the two children who are in minority, for they have no curator, and it is maintained by the defenders that they are not in a position by themselves to grant a valid discharge. This is quite a new point in questions of this kind, although there are three previous cases which came before the Court upon applications similar to the present. The first of these was the case of *Pratt* in 17 D., in which the Court refused to hold as sufficient a discharge by the person who had been appointed curator *ad litem*, and decided that there must be a formal application in the usual way. That decision is obviously of no use to us in the determination of the present question. The next case was *Anderson* v. *Kidd* in 1881, which is unreported. There a widow and her children were the pursuers of the action, and the Court refused to grant decree until a factor *loco tutoris* was appointed, because the mother declined to hold the sum awarded by the jury in trust for herself and the children subject to the orders of the Court. In *Anderson* v. *Muirhead*, June 4, 1884, 11 R. 870, which was an action at the instance of minor children, no demand was made by the pursuers to obtain a decree in their own names. They evidently considered that they ought to have a guardian, and proceedings were delayed until he had been appointed, In the present case the demand is made by the minors that they are entitled to have the decree granted in their own names. Upon this matter Erskine says (lvii. 33)—"Every deed of a minor who has no curators is as effectual as if he had curators, and had acted with their consent." Now, if this *dictum* is to be held to be of universal application, then of course there is an end to all difficulty with regard to the present application. But there are exceptions to this rule, and the measure of the powers of minors without curators is thus stated by Professor More (Lectures, vol. i. p. 110)—"When minors have no curators they may act by themselves, and payments made to them by their debtors will be valid and effectual. But the Court of Session will not in every instance compel a debtor to pay to a minor who has no curator without his giving security to keep the debtor indemnified." The case upon which the qualification mentioned by Professor More rests is that of *Kirkman* v. *Pym*, reported in Morison, 8977, and referred to by Lord Fraser in his work on Parent and Child, the circumstances of which show very clearly the kind of case in which the exception noticed by More arises. There Pym, the debtor, was due a large sum of money to Kirkman, who died and was succeeded by his son, who when a minor in his seventeenth year, and without curators, demanded payment of the debt, which was a large sum of money secured by heritable bond. Pym objected that "as he (Kirkman) was without curators payment could not be made to him with safety," but expressed his willingness to pay "if he was secured by the Court *causa cognita* against the hazard of being obliged to make payment a second time." The Court observed there that a distinction was to be taken between cases which related to the payment of a principal sum and those in which the interest only of money or the rents of subjects was claimed —"those ordinary acts of administration which might be necessary for a minor's support. Accordingly the Lords were of opinion that as the debtor could not, even by making full money, be secure against future challenge, unless the money were to be afterwards profitably employed for the minor's behoof, so the Court ought not to interpose their authority in order to compel him to do an act which would subject him to that hazard." Now, the distinction there taken between a large capital sum which fell to be invested, and income, whether in the shape of interest or rents, is very important, and it is in applying that doctrine to the present case that the only difficulty arises. Now, it appeared to me that the sum of money which each of these minors proposes to discharge without the intervention of a curator cannot be described as a large sum for investment. It is a sum which the law has given these children to repair the loss they have sustained upon the death of their father, and it appears to me that the loss which they have sustained upon the death of their father is just the liability which the father would have been under to maintain and educate them, and if the sum which comes in place of his paternal care and administration is that sum of £50, that seems rather a sum which goes to satisfy the immediate charges—that is to say, charges for the maintenance and the education of these minors. I think therefore that as it falls within that category, and not within the category of a principal sum or large amount which ought to be invested for the minors, these minor children have a good title to discharge that sum.

LORDS MURE, SHAND, and ADAM concurred.

The Court decerned for payment of £50 to each of the minor children, and on a minute being lodged sisting the mother as tutor to the pupil children, decerned for payment to her of their sums of £50 found due to each of them under the settlement.

Counsel for Appellants—Ure. Agents—Dove & Lockhart, S.S.C.

Counsel for Respondents—Graham Murray. Agents—Millar, Robson, & Innes, S.S.C.

Friday, December 17.

OUTER HOUSE.

[Lord Trayner.

FORBES *v.* CALEDONIAN RAILWAY COMPANY AND PAROCHIAL BOARD OF DENNY.

Entail—Petition to Uplift and Apply Consigned Money—Expenses—Lands Clauses Consolidation (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 9) *—Apportionment when Money Consigned by more than one Party.*

Two bodies had under statutory powers taken parts of an entailed estate for their undertakings, and consigned the respective sums payable by them, which sums were unequal in amount. *Held*, in a petition to uplift and apply the consigned money, that the expenses of the proceedings fell to be paid by the two bodies equally, and not in the proportions which the respective sums consigned bore to each other.

Mr Forbes of Callendar was the heir of entail in possession of the lands and barony of Herbert-

shire, in the county of Stirling, and feudally vested therein.

In April 1873, under the Burial Grounds (Scotland) Act 1873 (18 and 19 Vict. c. 68), the Sheriff-Substitute of Stirlingshire designated and set apart, on the petition of the Parochial Board of Denny a portion of the estate of Herbertshire. The price was fixed by valuation under the Lands Clauses Act at £480, 6s. 9d., and that sum was consigned in bank, a disposition being executed by Mr Forbes in favour of the chairman of the Parochial Board of Denny.

Mr Forbes was also heir of entail in possession of, and feudally vested in, the lands and barony of Callendar in the same county, and the destination in the entail of that property was the same as in the entail of Herbertshire.

Under the Caledonian Railway Act 1876, and the Lands Clauses Consolidation Act 1845, the Caledonian Railway Company acquired certain portions of the estate of Callendar for their undertaking, the price of which, £906, 3s. 9d., was consigned in bank on May 12, 1883. The two sums thus consigned amounted to £1386, 10s. 6d.

In this petition Mr Forbes craved, under the Lands Clauses Act 1845, secs. 67 and 68, authority to invest the sum of £1335 in a certain investment in superiorities of lands, and to obtain payment of the balance of £51, 10s. 6d.

The petition craved the Lord Ordinary to decern against the Parochial Board of Denny and the Caledonian Railway Company for payment of the costs of the petition and proceedings therein, and uplifting and applying the consigned money, and of entailing the superiorities to be purchased as an investment on the series of heirs in the entails, "and that in the same proportions as the sums consigned by them respectively bear to each other," or to do otherwise as should seem proper.

On a motion being made for expenses against the parochial board and the railway company, the Lord Ordinary directed inquiry to be made as to whether in practice such expenses in similar cases were divided equally between the parties, or in proportion to the sums consigned by them respectively. It was stated that the practice had varied.

Argued for the parochial board—It was equitable that the expenses should be apportioned between the board and the railway company in proportion to the sums consigned by them respectively.

Argued for the railway company — The general rule in the English Courts was to make such costs divisible between the parties equally (Deas on Railways, p. 350, and cases there cited; *ex parte* Governors of St Bartholomew's Hospital, May 20, 1875, 20 L.R., Equity Cases, p. 369), and as there might have been separate petitions with reference to each of the consigned sums, the equitable course was to divide the expenses equally between the parochial board and the railway company.

The Lord Ordinary (Lord Trayner) sustained the contention of the railway company, and pronounced the following interlocutor—"Finds the Parochial Board of Denny and the Caledonian Railway Company liable equally between them in the expenses of this petition and proceedings therein, and also of and incident to the purchases referred to in the petition, and of uplifting and applying the said consigned moneys, and also of the expenses of entailing the said superiorities on the series of heirs mentioned in the petition, and remits the accounts thereof," &c.

Counsel for the Petitioner—A. J. Mitchell. Agents—Graham, Johnston, & Fleming, W.S.

Counsel for the Parochial Board — Begg. Agents—Philip, Laing, & Trail, W.S.

Counsel for the Railway Company — Johnstone. Agents—Hope, Mann, & Kirk, W.S.

Saturday, December 18.

SECOND DIVISION.

[Sheriff of Aberdeen.

LESLIE AND OTHERS *v.* WALKER AND OTHERS.

Reparation — Shipping Law — Trawler — Sea Fisheries Act 1883 (46 *and* 47 *Vict. cap.* 22), *Sched.* 1.

The Sea Fisheries Act 1883 provides that when trawl-fishermen are in sight of long-line fishermen they shall take all necessary steps to avoid doing injury to them, and that where damage is caused the responsibility shall lie on the trawlers unless they prove that the loss sustained did not result from their fault. Long-line fishermen set their lines, 6000 yards in length, during daylight in a bay on the North Sound of Orkney, and according to a local custom left them there all night. They were only marked at either end by a buoy surmounted by a short flag-staff. During the night they were injured by a trawler which they had seen a few miles off when they set their lines. *Held* that the damage was due to the leaving of the lines unwatched and unlit, and to the failure to warn the trawler of their presence, and that the trawler had proved that the loss did not result from her fault.

This was an action by William Leslie and others, owners of the fishing-boat "Ebenezer" of Stronsay, Orkney, against Thomas Walker and others, owners of the steam-trawler "St Clement" of Aberdeen, for £122 as damages. The pursuers alleged that the trawler on the night of 20th May 1885 carried away ten lines, of 6000 fathoms length in all, which they had set that afternoon, about 1½ mile from shore, in the North Sound, near Papa Westray, properly buoyed and secured, and easily observable, and that the trawler was indeed within sight when they were set. They alleged fault at common law, and also neglect of the provisions of the Sea Fisheries Act 1883, particularly article 15 of schedule 1 and article 19 of schedule 1; that they lost in consequence a fortnight's fishing worth £112, and the value of the lines, £10.

The Sea Fisheries Act 1883 (46 and 47 Vict. cap. 2), first schedule, article 15, provides—"Boats arriving on the fishing-grounds shall not either place themselves or shoot their nets in such a way as to injure each other, or as to interfere with fishermen who have already commenced their operations." Article 19—"When trawl