through or made under conditions which were inconsistent with the best price being obtained, yet if this was not done in time, and if a sale took place after all these statutory formalities had been complied with, the right of the purchaser was not open to challenge on such grounds. I think it is satisfactory that we have been enabled to come to a decision on this point, which your Lordship held not to be necessarily raised in *Stewart* v. *Brown*, because it is extremely desirable that in the case of sales under powers by heritable creditors, which are of very frequent occurrence, there should be no dubiety as to what is necessary advertisement. The object of advertisement of course is to ensure that the sale should be sufficiently known, so that intending purchasers—persons looking out for investments—may come forward. In these days of wide diffusion of intelligence through the newspapers, I should think that an advertisement in a leading journal for three successive occasions in three successive weeks was ample notice, and any person having money which he meant to invest on heritable property would not be likely to overlook a sale so advertised. And that reason applies, of course, however long be the time between the original and the adjourned sale.

With regard to the question of expenses, I think that we have an absolute discretion in cases of this kind in awarding them. As your Lordship has observed, where a title is challenged on merely frivolous grounds, expenses might be awarded to the seller against the purchaser making this frivolous and perfectly unfounded complaint. Where an important question is at issue we may give the expenses to the purchaser, even though he has not succeeded in establishing the objection. It seems to me to follow that there may be an intermediate class of cases where we would not award expenses to either party. That was the view that the Lord Ordinary has taken of this case, and there is a great deal to be said for it. But I agree with your Lordship in thinking that having regard to the difficulties expressed in *Stewart* v. *Brown* this rather falls within the class of cases in which the pursuer is entitled to try the question at the seller's expense.

The Court pronounced this interlocutor:—

"Recal the said interlocutor [of 30th July 1889] in so far as it finds neither party entitled to expenses, and in place thereof find the complainers entitled to expenses in the Outer House; *quoad ultra* adhere to the interlocutor and decern: Find the complainers entitled to additional expenses since the date of the interlocutor reclaimed against," &c.

Counsel for the Complainers—H. Johnston — W. Campbell. Agent — John Cameron, S.S.C.

Counsel for the Respondents — Comrie Thomson—Napier. Agents—Tait & Johnston, S.S.C.

Saturday, June 21.

FIRST DIVISION.

[Lord Trayner, Ordinary.

MUIR *v.* CALEDONIAN RAILWAY COMPANY.

Railway—Street—Police Board—Arbiter—Reparation—Title to Sue—Irrelevancy.

A railway company were required by their Act to submit for the approval of the police board of a burgh plans for work affecting the streets, and they were bound to restore any street interfered with to its original level. It was further provided that any difference between the railway company and the police board as to any such matter should be referred to arbitration. A difference between the parties regarding a certain street was referred to an arbiter, who first ordered certain works to be done, and finally found that these had been properly carried out, and the street restored to its original level.

An individual proprietor in this street, on the ground of injury to her property, brought an action against the railway company and the police board to have it found that the street had been wrongfully altered, and to have it restored, or for damages. *Held* that she had no title to sue for setting aside the statutory arrangement between the parties, and that no damages were due at common law as neither a wrong nor a breach of contract was alleged, although if injury had been done the railway company would be liable in compensation under the Railways Clauses Act.

In June 1889 Mrs Catherine Muir, as owner of certain tenements in Inverkip Street, Greenock, sued the Caledonian Railway Company (1) for declarator that the defenders had wrongfully altered and raised the level of the street; (2) for decree ordaining the defenders to restore the street to its original level; and (3) alternatively for damages.

In 1884 the Caledonian Railway were authorised by Act of Parliament to construct a railway known as the Greenock Railway.

Section 22 of the Act provided—"The company may, in the construction of railway No. 1, and of the quay or pier, by this Act authorised, deviate from the levels thereof, as shown on the deposited sections, to any extent not exceeding 5 feet, and may, in the construction of railway No. 1, deviate from such levels and from the gradients of the said railway, as shown on the said sections, to such further extent as may be found necessary or convenient for avoiding, accommodating, preserving, or improving the drainage or sewers or other works in or under the streets, roads, lanes, footpaths, and places through which the said railway will be made, anything in the Railways Clauses Consolidation (Scotland) Act 1845 to the contrary notwithstanding: Provided

always that no such vertical deviation exceeding 5 feet shall be made without the consent of the Board of Trade: Provided also that nothing in this section contained shall authorise the company to alter the level of any such street, road, lane, or footpath within the burgh of Greenock without the consent of the Board of Police of Greenock."

The 29th section, for the protection of the Provost, Magistrates, and Town Council of the burgh, provided — "At least twenty-one days before the company commence any works, the execution of which would in any way interfere with or affect any of the public roads or streets in the burgh of Greenock, or which would interfere with or affect the culverts, sewers, and drains belonging to the Police Board, the company shall give to the Police Board notice thereof in writing, accompanied by plans, sections, working drawings, and specifications showing the manner in which such works are to be executed, and also the means to be employed for protecting the roads, streets, culverts, sewers, and drains, during the operations of the company, and for making good any injury or damage to or interference with the said roads, streets, culverts, sewers, and drains, and also the means of providing for the temporary accommodation of the traffic and of the public during the operations of the company, which plans, sections, working drawings, and specifications shall be submitted to the Police Board for their approval previously to the work of the company affecting the said roads, streets, culverts, sewers, or drains being commenced; and such works shall, subject to the provision hereinafter contained, with respect to the settlement of differences by arbitration, be executed only in accordance with plans, sections, workings, drawings, and specifications approved by the Police Board." It is further provided by said sub-section that, "In every case in which the company interfere with the said roads, streets, culverts, sewers, or drains, the Company shall, at their own expense, and to the satisfaction of the Police Board, observe the following conditions, viz., ... (*c*) Restore any road or street so interfered with to its original level." By sub-section K of said section 29 of said Act, it is further enacted as follows —"If the Police Board and the company shall differ upon or with reference to any plans, sections, elevations, working drawings, specifications, or other particulars which, under the provisions hereinbefore contained, are to be delivered by the company to the Police Board, or by the Police Board to the company, or as to the mode of carrying out the same, or as to any other matter or thing arising under any of the provisions of this section (except so far as otherwise specially provided in this section), every such difference shall, on the application of the company or of the Police Board, be referred to the determination of an arbitrator to be named by the Sheriff of Renfrew and Bute, and such arbitrator shall have power to determine the matter in difference, and by whom and in what manner the costs of and incident to the reference shall be paid."

The company gave notice to the Police Board, and lodged plans and specifications of a proposed bridge to carry Inverkip Street over the railway.

A difference arose between the Board and the Railway Company as to the manner in which the work was to be carried out, and an arbiter was appointed.

The arbiter issued two awards, the first dated 16th November 1889, in which, after hearing parties, he directed various operations to be carried out, and the second on 26th February 1890, in which he intimated that the works which he had directed to be executed in his previous decree-arbitral, had been carried out to his satisfaction, and that the streets which it had been necessary for the purposes of the works to open up, had been restored to their former levels. The clausesi the decree-arbitral, so far as material are quoted in the opinion of the Lord President.

The pursuer who raised this action in June 1889, averred that the defenders had not so made the bridge as to restore the roadway passing over it to the line and level of the street previous to the construction of the bridge, and the result was that her property was seriously injured. The drainage of the street was thrown back upon her property, and she would require to raise the level of the pavement and the floor of her tenements.

The defenders averred that the question whether Inverkip Street, where it had been interfered with by their operations, had been restored to its original level, was a dispute between the Police Board of Greenock and themselves, and was at the date of the raising of the present action before an arbiter, and they maintained that the street had been restored to its former level.

The pursuer pleaded *inter alia*—"(1) That the defenders had wrongfully altered the level of Inverkip Street, and that they were bound to restore the same, or to pay her the cost of doing so."

The defenders pleaded *inter alia*—"(1) The pursuer has no title to sue. (2) The question whether Inverkip Street, where it has been interfered with by the defenders, has been restored to its original level, being a difference between the Police Board of Greenock and the defenders, at present referred to and depending before the arbitrator appointed by the Sheriff, in terms of the foresaid Act of 1884, the present action is incompetent. (3) The pursuer's statement is irrelevant and insufficient in law to support the conclusions of the summons. (4) The whole of the defenders' railway and works having been constructed in conformity with and under the authority of the provisions of the foresaid Act of 1884, and Acts incorporated therewith, any claims competent to the pursuer can only arise under said Act, and the present action is incompetent."

On 10th December 1889 the Lord Ordinary (TRAYNER) repelled these pleas, and allowed a proof.

The defenders reclaimed.

After a short discussion the Court on 22nd January 1890 opened up the record and appointed the parties to revise their pleadings. The pursuer amplified her averments of injury and the defenders founded on the two awards which had been issued since the closing of the record. They added this plea—"(3) The said street, so far as interfered with by the defenders' operations, having been restored by them in terms of section 29 of the foresaid Act of 1884, and to the satisfaction of the arbitrator, all as found by his interlocutor of 26th February 1890, the action ought to be dismissed." The Court also ordered intimation of the action to be given to the Police Board of Greenock, and directed that they should, if necessary, be called by a supplementary summons, in order that they might have an opportunity, if so advised, of objecting to decree passing against the Caledonian Railway Company in so far as such decree might affect the existing condition of Inverkip Street,

On 7th February 1890 a supplementary summons was raised by the pursuer Mrs Muir against the Police Board of Greenock.

On 25th February this action was, by interlocutor of the Lord Ordinary, conjoined with the action by the same pursuer against the Caledonian Railway Company.

Argued for the reclaimers the Railway Company—By the terms of their Act the only parties that the company had to deal with in regard to the restoration of any streets, the levels of which in the course of the operations had been interfered with, were the Police Board. No doubt that Board and the Company did not agree, but there was a reference to an arbiter in terms of the statute, who prescribed certain works which had been carried out, and the levels restored to his satisfaction. His award was final, and the Court could not get behind it without a reduction of the decree-arbitral. The pursuer had no title to sue such an action with a conclusion for damages. If she had suffered damage by the operations of the defenders she could get compensation under the Railways Clauses Act, sec. 16, and the Lands Clauses Act, sec. 6.

Argued for the respondent—The Railway Company had no right by their Act to interfere with the permanent level of the street. They might make a temporary alteration, but they were bound to restore things as they were. Owing to a mistake of their engineer a permanent alteration of level had been made, and that without the sanction even of the Police Board. Therefore the company were outwith their Act, and an action at common law for damages lay against them. If the Police Board had approved the pursuer could not have maintained her action. She was no party to the reference between the company and the board, and was therefore entitled to a proof of the loss she had sustained—*Clyde* v. *Glasgow District Railway Company*, July 16, 1885, 12 R. 1315.

At advising.

LORD PRESIDENT—There can be no doubt that under their Act of 1884 the Caledonian Railway Company were empowered to interfere with the streets of Greenock, but they were laid under certain conditions and restrictions in dealing with these public streets as is always the case in Acts authorising the construction of railways through towns. And one of the provisions affecting the exercise of their powers is contained in the 22nd section of the Act which provides—"That the company may in the construction of railway, No. 1 and of the quay or pier by this Act authorised, deviate from the levels thereof as shown on the deposited section to any extent not exceeding five feet, and may in the construction of railway No. 1 deviate from such levels . . . to such further extent as may be found necessary or convenient for avoiding, accommodating, preserving, or improving the drainage or sewers or other works in or under the streets, roads, lanes, footpaths, and places through which the said railway will be made, anything in the Railway Clauses Consolidation (Scotland) Act 1845 to the contrary notwithstanding, provided always that no such vertical deviation exceeding five feet shall be made without the consent of the Board of Trade; provided also that nothing in this section contained shall authorise the company to alter the level of any such street, road, lane, or footpath within the burgh of Greenock without the consent of the Board of Police of Greenock."

Now, in so far as that section 22 relates to the alteration of the levels of streets, the condition imposed upon the company is that they must obtain the consent of the Board of Police to the alteration of such level. But then the 29th section must also be considered in reference to this matter, and it is very important to observe that that is a section which is declared by the opening words to be for the protection of the Provost, Magistrates, and Town Council of the burgh of Greenock, thereinafter called the Corporation, and of the Board of Police of Greenock, thereinafter called the Police Board. It is not a section upon which anybody else is entitled to found as a section protecting him or them. The only title to obtain protection under this 29th section is in the Corporation and the Police Board.

Now, with regard to these two bodies there are a great number of provisions made, to most of which it is quite unnecessary to refer in determining this case. But there is one sub-section marked with the letter C which requires to be attended to. It is No. 1 under letter C, and it provides that—"At least 21 days before the company commence any works, the execution of which would in any way interfere with or affect any of the public roads or streets in the burgh," with certain exceptions, "the company shall give to the Police Board notice thereof in writing accompanied by plans, sections, working drawings, and specifications showing the manner in which such works are to be executed, and also the means to be employed for protecting the roads, streets,

culverts, sewers, and drains during the operations of the company, . . . which plans, sections, working drawings, and specifications shall be submitted to the Police Board for their approval previously to the works of the company affecting the said roads, streets, culverts, sewers, or drains being commenced, and such works shall, subject to the provisions hereinafter contained with respect to the settlement of differences by arbitration, be executed only in accordance with the plans, sections, working drawings, and specifications approved by the Police Board."

Now, that shows that the plans which are to be carried into execution require the approval of the Police Board, but it does not by any means appear—nay, the contrary is clearly implied—that the Police Board and the company are bound by one set of plans once produced. On the contrary, it is perfectly clear that the plans are to be adjusted between the parties in a reasonable manner, subject also to arbitration if that shall be necessary.

The 2nd sub-section of section 29, C, provides that the company shall restore as soon as possible the things that they have disturbed—the culverts, sewers, drains, and so forth, and also "restore any road or street so interfered with to its original level." And then comes the arbitration clause, which is—"If the Police Board and the company shall differ upon or with reference to any plans, sections, elevations, working drawings, specifications, or other particulars which under the provisions hereinbefore contained are to be delivered by the company to the Police Board or by the Police Board to the company, or as to the mode of carrying out the same, or as to any other matter or thing arising under any of the provisions of this section (except so far as otherwise provided in this section), every such difference shall on the application of the company or of the Police Board be referred to the determination of an arbitrator."

Now, I do not think it necessary to read any more of the statute. The result is this, that the company are authorised to carry their railway through the town of Greenock. In doing so, it is inevitable that they must interfere with drains and culverts and all manner of works of that kind which are common in cities, and also must interfere with the streets and roads, otherwise the railway could not be constructed. And there is here, I think, a complete code of regulations as to the way in which that interference is to be regulated, giving rights to the Police Board on the one hand, and to the company upon the other; and the result seems to me to be that if the two parties, the company and the Police Board are agreed, nobody else can interfere with them. These are the two parties to whom is committed the task of arranging this matter. The power is given on the one side of interfering with the streets, the power of restraint is given on the other side so far as they propose unreasonably or without the consent of the Police Board to carry out their operations.

Now, what has happened in the present case is simply this, the company gave the requisite notices to the Police Board, but they did not succeed in obtaining their consent. And therefore it became necessary to resort to an arbitrator; and the proceedings which took place before Mr Carrick, the arbitrator, seem to have been gone about very carefully and very regularly. I think it is only necessary to refer to two of his interlocutors—if they may be so called—one of the 16th November 1889 and the other of the 26th of February 1890. The former of these had been issued when the case was previously under discussion before us; the second has been pronounced since that date, and adds very materially to the light which we now have for the decision of this case. The first—the interlocutor of 16th November 1889—prescribed particularly the conditions upon which the railway comany were to interfere with this Inverkip Street which is in question, and the arbitrator gives very precise and minute directions as to how that is to be carried on. Having adjusted plans between the company and the Police Board, and signified his approval of them, he authorised the works to be executed in terms of these plans. And then upon the 26th of February 1890 he went and inspected the works again, and heard parties, and his finding is this, "that the works specified in the order of the 16th of November have been duly executed, and accordingly finds that the works referred to in this arbitration have been executed in accordance with the plans, sections, working drawings, and specifications approved of by the interlocutor of the 27th of April 1887, and that Inverkip Street so far as interfered with by the railway company's operations, referred to in this process, has been restored by them in terms of section 29 of the Caledonian Railway (No. 2) Act 1884, and to the satisfaction of the arbitrator."

Now, these findings are final. We cannot touch them. Some observations have been made as to whether the arbitrator has not exceeded his powers. I do not see the slightest foundation for these observations, but if there were we could not give effect to them unless this award could be set aside by reduction, which has not been proposed. We take therefore these findings of the arbitrator as final and conclusive between the company and the Police Board and the corporation, because the corporation have not in any way objected to the proceedings.

The pursuer of this action is an individual proprietor in Inverkip Street, and the ground of her complaint is that her property in Inverkip Street has been injuriously affected by the operations of the railway company in altering, to the extent of some inches up to a foot it is said, the level of the street upon which her property abuts; and upon that ground she proposes that all this statutory arrangement between the railway company and the Police Board shall be set aside, and that Inverkip Street shall be restored precisely to its original level. Now, it appears to me,

in so far as that conclusion of the action is concerned, that an individual owner has no title whatever to sue. If his property is injuriously affected there are remedies for that which we are all familiar with under the Railways Clauses Act, but the notion of setting aside an arrangement of this kind come to under statutory powers, and with the consent and approval of all the parties who have any title to interfere with the public streets in Greenock, is obviously quite out of the question.

But the pursuer also asks for damages in respect of what has been done. That seems to me to be just as plainly excluded as the other. If the operations of the railway company have been conducted within the powers conferred upon them by their statute they cannot be liable in damages at common law, because nobody can be liable in damages at common law except either for a wrong or a breach of contract, and neither the one nor the other is alleged. It cannot be a wrong at common law to carry out regularly the provisions of an Act of Parliament. To exercise the powers of an Act of Parliament is not a wrong. It may be very injurious to the private party, and for that there is a remedy of a different kind, but it never can be a legal wrong, and therefore it never can be made the foundation of an action of damages. I think therefore that the pleas stated by the defenders in their amended record are perfectly well founded as regards the third, fourth, and fifth pleas. The one is "that the said street, so far as interfered with by the defenders, having been restored by them in terms of section 29 of the foresaid Act of 1884, and to the satisfaction of the arbiter, all as found by his interlocutor of 26th February 1890, the action ought to be dismissed." The second is an objection to the relevancy of the statements of the pursuer, and I think that plea is also well-founded. The fifth plea is this, that "the whole of the defenders' railway and works having been constructed in conformity with and under the authority of the provisions of the foresaid Act of 1884, and Acts incorporated therewith, any claims competent to the pursuer can only arise under said Acts, and the present action is incompetent." The last of these pleas plainly refers to the claim which is competent to a landowner whose land has not been taken, but has been merely injuriously affected by the execution of the railway works. I am therefore for altering the Lord Ordinary's interlocutor, and sustaining these three pleas.

LORD SHAND—When the Caledonian Railway Company proposed to obtain their Act of 1884, which is referred to in these proceedings, it appeared that their works would seriously interfere with the streets of Greenock. The body having the care of these streets, and the administration of all matters in relation to them, was the Police Board, and while the railway company got certain powers with reference to these streets, it was under conditions of restraint. But these conditions of restraint (and there were no others, so long as the limits of deviation were not exceeded) were not of this character that any individual having property abutting upon a street could come forward and object to what was done. The Police Board, as representing the public interest, were charged with the protection of the public interest which was about to be interfered with. And accordingly there was inserted in the statute a series of clauses enabling the Police Board to defend the public interest. They might consent to certain things being done. If they did not give their consent, and the railway company insisted upon them as being within their powers, that matter was to go to an arbitator, whose decree was to be final.

In all this the Police Board was charged with the public interest only. They had no right to represent the interest of private individuals whose properties abutted on the streets. All differences between the railway company proposing to execute their works and the Police Board as representing the public objecting to these works were to be referred to arbitration, and in point of fact everything in regard to these streets was so referred, and the arbiter has expressly found that the works as executed were in accordance with the plans as approved of by him. That seems to me, having regard to the averments on record, to put an end to any question being raised as to the lawfulness of the works which the Railway Company executed. Accordingly I am of opinion with your Lordship that the pursuer here has no title to present an application such as this to have the street restored, for that was a matter entrusted to the Police Board. But the works having been completed, I do not doubt that if it can be shown that they have injuriously affected the pursuer's property there must be a claim of compensation, and I entirely demur to the notion that the company could say that the arbiter having authorised the works under the statute is a sufficient answer to that claim of compensation. The very fact of the arbiter having authorised works which have created an injury to a neighbouring proprietor is the ground on which compensation is claimed. The Railways Clauses Act provides for such claims, and in this statute, section 31, we have a provision in paragraph 8 that "nothing in this enactment contained, nor any dealing with any property in pursuance of this enactment, shall relieve the company from the liability to compensation under the Lands Clauses Consolidation (Scotland) Act 1845, or under any other Act." Therefore I think that in so far as the pursuer of this action can show that her property has been injuriously affected, her claim is a good one; but a claim on the footing that she can found on the provisions inserted for the protection of the public, or a claim of damages in respect that these provisions were not fully carried out, cannot be maintained by her. Therefore I agree with your Lordship that we must sustain the defences.

LORD ADAM and LORD M'LAREN concurred.

The Court recalled the Lord Ordinary's interlocutor and sustained the second, third, and fourth pleas-in-law for the defender.

Counsel for the Pursuer—M'Kechnie—Salvesen. Agent—W. B. Glen, S.S.C.

Counsel for the Defenders—D.-F. Balfour, Q.C.—R. Johnston. Agents—Hope, Mann, & Kirk, W.S.

Saturday, June 21.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

WINCHESTER *v.* BLAKEY.

Process—Multiplepoinding—Competency—Double Distress.

A sum of money was deposited in the hands of a neutral person pending the settlement of disputes between several parties claiming right thereto, one of the parties stipulating that the deposit should be for three months only. That period having elapsed, and no settlement having been arrived at, this claimant raised an action against the depositary for payment of part of the sum in his hands. On this action being intimated to the agents for the other claimants they wrote to the depositary objecting on behalf of their clients to his paying away any part of the sum entrusted to him till the rights of parties were settled, and threatening him with personal responsibility if he did so. The depositary thereupon raised an action of multiplepoinding. *Held* that there was such double distress as to make the action competent.

John Wood Blakey, Miss Elizabeth Wood, Mrs Brewster, and Mrs Handyside were jointly interested in a property in Hull. The property was sold in 1888 with a view to the settlement of their respective claims. Difficulties arose between Mr Blakey on the one hand, and Miss Wood, Mrs Brewster, and Mrs Handyside on the other, as to the carrying out of the sale, and the execution of the writs necessary to give a good and sufficient title to the purchasers, and the application of the price.

Ultimately, and in order to admit of a settlement with the purchasers of the property, W. G. L. Winchester, W.S., Mr Blakey's agent, wrote on behalf of his client to Messrs Romanes & Simson, W.S., the agents for the other parties, offering to retain £442, 10s. of the £587, which would fall to his client as his fourth share of the price of the property, in his own hands "for three months to meet any claim you may be able to establish against my client, failing our being able to settle the matter out of Court." Writing to Messrs Romanes & Simson on 8th April Mr Winchester referred to this offer as his client's *ultimatum*, and said—"If you wish to retain Miss Wood's £200, that could be paid to you direct, which would make the sum payable to Mr Blakey £387, 10s., and after paying him the sum of £145 there would be £242, 10s. remaining on deposit for three months to meet any claims for expenses and interest."

Messrs Romanes & Simson agreed that when the price was paid the sum of £442, 10s. would be remitted to Mr Winchester, as a "neutral stakeholder," until it was determined to whom the money should be paid.

Mr Blakey thereafter signed the documents necessary to complete the transfer of the property, the price was paid, and £442, 10s. was remitted to Mr Winchester, and was by him consigned in bank on 22nd May 1889 "in trust for behoof of the parties entitled thereto."

On 26th June 1889 an arrestment was used in Mr Winchester's hands at the instance of Miss Wood to the extent of £320 in security of the sum due under a bond granted by Mr Blakey to her for £200, dated 19th January 1881, with interest due from said date. In September 1889 Mr Blakey raised an action in the Sheriff Court at Edinburgh against Mr Winchester for payment of £122, 10s. Mr Winchester having informed Messrs Romanes & Simson of this action they wrote to him on 10th September reminding him that the money had been deposited with him as mutual stakeholder pending the settlement of the claims of parties, and objecting on behalf of their clients to his paying away any portion of it, and threatening to hold him personally responsible if he did so.

Mr Winchester thereupon raised an action of multiplepoinding and exoneration in the Court of Session, calling Mr Blakey, Miss Wood, Mrs Brewster, and Mrs Handyside as defenders, in order to have the claims of these parties to the sum in his hands judicially settled.

Mr Blakey objected to the competency of the multiplepoinding on the ground that there was no double distress, averring *inter alia* that the money, which was his, had been deposited with the pursuer for three months only, and that period having elapsed he had no longer any title to retain it.

On 25th February 1890 the Lord Ordinary (KINCAIRNEY) repelled the defences so far as stated against the competency of the action and decerned.

"*Opinion.*—The pleadings are extremely confused. Even the plea against the competency of the action is not well stated. But the objections must have been lodged for that purpose, and the argument at the bar was directed to show that the multiplepoinding was incompetent on the ground that there was no double distress. The objector, it ought to be mentioned, asked a proof of his averments. But it would be out of the question to incur the expense of a proof, and it appears to me that the point may be decided without more inquiry.

"The fund *in medio* is £442, 10s., part of