ally when it comes to be applied to a state of matters unknown at its date.

"6. The defenders' agent ingeniously founded on the use of the word 'materials' in the following section to show that the framers of the Act meant prepared as well as raw materials. But it is often found that a word left undefined in a statute is not used precisely in the same sense wherever it occurs.

"7. The defenders' agent skilfully put questions, such as whether it would be within the powers of the defenders to break up a big stone in the quarry into managable pieces in order to carry them away, and if so, why should they not be allowed to break up these pieces into smaller fragments, and so ultimately into road metal? The answer is, that the road authorities are entitled to perform any acts which are fairly incidental to the powers conferred in the statute, and no others. It is but a slender argument against the soundness of a particular construction of a statute that it may give rise to difficult questions. In every enabling statute the line must be drawn somewhere, and wherever the line is drawn there will always be cases in which it is difficult to say on which side of the line they lie. The Courts must deal reasonably with each case as it arises. In this case, if the principle maintained by the pursuers is sound, there is no difficulty in its application.

"It is for the Legislature, and not for the Court, to consider whether it would be expedient to confer upon road authorities the power of using lands for preparing materials, and if so, with what limitations and conditions as to compensation or otherwise."

The defenders appealed, and argued—The action of the defenders was authorised by statute. All that the defenders had done was to employ modern improvements in machinery to carry out the purpose for which the Act permitted them to be on the pursuers' land. The use of the word "materials" in section 81 of the General Turnpike Act indicated that in section 80 the same word must be taken to signify the finished material for repairing the roads.

Counsel for the pursuers was not called upon.

LORD PRESIDENT — Under the General Turnpike Act road trustees have a right "to search for, dig, and carry away materials for making or repairing" a road. That is a somewhat serious interference with private rights, such as could be licensed only by statute, and in considering the statute we must have regard to that fact. All that the road trustees are authorised to do is to search for and carry away materials for repairing the roads. What is now complained of is that they did not forthwith carry away the materials, but manufactured them by means of a stone-breaking machine in preparing them for use on the road. Now, it seems to me that to do this is simply to add to the statutory burden upon the adjacent proprietor, and to impose upon him a new and unauthorised burden. Instead of forthwith carrying away the materials, the road authority encamp upon the pursuers' grounds in the quarry, and there prepare the stuff for its ultimate use.

I do not think that there is anything in the word "materials," for I think it is used in the sense of raw material, and it is a complete satisfaction of the powers given by the statute to hold that, having sought for and found the materials in such form that they can be carried away, the road trustees shall carry them away and the proprietor be relieved of their presence.

Upon these grounds, which are very well stated in the Sheriff-Substitute's note, I am for affirming the interlocutor appealed against.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court affirmed the interlocutor of the Sheriff-Substitute.

Counsel for the Pursuers—W. Campbell. Agents—Davidson & Syme, W.S.

Counsel for the Defenders — Guthrie — Chisholm. Agents—Wallace & Begg, W.S.

Wednesday, May 13.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

ALEXANDER *v.* ALEXANDER AND ANOTHER.

Sale — Sale of Medical Practice — "Book Debts"—Title to Sue

The widow of a medical practitioner agreed to sell to her husband's former assistant "the deceased's whole right and interest in the practice carried on" by a firm of medical practitioners of which he had been a member, "consisting of (first)" his share in the horses, harness, machines, and others, (second) his share in the instruments and books, and (third) his "share, right, and interest in the book debts, including the goodwill of the business, belonging to the said firm," all at a certain sum, and on condition of being freed and relieved "of all debts and obligations due by the said firm . . . in any manner of way whatsoever." She sued the surviving partner of the firm for an accounting as to moneys collected prior to the date of the agreement for work done during deceased's lifetime, maintaining that these sums were not covered by the agreement. *Held* that though as a general rule the expression "book debts" would not include such moneys, yet as here the intention of the agreement was to assign to the assistant the whole of the deceased's rights as against the firm, the expression "book debts" must be read in the sense of the agreement, and so read covered the moneys in question, and that consequently the

widow had no title to sue for such an accounting.

This was an action at the instance of Mrs Elizabeth Crowe or Alexander, executrix-dative *qua* relict of the late Alexander Alexander, M.B., C.M., medical practitioner at Pulteneytown, Wick, against John Alexander, M.D., Wick, sole surviving partner of her husband's late firm of J. & A. Alexander, medical practitioners, Wick, as such partner, and also as an individual. The action concluded for count and reckoning as to the profits due to the pursuer, as executrix, for the period between the last balance-sheet and division of profits and the dissolution of the firm by her husband's death, and for payment of the amount of such profits, or, in the event of failure to account, the sum of £185, 19s. 2d.

The pursuer averred, *inter alia*, that between 31st January, the date of the last balance-sheet, and 21st July, the date of the agreement after mentioned, certain sums due in respect of business done by the firm prior to the death of the deceased, which took place on 15th April 1894, were ingathered by the defender Dr Alexander, and that after deduction for expenses half of the balance, amounting to £185, 19s. 2d., was due to the pursuer."

The defenders produced an agreement, dated 21st and 26th July 1894, between the pursuer as executrix, and Mr Samuel Elliot, M.D., Wick, who, prior to the death of Dr Alexander Alexander, had been salaried assistant of the firm of J. & A. Alexander, whereby she agreed to sell, and Dr Elliot agreed to purchase, "the deceased's whole right and interest in the practice carried on by the said firm, and now belonging to the first party as his executrix-dative *qua* relict, consisting of (first) the deceased's share, right, and interest in the horses, harness, machines, and others belonging to the said firm of J. & A. Alexander; (second) the deceased's share, right, and interest in the medical and surgical instruments and medical books belonging to the said firm; (third) the deceased's share, right, and interest in the book debts, including the goodwill of the business belonging to the said firm, all at the sum of four hundred and eighty-five pounds sterling," upon the condition, *inter alia*, that the pursuer and the representatives of the deceased were to be freed and relieved by Dr Elliot of all debts and obligations due by the firm in any manner of way whatsoever.

With regard to this agreement the pursuer averred as follows:—"(Cond. 6) In respect of said agreement the pursuer lays no claim in the present action to any sum in consideration of the deceased's interests disposed of to Dr Elliot under the said agreement, and limits her claims to the deceased's share of the partnership funds actually recovered and *in bonis* of the firm prior to the date of the said agreement."

The defender Dr John Alexander pleaded —"(1) No title to sue; and (2) All parties not called."

Dr Elliot was thereafter allowed to sist himself as a defender, and lodged defences and pleaded, *inter alia*—"(2) No title to sue."

On 26th February 1896 the Lord Ordinary having heard counsel in the Procedure Roll issued the following interlocutor:—"Sustains the first plea-in-law for the defender Dr Alexander, and the second plea-in-law for the defender Dr Elliot, and therefore assoilzies the defenders from the conclusions of the action, and decerns," &c.

Opinion.—"The pursuer here is the widow of the late Dr Alexander Alexander of Wick, who died in April 1894. He was, it seems, for some years before his death, in partnership with his brother, the defender Dr John Alexander, and the compearing defender Dr Elliot was their assistant.

"The pursuer concludes, as executrix of her husband, for an accounting for the profits of the firm or copartnery effeiring to the period between 31st January 1894, when there was a division of profits between the two brothers, and the 15th of April 1894, when the firm was dissolved by the death of the pursuer's husband. The defence is, or rather one defence is, that the pursuer has no title to sue, in respect that the whole interest of the deceased in the assets of the firm was assigned by the pursuer by a certain agreement of 21st July 1894 to the defender Dr Elliot.

"Now, that being so, the question I have to decide is a question upon the construction of that agreement. It is on the one hand maintained that the agreement dealt merely with certain corporeal moveables belonging to the firm, with the goodwill of the firm, and with certain book debts which were outstanding at the date of the agreement of July 1894. The other view—the view of the defenders—is that the agreement covered the whole assets of the firm, and that in particular it covered all book debts, whether collected or uncollected, which had been outstanding at the date of the deceased's death, and whether these debts had been incurred prior to 31st January 1894, the date of the last division of profits, or between that date and 15th April 1894, when, as I have said, the partnership was dissolved. It appears that between January 1894 and the date of dissolution a number of book debts —that is to say, fees—due by patients were ingathered and put in bank; and it also appears that certain further collections were made by the surviving partner between the date of dissolution and the date of the agreement of July. And the point really in controversy is how far the book debts thus collected and placed in bank are to be dealt with as within the agreement. Now, I have had a good deal of difficulty about that matter. The agreement, I must say, does not seem to me to be very well expressed—it is, indeed, very loosely expressed—but after full consideration I have not seen my way to hold otherwise than that the agreement covers the whole assets of the firm, including the whole book debts, whether collected or uncollected, whether they remain payable by customers, or have been paid by them and lodged in bank. Of course so far as they were in that position they were not book debts in the popular

sense, but debts due by the firm's bankers to the partners. Still, I think they must be held to have been book debts in the sense of the agreement.

"That being so, the result is that I sustain the first plea-in-law for the defender Dr Alexander, and the second plea-in-law for Dr Elliot, and therefore assoilzie the defenders from the conclusions of the action with expenses."

The pursuer reclaimed, and argued—The agreement applied only to the debts outstanding at its date, and not to sums in the coffers of the firm or in bank. For all that was assigned to Dr Elliot was "book debts," and money already collected was not a book debt. A sum in the possession of a surviving partner of a dissolved firm was in possession of the firm, which still existed for winding-up purposes, and was not a debt due by him to the firm. A balance in bank was not a book debt—*In re Stevens, Stevens* v. *Kelly*, May 2, 1888, W.N., pp. 110 and 116. See also *Official Receiver* v. *Tailby*, Nov. 20, 1886, 18 Q.B.D. 25, *per* Lord Esher, M.R., at p. 29. A book debt was a debt on open account or current account — Bell's Comms., i. 347 (ed. M'L.). What was assigned to Dr Elliot was here particularly specified, and this specification did not include moneys collected. The maxims *specialia derogant generalibus* and *enumeratio unius est exclusio alterius* applied — Trayner's Latin Maxims, 230 and 182; *Earl of Kintore* v. *Lord Inverury*, April 16, 1863, 4 Macq. 520, *per* Lord Westbury, L.C., at p. 522; Ersk. Inst., iii., 4, 9. The doctrine relied on by the defenders applied only to *mortis causa*, and not to *inter vivos* conveyances. The pursuer's right to her husband's share of the moneys collected and not still owing at the date of the agreement had therefore not been assigned to Dr Elliot under the agreement, and she was entitled to an accounting from Dr Alexander with reference to them.

Argued for the defender Dr Elliot—The intention of the agreement was to convey to Dr Elliot the deceased's whole interest in the business and all his rights as against the old firm. The enumeration of the particular things of which the practice was said to consist did not derogate from the generality—M'Laren on Wills and Succession, 623, and cases there quoted. The *specialia* here were merely illustrative—*Dean* v. *Gibson*, February 26, 1867, L.R., 3 Eq. 713. The expression book debts must be read in view of the intention of the agreement, and so read it covered the book debts already collected as well as those still due. The pursuer's rights, as regards the moneys collected, had therefore been assigned by her to Dr Elliot and she was not entitled to an accounting.

Counsel for the defender Dr Alexander adopted the argument for the defender Dr Elliot.

LORD JUSTICE-CLERK—There can be no doubt that this agreement was not very fortunately expressed, but I think it was plainly the intention of the parties to make a complete settlement between this lady and Dr Elliot. No doubt if we were to put a very strict and technical meaning on the expression book debts, the proceeds of debts which had been collected would not fall under that expression, but I have come to be of opinion with the Lord Ordinary that we must read the term book debts in the sense of the agreement, and that the intention of the agreement was that all the moneys due to the firm should be collected by him and retained for his own use, he undertaking all responsibility for the firm's liabilities.

LORD YOUNG—I am of the same opinion and have practically nothing to add. I think that the meaning of the parties to this agreement was that the executrix was to transfer the whole of the deceased's interest in the undistributed fees of patients. She gave up all right to claim as representing the deceased, and she was relieved from all liability as representing him. I concur with the Lord Ordinary and think that his interlocutor should be affirmed.

LORD TRAYNER and LORD MONCREIFF concurred.

The Court adhered.

Counsel for the Pursuer and Reclaimer—Comrie Thomson — M'Lennan. Agent — Alexander Mustard, S.S.C.

Counsel for the Defender and Respondent Dr Elliot—Jameson—G. Watt. Agents—A. & S. F. Sutherland, S.S.C.

Counsel for the Defender and Respondent Dr Alexander — W. Campbell — Chree. Agent—Thomas Liddle, S.S.C.

Saturday, May 16.

FIRST DIVISION.

[Quarter Sessions of Inverness-shire.

INLAND REVENUE *v.* COWAN.

Revenue—Excise Duties—Licence to Carry Armorial Bearings—Customs and Inland Revenue Duties Act 1869 (32 *and* 33 *Vict. cap.* 14), *sec.* 19, *sub-sec.* 13.

Held that a device upon a signet ring consisting of a shield charged with a lion rampant surmounted by a crown, there being also a bar or other cutting at the base of the shield, was an armorial bearing within the meaning of the Act 32 and 33 Vict. cap. 14, sec. 19, sub-sec. 13.

Samuel Milligan, officer of Inland Revenue at Inverness, brought a complaint against Alexander Cowan, wine and spirit merchant, Union Street, Inverness, charging him with having "contravened the 27th section of the Act of Parliament 32 and 33 Vict. cap. 14, in so far as on the 6th day of December 1895, at Union Street aforesaid, he did wear or use armorial bearings on a ring, for the wearing or using of which a