and theft of what there was no duty to restore was impossible; on the second point, that although the prosecutor had been careful to use the word "custody," the narrative of the *modus* made it plain that the "possession" and not the custody was what was actually given. The case was therefore quite different from *Brown*, 2 Swin. 394, Bell's Notes, p. 9, where the custody only of the article was given for the purpose of repair, and the duty of restitution was clearly set forth. In any case the second alternative in the last part of the charge, viz., "for the purpose of using the same to furnish a house there," was irrelevant, and ought to be struck out, inasmuch as it only implied a *furtum usus*, which was unknown to the law of Scotland.

For the Crown it was argued that although the indictment set forth no duty of restitution as in the case of *Brown*, yet there was set forth quite as plain and important a duty, viz., "not to remove therefrom." Further, the possession given was plainly limited to custody for a particular purpose, namely, for safe custody, and a duty to restore on demand was patent from the whole narrative. The case therefore fell under the rule laid down in the case of *Brown* above quoted, and in the subsequent case of *Michael*, Bell's Notes, p. 8.

Lord Craighill held the indictment relevant, on the grounds (1) that there was a sufficient duty specified in the obligation not to remove the furniture from the store; (2) that the possession here was of the same limited character as in the case of *Brown*, which therefore ruled this case; and (3) that in regard to the last objection, there was a sufficient allegation of "conversion" to the prisoner's use of property belonging to another, which, while it was in his custody, was not in his possession. It was this "conversion" which was the essence of a theftuous act.

Objection to the relevancy repelled.

Counsel for H. M. Advocate—Wallace, A.D.—Harvey. Agent—Procurator-Fiscal for Lanarkshire.

Counsel for Panel—A. S. D. Thomson.

COURT OF SESSION.

Thursday, October 27.

SECOND DIVISION.

SPECIAL CASE—ROYAL BANK OF SCOTLAND AND ANOTHER

Judicial Factor—Bank Stock—Transfer—Act and Warrant

A judicial factor on a trust-estate was registered at the date of his death, as judicial factor, as proprietor of stock of the Royal Bank of Scotland. A successor was appointed to him, conform to *interim* act and decree, and by the decree the Court granted warrant to, and authorised him to complete a title to the estate, including the bank stock. *Held* that the *interim* act and decree was a sufficient title to the bank stock, and that the bank were bound to register the factor as proprietor.

This was a special case presented by the Royal Bank of Scotland and Mr James Greenlees, judicial factor for executing the purposes of the trust-deed granted by Mrs Ralston or Walker, and her deceased husband Alexander Ralston. The case set forth the following facts:—The late Mr Samuel Greenlees, who was judicial factor upon the trust-estate, was at the time of his death registered, as judicial factor, as proprietor of the sum of £440 of the capital stock of the Royal Bank of Scotland. Mr James Greenlees had in succession to him been appointed judicial factor under the trust-deed, conform to *interim* act and decree of the Lords of Council and Session dated 3rd November and extracted 2nd December 1886.

The decree was in the following terms:—"And the said Lords of the second date hereof, granted warrant to, and authorised, and hereby grant warrant to and authorise the said James Greenlees, judicial factor foresaid, to complete a title in his person to the heritable and moveable or personal property specified in the inventory annexed to the petition," including the said sum of £440 of the stock of the Royal Bank.

The Royal Bank of Scotland is a corporation constituted by that name with a perpetual succession and a common seal by a charter under the Union Seal, dated 3rd July 1727, following on a royal warrant dated 31st May 1727. Mr James Greenlees, as judicial factor, called upon the Royal Bank to register him as proprietor of the said sum of £440 of stock, or to prepare and send to him for execution, such transfer or memorandum or deed as might be necessary for transferring the said stock to his name as judicial factor, on the ground that the *interim* act and decree was a good and sufficient title to the stock in his person, or at least a sufficient warrant to authorise the bank to transfer the same from the name of Mr Samuel Greenlees, as judicial factor, to his name as judicial factor. The bank declined to do so on the ground that by the terms of their charter and Act of Parliament (quoted *infra*) the said *interim* act and decree was not *per se* a sufficient title to the stock in question, nor a sufficient title to authorise the bank to transfer the same.

The different modes of transfer prescribed in the Royal Warrant of 31st May 1727 were as follows:—"That there shall be forthwith provided and constantly kept in the public office or offices of the said corporation at Edinburgh, a book or books, wherein all assignments or transfers shall be entered . . . . . and the method and manner of making all assignments and transfers of the said capital stock, or any part thereof, shall be by an entry in such book or books to be kept as aforesaid, signed by the parties so assigning and transferring in the words or to the effect following, viz.—*I, A B, this day of , in the year of our Lord , do assign and transfer , being all my interest or share, or (as the case may be) part of my interest or share in the capital stock or fund of* The Royal Bank of Scotland, *and all benefit arising thereby, unto C D, his executors, administrators, and assigns.—Witness my hand, A B.* Or, in case the party assigning

be not personally present, then by an entry in the book or books, signed by some person thereunto lawfully authorised by letter of attorney or factory, under hand and seal, attested by two or more witnesses, in the words or to the effect following, viz.—*I, A B, this day of , in the year of our Lord , by virtue of a letter of attorney or authority, under the hand and seal of , dated the day of , in the said year , do, in the name and on the behalf of the said , assign and transfer , being all the interest or share or (as the case may be) part of the interest or share of the said in the capital stock or fund of* The Royal Bank of Scotland, *and all benefits arising thereby, unto his executors, administrators, and assignees.—Witness my hand, .* Under which transfer the person or persons, bodies politic or corporate, to whom such assignment or transfer shall be made, or some other person by him or them lawfully authorised thereunto, shall sign his or their name or names, attesting, *that he or they do freely and voluntarily accept of the same. . . .* Provided always, That any person having any share or interest in the said capital stock or fund, may dispose or devise the same by his or her last will and testament. But, however, that the executor or administrator shall not transfer the same, or be entitled to receive any dividend, until an extract of the testament be delivered to the company, and until an entry or memorandum of so much of the said will as relates to the said stock or fund be made in the book or books to be kept by or by order of the said corporation for that purpose."

The Royal Bank of Scotland Act 1873 (36 and 37 Vict. cap 217), sec. 7, provides—"The stock of the Royal Bank (subject to its right of lien or retention for any debt due to it by the transferror), may be assigned or transferred either in the form and manner prescribed by the first recited charter or by a separate transfer, duly stamped, in the form as near as may be of the schedule to this Act annexed; and every such transfer shall be prepared by the Royal Bank at their head office in Edinburgh, and shall be signed by the transferror and transferree before being presented to the bank for registration."

The question for the opinion and judgment of the Court was—"Is the said *interim* act and decree of itself a good and sufficient title to the said bank stock, and is the bank entitled and bound to recognise the same as a sufficient warrant under which to register the second party as proprietor in the books of the bank? or is the said *interim* act and decree a good and sufficient warrant to authorise the bank to prepare a transfer or memorandum or deed of transfer of the said stock in favour of the second party, and upon execution thereof to register him as proprietor of the said stock in the books of the bank?"

Argued for the first party (the Royal Bank)—The bank considered they would not be in safety if they transferred the stock from the name of Samuel Greenlees to that of James Greenlees. There were only three methods of transferring stock allowed in the charter, two of which were transfers *inter vivos*, and the third was by presenting the testament of the deceased party to the bank. None of these methods could be followed here. The only way that the stock could be tarnsferred was by an action of adjudication, as prescribed in the case of *Royal Bank* v. *Fairholm*, M. App., *voce* Adjudication, No. 1. The act and decree appointing the second party gave him only a right to make up a title but did not confer on him a title, and there was no provision in the 15th section of the Trusts Act 1867 that the act and decree should be equivalent to an assignation of moveables.

Argued for the second party (the judicial factor)—The act and decree of a judicial factor was a sufficient warrant to the bank to register the second party as proprietor of the stock. The property was really held by the Court by the hands of the judicial factor, and therefore there was no difficulty when one factor died in transferring it to his successor.

At advising—

Lord Young—In my opinion, the estate of which the bank stock in question forms part is being administered by the Court, and that through the hands of an officer, not indeed a permanent official, but one appointed for the special purpose. The officer whom we first appointed died, and we supplied the loss by appointing another. He will receive all that was in the hands of his predecessor, and will have to show his title to the bank before the stock can be transferred, and all we are asked to do is simply to authorise the bank to put the name of the new officer in their books as the proprietor of the stock. It is a simple question, and in my opinion there would be no difficulty or risk in acting in this way. It is not a matter of completing a title at all. I think we should answer the first part of the question in the affirmative.

Lord Rutherfurd Clark and the Lord Justice-Clerk concurred.

Lord Craighill was absent on circuit.

The Court answered the first part of the question in the affirmative.

Counsel for the First Party—Fleming. Agents—Dundas & Wilson, C.S.

Counsel for the Second Party—Dundas. Agents—M'Neill & Sime, W.S.

Friday, October 28.

SECOND DIVISION.

[Sheriff of Aberdeenshire.

CLACEVICH *v.* HUTCHESON AND COMPANY.

Shipping Law—Demurrage—Mixed Cargo—Discharge in Separate Lots—Custom of the Port.

Circumstances in which *held* that the consignees of a mixed cargo had failed to prove that by the custom of the port they were entitled to delivery in separate lots, and that therefore they were liable for demurrage in respect of delay caused by their insisting on this mode of discharge.

On 19th January 1886 Andrea Clacevich, for himself and the owners of the Austrian barque