intimation and advertisement, "to grant warrant to and authorise the petitioners, as the existing trustees of the foresaid property, to dispone to and in favour of the County Council of Linlithgow the whole trust property held by them under the trust created as aforesaid, . . . and to make and execute all deeds necessary thereto, and thereupon to find that the office of the petitioners as trustees has come to an end, and to exoner and discharge them of the said trust and of their whole actings, intromissions, and management as trustees foresaid."

In support of the petition it was argued that it was most desirable that the County Council, who now had the main use of this building, should have the title to it. They were bound under the sub-section (2) of section 25 of the Local Government (Scotland) Act to provide themselves with necessary buildings. They were therefore entitled to take over a suitable existing building. But for the peculiarity of this being trust property it would have been transferred under the 1st sub-section of section 25. The only difficulty was as to the right of the trustees to put an end to the trust; but all interests contemplated by the trust were represented by the petitioners. The purpose of the trust had virtually come to an end, and under the doctrine of *cy-près* the Court would authorise the application of trust property to a cognate purpose. The purpose here to be served was so similar as to be virtually identical with that of the original trust. The only difference was that henceforth the administration of the property would be in different hands. All interested were anxious that this petition should be granted, and there was no opposition. The present trustees had no funds out of which to keep up this property. The County Council could always get such funds by rating.

The Court granted the prayer of the petition.

Counsel for Petitioners—D.-F. Balfour, Q.C.—Horn. Agents—Tods, Murray, & Jamieson, W.S.

Tuesday, July 19.

FIRST DIVISION.

BEATSON AND OTHERS (MACKINNON'S TRUSTEES).

Trust—Vesting—Discretion of Trustees to Retain Capital—Right of Trustee in Bankruptcy.

A truster left all her estate, heritable and moveable, to trustees under direction "to hold, retain, and invest in their own names the residue and remainder of my said means and estate until my son . . . attains the age of twenty-five years complete, at which time they shall . . . make over to him the said residue and remainder. . . . Declaring that my trustees shall be entitled, so long as they think it expedient to do so, to retain the said residue and remainder in their own hands, . . . and that even after my son shall have attained said age, and only pay him the annual produce or income thereof, it being understood that should they so retain it after he attains twenty-five years, and should he die without said residue and remainder and others having been paid to him, then the same shall be paid to his nearest heirs and representatives whomsoever, my intention being that the same should vest in him at said age of twenty-five." The son became bankrupt before reaching the age of twenty-five, and after he had attained that age, his trustee in bankruptcy claimed from his mother's trustees payment of the remainder and residue of the trust-estate as at that date, together with any income or revenue that had accrued thereafter.

Held that the claim was sound and must be given effect to.

Mrs Mary Stewart Mackenzie Beatson or Mackinnon, widow of Campbell Mackinnon, M.D., C.B., Inspector-General of Hospitals, died at Campbeltown on the 13th day of February 1884, leaving a trust-disposition and settlement, dated the 26th day of February 1883, and registered in the books of Council and Session the 19th day of May 1884. She was survived by one son, John Campbell Mackinnon, who was born on the 29th day of August 1866.

By the said trust-disposition and settlement the said Mrs Mary Stewart Beatson or Mackinnon gave, granted, assigned, and disponed to and in favour of Surgeon-General John Fullarton Beatson, her brother, and certain other persons, all her estate, heritable and moveable, real and personal, at the time of her death, in trust always for the uses, ends, and purposes, and under the conditions, declarations, and provisions thereinafter expressed. She directed her trustees by the third purpose of the said trust-disposition and settlement to "hold, retain, and invest in their own names the residue and remainder of my said means and estate until my son John Campbell Mackinnon attains the age of twenty-five years complete, at which time they shall, subject to what is hereinafter contained, pay and make over to him the said residue and remainder, together with any interest or other produce that may have accrued thereon: Declaring that my trustees shall be entitled, so long as they think it expedient to do so, to retain the said residue and remainder in their own hands, excepting my silver plate, jewellery, napery, pictures, and books, as after mentioned, and that even after the said John Campbell Mackinnon shall have attained said age, and only pay him the annual produce or income thereof, it being understood that should they so retain it after he attains twenty-five years, and should he die without said residue and remainder, and others, having been paid to him, then

the same shall be paid to his nearest heirs and representatives whomsoever, my intention being that the same should vest in him at said age of twenty-five, and I authorise my trustees to apply the annual produce or income of said residue and remainder, or such portion thereof as they may think proper, for behoof of my said son until he attains said age of twenty-five, and also to advance to him, or for his behoof, the whole or such portion of the capital as they may think proper, should circumstances arise which in their sole discretion render it expedient for them to do."

The said John Campbell Mackinnon became twenty-one years of age on the 29th day of August 1887, and became then entitled under his father's settlement to the residue of his father's estate, amounting to over £8000. This sum was paid to him at that date. He then went to reside in London, and having spent the whole of the said sum of £8000, and having in addition incurred heavy debts, a receiving order in bankruptcy was on the 19th day of October 1889 made by the High Court of Justice, London, against him, by which order the Chief Official Receiver of the High Court was constituted receiver of his estate. This receiving order was intimated to Mr Mackinnon's trustees on or about 20th January 1890.

After John Campbell Mackinnon had attained the age of twenty-five, which he did upon 29th August 1891, the official receiver claimed that he was entitled to receive payment from the trustees of the residue and remainder of the trust-estate, which amounted to about £2000 as at that date, together with the revenue or income of the said residue and remainder accruing from and after that date.

The trustees, on the other hand, who continued to hold the capital maintained that by the trust-disposition and settlement they were armed with a discretionary power to retain the residue and remainder of the trust-estate, except the silver plate and other articles therein referred to, after 29th August 1891, although vested in the truster's son, and to pay the income arising therefrom to him for his maintenance.

A special case was therefore presented to the First Division of the Court of Session, by Mr Mackinnon's trustees of the first part, and by the Official Receiver in Bankruptcy in the High Court of Justice in England of the second part, to have the following questions of law determined—"(1) Are the first parties entitled to retain the remainder and residue of the said trust-estate (except the said silver plate and other articles before referred to) in their own hands, since the said John Campbell Mackinnon attained twenty-five years of age on 29th August 1891, and to apply the income thereof for the said John Campbell Mackinnon's maintenance? Or (2) is the second party, as trustee on the bankrupt estate of the said John Campbell Mackinnon, entitled to claim as from the said date of 29th August 1891 the remainder and residue of the said trust-estate, and to receive and be paid the same, together with the income or revenue thereof from said 29th August 1891?"

Argued for the first parties—They were entitled, and in the interests of the beneficiary here were bound, to exercise the power conferred upon them of continuing to hold the capital in their own hands. Although the word "alimentary" was not used, the provision of the deed was valueless if it did not secure an alimentary provision for the truster's son. The question was, could the son himself have demanded payment of the capital? Clearly he could not. The official receiver, although in his place, could only take up his right *tantum et tale* as it stood in him. The case of *Chambers' Trustees* v. *Smiths*, April 15, 1878, 5 R. (H.L.) 151, was exactly in point. [LORD KINNEAR—In that case the trustees had power to keep the fee away altogether from the child, and give it to that child's issue; here the fee could not be defeated, and had vested absolutely.]—*cf.* also *Christie's Trustees* v. *Murray's Trustees*, July 3, 1889, 16 R. 913; and *Campbell's Trustees* v. *Campbell*, July 17, 1889, 16 R. 1007.

Counsel for the second party were not called upon to reply.

At advising—

LORD PRESIDENT—I think this case is quite clear. The provision in the trust-deed leaves no doubt as to the vesting of the capital, because the testatrix distinctly says that her son is to have the fee when he becomes twenty-five years of age. He is now twenty-five, the fee has vested in him, and he can do with it what he likes. He has done what he liked, for he has made a legal assignation of it to his trustee in bankruptcy. The same applies to each year's income as it falls in, as Lord M'Laren pointed out in the course of the argument. There being thus concurrence of right to the fee and right to the income, it is difficult to see how right to both has not now accrued to the trustee in bankruptcy.

I am of opinion that we must answer the first question in the negative and the second in the affirmative.

LORD ADAM concurred.

LORD M'LAREN—The son here has an unqualified right to the income and to the fee, although for the better administration of the estate there is a direction to the trustees to retain the trust-funds in their own hands, Whoever has the right of property, even although that property may be in the hands of trustees for administrative purposes, is liable to make that property forthcoming for the payment of his creditors.

LORD KINNEAR—I am entirely of the same opinion.

The Court answered the first question in the negative, and the second in the affirmative.

Counsel for First Parties—H. Johnston—Dove Wilson. Agents—Murray, Beith, & Murray, W.S.

Counsel for Second Party — Dundas — Gray. Agents—Smith & Mason, S.S.C.

Tuesday, July 19.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

CRAMB AND OTHERS *v.* CALEDONIAN RAILWAY COMPANY AND OTHERS.

Reparation — Culpa — Poisonous Goods — Railway — Duty of Railway Company as Common Carriers — Duties of Consigner and Consignee.

A box containing tins of a highly poisonous fluid weed-killer, and without further indication of the nature of its contents than the stencilling upon it of the words "weed-killer," was sent by a chemical company over the Caledonian Railway Company's line to Crieff. At Stirling the porter noted on the invoice that the box was leaking. A bag of sugar in the same waggon became stained by the leaking fluid, and the stain was noted on the sugar invoice at Crieff. Upon the grocer to whom the sugar was consigned, asking a reason for the stain, the railway carter said it was caused by the rain drops off his tarpaulin. The sugar was put into the tierce, and sold some weeks afterwards to a woman, who along with her husband died from arsenic in the sugar.

In an action of damages at the instance of the children of the deceased against the railway company and against the grocer—*held* that *culpa* had not been established against either set of defenders, and that they ought to be assoilzied with expenses.

Upon 10th March 1891 the Boundary Chemical Company, the Arches, Luton Street, Liverpool, sent by rail a box containing tins of "Climax Weed Killer," a nearly colourless fluid of a most dangerously poisonous character, addressed to a grocer at Comrie, in Perthshire. "Weed-killer" was stencilled on the box, but there was no marking to indicate the poisonous nature of its contents. From Stirling to Crieff, where it arrived upon 11th March, it was conveyed by the Caledonian Railway Company. At Stirling the servants of the company noticed that the box was leaking, and noted that on the invoice. It was there put into the only waggon going to Crieff, in which among other things, were five jute bags containing a consignment of sugar for Thomas M'Ewen junior & Company, grocers, Crieff. In the course of the transit one of these bags became stained with the weed-killer, and the sugar therein contained became strongly impregnated with arsenic. The head porter at Crieff noted in the invoice of the sugar "one bag wet with dip." When the sugar was delivered the shopman noticed the stain, but upon being told by the carter that it probably arose from rain water dropping off his tarpaulin, put it into the tierce in the ordinary way. Upon 3rd April the damaged sugar was reached, and was sold *inter alios* to Mrs Mary Cramb, Alichmore, Crieff. Both she and her husband Peter Cramb died from the effects of the arsenic in the sugar, and one of her sons—Frederick—after partaking of it was seriously ill for some time, but recovered.

In July 1891 William Cramb, son of the said Mr and Mrs Cramb, and his four brothers and two sisters brought an action of damages against the Boundary Chemical Company, the Caledonian Railway Company, and Thomas M'Ewen junior & Company, to have them ordained, conjunctly and severally, or otherwise severally, to make payment to each of the pursuers of £500 for the loss of their parents, and to the pursuer Frederick Cramb an additional sum of £500 for the injury to his own health.

The Boundary Chemical Company settled the claim made against them by payment of two hundred guineas.

The pursuers stated their ground of action against the railway company thus—"The defenders the said Caledonian Railway Company acted negligently, recklessly, and culpably, firstly, in allowing the said sugar, an edible subject, to come in contact with the leakage of a box marked 'weed-killer;' and secondly, in not intimating to the consignees that such contact had taken place." And against the grocers thus—"The stain on the bag was plainly visible, and had been observed by the defenders Thomas M'Ewen junior & Company or their assistant, and the sugar itself was stained, and in the circumstances the defenders Thomas M'Ewen junior & Company behaved negligently, recklessly, and culpably in selling the sugar without due inquiry and examination into the nature of the damage."

They pleaded—"(1) The death of the said Peter and Mary Cramb, and the illness of the said Frederick Cramb, having been occasioned by the fault or negligence of the defenders, or of one or other of them, the pursuers are entitled to decree against the defenders, or one or other of them, as concluded for. (3) In any event, the defenders Messrs M'Ewen junior & Company having sold the deceased Mr and Mrs Cramb as sugar fit for consumption, sugar impregnated with arsenic from said weed-killer, are liable in reparation to the pursuers, and decree should be pronounced against them for the sums concluded for."

The Caledonian Railway company pleaded —"(2) The pursuers having suffered no loss or damage for which these defenders are responsible, the said defenders ought to be assoilzied, with expenses. (3) These defenders having acted with care and prudence, and in accordance with their usual custom, in regard to the transmission of the goods in question, and having been guilty of no fault or negligence in the