been guilty of default. Now he might have been guilty of default if he had not kept his contract,—that is, if he had either refused to pay the £3 per cent. or had refused to pay the money when demanded. That was the whole of his contract. He had contracted for nothing more. I can see no breach of contract by this banker, who, if it had been demanded at the proper time, we may suppose would have kept his contract, and have paid the £3 per cent. But because in his own books he has not entered up the £3 **[41]** per cent. interest, which might have been a beneficial entry for the customer, it is not to be said that that is a breach of contract or a breach of duty. His duty was to account for the £3 per cent. and for the principal. That was all his contract; I do not apprehend that that can possibly make any difference in the question of his liability.

I do not advert to the question on the Statute of Limitations at all, because, if I am right upon this, which is the first question, the Statute of Limitations does not apply. Therefore it is unnecessary to reason upon what the effect might be of that defence being set up, even if there had been a good title in the plaintiff to institute proceedings in equity. The principle upon which my opinion is formed is, that there is nothing to bring the demand within the precincts of a Court of Equity. Upon that ground I think the decree was right in dismissing the bill.

Lord Brougham.—My noble and learned friend (Lord Lyndhurst)—who, from his right of precedence here, would naturally have addressed your Lordships before me—being the Judge from whose decree this appeal is taken—I nevertheless take leave, before he addresses your Lordships, to state my entire agreement in the reasons stated by my noble and learned friend (the Lord Chancellor), and in the opinions at which he has arrived through those reasons, in favour of the decree of the Court below, and shall join with him, or rather shall make, which he omitted, the motion which, from the tenour of his statement, it is evident he meant to make, that your Lordships should affirm the decree, with the costs of the appeal.

[42] I agree with my noble and learned friend, that the question of the Statute of Limitations would arise if there was an equitable title, and it came within the proper cognizance of a Court of Equity. But the question does not arise, and I therefore abstain, as he did, from saying a word upon it.

There is clearly no such account,—whatever may be set forth by the bill,—upon the facts of the case, which calls upon a Court of Equity, upon that head of jurisdiction, to give relief. And, in passing, I would observe that, to say that whenever there is a right to discovery, there must be an account allowed,—where that comes in question,—is rather reversing the thing. Discovery, on the contrary, is incident

to the order to account. The two things are separate. But the account being excluded by the facts of this case, which shew that there is no reason for this statement of account, there being but one sum paid in, and two sums of money drawn out, there is no reason, upon this statement of the facts, for giving relief in equity. The question then comes to be, whether they have succeeded on one or other of the two grounds, the first of which is, holding the banker to be in a *quasi* fiduciary position towards his customer, and proceeding against him as if he were a trustee; and the other is, whether the stipulation for interest by the banker makes any difference in the case?

Now, with respect to the latter question, arising upon the interest, I think that may be disposed of in a few words. It does not follow that, because a banker contracts to pay any strictly legal demand, therefore that puts the case on a different footing. I should be very sorry if that should be so; because I am sure the Court of Chancery might have then a bill from every **[43]** tradesman for payment of his account, for goods sold and delivered, and wherever there was a stipulation to pay after a certain time, as in many cases there is, in such a case a bill might be filed. But we know pretty well it is the A B C of the practice of the Court of Equity that no such bill can be filed.

I come then to the only other ground, which was the main contention, ably contended in some respects, judiciously in others; I particularly allude to the judicious course taken by the learned counsel, in avoiding to answer the question upon which he was pressed once and again by your Lordships, but who delivered an able argument in other respects. Now, as to the banker: is his position with respect to his customers that of a trustee with respect to his *cestui que trust*? Is it that of a principal with respect to an agent? or that of a principal with respect to a factor? I see no ground for contending that there is any identity in those two points. I am now speaking of the common position of a banker, which consists of the common case of receiving money from his customer on condition of paying it back when asked for, or when drawn upon, or of receiving money from other parties, to the credit of the customer, upon like conditions to be drawn out by the customer, or, in common parlance, the money being repaid when asked for, because the party who receives the money has the use of it as his own, and in the using of which his trade consists, and but for which no banker could exist, especially a banker who pays interest. But even a banker who does not pay interest could not possibly carry on his trade if he were to hold the money, and to pay it back, as a mere depositary of **[44]** the principal. But he receives it, to the knowledge of his customer, for the express purpose of using it as his own, which, if he were a trustee he could not do without a breach of trust. It is a totally different thing if we are to take into consideration certain acts that are often performed by a banker, and which put him in a totally different capacity, for he may, in addition to his position of banker, make himself an agent or a trustee towards a *cestui que trust;* for example, suppose I deposit exchequer bills with a banker, and he undertakes to receive the interest upon them, or undertakes to negotiate or make sale of these exchequer bills, and to credit my account with the proceeds of the sale, I do not stay to ask whether, in that case, he might not be in the position of a trustee, and might not partly sustain a fiduciary character; but he does that incidentally to his trade of a banker; for his trade of a banker is totally independent of that,—his trade of a banker consists in the general trade, to which the other is an accidental addition. This trade of a banker is to receive money, and use it as if it were his own, he becoming debtor to the person who has lent or deposited with him the money to use as his own, and for which money he is accountable as a debtor. That being the trade of a banker, and that being the nature of the relation in which he stands to his customer, I cannot, without breaking down the bounds between equity and law,—without, as it were, removing the land-marks of jurisprudence,—I cannot at all confound the situation of a banker with that of a trustee, and conclude that the banker is a debtor with a fiduciary character. I therefore entirely agree with my noble and learned friend, thinking that the view taken of this case in the Court **[45]** below was a correct one, and, therefore, I move that this appeal be dismissed, and the decree appealed from be affirmed, with costs.

Lord Campbell.—I cannot help thinking that when this case was before his Honor the Vice Chancellor of England, the decree he pronounced must have pro-

ceeded upon some incorrect statement of the facts, and that he had thought that several actions would have been necessary.

My Lords, when you come to examine the facts, it is quite clear that this is a purely legal demand, the relation between banker and customer, as far as the pecuniary dealings are concerned, being that of debtor and creditor. It has been said, that the banker is liable to do something more than merely to repay the money. He is bound to honour cheques, and perhaps to accept bills of exchange, if drawn upon him, he having assets in his hands; but these are purely matters of legal contract, and, it seems to me, that there is nothing of a fiduciary character at all in the relation subsisting between them.

That being the case, why should this legal demand be recovered by a bill in equity? The learned counsel at the bar could not contend that a bill could be filed the moment that there was a sum of £1000 entered to the credit of the customer. Then at what time could a bill in equity be maintained? Is it when one cheque is drawn; or when a second payment is made, even of £100 more? The time when the jurisdiction of equity attaches, is when, at law, there is not a satisfactory remedy, or when, from the complexity of the accounts, it is not a fit case to be referred to a jury. I most heartily concur in the case of *The Taff Vale Railway* **[46]** *Company* v. *Nixon* (1 H. of L. Cas. 111), in its, I think, most salutary doctrine, that where there are complex accounts, it is a much better thing, though all rests upon a legal demand, to file a bill, and at once to go to the Master's office, and have the accounts taken there, than to bring an action at law, and have that investigation before a jury, for which a jury is clearly inadequate.

There is no such difficulty here. The items are of the simplest description, and the matter might have been settled by a judge and jury at *Nisi Prius*. I therefore think the noble and learned Lord (Lord Lyndhurst) was perfectly right in reversing the decree of the Vice Chancellor, and that we shall do right in dismissing this appeal.

The other points that were raised in the argument, it is wholly unnecessary to consider, and I abstain from entering into them.

Lord Lyndhurst.—I expressed my opinion very fully upon the subject in the Court below, and, as that opinion is in print (1 Phil. 399), it appears to me to be unnecessary to repeat the grounds upon which I decided the case.

I entirely concur in the view that has been taken by my noble and learned friends, with respect to jurisdiction in matters of account. I will only refer, therefore, in addition to those authorities which were cited by my noble and learned friend on the Woolsack, to the case of *O'Mahony* v. *Dickson* (2 Sch. and L. 400). It appears to me to apply very closely to the present case. The marginal note is this:—"The account sought in this case, consisting only of three disputed items, admitted to have been paid, if at all, on account of rent, and **[47]** being such as a jury might easily have investigated; the bill was dismissed, with costs." That almost in its terms applies to the case before your Lordships. I am of opinion, therefore, with my noble and learned friends, that this judgment must be affirmed.

The appeal was then dismissed, with costs.

IN COMMITTEE FOR PRIVILEGES.

LORD DUFFERIN AND CLANEBOYE'S CLAIM.

Evidence—Certificate of baptism abroad; Copy.

A copy of an entry, made from a certificate of baptism by a chaplain of a British minister at a foreign Court, is not sufficient evidence of birth and parentage.

This was the claim of an Irish Peer to vote at the election of representative Peers for Ireland. To prove the claimant's birth, a copy of an entry in a registry of baptisms, kept in a parish church in Ireland, in which the family mansion was situated, was produced. That entry was made in 1827, by direction of the claimant's grandfather, the then Lord Dufferin and Claneboye, from a certificate of the chaplain