There is a proviso put there, that if there is already a water company authorised by Act of Parliament to supply water to that district—whether that water company had supplied it or not does not seem to me to be material—they shall not interfere with their vested rights by supplying water until they have purchased that company's vested rights of water. Then it goes on to say further, that where there is a "public well" (I pass by all the other words) from which the public have been gratuitously supplied with water, the local authority may (it is one of the purposes to which they may apply their rates) "continue and maintain" that well from which the public had been gratuitously supplied with water. I cannot but think that that applies, and is meant to apply, to such a case as this. I do not know whether a public company could without excessive impudence, if there had been a public water company in Denny, say that the effect of the Public Health Act being introduced had been to take away the right which the public of Denny had to draw water from this well, and to force them to come to the company. That would be, I think, beyond a conceivable case for a company. Even a corporation, which it is said has no conscience, could not do that. What the Act says is —Notwithstanding that there may be a company with a vested right to supply the inhabitants, the local authority may, where there is such a well, and where there is such a public right to be gratuitously supplied as I have already mentioned, continue and maintain that well.

Now, has this local board done any more than that? I think not. If I am correct in what I have already stated to your Lordships as being my view of what has taken place, and of what the rights of the public of Denny were before the Public Health Act was introduced into the place, the respondents have not done one whit more than the public did before. Consequently, I think the Court of Session were quite right in saying—We will not interdict them from doing what they have a perfect right to do, and we will not order them to take away what they have done, even if in some trifling degree they may have injured Mr Smith, which I do not think they have.

My Lords, there remains the last question, on which, as my noble and learned friend who first addressed your Lordships has said some doubt has been cast, namely, whether or no if we were simply to affirm the interlocutor it might not be agreed hereafter that there was *res judicata* as to some further right which the local authority might have in respect of this as a public well. I think each of your Lordships who have spoken has stated—and certainly I myself positively and distinctly state—that I do not mean to decide anything of the sort. I do not think that the meaning of the Public Health Act is, that although this was a public well in the sense which I have described, the public authority has a right to do anything more to it unless they purchase it, as they may purchase any other well, for the purpose of making water-works. If any sanitary evils came from the well, they might stop it up, just as they may any other; but the mere fact that the public of Denny had a right to use it before the Public Health Act was passed does not give the local authority the right to do anything more than the public had the right to do before.

My Lords, looking at all that is asserted on each side on the record, and coupling that with the careful way in which each of your Lordships has guarded the expression of your opinion, I have no fear at all myself lest it should ever be supposed that this was *res judicata*. Nevertheless, if the parties are afraid of it, really I do not know that there will be any great harm in doing what would be, in my view of the matter, quite useless, namely, putting a note to the affirmance of the interlocutor saying that it is without prejudice to any question such as I have alluded to being mooted hereafter. I think it would require some care and attention to word that properly, because if it were not worded properly, the effect of it might be to leave things open which were not meant to be left open. I confess, for my own part, I should prefer simply to affirm the interlocutor. Upon that I should myself have liked to ask the Lord Advocate if he felt any fear on the part of his client, and if he wanted other words to be added, how it should be done. For myself, I really do not think it is required.

Lord Hatherley—My Lords, from what has fallen from your Lordships, it appears to me that your Lordships are of opinion that a simple affirmance of the interlocutor of the Court of Session will be quite sufficient without anything more, and that any misunderstanding of this decision will be guarded against by such declarations as have been made by your Lordships. What I threw out before was merely a suggestion with the view of eliciting your Lordships' opinions on this matter. I will move simply that the interlocutors be affirmed and the appeal dismissed with costs.

Interlocutor appealed from affirmed, and appeal dismissed with costs.

Counsel for Appellant—Lord Advocate (Watson) —Benjamin, Q.C. Agent—William Robertson, Solicitor.

Counsel for Respondents—Herschell, Q.C.—Mair. Agent—Andrew Beveridge, Solicitor.

COURT OF SESSION.

Wednesday, March 10.

SECOND DIVISION.

[Lord Rutherfurd Clark, Ordinary.

CITY OF GLASGOW BANK LIQUIDATION—(*FRASER'S TRUSTEES' CASE*)—ROBINSON *v.* MURDOCH AND OTHERS (FRASER'S TRUSTEES).

Trust—Liability of Trustees—Discretion as to Investment—Relief from Trust-Estate.

The trustees of a deceased party were directed, *inter alia*, to pay the "interest or annual-rent" of two sums of £2000 to each of the truster's two sisters—the "sums" in

question were to be paid to their children respectively after their death. Part of the funds which were set aside to meet the obligation in favour of one of the sisters was invested in bank stock — an investment which had been retained by the trustees after communication with the beneficiary in question. The sum retained amounted to £200 stock, £650 having been disposed of subsequently to the death of the truster. By the trust-deed the trustees were authorised "to continue to hold any or all of such shares or stocks in public or other companies as may pertain and belong to me at the time of my decease, should they consider it advisable or expedient to do so, without any personal responsibility for loss." There was a further power to the trustees "to lend or place out on such security or securities, heritable or moveable, as they shall consider advantageous, the foresaid legacies of £2000 and £2000 respectively, the said security or securities to be conceived in favour of my trustees, and that for the purposes of this trust and no otherwise." The bank having failed, the trustees were put on the register as owners of the stock. *Held* (*rev.* Lord Rutherfurd Clark, Ordinary—*diss.* Lord Gifford) that, upon a construction of the trust-deed the trustees were entitled to relief against the trust-estate belonging to both sisters from payment of calls, and that so long as there was no imputation of dishonesty it was irrelevant to inquire whether the trustees thought the investment a right or wrong one, they having merely exercised a definite power conferred on them.

Mrs Elizabeth Robb or Fraser died on 11th January 1876 leaving a trust-disposition and settlement with relative codicil, both recorded on 11th February 1876. Several trustees were appointed, of whom James Fraser Robb, the truster's son, and William Murdoch, solicitor, Huntly, alone accepted. These gentlemen, with Mr R. F. R. Sinclair and Mr Andrew Macpherson, whom they assumed as trustees, were the respondents in this case. Mrs Fraser conveyed all her property to her trustees, except some heritage, in trust for various purposes. These were, *inter alia*— "*Secondly*, That my trustees shall make payment to Margaret Fraser or Sinclair, my elder daughter, wife of the said Reverend William Sinclair, of the interest or annual-rent of £2000 sterling, payable at the term of Whitsunday yearly, . . . exclusive of the *jus mariti* of the said Reverend William Sinclair, her present husband, or of any future husband she may hereafter marry; and the receipts for the same to be granted by the said Margaret Fraser or Sinclair alone shall be valid and sufficient to the receivers thereof, without the consent of the said Reverend William Sinclair, or of any future husband she may hereafter marry; and the same shall neither be liable to his deeds nor subject to the legal diligence of his creditors for payment of debts already contracted or to be contracted by him at any time hereafter; And after the decease of the said Margaret Fraser or Sinclair, my elder daughter, my trustees shall be bound and obliged to make payment to the child or children lawfully procreated of her body of the foresaid sum of £2000 sterling, in the shares, at the terms, and under the declaration after mentioned"—[the deed then set forth certain provisions for payment of the fee to Mrs Sinclair's children]. *Thirdly*, For payment of a provision of £2000 in precisely similar terms to Mrs Elizabeth Fraser or Robinson, who was the complainer in this action, and after her death to her children. *Fourthly*, For payment of certain legacies. "And *Lastly*, That my trustees shall, after payment of my debts, deathbed and funeral expenses, and the expenses of this trust, and making provision for payment of the legacies above mentioned, divide the free residue and remainder of my said heritable and moveable means and estate" (excepting certain heritage) "equally between and among the said James Fraser Robb, Margaret Fraser or Sinclair, and Elizabeth Fraser or Robinson, share and share alike; with full power to my trustees to enter into possession of the said trust-estate and effects, to call and sue for, uplift, and receive the rents, mails, and duties, interests and annual profits of the same, and to grant discharges therefor, which shall be as valid and effectual to the receivers as if granted by myself; as also, to sell and dispose of all or any part of the said trust-estate and effects, and that either by public roup or private bargain, as my trustees shall consider most proper; and to execute all and whatever deed or deeds, containing all necessary clauses for rendering the said sale or sales effectual, in the same manner and as amply as I could have done myself: With power also to my trustees to continue to hold any or all of such shares or stocks in public or other companies as may pertain and belong to me at the time of my decease, should they consider it advisable or expedient to do so, without any personal responsibility on my trustees for loss, if any, thereby sustained: With power also to my trustees to lend or place out on such security or securities, heritable or moveable, as they shall consider advantageous, the foresaid legacies of £2000 and £2000 respectively, the said security or securities to be conceived in favour of my trustees, and that for the purposes of this trust and no otherwise; as also, to vary such security or securities in or upon which they shall have lent or placed out the monies coming into their hands in virtue of the present trust, for other security or securities of the like nature, when and so often as it shall seem to them expedient: . . . Declaring always that my trustees shall not be liable for omissions or neglect of management, nor *singuli in solidum*, but each one for his own acts, receipts, or intromissions only, nor shall they or any of them be liable, answerable, or accountable for any banker, factor, or other person with whom or in whose hands any of the trust-funds may come to be deposited in the execution hereof, nor for the insufficiency or deficiency of any funds or securities in or upon which any of the trust-funds may be invested in pursuance of and conformity to this settlement, or for any other misfortune, loss, or damage which may happen in the execution of this trust or otherwise in relation hereto, unless the same shall happen by or through their own wilful defaults respectively."

At the time of her death Mrs Fraser held £850 of the stock of the City of Glasgow Bank. Some correspondence passed between Mr Robb and Mr Murdoch, as trustees, and Mrs Sinclair in reference to the investment of her £2000. The fol-

lowing letters were written by Mr Murdoch's firm to Mrs Sinclair, and by her in answer:—

"*Huntly, 28th November* 1876.

"Dear Mrs Sinclair—We had a letter a few days ago from Mr Fraser Robb, in which he stated that he had written to you to see whether you would care to take £1000 worth of the City of Glasgow Bank stock as part of the money to be invested for your behoof by the trustees under Mrs Fraser's will. We are anxious to have the matter of the investments concluded prior to Mr Fraser Robb's leaving the country, as he proposes to do next month, and shall be glad to learn your views on that subject. We may mention that our brokers recommend that this stock should be realised, and our own view is that bank stock is not a suitable class of stock for trustees to hold—We are, &c.

"Murdoch & Macpherson.

"59 *Forrest Road,*
"*Kirkwall, 30th November* 1876.

"Dear Mr Murdoch—I am in receipt of yours of the 28th, and beg to say in reply that I would be unwilling to risk so large a sum as £1000 in the purchase of stock of the City of Glasgow Bank; but with the consent of the trustees I would willingly invest £500, and that on my own responsibility. We shall all be glad how soon everything is settled, but of course we must not be impatient.—I am, &c.

"Margt. F. Sinclair."

The trustees, therefore, in realising Mrs Fraser's estate, and setting apart funds for implementing the two provisions of £2000 each, retained £200 stock of the bank (disposing of the remainder), and set it aside as part of the fund for implementing Mrs Sinclair's provision. The trustees afterwards, on the narrative that these funds had been set aside for implement of the provisions, and that they had paid the residue, received their discharge, dated 22d March and 31st May 1877, from the beneficiaries. The £200 stock of the bank remained in name of the trustees, and on the insolvency of the bank, calls (1st) of £500 per share, and (2d) of £2250 per share being made on them in respect of the shares, they proposed to pay the calls out of the trust-funds belonging to both Mrs Robinson, the complainer in this action, and Mrs Sinclair. Mrs Robinson then raised this action of suspension and interdict for the purpose of preventing the trustees from selling or disposing of the stocks or securities held by them in trust for behoof of the complainer, and from paying or conveying such funds to the liquidators of the City of Glasgow Bank.

The complainer averred—"In a letter dated 28th November 1876, addressed to Mrs Sinclair by Mr Murdoch's firm, asking whether she would care to take £1000 worth of the City of Glasgow Bank stock as part of the money to be invested for her behoof, they say—'We may mention that our brokers recommend that this stock should be realised, and our own view is that bank stock is not a suitable class of stock for trustees to hold.' On 30th November 1876 Mrs Sinclair, in writing to Mr Murdoch, stated that she would be unwilling to risk so large a sum as £1000 in City of Glasgow Bank stock, but with the consent of the trustees she would willingly invest £500, and that on her own responsibility. Accordingly, under an arrangement to that effect with Mrs Sinclair, and upon her responsibility, the trustees either bought or retained £200 of the said stock as part of her investments. In their communications with the complainer, however, no mention was ever made of the trustees having retained any part of the City of Glasgow Bank stock. On the contrary, the respondents, through their agent Mr Murdoch, represented to the complainer that the stocks were being all sold, and in a letter addressed to the complainer on 20th December 1876 Mr Murdoch stated that the residue would be divided so soon as the shares were sold, and he added—'They' (the stocks) 'are now in the hands of brokers for the purpose of being disposed of, and when this is done no delay will take place on our part in dividing the balance.'" The trustees considered the question as to retaining the City of Glasgow Bank stock, and came to the conclusion that it was not advisable in the interests of the trust to retain any part of the said stock. Having, however, come to this conclusion, they were requested by Mrs Sinclair, at her wish and responsibility, to retain £200 of the said stock, and, surrendering their own judgment at her request, they accordingly did so.

It was answered that "the shares referred to in the letter of 20th December 1876 were the shares composing the said balance or residue, and at the time the complainer signed the discharge for her share thereof, which she did on 31st May 1877, she was well aware that the said £200 City of Glasgow Bank stock was among the stocks which the trustees retained and continued to hold as part of the trust-funds."

It appeared that statements and accounts of their investments, and of the interest falling due thereon, were sent to each of Mrs Sinclair and Mrs Robinson annually, the City of Glasgow Bank investment being included in that sent to Mrs Sinclair, but all the investments alike stood in the name of Mrs Fraser's trustees, and continued to be held by them as part of the trust-estate.

The complainer's pleas were, *inter alia*—"(1) The respondents James Fraser Robb and William Murdoch, being the registered contributories in respect of the said shares of the City of Glasgow Bank, and being personally bound for the calls thereon, they are not entitled to appropriate the investments made for behoof of the complainer in payment of said calls. (2) Two separate and distinct trust-estates having been created as applicable to the complainer and Mrs Sinclair respectively, the respondents are not entitled to burden the complainer's estate with losses sustained through the investments made for Mrs Sinclair's trust-estate and behoof. (3) In any view, the trustees having made separate and distinct investments, the one set applicable to Mrs Sinclair, and the other to the complainer, there was thereby, and by the correspondence which preceded and the actings of parties which followed, an arrangement constituted whereby the risk of the investments made on behalf of Mrs Sinclair was left with her and her share of the trust-funds in the trustees' hands, and in no respect with the complainer or her investments. (4) The respondents are barred, by the arrangements entered into with Mrs Sinclair condescended on, from claiming relief against the complainer or the investments made for her

behoof. (5) Under the terms of the trust-deed, the trustees were not entitled to retain or purchase City of Glasgow Bank stock as part of the investments, either of the said £2000 for behoof of the complainer, or of the £2000 for behoof of Mrs Sinclair."

The respondents' pleas were, *inter alia*—"(2) The trustees having acted within their powers in continuing to hold the bank stock, are entitled to be indemnified out of the trust-estate in their hands for any loss incurred or to be incurred by them in consequence of holding the said stock. (3) The investments of the trust-funds having all along stood in the names of the trustees as such, and the trust being one and indivisible, the trustees' lien or right of indemnity subsists, and extends over the whole trust-estate. (4) The trustees not having by their actings, or by acceptance of the discharge founded on, or in any other way, renounced or restricted their said right of indemnity as against the complainer, the interim interdict should be recalled, and the reasons of suspension repelled, with expenses."

On 6th January 1880 the Lord Ordinary (Rutherfurd Clark) granted suspension and interdict as prayed, adding the following note:—

"*Note.*—The respondents as trustees held £200 stock of the City of Glasgow Bank. The question is, Whether they are entitled to indemnify themselves out of the trust-estate for the losses they have sustained by reason of calls made on them as shareholders?

"The truster at her death held £850 stock, of which the respondents retained £200. By the trust-deed they are authorised to continue to hold such shares or stocks as might belong to the truster, "should they think it advisable or expedient to do so," without any responsibility for loss. They plead that they retained the stock in the exercise of the power, and that they are in consequence entitled to be kept free of respcnsibility so far as the trust-estate will go.

"In the opinion of the Lord Ordinary, this plea is not well founded. He thinks that the stock was not retained in the exercise of the power, but at the request and for the behoof of Mrs Sinclair, who liferented a sum of £2000. Accordingly, in the discharge which was taken from the residuary legatees, among whom were the complainer and Mrs Sinclair, the respondents represented the £200 bank stock as a part of the stocks in which the £2000 above mentioned was invested, and they gave her the income which was derived therefrom. But in seeking to benefit Mrs Sinclair the respondents surrendered their own judgment, which, as it appears from the correspondence, would have led them to realise the whole except the portion which Mrs Sinclair wished them to retain.

"The truster left two legacies of £2000 each—one to the complainer in liferent and her children in fee, and the other to Mrs Sinclair in liferent and her children in fee. The complainer maintains that certain stocks were set aside to meet the legacy to her and her children, so that they came to be held under a separate trust. It is to these stocks that the present application relates. The Lord Ordinary does not think it necessary to enter on this question. He has disposed of the case on a ground which entitles the complainer to the remedy which she asks, though it might also entitle her to one still wider."

The respondents reclaimed.

Authorities—*Brownlie and Others* v. *Brownlie's Trustees*, July 11, 1879, 6 R. 1233; M'Laren on Wills and Succession, ii. 308, 320, 520; *Cochrane* v. *Black*, Feb. 1, 1855, 17 D. 321; *Laird and Others* v. *Laird's Legatees*, June 26, 1855, 17 D. 984; *Morison*, Dec. 5, 1856, 19 D. 132; *Bontine's Curators*, July 13, 1870, 8 Macph. 976; *Marsden* v. *Kent*, 1877, L.R., 5 Chan. Div. 598; Lewin on Trusts (7th ed.), 267, 290, 299; Williams on Executors (8th ed.), ii. 1800, 1826–7, 1755.

At advising—

Lord Justice-Clerk—[*After stating the facts*]—The questions which arise in this case seem to be two — *First*, whether the respondents Fraser's trustees were entitled to continue the investment in the City of Glasgow Bank stock which is the subject of dispute? and *secondly*, whether if they were so entitled, they had a right to be relieved out of the trust-estate of the liability and loss which they have thereby incurred?

As to the first, it necessarily depends on the clause of the trust-deed under which the respondents allege that they continued this investment. Now, as far as the authority given in the clause extends—on which I shall speak immediately—it is as ample, unreserved, and comprehensive as any words could make it. To continue or not continue such investments is left wholly to their uncontrolled discretion. The words "if they shall think it advisable" have no more limiting signification than the words "if they shall choose" or "see fit" so to act. It is enough that they do it, and the clause authorises what they do.

I hold it therefore quite irrelevant to inquire whether the trustees thought this a right thing to do, or to allege that although they did it they did not think it right. They exercised a definite power conferred on them, and they were the only judges of whether the exercise of it was or was not beneficial in the administration of their trust, as long as there is no reason to suppose they acted dishonestly or corruptly.

I cannot, therefore, proceed on the ground on which the Lord Ordinary has decided this case. He says the trustees surrendered their judgment; and he comes to this conclusion because, in negotiating with the beneficiary who had the main interest in continuing the investment, Messrs Murdoch and Macpherson, two of the trustees, in a letter to Mrs Sinclair, dated 28th November 1876, say, "Our own view is that bank stock is not a suitable class of stock for trustees to hold." But the trustees might be of that general opinion, and yet quite reasonably come to the conclusion that in the case before them the power given them by the testatrix might with propriety be exercised, and I cannot spell out of the subsequent correspondence anything in the least tending to show that they did not. The general opinion which they expressed, although most people would think it sound in itself, was not that of the testatrix, and I am averse to restrict by such surmises the distinct power thus bestowed, or the indemnity attached to it, in the settlement.

It was, however, argued from the bar that the power thus conferred was only temporary, and that it came to an end whenever the residue came to be divided. It was also argued that the clause giving power to the trustees to invest was equi-

valent to an obligation to realise these two sums. The Lord Ordinary takes no notice of these views, at which I am not surprised, for they seem to me at variance with the whole scope of the settlement.

The power to continue the existing investments contains neither in words nor in implication any limitation in point of time, and it is quite plain that it was intended to operate as long as it was necessary for the trustees to hold the money. But it may be worth while to inquire what amount of meaning the directions of the testatrix would have on the footing now contended for. A short analysis of the clauses will bring this distinctly out.

The purposes of the trust are—(1) to pay debts and funeral expenses; (2) to pay Mrs Sinclair the interest of £2000, and the fee to her children; (3) to pay the like sum to Mrs Robinson and her children; (4) to pay four legacies of £5 each; and then follows the residuary clause—"And lastly, that my trustees shall, after payment of my debts, deathbed and funeral expenses, and the expenses of this trust, and making provision for payment of the legacies above mentioned, divide the free residue and remainder of my said heritable and moveable estate," &c. After this clause come the three clauses regulating the realisation and investment of the estate—the first giving power to realise investments; the second giving power to continue existing investments; and the third giving power, in the event of existing securities being realised, to invest the two sums of £2000 of new, in the following terms —[*reads as above*].

It seems sufficiently clear that these clauses were all of them intended to remain operative during the whole existence of the trust—the power to realise, and those to continue and to alter investments. As I read the settlement, the power to continue existing investments could have no practical effect excepting for the period after the division of the residue, and with reference to the two sums of £2000, which were the only sums which the trustees were to retain in their hands. The scheme of the instrument was an immediate division of the residue, delayed only by the payment of debts and funeral expenses and the investment of these sums; and the power to continue existing investments, and the indemnity so carefully attached to it, were certainly not limited to a few months, and would have been quite unnecessary for that purpose. In this way this power not only includes the investment of these two sums, but was in fact intended for and applicable to no other purpose than that to which the trustees applied it.

As to the reading of the investing clause contended for, it can only be made plausible by unwarrantably separating it from the context. The scope of these three clauses when read together is unmistakeable. The first gives power to realise existing investments. The second gives power, not to realise, but to hold existing investments, if the trustees think it right to do so. The third gives power, if the trustees think it right to realise, to invest the only sums they had occasion to invest in such security, heritable or moveable, which the trustees may think advantageous, and to vary the investment from time to time. It might, no doubt, have been a question, with which we have no concern in this case, whether if the trustees had thought fit to realise this Glasgow Bank stock, they could have re-invested in a similar security? In that case they would not have been protected by the power, and must have been judged by the ordinary rules of law. But this power to invest is one which they could only exercise if they resolved to realise; and to read it as a direction to realise and invest is to pervert it from its plain and obvious meaning. I think, therefore, that the first question must be answered in the affirmative.

The next question is, whether, on the assumption that the trustees were entitled to continue this investment in the stock of the City of Glasgow Bank, they are entitled to be relieved of the personal loss they have thereby incurred out of the estate of the maker of the trust which remains in their hands. It is maintained that the course followed by the trustees had the effect of terminating the original trust as far as Mrs Sinclair was concerned, and rendering the trustees only the agents or mandatories of Mrs Sinclair.

I have been unable to give any effect to, or even to follow, this argument, and I can find as little foundation for it in the facts as in the reason or justice of the case. If it be assumed that this sum might be left by the trustees on the existing investment, then there is nothing in their action but what they were authorised and directed by the trust-deed to do. Whatever investment they had selected, the separation of the two sums was in fulfilment of their instructions, and each was for behoof of the eventual fiars, as well as for that of the immediate life-interests. One of these investments might under many possible contingencies have been more fortunate or less fortunate than the other, and how far without stipulation any deficiency which might have arisen on the sum set apart for one set of beneficiaries in liferent and fee could be to any extent made up from the other investment might have given rise to question. The funds by the very terms of the settlement were to remain trust-funds, and to be held for the purposes of the trust. But while the trustees in this case, in the view of the possible fluctuation of this stock, of which the testatrix was quite aware when she authorised the trustees to continue to hold it, thought it right to ascertain Mrs Sinclair's wishes in regard to it, they excluded any question between her and the other beneficiary by a direct personal obligation from Mrs Sinclair. But the trustees' personal right of relief is quite a different manner. That is a direct debt of the maker of the trust, for which the whole of the trust-funds in the hands of the trustees must be liable, and nothing that occurred in the course of these communications amounted to a discharge of that debt, or in any way affected or related to the right of the trustees to the indemnity which had been specially provided for them.

I am therefore not at all inclined to search about for grounds to impose on these gratuitous trustees a liability from which the trust-deed specially exempted them. I see nothing in their proceedings but fair and reasonable administration under the terms of their trust. If it has been attended with loss, that loss has flowed directly from the powers conferred by the testatrix, and her estate should repair it.

Lord Ormidale—The question raised in this

case is one of nicety and importance in the law of trusts, and more especially in the law relating to the powers and liabilities of gratuitous trustees.

The late Mrs Fraser by her trust-disposition and settlement disponed her estates, heritable and moveable, to trustees, of whom the reclaimer William Murdoch was one. The purposes of Mrs Fraser's trust-deed and settlement were, besides the usual ones of payment of debts and funeral expenses, and certain small bequests which are not now in question, the investing and securing of £2000 for behoof of each of her two daughters Mrs Sinclair and Mrs Robinson in liferent, and after providing for the fulfilment of these objects, for the purpose of paying and dividing the residue among various persons.

The means or estate left by Mrs Fraser for implementing these purposes consisted in part of shares or stock of the City of Glasgow Bank, which not long since fell into utter insolvency.

The powers conferred upon her trustees by Mrs Fraser are very ample. In particular, by the clauses regulating the realisation, continuance, and alteration of investments, she empowers her trustees—[*reads terms of clause ut supra*].

Unfortunately, as it has turned out, the trustees continued to hold £200 of the City of Glasgow Bank, which was part of Mrs Fraser's estate left by her, and the consequence has been that not only that sum but much more—in short, the whole available trust means and estate—will be exhausted in payment of calls made upon the trustees by the liquidators in winding up the bank and settling with its creditors.

It was in this state of matters that the present process of suspension and interdict was instituted by Mrs Robinson, one of the truster's daughters, and a legatee, as has been already noticed, in her settlement for £2000.

The trustees, or at anyrate the reclaimer Mr Murdoch, has resisted that application for interdict, and pleaded that—"The trustees having acted within their powers in continuing to hold the bank stock, are entitled to be indemnified out of the trust-estate in their hands for any loss incurred or to be incurred by them in consequence of holding the said stock." On the other hand, the suspender Mrs Robinson, besides some pleas which will be afterwards adverted to, has maintained in debate, although she has no corresponding plea upon record, that, *esto* the trustees had the discretionary power assumed by them, they did not exercise it, but, on the contrary, as stated by the Lord Ordinary in his note to his interlocutor reclaimed against, in seeking to benefit Mrs Sinclair, "surrendered their own judgment, which as it appears from the correspondence would have led them to realise the stock, for they realised the whole except the portion which Mrs Sinclair wished them to retain."

Such being the only ground upon which the judgment of the Lord Ordinary proceeds, the first question which falls to be determined is, whether it is well or ill founded? Nor is it, in considering this question, necessary to inquire whether the trustees, if they in good faith exercised their judgment, were entitled to do so to the effect of retaining in place of realising the stock, for their power to do so is necessarily assumed. Now, for my own part, I have been unable to find any sufficient ground for holding that the trustees had not, in acting as they did, exercised their own judgment. No proof on that, or indeed any other point in the case, appears to have been asked or moved for by the suspender. But certain correspondence between the trustees and Mrs Sinclair has been produced, and founding on one or some passages in that correspondence, it has been contended by the complainer that it sufficiently appears that the trustees in continuing to hold the bank stock did not exercise their own judgment, but surrendered it to the will of Mrs Sinclair. Anything material in the correspondence relating to this matter will be found, I think, in the letters; and the passage chiefly founded on by the complainer is contained in Messrs Murdoch and M'Pherson's letter of 28th November 1876 to Mrs Sinclair, and her answer thereto of 30th November 1876. Messrs Murdoch and M'Pherson say in reference to continuing or realising the bank stock, that they "may mention that our brokers recommend that this stock should be realised, and our own view is that bank stock is not a suitable class of stock for trustees to hold;" and in her answer to that letter Mrs Sinclair says that she would "be unwilling to risk so large a sum as £1000 in the purchase of stock of the City of Glasgow Bank, but with the consent of the trustees I would willingly invest £500, and that on my own responsibility." Such being the whole evidence of any materiality tending in any way to support the complainer's plea, I am unable to hold that it is sufficient. It appears to me to be at the most only an indication of a desire on the part of the trustees to give effect to the wishes of Mrs Sinclair on the subject if upon full consideration they saw their way to do so; but that they did not come to the conclusion to continue the bank stock as it was left to them by the truster, in the exercise of their own judgment, nowhere appears. Considering that the trustees had the power to retain the stock if they thought it right or expedient to do so, it would be difficult in any circumstances to establish that they did not apply their minds to the subject, and it would, I think, be very unfair to them to hold that they did not. The circumstance of their thinking it right to consult brokers as well as Mrs Sinclair, at the same time expressing their opinion that in the general case they did not think it advisable for trustees to hold such stock, in place of proving that they did not apply their minds to the subject, or that they surrendered their own judgment regarding it, shows rather the contrary—shows that they acted advisedly and deliberately in the matter. The *onus* of establishing her plea clearly lay upon the suspender, and as she has not relieved herself of that *onus* by examining the trustees, and especially Messrs Murdoch and M'Pherson, as well as Mrs Sinclair, in reference to their letters, I can come to no other conclusion than that the plea in question has not been made out.

But supposing the Lord Ordinary's finding could not be sustained, it was argued for the suspender, that according to the true reading of the trust-deed the trustees had not the power, even in the exercise of the soundest discretion they were capable of bringing to bear on the matter, of retaining the bank stock in question as left to them by the truster, but were bound to realise and invest it on personal or heritable security. It is true that the trust-deed, in that part of it which I have already quoted, confers a

power (not a discretion) on the trustees to "sell and dispose of all or any part of the trust-estate," and also a power "to lend or place out on such security or securities, heritable or moveable, as they shall consider advantageous," the two legacies in question. But I fail to see in this, or in any other part of the trust-deed, that the trustees were bound first to realise the bank stock or any of the other stocks or shares left by the truster, and then to lend and place out the proceeds, to the extent at least of the two legacies of £2000, on moveable or heritable security. On the contrary, the deed contains, in clear and unambiguous language, an express power to the trustees "to continue to hold any or all of such shares or stocks in public or other companies as may pertain and belong to me at the time of my decease, should they consider it advisable or expedient to do so, without any personal responsibility on my trustees for loss, if any, thereby sustained."

Having regard to the power so conferred on the trustees, and to the fact that the bank stock in question did pertain and belong to the truster at the time of her death, I am at a loss to understand how it can with any reason or plausibility even be maintained that the trustees were bound to realise the bank stock in question, and not to continue to hold it as they did, assuming, as I think it must be assumed, that they deemed it advisable and expedient to do so.

I did not indeed understand that the suspender pushed her argument so far as to maintain that the trustees were bound to realise all the shares and stocks which had been left by the truster, and to re-invest them before they had carried into effect any of the trust purposes. She did maintain, however, very strenuously that it was incumbent on the trustees to realise and re-invest stock sufficient to secure the two legacies in question on personal or heritable security. But again I must remark that I can see nothing to this effect in the trust-deed. On the contrary, the discretionary power conferred on the trustees to continue to hold the shares and stocks composing the trust-estate or any portion of them, as they were left by the truster herself, is quite unlimited as to time or subjects. In short, the discretionary power is clearly applicable alike to all and every part of the trust-estate, and to each and all of the trust objects. And if that be so, it follows that the modified contention now under consideration cannot avail the suspender.

It was, in the next place, urged on her behalf, that as the trustees had separated the trust shares and stocks into two parts, and appropriated one of these—that containing the City of Glasgow Bank stock—to Mrs Sinclair, and the other part, that did not contain that stock, to the suspender, the latter could not be made to suffer any of the loss which has occurred.

Now, with reference to this branch of the suspender's argument, I have, in the first place, to remark that the separation and allotment of the trust-estate referred to consisted in nothing more than book entries and accounts, made, so far as I can discover, for no other purpose than convenience in dealing with the interest of two separate individuals, Mrs Sinclair and Mrs Robinson. There was certainly no transference or investment in any form of the bank stock in name of Mrs Sinclair. It was held at the last and throughout, as it was at the commencement of the trust, in the names of the trustees for the purposes of the trust. Supposing, however, that such a separation and allotment as that alleged by the suspender did take place, the bank stock still continued part of the trust-estate as it had previously been. Nor can I find anything in the deed of discharge which was executed by the parties interested after the trustees had laid aside what they at the time considered sufficient to meet the two legacies of £2000 each. On the contrary, I find that in the trust-deed it is expressly declared that the securities for these legacies "shall be conceived in favour of my trustees, and that for the purposes of this trust and no otherwise." Keeping this in view, and that Mrs Sinclair and Mrs Robinson were respectively only entitled to the annual rent or interest arising out of the two legacies of £2000, the capital sum ultimately going on their deaths to others, it cannot admit of doubt, I think, that no new and separate trusts in reference to these legacies were contemplated by the truster, or could have been created under the deed of settlement. It is also most important to keep in view that it appears *in gremio* of the deed of discharge, which was executed by the present suspender as well as by Mrs Sinclair so far back as March 1877, more than a year and a-half before the insolvency of the City of Glasgow Bank was declared or any apprehension entertained on the subject by at least the outside public, that the stock in question had been retained by the trustees to meet the two legacies in question, or at anyrate the legacy of Mrs Sinclair. Mrs Robinson must, therefore, have been quite aware of this from the date of the discharge in March 1877, and her statement to the contrary is not correct. And yet she did not remonstrate with the trustees for so retaining the stock, or in any way whatever object to their conduct in that respect.

Nor am I able to see that the alleged separation and appropriation by the trustees of the stocks to the two legatees Mrs Sinclair and the suspender Mrs Robinson respectively, even if such separation and appropriation had been actually made, and the placing of the £200 bank stock in question in Mrs Sinclair's lot, can enable the suspender to maintain that the trustees are not entitled to retain that, and every portion of the trust estate of which they are not divested, in relief of the liabilities incurred by them in the discharge of their office, in so far at least as they acted *intra vires* of the trust. Now, if the views I have already expressed are correct, the trustees did act in all respects within their powers, and are entitled to the relief and indemnity maintained by the reclaimer in the present case. That this is so appears to me to be clear, on the authority of the recent case of the *City of Glasgow Bank Liquidation (Cuningham's Case)—Cuningham and Others* v. *The Liquidators*, July 19, 1879, 6 R. 1333. The soundness of the principle given effect to in that case was not, I think, disputed by the suspender, and it appears to me to be indisputably applicable to the present.

The result, in my opinion, is, that upon the grounds I have stated, the Lord Ordinary's interlocutor ought to be recalled and the reasons of suspension found to be untenable. This may be a hard result for Mrs Robinson, but the opposite result would be equally hard, if not more so, for the reclaimer, a gratuitous trustee, who, I think,

has acted throughout in good faith and within his powers.

LORD GIFFORD—I have found this case to be one of extreme delicacy and difficulty, and it is only with great hesitation, and even yet with some misgivings, that I have formed a final opinion upon it. I am sorry that my final opinion, though I hold it with doubt and hesitancy, is not in accordance with the result reached by your Lordships, and although after listening to the opinions now delivered I am not entitled to feel much confidence in an opposite view, yet as I still hold that view, I think I am bound to express it. I shall do so very shortly. I agree in the judgment pronounced by the Lord Ordinary, although I do not rest my opinion on what appear to me to be the somewhat narrow grounds to which the Lord Ordinary has confined himself. I come to the same result as the Lord Ordinary, but upon different and, as I venture to think, upon wider grounds.

The real question is, Whether the trustees of the late Mrs Elizabeth Robb or Fraser, of whom the reclaimer Mr William Murdoch alone appears, were entitled under the terms of Mrs Fraser's trust-deed to invest in certain shares of the City of Glasgow Bank any part of two legacies of £2000 each bequeathed by the testatrix Mrs Fraser for behoof of her two daughters respectively (Mrs Sinclair and Mrs Robinson) in liferent, and for their respective children in fee? I say the main question is, whether the trustees were entitled to invest any part of these two legacies in City of Glasgow Bank stock? and I do not think that the question is varied by the circumstance that the trustees instead of buying that bank stock in the market after the trust opened, continued to hold and allocated as part of the investment of the legacies certain shares of the bank stock which had originally belonged to Mrs Fraser, the truster, herself. I shall advert to this immediately, for of course everything turns upon the precise meaning and effect of the powers conferred by the trust-deed now under consideration.

There are further questions in the case, and very important and difficult ones they are—Whether the trustees had power to invest the two legacies of £2000 each in separate and distinct securities specifically appropriated to each legacy? and whether they did so? and whether, having done so, the respective beneficiaries in each legacy, liferenters and fiars, had no concern with and no responsibility or risk for losses or liabilities which might arise from investments specifically appropriated to the other legacy only?

Mrs Fraser, the truster, died on 11th January 1876 leaving the trust-deed which is before the Court. After providing for debts and expenses she directed her trustees very specially to deal with two sums of £2000 each, part of her general trust-estate. The directions regarding the two sums are in the second and third purposes of the settlement, and are in similar terms, *mutatis mutandis*. I take the third purpose, being that relating to the £2000 in which the present complainer Mrs Robinson is interested. The trustees are directed to pay "the interest or annual rent of £2000 sterling" at Whitsunday yearly to Mrs Robinson annually during her life, "which interest or annual rent shall be paid" to Mrs Robinson exclusive of the *jus mariti* of her husband, and after Mrs Robinson's death the trustees are directed to pay to the children of her body "the foresaid sum of £2000 sterling" in the shares and in the manner therein mentioned. Now, before going further, let me call attention to the fact that it is only "interest or annual rent" which is to be paid to Mrs Robinson, and this implies in the strongest manner that the sum of £2000 is so to be lent out as to produce "interest or annual rent," and in no other way. The trustees are not to buy land or houses with it, or to engage in trade, or to go into joint-stock or other companies, for then the annual produce would be no longer "interest or annual rent," but would become rents or dividends, and this the testatrix did not contemplate. And so when Mrs Robinson dies it is the "sum of £2000" that is to be divided among her children—that is, simply the sum lent out on "interest or annual rent," and not the properties or shares in trading concerns in which the trustees might choose to embark. It was never intended that they should do so. The other legacy of £2000 is dealt with in precisely the same way. It also is to be lent out so as to produce "interest or annual rent." The "interest or annual rent" is bequeathed separately from the principal, and the principal sum lent and nothing else is to be divided among the liferenter's children.

Accordingly, when the testator comes to give powers and instructions regarding the two legacies of £2000 each, here is what she says the trustees are to have power to do—"With power also to my trustees to lend or place out on such security or securities, heritable or moveable, as they shall consider advantageous, the foresaid legacies of £2000 and £2000 respectively, the said security or securities to be conceived in favour of my trustees and that for the purposes of this trust and no otherwise; as also, to vary such security or securities in or upon which they shall have lent or placed out the moneys coming into their hands in virtue of the present trust, for other security or securities of the like nature, when and so often as it shall seem to them expedient." Although this is expressed as a power, I think I am entitled and bound to read it also as a direction or instruction, and it is the only power and the only instruction which the testatrix has given in reference to the two specific legacies of £2000 each. There is no general power of investment which can apply to these two legacies—there is no power whatever to invest them (the legacies) in any way whatever excepting by lending them out on heritable or moveable security, that they may produce the "interest or annual rent" which is the first part of each bequest, and that the principal sum, exact and entire, may be available for ultimate division.

Had the case stopped here I think there could have been no doubt. The trustees had no power, so far as I have yet gone, to invest any part of these two legacies in joint-stock trading concerns, whether the trade was that of banking or of any other description of trade more or less speculative. The liferenters were only to have the interest of money lent on security, heritable or moveable. The fiars were to have the capital so lent when it was ultimately called up, and if the trustees bought bank stock or any other

stock, or traded in any way with the legacies or any part thereof, they went out of the trust and beyond their powers, and did so at their own responsibility, having only such private grantee as they chose to get from the parties concerned. I cannot doubt that this would be the decision if the case rested where I have now stated it.

But there is a specialty in Mrs Fraser's trust-deed which is undoubtedly of the greatest pertinence and importance, and on which indeed the whole case or the whole of this part of the case turns. It appears that Mrs Fraser, the truster, at the time of her death held various stocks in railways and other companies, and, in particular, she held £850 of the consolidated stock of the City of Glasgow Bank. It was in reference to this condition of her estate she inserted in her trust-deed the following clause—"With power also to my trustees to continue to hold any or all of such shares or stocks in public or other companies as may pertain and belong to me at the time of my decease, should they consider it advisable or expedient to do so, without any personal responsibility on my trustees for loss, if any, thereby sustained."

Now, it is contended that this is a general clause perfectly unlimited, which entitled the trustees not only to defer the winding-up of the trust and the payment of the general residue for an indefinite reasonable time, and until they found it expedient to sell or realise any shares in joint-stock companies which might be temporarily depressed, but that it is a general power entitling the trustees to select and continue as the permanent investment of the two legacies of £2000 each, all, or any of the bank stocks or other stocks of which the testatrix might die possessed. After full and repeated consideration I am unable to come to this conclusion. I think it contrary to the very explicit powers and directions which the testatrix had given in reference to the two legacies of £2000 each, and contrary to the very conception of these legacies themselves.

The truster knew, or had been told, that it would be the duty of her trustees immediately after her death to sell out and realise all her shares in trading, joint-stock, and other companies, and she knew or was told that this was their duty even at a time when the market was depressed or unfavourable for the realisation of high prices for such descriptions of property. I think she intended to provide for this contingency and for no other. She gave her trustees a certain latitude and discretion that they might abstain from selling for a reasonable time, as they might consider expedient, and she exempted them from personal responsibility if they should deem it advisable to delay realisation. But all this had reference to her general trust. It was for the benefit of her residuary legatees, who were interested only in the residue, and whose interest it was that the residue should not be hurriedly realised at a loss. It had nothing to do with the two special legacies of £2000 each, which were quite fixed in amount, and the beneficiaries in which as such had no concern how the residue might turn out, or whether the stocks in public companies were sold at a time of depression or not. So long as there was a residue at all—and the residue was £1200—it did not matter to the special legatees with a fixed pecuniary amount what loss might occur on the realisation of stocks by reason of depressed markets, so long as they did not destroy the residue altogether. That was the concern of the residuary legatees alone, and these were the whole three children of the testatrix. The continuing to hold stock was all to be before the division of the general residue, and before the payment or the lending out of the pecuniary legacies, but the clause was not intended to govern, and had no reference to, the permanent management and investment of the special legacies of £2000 each—a management which might endure for many a long year, and for which the trust-deed made separate and ample provision.

This is the conclusion to which I have been forced to come, though not, as I have said, without difficulty and hesitation. It leads to the result that it was *ultra vires* of the trustees to take £200 of the stock of the City of Glasgow Bank as part of the investment of the legacy of £2000 in which Mrs Sinclair and her children are interested, and that Mrs Robinson, the present complainer, who had nothing whatever to do with that investment, who never consented thereto, and who never was consulted thereanent, either directly or indirectly, is not liable for the loss which has arisen therefrom. I think that Mrs Robinson and her children are well entitled to say—We had nothing to do with the mode in which you the trustees chose to invest the legacy belonging to Mrs Sinclair and her children—you consulted them about that—you did not consult us. We were consulted about the investment of our own legacy, of other £2000, and we consented to certain investments of that sum, but to nothing else. We were never asked to approve of Mrs Sinclair's investments, and specially as to the investment in bank stock. You took Mrs Sinclair's guarantee about that.—See her letter of 30th November 1876, where she (Mrs Sinclair) consented to invest £500, "and that on my own responsibility." But we were never asked about this. We never knew of it, and were never told of it. It was not our concern. Mrs Sinclair alone received the enhanced dividends—she alone had all the benefit—she alone must take the risk.

This is the second part of the case, and I think, though here too with difficulty, that Mrs Robinson's pleas are well founded.

I think that under the terms of the trust-deed it was competent for the trustees to invest the two legacies of £2000 each separately, and to allocate them so that while each legacy had the benefit of the interest, higher or lower, on its own investments, each took the risk of its own securities, so that if a specially allocated security failed in whole or in part, the loss resulting would affect, not the two legacies jointly of £4000 in all, but only that legacy of £2000 whose special security gave way. The power to invest on loan is not to invest £4000 and divide the slump interest, but it is special "to lend on security the foresaid legacies of £2000 and £2000 respectively." This seems to contemplate separate loans of the respective sums, and whether it was the trustees' duty so to lend or not, to separate or allocate.

The Court recalled the interlocutor of the Lord Ordinary, repelled the reasons of suspension, and refused the interdict.

Counsel for Complainer (Respondent)—Mackintosh—A. J. Young. Agent—Alexander Morison, S.S.C.

Counsel for Respondents (Reclaimers)—Kinnear—Asher—Pearson. Agents—Davidson & Syme, W.S.

Friday, March 19.

SECOND DIVISION.

[Lord Young, Ordinary.

GILMOUR *v.* BANK OF SCOTLAND.

Cautioner—Cash-Credit Bond—Terms of Bond in regard to Obligation to Pay Interest—Period from which Interest to Run.

Four persons granted a cash-credit bond to a bank for £600 on an account to be operated on by T., one of their number. All four bound themselves "to pay on demand all such sums not exceeding £600 as are and shall be due to the said governor and company from me, the said T. . . . with interest on such sums severally at the rate of five per cent." *Held (rev.* Lord Young, Ordinary) that this imported an obligation on each cautioner to pay £600 and interest thereon.

T., the principal in a cash-credit bond with a bank, became bankrupt in November 1878. At the last balance struck previously, on 31st December 1877, he was due the bank over £700. On 7th January 1879 the bank wrote one of the cautioners with a note of the indebtedness, amounting to £635, 13s. 8d. The cautioner offered to pay £600 and interest from the date of that intimation, holding that interest and principal had been accumulated at that date. The bank claimed interest from 31st December 1877, the date of the last balance struck before the principal debtor's bankruptcy, and it was *held (rev.* Lord Young, Ordinary) that they were entitled to payment of the principal sum of £600 and interest from that date.

Observations on the case of *Reddie* v. *Williamson*, Jan. 9, 1873, 1 Macph. 228.

This was a suspension raised by Andrew Gilmour, farmer, Neilston, against the Bank of Scotland, of a charge to pay £653, 14s. 9d., under deduction of £622, 14s. already paid by him. The complainer, along with David Tweedley and two other parties, had obtained credit from the bank of £600 in name of Tweedley, and by a cash-credit bond the four bound themselves as follows:—"We . . . having obtained a credit of £600 with the Bank of Scotland on cash account, in name of me, the said David Tweedley, do therefore hereby bind and oblige ourselves, our heirs, executors, and successors whatever, all conjunctly and severally, to pay to the governor and company of the Bank of Scotland, or to their assignees, on demand, all such sums not exceeding £600 as are or shall be due to the said governor and company from me, the said David Tweedley, whether drawn out on said cash-account by me, or liable on me by any drafts, orders, bills, promissory-notes, endorsements, receipts, bonds, letters, procurations, guarantees, documents, or legal construction whatever, with interest on such sums severally at the rate of five per cent." The bond also contained the following clause:—"And any account or certificate signed by the cashier of the said bank, or by any accountant in the said bank, or by the manager or sub-manager or agent or accountant for the office where the said cash-account may then or before be kept, shall ascertain, specify, and constitute the sums or balances of principal and interest to be due hereon as aforesaid, and shall warrant hereon all executorials of law for such sums or balances and interest, and for the liquidate penalty aforesaid, whereof no suspension shall pass but on consignation only." In November 1878 Tweedley became insolvent, and in January 1879 a state of the operations on his cash-account was sent to the complainer, bringing out a balance of £635, 13s. 8d. against Tweedley. In January 1878 the balance against Tweedley had been £700, 13s. 10d. There were various operations on the account down to 5th September 1878, when the balance stood at £603, 5s. 11d., exclusive of interest from the beginning of the year. The bank thereafter on 24th October 1879 charged the complainer to make payment of £653, 14s. 9d., being the principal sum of £600 with interest from 1st January 1878, the last date at which the bank alleged that interest was accumulated with principal. The complainer, as already mentioned, paid £622, 14s., being the principal sum in the bond and interest from 31st December 1878, he alleging that the bank had accumulated interest at that date in terms of the state of Tweedley's account sent him on 7th January 1879. He further alleged that this accumulation of interest with principal had taken place each year during the currency of the account, and was the usual practice of the Bank of Scotland and other Scotch banks. He produced the following state of the account rendered to him on 7th January 1879:—

DAVID TWEEDLEY, Grocer, Barrhead, in A/c with the BANK OF SCOTLAND.

	Dr.			*Cr.*	
1877.			1878.		
Dec. 31. To balance,	£700	13 10	Feby. 2. By cash,	£6	16 3
1878.			4. ,, ,,	7	12 6
,, 31. To int.,	32	7 9	5. ,, ,,	4	15 0
			6. ,, ,,	50	0 0
			Mch. 28. ,, ,,	11	0 0
			Aug. 22. ,, ,,	13	4 2
			Sept. 5. ,, ,,	4	0 0
			Dec. 31. Balance,	635	13 8
	£733	1 7		£733	1 7

The bank denied that they had accumulated interest after 1st January 1878, and produced a state of the account in support of this contention; they also denied that the account rendered on 7th January 1879 was a proper state of the account, alleging that it was merely a statement by a bank clerk of the balance due at that date, and that no balance was struck in the bank books after 31st December 1877. The sum in dispute between the parties was therefore the interest on the principal sum of £600 for 1878. The respondents alleged that it was a standing regulation with bankers not to accumulate interest with the principal of an account the holder of which had become insolvent or when the account had become irregular.

The complainer's pleas-in-law were, *inter alia*—