put to rights probably if another servant had not been engaged in the meantime. I think that as we must take it that there was a re-engagement of the servant, coupled with a liberty given afterwards to go if he wished, and in absence of any statement by the servant that he was going away, I think the present defence cannot be sustained. The result is that we must recal the judgment of the Sheriff and revert to the judgment of the Sheriff-Substitute, except as regards the amount of damages given by him, and I think we should limit the damages to £20 with expenses.

Lord Young, Lord Craighill, and Lord Rutherfurd Clark concurred.

The Court pronounced this interlocutor:—

"Find that in January 1886 the defender re-engaged the pursuer as his servant for the year ending at Whitsunday 1887, at a money wage of £18 with the allowances specified in the record: Find that in April following the defender intimated to the pursuer, on his making application regarding a supply of milk, that if he was not satisfied he might leave his service at the ensuing term of Whitsunday, and without further communication with the pursuer engaged another servant in his room for the year commencing at that term: Find that the defender was not justified in thus dismissing the pursuer either by what passed between them as aforesaid, or by the reports that subsequently reached him of statements said to have been made by the pursuer: Find that the defender is liable to the pursuer in compensation accordingly: Therefore sustain the appeal: Recal the judgment of the Sheriff appealed against: Affirm the judgment of the Sheriff-Substitute except as regards the amount thereby found due to the pursuer, assess the compensation due to him at Twenty pounds sterling: Ordain the defender to make payment of that sum to the pursuer: Find the pursuer entitled to expenses," &c.

Counsel for Pursuer—Rhind—Wilson. Agent—William Officer, S.S.C.

Counsel for Defender—Salvesen. Agent—J. Young Guthrie, S.S.C.

---

*Tuesday, February 22.**

SECOND DIVISION.

[Lord M'Laren, Ordinary.

MACKINNON (MILLAR'S JUDICIAL FACTOR) *v.* KNOX AND OTHERS (MILLAR'S TRUSTEES).

Trust—Liability of Trustees—Personal Liability of Trustees for Imprudent Investments.

Circumstances in which family trustees, whom the truster declared not liable for omissions or errors or neglect of management, and on whom he had conferred full powers of investment in such securities, heritable or personal, as they should think proper, were made personally liable for the loss of a sum lent to a member of the family on insufficient security.

A draper in Glasgow who died in 1863, in his trust-deed directed his trustees to hold his estate for the purpose of paying his widow an annuity, and of dividing the residue amongst his children, with full powers to invest the estate "on such securities, heritable or personal, as they should think proper." The truster's eldest son, who subsequently carried on his business, in 1874 bought the business premises for £25,000, and after paying £13,000 of the price, applied to the trustees for a loan of the balance, viz., £12,000. He offered as security the premises themselves, on which he had already borrowed £17,000, and also other subjects which were already burdened. The margin of value of the whole heritable security offered was £12,150. He also offered the security of a policy on his life for £2160, the surrender value of which was less than £500, his share of a sum of £10,000 held by the trustees for security of the widow's annuity, and the personal security of his father-in-law, whose credit, like his own, was good at the time, and who was a merchant and possessed of subjects in which a large quantity of shale was believed to exist. The trustees accepted his offer, but did not communicate it to the beneficiaries, who on hearing of the loan wrote through one of their number protesting against it, but no notice was taken of their letter. In 1884 the debtor and his father-in-law became bankrupt, and the prior bondholders on the subjects contained in the securities entered into possession. In an action raised by the beneficiaries against the trustees for repayment of the loss sustained by the estate through the loan—*held* that the trustees were personally liable for the loss as having invested on insufficient and unsubstantial security contrary to the law and practice of trust administration.

John Millar, who carried on business as a wholesale and retail draper at No. 20 High Street, Glasgow, died in November 1863 leaving a trust-disposition and settlement in which he gave his trustees directions as to the disposal of his whole estate—directing them to pay his widow an annuity of £400, and to divide the rest of the estate among his children. The deed contained a clause providing that the trustees should not be liable for omissions, errors, or neglect, but each for his actual intromissions only, and should be entitled to appoint a factor for whom they should not be responsible, except that he be habit and repute responsible when appointed. It also gave power of sale of the estate when the trustees should think it necessary or expedient, and contained a clause empowering them "to lend out the proceeds and other funds of the trust, or such parts thereof as may not be otherwise required, on such securities, heritable or personal, as they shall think proper." The estate consisted mainly of the premises No. 20 High Street, in which the business was conducted, the truster's interest therein, and his capital embarked in it.

* This action was decided on November 2, 1886, but the Court did not pronounce a formal interlocutor till February 22, 1887.

The truster was twice married. The only child of the first marriage, who survived him, was his son William Millar. The settlement provided that William should, in respect that the truster was satisfied with his conduct, as he had been of great service in the business, receive payment of his share at the first term after the truster's death.

The second wife survived the truster, as did also four daughters and three sons by the second marriage.

After the truster's death the business was carried on by his eldest son William Millar. The trustees allowed him to keep his father's capital in the business, which was very profitable. This capital amounted to £4400 at the truster's death. William took his stepmother into partnership for ten years, and during that period she received as her share of profits £14,000. The premises in which the business was carried on at 20 High Street, were leased from the trustees by William Millar at a rent of £400. He purchased certain neighbouring subjects.

In the beginning of 1874 the trustees were asked by William Millar to extend his lease, and they met to consider the application. Mrs Millar, whose partnership was at an end, and her children, of whom two had attained majority, insisted that the trustees should sell the property No. 20 High Street, as they thought the property-market in Glasgow was at that time in a favourable state; and they further thought that William Millar was paying an inadequate rent (£400) for the premises. The trustees then were unwilling to sell, but took the opinion of counsel as to their obligations in the matter, and were advised that it was their duty to comply with the desire of the beneficiaries. They also obtained a valuation of the property, wherein the property was valued at £19,000. The beneficiaries considered this valuation too low, and at a final meeting of the trustees and the beneficiaries it was agreed that the property should be offered for sale at the price of £25,000. On 8th May 1874 the trustees met and accepted an offer from William Millar to purchase the High Street property at £25,000—"settlement to take place in May 1874." The transaction, however, was not settled in May 1874, and the trustees did not take steps to oblige such settlement to be made. On 31st October 1874 William addressed to the trustees' agent, Mr Black (who also acted as his own agent), a letter which was read at the meeting of the trustees, informing them with reference to his recent purchase of the trust property for £25,000, that he had arranged for a loan over it of £17,000, and stating that as his father's trustees would have money to lend, he applied for a loan of £12,000 from them on the following heritable and personal security—all to be arranged at Martinmas term, viz.:—

"Property, 30 High Street, valued by Mr Graham	£6000 0 0	
Bond	4000 0 0	
Reversion		£2000 0 0
Shops and back-lands, 34, 36, 40, 42 High Street,	£15,600 0 0	
Bond	11,000 0 0	
Reversion		4600 0 0
Property, 20 High Street	£25,000 0 0	
Bond	17,000 0 0	
Reversion		8000 0 0
Carry forward,		£14,600 0 0
Brought forward,		£14,600 0 0
Life Policy		2,160 0 0
One-seventh part of £10,000		1,428 11 5
		£18,188 11 5

and besides the above, the personal security of myself and my father-in-law, Andrew Walker, Esq., of Hartwood, West Calder."

The property valued at £6000 in the above offer had been bought by Mr William Millar at Whitsunday 1873 for £5500, and bonded by him for £4000, leaving a margin of £1,500 0 0

The property valued at £15,600 had been bought by him at Whitsunday 1874 for £13,650, and bonded for £11,000, leaving a margin of 2,650 0 0

The property valued at £25,000 was bonded for £17,000, leaving a margin of 8,000 0 0

£12,150 0 0

These properties had been valued in April 1873 and March and June 1874 respectively by Mr Graham, valuator, at £6000, £15,600, and £25,000, values which would leave for the proposed loan of £12,000 a margin of £14,600. On 2d November the trustees agreed to give the loan required, but made no intimation to any of the beneficiaries. William Millar then paid them £13,000 of the £17,000 which he borrowed on the property, and granted a bond in favour of the trustees for £12,000, being the balance, and gave them the real and personal securities above mentioned. The surrender value of the policy of insurance was less than £500.

On 27th November 1874 Mr A. G. Millar, the eldest son of the second family, addressed to the trustees a letter in these terms—"It is as well to make known to you in this form that I and the rest of our family strongly object to £12,000 of our father's estate being lent to my brother William on his property in the High Street, and on the personal security of his father-in-law Mr Walker. There are already four bonds over it, although they are not over the same parts of the property. . . I protest for myself and the rest of the family against this investment. The property is thus burdened altogether for £44,000, and it is plain to anybody that there is not a shilling of margin in the security. You will please therefore to understand that the investment is made not only against our wishes, but against our objections, and that we will look to the trustees for the £12,000 if it should be lost in whole or in part by the insufficiency of the security."

To this the trustees made no reply. On 6th January 1875 in the minutes of meeting held by the trustees there appeared—"There was read to the trustees a letter addressed to them by Mr A. G. Millar dated 27th November last." On 18th December 1874 they had obtained from Mr M'Michael, property valuator, a new valuation of the properties, which brought out value of £7000, £16,550, and £25,000, showing a margin for the loan of £16,550.

On 13th January 1880 Mr A. G. Millar wrote again to the trustees—"Fully more than five years ago I wrote a letter to you on behalf of the other members of the family and myself, of which a copy is enclosed. I called attention to the risk of lending a large sum of money to Mr Millar on

security which was plainly insufficient. During the long period that has since elapsed no endeavour has been made to realise the investment or any part of it. The depression of trade and in the value of property renders it still more insecure, and I beg again to call the attention of the trustees to it, and to renew the protest then made. I think it advisable that the trustees, for their own sake as well as for the trust, should make some arrangement for the reduction of this debt. As soon as a meeting is called, and a decision arrived at, I shall be glad to hear the result."

This letter was considered at a meeting held on 13th January. The trustees considered this letter, and minuted that they instructed their agents "to reply that they had carefully considered the security before they gave the loan, and were satisfied with it; that the interest had always been regularly paid; and that they saw no reason for disturbing it at present."

In 1884 Mr William Millar, who had previously assumed a son into partnership, became insolvent, as did also his father-in-law Mr Walker. The prior bondholder took possession of the heritable subjects. The estimated dividend on Mr William Millar's company estate was 8s. 8d. per £1, on his individual estate, 2d. per £1, and on Walker's estate 5s. 9d. per £1. On 28th February 1885 Mr Mackinnon was appointed judicial factor on the trust-estate, two of the trustees having resigned, and the sole remaining trustee being prevented from bad health from attending to business.

Mr Mackinnon, as judicial factor, raised this action against John Knox and others, being the two surviving trustees, and the son and representative of a deceased third trustee, for declarator that they were bound to make repayment of £10,000, or such other sum as should be found to have been lost to the estate in consequence of the trustees "having illegally and unwarrantably lent the sum of £12,000 to William Millar . . . . upon insufficient security," and for payment of such sum.

The pursuer averred—"The pursuer is advised that the defenders are bound to make good to the trust-estate the said sum of £10,000. The securities upon which the trustees lent the said sums of £12,000 . . . . were of such a nature that the trustees were guilty of breach of trust in investing the said trust funds upon them. The said investments were manifestly insecure and liable to result in loss, and the borrowers could not have obtained loans in the open market upon such securities as were taken by the trustees. It was illegal and *ultra vires* of the trustees to invest the said sums upon said securities. Further, the said sum of £12,000 was lent to Mr William Millar for his accommodation, and not with a view to the interests of the trust-estate. The said trustees were also guilty of neglect and violation of their duty in that they took no steps to realise the said sum of £12,000, although the value of house property in Glasgow had fallen long before the insolvency of Mr William Millar and Mr Walker, and although the beneficiaries under the trust pressed them to realise the said sum, on the ground that the security was plainly insufficient. The defenders deny their liability to make good the loss sustained by the trust-estate, and the present action has been rendered necessary. The pursuer offered to transfer the said securities to the defenders upon payment of the sums lent, but the offer was declined."

The defenders averred—"In the whole matters alleged the said trustees acted with the advice of skilled valuators, and with all reasonable and proper care and prudence in the interest of the trust-estate, and the present position of the loans is due entirely to causes for which neither the said trustees nor the defenders are responsible."

The pursuer pleaded—"(1) The pursuer is entitled to decree in respect that the said trust-estate has sustained loss to the amount libelled, through the said sum of £12,000 being illegally and unwarrantably invested upon insufficient security. (2) The trust-estate having sustained loss by the illegal and improper actings of the defenders, they are jointly and severally liable in reparation."

The defenders pleaded—"(4) The pursuer's averments, so far as material, being unfounded in fact, the defenders should be assoilzied. (5) The sums in question not having been illegally and unwarrantably invested upon insufficient security, the defenders should be assoilzied. (6) The whole actings of the trustees in the matters alleged having been legal and proper, and within their powers, and warranted by the trust-deed, they should be assoilzied. (7) The trust estate having suffered no loss for which the defenders are responsible, they should be assoilzied. (8) The trustees being by the trust-deed entitled to lend on such heritable or personal security as they should think proper, and having in the *bona fide* and proper discharge of their duty agreed to give the loans in question, they should be assoilzied."

A proof was allowed. The facts stated in the foregoing narrative were established. It also appeared that Mr William Millar was generally reputed in Glasgow to be worth £12,000 to £20,000, and on 31st January 1874 £104,463 was turned over in the business. The average turnover for the years 1872 to 1880 was £87,000. Mr Walker, Mr William Millar's father-in-law, was a "club" draper in Glasgow, doing an ordinary business of that class. He was believed to be of considerable means, arising from heritable property which was believed to contain valuable shale. The trustees believed him to be worth £30,000 to £40,000.

The Lord Ordinary (M'Laren) pronounced this interlocutor:—"Finds that the sum of £12,000 was lent by the trustees of the deceased John Millar to his son William Millar on unsubstantial and insufficient security, contrary to the law and practice of trust administration: Therefore decerns against the defenders for payment of the said sum on receiving from the judicial factor an assignation to the securities libelled: *Quoad ultra* assoilzies the defenders from the conclusions of the action, &c.

"*Opinion.*— . . . The offer of Mr William Millar, which is dated 7th May 1874, bears that the settlement is to take place that month. But it does not appear that the trustees, after accepting the offer, took any steps towards enforcing this condition, and the settlement was allowed to lie over until Martinmas.

"This is not a favourable circumstance for the case of the trustees. The unexplained default in

payment, where the sale was for an immediate settlement, ought to have suggested to the trustees that Mr William Millar was not in circumstances to fulfil an obligation for such a sum, and that he needed time to obtain the money by borrowing. When Martinmas came it turned out that Mr William Millar had arranged to borrow as much as he could get in the open market on the security of this property, namely, £17,000. In a letter dated 31st October 1874, addressed to Mr George Black as agent of the trustees, Mr William Millar proposed to borrow from the trustees, not the difference between that sum, £17,000, and the price, £25,000 (which would be only £8000), but the sum of £12,000, offering as security the margin of value of his purchase from them, and the margins of his other High Street properties, which were already bonded, apparently, for as much as could be obtained in the open market. This proposal ought to have alarmed the trustees very much.

"And here I pause to observe that Mr George Black, the gentleman to whom this strange and, I should say, alarming proposal was addressed, was also Mr William Millar's agent, the person who assisted him in his purchases, and arranged the first loans for him. Very likely the letter addressed to Mr Black as agent for the trustees was written by himself in his capacity as agent for Mr Millar, and it is in evidence, in answer to a question put by myself, that the trustees were advised by Mr Black that they were in safety to accept the loan. This is another illustration of the consequences of the odious practice (on which I have so often had occasion to comment) of the same agent acting for trustees who trust to him for advice and also for a private party having an adverse interest.

"No neutral person conversant with the law could or would have advised these trustees to accept Mr Millar's offer. It was accepted, however, unconditionally, without even the stipulation invariably inserted by companies who lend on second-class securities, that the debt should be reduced by periodical instalments.

"In 1884 Mr William Millar became insolvent, and there is at present no prospect of the recovery of the £12,000 lent to him from the trust-estate, and the loss to the trust is estimated at £10,000. I have stated the more important facts of the case, and I must now state the conclusion at which I have arrived, which is, that the defenders are liable to replace the funds lost to the estate, they receiving from the trustees an assignation to the securities in case these may eventually produce a reversion.

"It is a very unpleasant duty on the part of the Judge the enforcing personal liability against the holders of offices of trust, but I do not see how this result can be avoided in the present case unless trustees are to be made absolutely irresponsible for their actions.

"The question of the reasonableness of the loan must be carefully distinguished from that of the sale. The beneficiaries demanded a sale, and were willing that their elder brother should be the purchaser, though it is plain that they used no influence with the trustees on his behalf, and were quite willing that the property should be put up to auction. I think that the trustees acted properly in accepting Mr William Millar's offer of £25,000, but having done so, they should have kept him to his bargain. If Mr Millar had dealt openly with them, and had said—'I have no money to complete the purchase; my capital is all locked up in other property, and I ask you to lend me the reversion of the price over what I can borrow in the market,' the case would have been different. The trustees might then have consulted their constituents, and with their approval might have lent the balance of the price, or postponed the payment of the price, stipulating for periodical instalments and a security title. In the worst case they would have got back their own property unencumbered on repaying the £17,000 to the heritable creditor from whom they received it.

"I do not say that this is a kind of transaction which trustees ought to enter into on their own responsibility, but it would have been a fair family arrangement, and the trustees might have asked an indemnity from such of the beneficiaries as were able to give it.

"But the actual case is that Mr William Millar gets the property at the price of £25,000, borrows £17,000 upon it, whereof he only pays £13,000 to the trustees, and remains their debtor for £12,000, giving them in exchange a conveyance to the reversion, and other securities of the like unsubstantial character. Why did the trustees not insist on receiving at least the entire proceeds of the £17,000 loan? I asked that question of the trustees themselves, and of counsel. No explanation was or could be given. The truth is that the £12,000 lent by the trustees wholly on margins was an accommodation to Mr Millar, and not an investment of trust-funds in the ordinary course of business. When the true character of the transaction is discovered, if I have rightly judged it, there can be little doubt as to the legal result.

"Trustees are not entitled to accommodate their friends or the members of the truster's family with the funds entrusted to their care. In such a case clauses of indemnity have no application. There is such a clause in this trust-deed, and also a power to lend on real and personal security. The trustees had in addition to the property the personal guarantee of a gentleman of the name of Walker, who was said to be the owner of mineral property of fabulous value. Under other circumstances the fact of collateral security being given would be an element of more or less importance. But it does not in my judgment alter the complexion of the present case. Because in accepting Mr Millar's offer the trustees were not, as I conceive, trying to get the best security for a sum to be invested, but were simply lending the trust-money to accommodate Mr Millar, taking such security as he could offer.

"To test this let me ask the question, why did not the trustees, or Mr Black on their behalf, say to Mr Millar—'No, we will lend you the £17,000 on a first bond, and you may go into the market and raise the £12,000 on what you offer as "unexceptionable security?"' The answer is, they knew that Mr Millar could not have got the £12,000 from any source but the trust, and they would not have lent him the money out of their individual funds on the security offered." . . .

The defenders reclaimed, and argued—The trus-

tees had not rendered themselves personally liable for the sum sued for—First, under the trust-deed they had power to lend the trust-funds on such heritable or personal security as they should think proper; second, they had exercised that power in a reasonable manner, selecting their borrower with reasonable care and prudence, and taking what they deemed perfectly safe security, along with the personal security of two men, one worth the loan, and the other three or four times worth it. There was no element of such rashness which a reasonably prudent man would avoid. Supposing the transaction was reasonably prudent, it was not relevant to inquire into their motives. The business was for the benefit of the whole family, the trustees being on good terms with all of them. The alleged bias in favour of William Millar was only a desire to deal fairly with the family, and as creditor with him. It was necessary to endeavour to obviate the risk of losing the business. "Personal security" (on which the trustees might lend) meant the security of a personal bond—*Seton* v. *Dawson*, Dec. 14, 1841, 4 D. 310 (*vide* Lord Moncrieff's opinion, p. 328, 14 Scot. Jur. 115); *Lamb* v. *Cochran and Others*, March 23, 1883, 20 S.L.R. 575 (*per* Lord Fraser, Ordinary); *Pickard* v. *Anderson*, March 22, 1872, L.R., 13 Eq. 608; *Fraser* v. *Murdoch*, August 1881, 6 App. Cas. L.R. (H. of L.), 855 (*vide* Lord Blackburn's opinion, p. 864). At most the loss was the result of an error of judgment, for which in the circumstances they were not liable.

The pursuer replied—This was not the case of an error in judgment by the trustees acting in good faith. It was an abuse of their powers to accommodate one particular man, and not all the beneficiaries under the trust. The whole facts of the case revealed clearly that they had been acting solely and entirely in favour of the interests of William Millar. They had not exercised independent judgment in the trust affairs, but were financing for William Millar. The loan was made to him without the consent of the beneficiaries, who as soon as they heard of it wrote a letter, to which they received no reply, protesting strongly against it. It was also made without any examination of the securities offered by William Millar. Would any prudent man have taken such security? A trustee must take all reasonable care, and it was not enough to say that the money was lent on the class of security the trustees were empowered to take. The trustees were guilty of gross negligence in taking such security, and in failing to inquire minutely into the financial condition of William Millar and Walker. Even assuming that they had power to take such security, they were only given discretionary power to do what seemed reasonably best to be done for the trust. The meaning of the power to invest on personal security in the trust-deed was only that if necessary for a temporary purpose they were to be entitled to lend on a personal security till an eligible heritable security could be got. Therefore, though it were granted they had power to lend on personal security, they had no title to accommodate a particular person—*Langston* v. *Olivant and Others*, April 21, 1807, 9 Cooper's Chan. Rep. 33; *Ross* v. *Allan's Trustees*, November 13, 1880, 13 D. 44.

It was admitted that the Lord Ordinary had erred in giving decree for the amount of £12,000, as he had not taken account of the dividend received from William Millar's and Mr Walker's estates.

At advising—

Lord Justice-Clerk—This is an important case in its legal aspect as well as to the parties, and I have given it my best consideration. The action has for its object to make certain family trustees responsible for the loan of money which it is alleged they made on insufficient security to one of the family. The Lord Ordinary has very fully expressed the grounds on which he has felt himself compelled to adopt the conclusion that they are responsible when he finds "that the sum of £12,000 was lent by the trustees of the deceased John Millar to his son William Millar on unsubstantial and insufficient security, contrary to the law and practice of trust administration." I find myself compelled, after having carefully gone into the facts and circumstances of the case, to come to the same conclusion. I think that the security on which the loan was made was not one which the trustees in their administration of the estate were entitled to invest the trust-funds. The history of the case is shortly as follows—The trustees held the estate of John Millar, a merchant in Glasgow, who was married twice, and left a widow and children by both marriages. William Millar, a son by his first marriage, carried on a large draper's business in Glasgow, in which he had invested his money, and which was unquestionably at the date of the transactions in question in a flourishing condition. He was believed to be worth £12,000 or £14,000, and the turnover of his business was large. Part of the premises in which the business was conducted belonged to the trustees, and was rented from the trustees at what was thought an inadequate sum, and accordingly in January 1874 the question arose as to whether the lease was to be renewed. The beneficiaries, other than William, opposed the renewal, and requested the trustees to sell the property, on the ground that house property in Glasgow was in a rising condition, and a good price was likely to be got for it. The trustees were averse—and I think reasonably so—to this proposal, because William Millar had a very legitimate interest in preventing the premises going into other hands. They took the opinion of counsel, and were advised that they were bound to sell, and accordingly—not, I think, very willingly—they set about the sale. They got a valuation at £19,000, and they subsequently got a valuation at £25,000. I should have thought, myself, the latter a rather exaggerated valuation, but such was obtained. They were, however, entitled to act on the advice which they were given.

They next entered into negotiations with William Millar for sale by private bargain if he should be willing to give the sum. There also they were within their rights, and quite entitled to sell to him, and to take into account that he had a peculiar interest in the property. William Millar made an offer of £25,000, "settlement to take place in May 1874." That was accepted after communication with the other beneficiaries, who consented to his becoming the purchaser on condition that the price should be settled in the ensuing May. Up to this date I do not think there is any ground for adverse criticism of what the trustees did. But one condition they were bound to have had in view, and that was, that they ought to have

been reasonably convinced that William Millar was able to pay this price. Now, I fear that from the beginning it became perfectly obvious that he was not in a position to do so in any reasonable sense of the expression. What happened was, that William Millar having had his offer accepted, set to work to obtain a loan on his newly acquired property, and obtained one for £17,000, and wrote the following letter on the 31st October 1874, the terms of which are material—"In reference to the recent purchase of property at 20 High Street from my late father's trustees for £25,000, I have arranged for a loan of £17,000, and as my father's trustees will have a good deal of money to lend, I beg favour to make application through you to them for the loan of £12,000 sterling, sending to them the following unexceptionable heritable and personal security. All is to be arranged at Martinmas term." Then followed a list of securities [printed *supra*, p. 356], all of which consist of reversions of property already burdened to a considerable extent, a life policy, and a one-seventh share of a sum of £10,000.

That appeal to the trustees was made on 31st October, and on the 2d November the trustees agreed to grant the loan of £12,000. They had not consulted the beneficiaries on the subject, though they had taken them along with them in the previous sale. They consented, however, to grant the loan on the security mentioned in his letter along with the personal obligation of William Millar and the collateral personal security of Mr Walker. The securities have turned out, after a lapse of ten years, entirely inadequate. No doubt the fall in the price of house property and other causes may have accelerated the result, although things lasted for some ten years before the event happened. But the question is, whether these securities were such as the trustees ought to have taken? I am clearly of opinion with the Lord Ordinary that there was no justification whatever for the trustees so dealing with the money of the trust. There was nothing to be gained for the trust by taking a postponed security on the personal security of two Glasgow traders. There was no difficulty in investing the trust-funds, and the only excuse for accepting postponed securities in return for the loan was to accommodate William Millar, and assist him in carrying out his part of the contract of sale. If it could be shown that the transaction was completed on any reasonable view of the interest of the estate, or that it was necessary to take second-class security because none other could be got, I should have given effect to every presumption in favour of justifying the trustees. But I see no ground for either of these contentions, nor indeed has either been maintained. It is unnecessary to go into the matter further, for the Lord Ordinary has very fully explained the grounds of his judgment, and I agree with him. I think it is unfortunate that the trustees kept the beneficiaries in the dark between the acceptance of William Millar's offer and the settlement of the transaction, because it is plain that whenever the beneficiaries came to know of the loan they expressed a very strong dissent. On the whole matter I am of opinion that the Lord Ordinary has decided rightly.

Lord Young, Lord Craighill, and Lord Rutherfurd Clark concurred.

The Court, after delaying the case to allow the deductions which admittedly fell to be made from the sum decerned for by the Lord Ordinary, pronounced this interlocutor:—

"Recal the Lord Ordinary's interlocutor: Find that the sum of £12,000 was lent by the trustees of the deceased John Millar to his son William Millar on unsubstantial and insufficient security contrary to the law and practice of trust administration: Find that the loss thereby sustained by the trust-estate amounts to £8654, 4s. 10d.: Find that the pursuer has paid premiums upon the policies of insurance on the life of William Millar, forming part of the said security to the amount of £153, 19s. 9d.: Ordain the defenders conjunctly and severally to make payment to the pursuers as judicial factor on the trust-estate, of the said sums of £8654, 4s. 10d. and £153, 19s. 9d., together with the sum of £656, 12s. 11d., being the interest due on the said sum of £8654, 4s. 10d. at this date, and the sum of £7, 2s. 2d., being the interest due on the said sum of £153, 19s. 9d. at this date, and with further interest on said sums of £8654, 4s. 10d. and £153, 19s. 9d. at the rate of 5 per cent. per annum till paid, and that on receiving from the pursuer an assignation to the securities held by him for said sum of £12,000: *Quoad ultra* assoilzie the defenders from the conclusions of the action: Find the pursuer entitled to expenses," &c.

Counsel for Pursuer — Asher, Q.C. — Low. Agent—Donald Mackenzie, W.S.

Counsel for Defenders—D.-F. Mackintosh, Q.C. —Dickson. Agents—C. & A. S. Douglas, W.S.

Tuesday, February 22.

FIRST DIVISION.

[Exchequer Cause.

THE HAMILTON WATERWORKS COMMISSIONERS *v.* ALLAN (SURVEYOR OF TAXES).

Revenue—Income Tax - Burgh Waterworks.

The Hamilton Waterworks Commissioners by local Act were empowered to levy, *inter alia*, a domestic water-rate of sixpence per pound upon the annual value of premises which were supplied with water, and section 34 of that Act provided that "it shall be lawful to the Commissioners to supply any corporation or company or person with water for other than domestic use at such rates and upon such terms and conditions as shall be agreed upon between the Commissioners and the corporation or company or person desirous of having such supply of water, and the rates so agreed upon shall be recoverable in the same manner as any other rates under this Act."

Hamilton Barracks being within the boun-