process of ear-marking the various investments to show to what estates they severally belong.

Lord Adam—I concur. I only wish to add that in the case of *Orr* (*Maclean's Trustee*), which has been referred to, I did not mean to decide anything further than that the stocks there reported on were eligible for the purposes of that case only, not that they were to be held as good in all time coming. I make this remark as I understand that a somewhat different opinion of what I then decided prevails in the profession.

The Court remitted to the Accountant to sustain the investments.

Counsel for *Curator Bonis*—G. W. Burnet. Agents—Millar, Robson, & Innes, S.S.C.

Counsel for Accountant of Court—Moncreiff. Agents—Mackenzie, Innes, & Logan, W.S.

Friday, November 12.

FIRST DIVISION.

[Lord Trayner, Ordinary.

HORSBRUGH'S TRUSTEES *v.* WELCH.

Trust—Bond and Disposition in Security—Clause of Warrandice—Personal Liability of Trustee.

A trustee, who had been consenter to certain bonds and dispositions granted by the beneficial owner of heritable property falling under the trust, borrowed "as trustee" a sum for trust purposes, binding himself "as trustee," and his successors, to repay the same, and disponing the lands in security. This deed contained the words, "I grant warrandice." The holders of one of the prior bonds, to the granting of which he had been consenter, entered into possession of the property, which was insufficient to meet the bonds on it. *Held* that the executor of the trustee, he himself having died, was liable under the warrandice, because the granting of consent to the prior bonds was a "fact and deed" which the warrandice covered.

This was an action by the marriage-contract trustees of the deceased William Horsbrugh, Clerk of the Peace for the county of Fife, against Ralph Welch, executor and universal disponee of the late Charles Welch, otherwise Charles Welch Tennent of Rumgally, in which the pursuers sought decree against the defender for £375, with interest from 15th May 1884. The circumstances out of which the action arose were as follows:—

In March 1858 William Wright of Hallfields, in the county of Fife, executed a trust-deed for behoof of creditors in favour of Charles Welch, by which he, *inter alia*, conveyed the estate of Hallfields, which was then entailed, so far as was consistent with the entail. Welch was duly infeft on the said deed, but by the end of the same year the truster's debts were all paid.

In December 1858 Welch reconveyed to Wright by disposition and assignation which was recorded, but (also on 30th December 1858) Wright executed a bond of relief and disposition and assignation in favour of Welch, the terms of which are explained *infra* in the opinion of Lord Trayner, it being sufficient here to say that it was a deed of trust providing that Welch should, after operating relief of a cautionary obligation, hold the estate for certain specified purposes.

Wright, however, then resumed the management of the estate.

Certain sums were borrowed by him (Wright) over Hallfields. On the 4th May 1870 he borrowed £5000, and shortly after a sum of £1300, giving bonds and dispositions in security therefor, which bore—"And in security of the several personal obligations before written, I, the said William Wright, with consent of Charles Welch, writer in Cupar, and I, the said Charles Welch, for all my right and interest in the premises, and we both, dispone to and in favour of," &c., &c. In December 1872, Welch, acting under the powers of the bond of relief, disposition, and assignation above mentioned, borrowed the sum of £375 from Robert John Brody, residing at Gillingshill, by Pittenweem, and granted him a bond and disposition in security over the lands of Hallfields on the narrative of the said bond of relief and power of relief therein contained, and that the sum was necessary to enable him to execute the purposes of the deed. It was set forth in the body of the deed that the money was borrowed for trust purposes, and Welch acknowledged the loan in these words—"I, as trustee foresaid, grant me to have instantly borrowed and received" £375, "which sum I, as trustee foresaid, bind myself and my successors to repay," &c. The only other part of the deed which it is necessary to refer to is the clause of warrandice, which was in these terms—"I grant warrandice." In 1876 this bond was assigned by Brody to Horsbrugh's trustees, the pursuers of this action, and they received the interest till 1884. The creditors in the prior bond for £5000 ultimately took possession of Hallfields, which was insufficient to meet the heritable debts upon it, and drew the rents.

Welch died in 1884.

It was in these circumstances that the present action was raised by Horsbrugh's trustees (the assignees of the bond for £375) against Welch's executor.

The plea upon which the pursuers ultimately prevailed, and which was added after the closing of the record, was in these terms—"The late Charles Welch, and the defender as his representative, in respect of the warrandice granted by him in the bond taken over by the pursuers, became bound to purge the then existing incumbrances on the estate, or to make good the loss sustained by the pursuers in consequence of the eviction by the prior bondholder."

The Lord Ordinary (Trayner) on 29th March 1886 found the defender liable in the sum sued for.

"*Note.*—On 23d December 1872 the late Mr Charles Welch granted a bond and disposition in security for £375 over the lands of Hallfields in favour of Mr Brody, who in February 1876 assigned the same to the pursuers. The pursuers in this action seek decree against the executor and general disponee of Mr Welch for the amount contained in the bond, and interest thereon from Whitsunday 1884—the interest due prior to that date having been paid.

"The bond in question proceeds upon the

narrative that under a bond of relief and disposition, dated 30th December 1858, William Wright of Hallfields and others had disponed to Mr Welch, for the purposes therein mentioned, the lands and others therein described, and empowered him to borrow such sum or sums of money from time to time as might be necessary to enable him to execute the purposes of said deed, and to grant bonds for money so borrowed, 'binding the said William Wright and others, their heirs and successors, and the estate thereby conveyed.' The bond proceeds—'Whereas it is necessary, in order to enable me to execute the purposes of said deed, that I should borrow the sum afternoted: Therefore I, as trustee foresaid, grant me to have instantly borrowed and received from Robert John Brody . . . the sum of £375 sterling, which sum I, as trustee foresaid, bind myself and my successors to repay . . . at Whitsunday 1874 . . . and the interest of the said principal sum at the rate of £5 per centum per annum . . . And in security of the personal obligation before written, I, as trustee foresaid, and empowered as aforesaid, dispone to and in favour of the said Robert John Brody,' the lands of Hallfields as there described. The bond farther contains this clause, 'I grant warrandice.'

"The pursuers seek to enforce personal liability for the amount of their bond against the representatives of Mr Welch, the granter of it, on various grounds.

"1. The pursuers maintain that the deed granted by Mr Wright in favour of Mr Welch in 1858 did not constitute a trust at all; that it was in fact a factory or commission or mandate, which fell by the death of Mr Wright on 28th November 1871, and was consequently not existing at the date of the bond in 1872, and could not authorise it.

"The deed of 1858 is of a composite character. It narrates a certain transaction in which Mr Welch had become cautioner for Mr Wright, and contains an obligation on the latter (and certain persons who concurred in granting the deed) to free and relieve Mr Welch of all liability from loss or expense which he might incur through his cautionary obligation. In security of this obligation of relief the lands of Hallfields are conveyed to Mr Welch, but they are conveyed 'also for the purposes after specified' in the deed. The primary purpose of the deed undoubtedly was to secure Mr Welch against the possible consequences of his cautionary obligation, but having provided for that the deed goes on to provide for something else. It declares 'that these presents are granted, and shall be accepted of, by the said Charles Welch for the uses, ends, and purposes, and under the conditions, &c., underwritten, viz., that said estate and prices and proceeds thereof shall . . . be applied by the said Charles Welch' to the purposes there specified. I need not enumerate these, as they are given in the third article of the condescendence. It appears to me, from the nature and character of these purposes, the fulfilment of which might not be accomplished (as in fact some of them were not accomplished) within the lifetime of Mr Wright, that something more was intended to be given than a mere mandate or factory, which should fall by the death of the mandant or granter. I think it is the fair, and indeed the necessary, reading of the deed of 1858 to say, that while it provided first for the relief of Mr Welch, it provided also for his continuing to hold the estate (after his relief had been operated or his cautionary obligation extinguished) for the execution and fulfilment of the specified purposes set forth in the deed. The deed in question, therefore, in my opinion, constituted a trust in Mr Welch, and did not terminate with the life of the granter. Nor does it affect this view that under the trust-deed Mr Welch was allowed to charge a commission as well as professional charges. The office of trustee is a gratuitous office, unless the truster likes to make it otherwise. But if the truster directs that his trustee shall receive remuneration for his services, that does not exclude the idea of trust, nor of itself convert what would have been a continuing trust into a mandate, terminable by the death of the granter.

"2. It was maintained by the pursuers that even if the deed in question constituted a trust, that trust was never acted upon. I hold that proposition to be conclusively negatived by the evidence, parole and documentary, in process. There was a period, no doubt, during which Mr Wright removed the charge of his affairs generally from the hands of Mr Welch, and during that period Mr Welch may not have acted under the trust. But Mr Wright returned to Mr Welch as a client, and after that, I think, the trust was acted upon. Mr Welch was certainly acting both as agent and trustee for Mr Wright at and prior to the date of the death of the latter. The right conveyed by the trust-deed was never reconveyed, and was never renounced.

"3. The pursuers argued that the granting of the bond now in question was *ultra vires* of Mr Welch, as he had no power under the deed of 1858 to pledge the estate. The estate of Hallfields was entailed when conveyed to Mr Welch, and by the deed of 1858 it was declared that Mr Welch should only be entitled to borrow on the estate or convey the same in security, 'in so far as is consistent with the provisions in said deed of entail.' The purpose of this (and some other clauses in the deed) evidently was to prevent the incurring of an irritancy by Mr Wright under the entail. The estate was disentailed in 1868. But the pursuers argue that as no additional powers were conferred on Mr Welch subsequent to the disentail, his power was limited to that conferred while the estate was still entailed, and that he had consequently no power to pledge the estate itself as he did by the bond in 1872, that being inconsistent 'with the provisions in said deed of entail.' I regard this argument as unsound. The conditions of the entail, like the other conditions expressed in the deed of 1858, were qualifications of Mr Welch's right. But when Mr Wright, with the necessary consents, disentailed the estate, I think the effect of that was to remove, so far, the qualifying conditions on which Mr Welch held. He was then infeft in the estate for certain purposes with certain powers, which he could exercise only under conditions. But when the conditions were removed, his right only became the more extensive. The pursuers' argument would come to this, that as the deed of 1858 dealt with an entailed estate, the moment the estate was disentailed the deed of 1858 became a dead letter, because the estate as an entailed estate ceased to exist. As I have

said, I think that argument unsound. The benefit or additional right acquired by Mr Wright through the disentail of the estate accresced to Mr Welch, his disponee, who then became entitled to deal with the estate (subject to the conditions of the trust) as a fee-simple estate. Mr Wright and Mr Welch evidently regarded the disentail in this light, for subsequent thereto Mr Welch (as vested in the estate for trust purposes) became a consenter to certain deeds executed by Mr Wright by way of encumbrance on the fee.

"4. It was objected, farther, by the pursuers that Mr Welch had exceeded his borrowing powers as trustee, because there were no trust purposes to fulfil at the date of the bond in question, and therefore no necessity for borrowing 'to enable him to execute the purposes of' the trust. It is admitted by the pursuers that the second purpose of the trust, so far as it directed payment of an annuity of £30 to Mrs Patrick Wright, was still an existing and unfulfilled purpose of the trust at the date of the bond in question. It is proved that the remainder of the second purpose (payment of public and parochial burdens chargeable against the estate) and the sixth purpose (payment of a sum of £6 per month for aliment, &c., to Mrs Wright, the truster's wife) were existing and unfulfilled purposes. For these purposes money was needed, and it is not proved that the free revenue of the estate, after providing for interest on bonds and expenses of management, was sufficient to meet these purposes. I think this objection, therefore, fails upon the facts.

"5. Assuming the bond to have been granted for the purposes of the trust, the pursuers maintain that the £375 for which it was granted was not expended on the purposes of the trust. In my opinion the pursuers have no right to question this. With the application of the loan they have no concern. But the proof satisfies me that the whole loan was expended on trust purposes within a very short time after it was obtained.

"6. Another objection is founded on the terms of the bond. Mr Welch, as 'trustee foresaid,' binds himself 'and my successors' to repay the loan. It does not in express terms bind Mr Wright or his estate. It is said, therefore, that as Mr Wright is not taken bound, and as there is no 'successor' provided for to Mr Welch as trustee in the trust-deed, Mr Welch only bound himself. If there had been any trust estate to administer after Mr Welch's death, a successor could have been got. On application to the Court, at the instance of the beneficiaries, a new trustee or judicial factor would have been appointed to carry on the trust, who would have been bound out of the estate under his charge (if it was sufficient) to meet the pursuers' debt as a trust obligation. Again, although Mr Wright was not taken bound to pay the debt, his estate undoubtedly was. The debt was burdened on his estate, and out of that estate payment could have been operated if it had not been carried off by creditors who were preferable. This leads me to notice the

"7th and last of the grounds on which the pursuers ask decree. The bond now held by the pursuers contains the clause 'I grant warrandice,' and in respect of that clause the pursuers maintain that the defender as Mr Welch's representative is personally liable for the amount of the bond, the property over which it was granted having been carried off by a prior bondholder. The facts upon this part of the case stand thus: On 14th May 1870 Mr Wright borrowed £5000 on the security of Hallfields, and in the bond and disposition in security granted for that loan the dispositive clause runs thus: 'And in security of the several personal obligations before written, I, the said William Wright, with consent of Charles Welch, writer in Cupar, and I, the said Charles Welch, for all my right and interest in the premises, and we both, dispone to and in favour of,' &c. Mr Welch is no party to the personal obligations in that bond, or to the clause of warrandice, or to anything but the disposition, and that in the terms I have quoted. That bond was duly recorded, and (although not admitted by the pursuers) I hold it sufficiently proved, supported by all the probabilities of the case, that the pursuers were aware, when they took the assignation to the bond they hold, that the £5000 bond was a burden on the estate of Hallfields preferable to theirs. I do not doubt that the pursuers or their agent saw the search of incumbrances over Hallfields which disclosed the existence of the £5000 bond. The question thus arises—What is the effect of the warrandice granted by Mr Welch? The form of the clause, as used in the bond in question, is statutory, and has a statutory meaning. 'The clause of warrandice shall be held to import absolute warrandice as regards the lands and the title-deeds thereof, and warrandice from fact and deed as regards the rents.' On the mere words of the clause, therefore, as interpreted by statute, Mr Welch is bound in absolute warrandice as regards the lands. There is no doubt that the lands have been taken possession of by the holders of the £5000 bond, who are drawing the rents; and there is another bond for £1300, granted by Mr Wright on 18th July 1870, over Hallfields, to which Mr Welch was a consenter, in the same terms as he consented to the £5000 bond, which is still undischarged, and preferable to the pursuers' bond. It is not said by the defender that the estate of Hallfields will when sold yield a price sufficient to pay off all the heritable burdens, while the pursuers aver that it will not. At all events, in the meantime, the lands, so far as affording any security for principal, loan, or interest, have been carried off from the pursuers. In these circumstances I am of opinion that there has been a breach of warrandice, for which the defender, as representative of Mr Charles Welch, is liable. He must either make good the lands as a security for the pursuers' £375, or pay the amount.

"It was urged by the defender, however, that looking to the whole scope and tenor of the bond held by the pursuers—that as it plainly was granted by Mr Welch as a trustee and for trust purposes—the clause of warrandice should be read and construed as if it had been expressed thus—'I, as trustee aforesaid, grant warrandice,'—and that a trustee's warrandice was not absolute, but only from fact and deed. It is not free from doubt whether the pursuers are bound to read the clause otherwise than as really expressed, or whether any meaning can be applied to that clause other than the statutory meaning. But the pursuers argued that if this concession was made to the defender, the result was not affected. It remains still the fact that it is the deed of Mr

Welch under which the lands have been carried off. That he was merely a consenter in the terms above given I do not regard as material, for his consent was, I think, necessary to the carrying out of the £5000 transaction. At that date Mr Welch was infeft in the lands in security of a right of relief, and also for certain trust purposes. His consent was necessary to the £5000 bond, in order that it might rank preferably to any right he had, and it is improbable that the lender of the £5000 would have taken a security postponed to Mr Welch's rights. But Mr Welch consented to the £5000 being ranked preferably to the trust purposes, and the bond now in question was granted in fulfilment of trust purposes; and accordingly it must be held that Mr Welch by his deed had done something to lessen the security of those who lent money to the trust on the trust estate. Mr Welch might easily have protected himself by excepting from the warrandice granted to the pursuers all the then existing burdens. But how does it appear that the pursuers' cedent or the pursuers would have accepted a security or lent their money on these terms? Taking it, as I do, that the pursuers knew of the existence of the £5000 bond, they were still entitled to rely on the warrandice to this effect, that if the prior bond carried off the estate, the personal liability involved in the warrandice would then arise, so that even then they had some security for the repayment of their loan. I am of opinion, therefore, that upon this ground the pursuers must prevail. They must, however, if required, assign their bond to the defender, so that he may obtain payment out of Hallfields, should it turn out that the proceeds of that estate are sufficient to meet the whole burdens upon it. As this has not been offered on record, I have meantime only pronounced a finding that the defender is liable to make payment of the sums sued for without pronouncing decree therefor.

"As the pursuers have been unsuccessful on all the points regarding which proof was led, I shall not find them entitled to any of the expenses incurred in connection with the proof, but otherwise I will find them entitled to expenses."

The defender reclaimed, and argued—The Lord Ordinary had dealt too strictly with the clause "I grant warrandice." Welch did not in granting warrandice bind himself in any other way or to any other effect than as a trustee, and what he bound himself to was that he would not do any deed inconsistent with that he was granting; any further liability, looking to the relation of the parties, was inequitable. The trust estate was no doubt absolutely bound, but Welch only in such warrandice as a trustee was bound to give.

Authorities — Titles to Land Consolidation (Scotland) Act 1868 (31 and 32 Vict. cap. 101), sec. 119; *Leith Heritages Company* v. *Edinburgh Glass Company*, June 7, 1876, 3 R. 789; *Gordon* v. *Campbell*, February 21, 1840, 2 D. 639.

Replied for pursuers — The clause of warrandice was the same in its effect in a bond and disposition in security as in an absolute disposition—*M'Alister* v. *M'Alister's Executors*, February 28, 1866, 4 Macph. 495. Warrandice was a personal obligation, and somebody must be bound by it—only Welch could be bound, and he must be held to have bound himself personally. The clause of warrandice was nothing but a personal contract. Wright was not bound, nor Wright's estate, because he had none. Even supposing the bond had borne "I grant warrandice as trustee," that would have made no difference. It would still remain true that Welch's deed as a consenter to the prior loan had carried off the lands from the pursuers. Warrandice from fact and deed included past deeds. The consent to the prior loans was a past deed; therefore upon any view of the warrandice clause the pursuers were entitled to succeed—*Lumsden* v. *Buchanan*, June 22, 1865, 3 Macph. (H. of L.) 89.

At advising—

Lord President — The Lord Ordinary has found the defender liable in the sum sued for—£375—which amount was advanced on a bond and disposition in security over the lands of Hallfields in the county of Fife. The pursuers seek decree against the executor and general disponee of the granter of the bond for the amount contained in the bond, and interest thereon since Whitsunday 1884, and in granting decree in favour of the pursuers I think the Lord Ordinary has come to a sound conclusion, and I am prepared to adopt the grounds of his judgment. Suppose this clause of warrandice had run that Welch bound himself "as trustee" from his own fact and deed only, still it appears to me that he would have been liable in the sum sued for, because such a warrandice would have meant that the lands were not to be liable to eviction from whatever had been done by him as well as from whatever was yet to be done by him.

No creditor would have been so rash as to have advanced money on the security of these lands without taking care that Welch was made a consenter to the loan, and so by thus being a consenter to the prior bonds Welch really, though perhaps indirectly, co-operated with Wright in bringing about the eviction of the lands.

I do not consider it necessary to go into the wider question whether this is to be read as a clause of absolute warrandice importing liability to Welch as an individual. I have considerable doubts upon the point, but we are not called upon to determine it; all I desire to say is, that I do not desire in this decision in any way to go back upon the doctrine I have so often had occasion to express as to the liability of a trust-estate to make good to the utmost the measure of its obligations.

Lord Mure concurred.

Lord Shand— Even if this clause of warrandice had been restricted by the words "as trustee," I am not sure that the result would have been to have enabled Welch to have avoided absolute warrandice as an individual. In cases of partnership as well as in contracts of loan, personal responsibility may sometimes be incurred unless the trustee makes specially clear the fiduciary character in which he acts, as was done in the case of *Gordon*. I have no doubts whatever as to the soundness of the Lord Ordinary's judgment, and think we should adhere to it.

As the deed is expressed, it is clear, I think, that the trust-estate is bound in absolute warrandice, and the trustee in warrandice from fact and deed. Welch was a consenter to these prior burdens, and without his consent they could never have been effectually constituted.

Lord Adam—The consent by Welch to the constitution of the prior bonds was a "fact and deed." Being such, it is struck at by the most limited interpretation of the clause of warrandice. Even as a trustee he was bound, for the consenting to these burdens was a "fact and deed" by him.

The Court adhered to the Lord Ordinary's interlocutor.

Counsel for Pursuers—Gloag—Graham Murray. Agents—Macandrew, Wright, Ellis, & Blyth, W.S.

Counsel for Defender—M'Kechnie—Kennedy. Agents—Douglas & Mitchell, W.S.

HIGH COURT OF JUSTICIARY.

Monday, November 8.

(Before Lord M'Laren.)

H.M. ADVOCATE *v.* BROWN.

Justiciary Cases—Ship—Destroying a Ship with Intent to Defraud Insurers—Indictment—Narrative—Relevancy.

A charge of destroying a ship with intent to defraud insurers is relevantly made although it is set forth as having been committed with intent to benefit a third party.

John Malcolm Brown was charged before the High Court with (1) the common law offence of "wilfully, wickedly, and feloniously sinking and destroying any ship with intent to defraud insurers;" or alternatively (2) with an offence against the Merchant Shipping Act 1854.

Section 239 of that Act enacts that "Any master of, or any seaman or apprentice belonging to, any British ship, who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person belonging to or on board of such ship, or who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall for every such offence be deemed guilty of a misdemeanour." Section 530 provides for the prosecution of such offences in Scotland.

The subsumption contained the following narrative of the common law charge—"You the said John Malcolm Brown having been mate of the British ship or schooner 'St Athens' of Inverness, on the voyage after mentioned, and being then owner or joint-owner of the said ship or schooner, or being otherwise interested in her on behalf of your father Archibald Brown, residing at or near Balaphuill, in the island of Tiree, and county of Argyll, the reputed and registered owner thereof, and the following insurances to the amounts hereinafter mentioned having been effected with the insurers after named" (here followed a statement of various insurances effected in the name of Archibald Brown, the panel's father); "and you having formed a wicked and felonious design to sink and destroy the said ship or schooner, in order that the sums contained in the said policies of insurance might be realised and recovered from the insurers by you, on behalf of yourself and your said father, or one or other of you, you did" (here followed a statement of the manner in which the loss of the vessel was alleged to have been wilfully caused); "and all this you did with intent to defraud the said insurers, and in order that the sums contained in the said respective policies of insurance might be realised and recovered by you on your behalf and on behalf of the said Archibald Brown, or of one or other of you."

No objection was taken to the relevancy of the statutory charge.

The panel objected to the relevancy of the charge under the common law. Under this charge the intent to defraud was essential to the statement of the crime. But the narrative set forth that the panel, as mate of the vessel, and as being interested in her on behalf of his father, was guilty of sinking the vessel in order to obtain the amount of the insurance for behoof of his father. To this extent the libel charged a man with intent to defraud who was not set forth as having any tangible interest. To say that a mate destroyed the vessel in order that his master might recover the insurance was not a relevant charge of fraud, and did not support the charge in the major proposition. Such an act amounted to barratry, and was a peril insured against, and the owner might recover in respect of it, without the intervention of a fraud. He therefore moved the Court to strike out of the indictment all words charging the panel with the crime of fraud in any other way than as owner or part-owner of the vessel. In support of his objection the panel cited Hume, i. 176.

Answered for the Crown — The indictment charged the panel with fraud, and the result of that machination was intended to be a transfer from the specified insurance offices of money which ought to have remained with them. The question was raised, "Was it the less fraud when the fraud was committed for the benefit of a third party?" Surely it was not. But sufficient attention had not been given to the words "or being otherwise interested" which the indictment contained. Even if he were not the owner of the vessel, he was the son of the registered owner, he was mate of the vessel, he was interested in getting a good equivalent for the ship, even if this was chiefly done for the sake of his father. The prosecutor offered to prove (1) that the panel cheated the insurance offices; (2) in order to recover the money for which the ship was insured; (3) that the panel was owner or part-owner, or at least was interested in the ship.

At advising—

Lord M'Laren—If I held the opinion that to make a relevant charge of destroying this vessel it must be shown that the actor was personally interested in the transaction, then I should be disposed to assent to the argument on behalf of the panel, and he would then probably be entitled to have the words complained of struck out of the indictment, or if retained, then only retained in order to cover the case of mortgagee or part-ownership. But it is my opinion that an act is