partnership; (2) that the Indian Courts are a tribunal having competent jurisdiction; and (3) that the accounting has already been proceeded with, perhaps concluded, by the representative of the pursuers acting under their authority in India. In these circumstances it appears to me that the Indian Court is the suitable tribunal for the trial of the case. It is certainly best for the interest of the defender that it should be tried there, and I do not think that that course would be contrary to any legitimate interest of the pursuers. Further, looking to the nature of the case, and the proceedings which have already been taken in India, I think that the ends of justice are more likely to be attained by holding that further proceedings must be taken in the Courts of that country."

The pursuers reclaimed, and argued—The cases where this plea had been sustained were chiefly those in which foreign executors had been called to account for estate situated in a foreign country, or where a person was sued as a partner in a foreign firm, the books of which were abroad—*Clements* v. *Macaulay*, March 16, 1866, 4 Macph. 583. The reason of this was that executors were officers of the Court and responsible to the Court which appointed them, and therefore should not be sued elsewhere. Neither of these considerations applied here. The executors of the deceased partner resided in this country, and were confirmed by the Scots Court. The production of the books was unnecessary, and did not affect the question—*Sim* v. *Robinow*, March 17, 1892, 19 R. 665. The party taking objection to the Courts of this country must show that he would be put to an unfair advantage by the case being tried here. It was not enough to show that the defence had a better chance of succeeding if the case was tried abroad—*Longworth* v. *Hope*, July 1, 1865, 3 Macph. 1049 (opinion of Lord Deas, 1057). No unfairness would result to the defender if the case was tried in this country, and his plea of *forum non conveniens* should be repelled.

Counsel for the defender was not called on.

At advising—

LORD JUSTICE-CLERK—I see no good ground for interfering with the decision at which the Lord Ordinary has arrived.

LORD YOUNG and LORD RUTHERFURD CLARK concurred.

LORD TRAYNER—I also agree. I think that this is one of the cases specially pointed at in the case of *Clements* as those in which action ought to be taken abroad. It is a case in which a person has been sued as a partner in a foreign company, the books and funds of which are in another country.

The Court adhered.

Counsel for the Pursuers—Chree. Agents—John C. Brodie & Sons, W.S.

Counsel for the Defender—Burnet. Agents—Murray, Beith, & Murray, W.S.

Wednesday, May 31.

FIRST DIVISION.

[Lord Low, Ordinary.

THE ROYAL BANK OF SCOTLAND AND OTHERS, PETITIONERS.

Trust—Trust for Creditors—Appointment of New Trustee—Trusts (Scotland) Act 1867 (30 *and* 31 *Vict. cap.* 97)—*Trusts (Scotland) Amendment Act* 1884 (47 *and* 48 *Vict. cap.* 63), *secs.* 1 *and* 2.

Held that the operation of the Trusts Act of 1867 is extended by the Trusts Act 1884 to trusts in which the trustees do not act gratuitously, and that it is competent for the Court under section 12 of the Act of 1867 to appoint a trustee in a trust for creditors.

On November 18th 1890 Francis Robertson Reid granted a trust-deed for behoof of his creditors in favour of Lawrence Hill Watson, C.A., Glasgow. The deed provided that a suitable remuneration should be paid to the trustee.

The trustee died on 27th January 1893, and thereafter the Royal Bank of Scotland and the British Linen Company Bank, the principal creditors of the said Francis Robertson Reid, with his consent and concurrence presented a petition wherein they craved the Court to appoint a trustee under the trust-deed in place of the deceased Lawrence Hill Watson, or otherwise to appoint a judicial factor on the trust estate.

Section 12 of the Trusts (Scotland) Act 1867 provides—"When trustees cannot be assumed under any trust-deed, or when any person who is the sole trustee acting under any such trust-deed has become insane or incapable of acting by reason of physical or mental disability, the Court may, on the application of any party having interest in the trust-estate, after such intimation and inquiry as may be thought necessary, appoint a trustee or trustees under such trust-deed, with all the powers incident to that office." . . .

The question arose whether the Trusts Amendment Act 1884 had extended the operation of the Trusts Act 1867 to trusts in which the trustees did not act gratuitously, and the Lord Ordinary (Low), in respect of the importance of this question, reported the petition to the First Division. The provisions of the Trusts Amendment Act 1884, on which the petitioners founded, are set forth in his Lordship's note.

"*Opinion.*—The petition is presented by two of the principal creditors of Mr Reid with his concurrence, and no opposition to the appointment has been offered by any of the parties interested. The prayer asks alternatively for the appointment of a judicial factor, but the parties desire that a trustee should be appointed, if that course is competent.

"The application is made under the Trusts Acts, although they are not cited in the petition, and it appears to me to be

doubtful whether a trust for creditors falls within the provisions of these Acts.

"It was decided in the case of *Mackenzie*, 10 Macph. 749, that the Trusts Act of 1867 applied only to trusts in which trustees act gratuitously, and did not apply to a trust for creditors.

"But it is said that the operation of the Act of 1867 is extended by the Trusts (Scotland) Amendment Act 1884.

"It is provided by section 1 of that Act that it and the previous Trusts Acts 'may be cited as the Trusts (Scotland) Acts 1861 to 1884, and shall be read and construed together.'

Then by section 2 it is provided that '"Trust" shall mean and include any trusts constituted by any deed or other writing, or by private or local Act of Parliament, or by resolution of any corporation or public or ecclesiastical body, and the appointment of any tutor, curator, or judicial factor by deed, decree, or otherwise. "Trustee" shall include tutor, curator, and judicial factor.'

"It is plain that the definition of a 'trust' is wide enough to include a trust for creditors, but the same thing could be said of the definition of a 'trust' under the Act of 1867.

"Again, if the word 'trustee' is to include tutor, curator, and judicial factor, I think that it presumably also includes a trustee in the ordinary sense of the word, whether gratuitous or not. Further, I apprehend that the presumption is that the trustees acting under all trusts falling within the definition of 'trust' are included in the Acts. There is, however, no separate definition of the word 'trustee,' and it was held in the case of *Mackenzie* that that word, where it occurs in the Act of 1867, means gratuitous trustee.

"The Act of 1884 has been followed by the Acts of 1887 and 1891.

"By the former Act it is provided that, in addition to the powers conferred on trustees by the second section of the Act of 1867, trustees shall have power to make abatement of rent 'in all trusts to which that section applies.'

"The Act of 1891 deals chiefly with the liability of trustees who have lent money on security of property, and by section 2 it is provided that 'trust' and 'trustee' shall have the meaning assigned to them by the Act of 1884.

"In the Act of 1887 there is no definition, either by reference or otherwise, of 'trust' and 'trustee,' but the 19th section of the Judicial Factors (Scotland) Act 1889 enacts that the provisions of the Trusts Act of 1887 'shall apply to and include all trusts and trustees as defined by the second section of the Trusts (Scotland) Amendment Act 1884.'

"The language of that enactment is very emphatic, and to ascertain the scope of the Act of 1887 the definition in the Act of 1884 alone has to be looked to. As I have already said, the definition of 'trust' in the Act clearly covers a trust for creditors, and the word 'trustee' is only defined as including certain offices, the holders of which, although acting in a fiduciary capacity, are not in ordinary language termed trustees. It therefore appears to me that a trust and a trustee for creditors fall within the operation of the Act of 1887, or, in other words, that the second section of the Act of 1867 as amended by the Act of 1887, applies to such trusts and trustees. I do not think, however, that in view of the decision in the case of *Mackenzie* it is clear that the other sections of the Act of 1867 have been extended beyond the case of gratuitous trusts, except in so far as applicable to tutors, curators, and judicial factors, and perhaps the fact that the Legislature has specially enacted (as I think) that the second section applies to all trusts, points to the remaining sections having a more limited application.

"As it is of importance that the scope of the Trusts Acts should be authoritatively declared, I have thought it right to report the case."

Argued for the petitioners—The provisions of the Act of 1867 were extended to all trusts by the operation of the Act of 1884. The latter Act was to be read and construed along with the previous Trusts Acts. It contained no definition of gratuitous trustee, but on the contrary its provisions applied expressly to trusts in which the trustees did not act gratuitously—Sections 1 and 2 of Act of 1884. The present case was thus distinguished from the case of *Mackenzie*, referred to by the Lord Ordinary, in which the Judges proceeded largely upon the ground that the wide definition of "trusts" contained in the Act of 1867, being followed immediately by a definition of "gratuitous trustees," must be limited and restricted to the scope of that definition. The Court could therefore grant the application for the appointment of a trustee under the Trusts Acts. The Court had also at common law the power of appointing trustees to fill vacancies, and would exercise that power where necessary, and a sufficient case of necessity existed in the present case—M'Laren on Wills and Succession, ii. 219, and following; *Aikman, &c.*, December 2, 1881, 9 R. 213; *Melville* v. *Preston*, February 8, 1838, 16 S. 457.

At advising—

LORD PRESIDENT—I think it is competent for the Court to appoint a trustee under the 12th section of the Trusts Act of 1867 where the trust is one in which the trustees do not act gratuitously. The decision in the case of *Mackenzie* was a decision under the Act of 1867 alone, and the Court held that the insertion of the definition of "gratuitous trustee," and the collocation of the clauses in section 1 of that Act showed that the intention of the statute was that the wide definition of "trusts" should be controlled by and limited to the scope of the definition of gratuitous trustee. We are now dealing, however, with the Act of 1884, and section 2 of that Act defines "trust" in very wide terms—wide enough to include a trust for creditors—and then defines "trustee" as including tutor, curator, and judicial factor, negativing the idea that the definition of trust

is limited to trusts in which the trustees act gratuitously. Now, that section was attracted by the Trusts Act of 1887 to the 2nd section of the Act of 1867—that is to say, those trusts which are defined in the 2nd section of the Act of 1884 have applied to them the provisions of the 12th section of the Act of 1867, which empowers the Court to appoint trustees on the petition of parties interested. I think therefore that the Lord Ordinary's deduction of the course of legislation is satisfactory up to this point, but it also appears to me to be made out that an application for the appointment of a trustee under the 12th section of the Act of 1867 is competent, even where the trust is not a gratuitous one, becuuse of the effect of the Act of 1884.

LORD M'LAREN—I agree, and I think there is no difficulty in our giving effect to the first alternative of the prayer of the petition. As I read the Act of 1884, it deals with only two objects, one being the regulation of the powers of investment by trustees, the other the extension of the scope of the previous enactments relating to trust administration. Now, the Act of 1884 does not specially allude to gratuitous trusts, but defines "trustee" in a wide sense, and in so doing must, I think, be held to confer on the Court power to appoint in private trusts. I have always thought that the Court by its constitution had the power to supply vacancies in private trusts, and the cases cited by the counsel for the petitioners show that it has been exercised, but at the same time the Court has always been reluctant to exercise their power of appointment in the case of private trusts, and most of the cases in which the Court has appointed trustees have undoubtedly been cases of trusts for charitable or public purposes, but the presumption against the exercise of the power of appointment in private trusts has been entirely displaced by the chapter of statutes known as the Trusts Acts.

LORD WELLWOOD concurred.

LORD ADAM and LORD KINNEAR were absent.

The Court remitted to the Lord Ordinary to appoint a trustee in terms of the first alternative of the petitioners' prayer.

Counsel for the Petitioners — Boswell. Agents—H. B. & F. J. Dewar, W.S.

Wednesday, May 31.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

THE SOCIETY OF ACCOUNTANTS IN EDINBURGH *v.* THE CORPORATION OF ACCOUNTANTS, LIMITED.

Interdict—Corporation—Title to Sue—Misleading Use of Professional Designation—Chartered Accountants Entitled to Prevent Use by Other Accountants of Initials "C.A."

The members of three Societies of Accountants in Edinburgh, Glasgow, and Aberdeen, which were incorporated by royal charter, adopted the designation of "Chartered Accountant," and used the letters "C.A." after their names as an abbreviation of that designation. These initials were universally recognised by professional men and the public as the designation of members of the three chartered societies, and prior to 1891 no other persons had used these initials with the exception of a few persons practising in Scotland, members of the Institute of Chartered Accountants of England and Wales, incorporated by royal charter.

In 1891 a number of accountants who were not members of any of these chartered incorporations, and who had endeavoured without success to obtain a royal charter for themselves, formed themselves into a limited liability company, called "The Corporation of Accountants, Limited," and in their articles of association adopted the designation of "Corporate Accountant," and thereafter they made public use of the initials "C.A.," and appended them to their signatures in the course of their professional employment.

Held that three Chartered Societies of Accountants and the individual members of these societies had no interest to reduce the articles of association and the certificate of incorporation of the Corporation of Accountants, Limited, but were entitled to interdict the members of the Corporation of Accountants, Limited, from using for professional purposes or as a professional designation the letters "C.A.," or any other letters or words, or abbreviation of words, calculated to lead the public to believe that they were members of one or other of the bodies of accountants in Scotland which were incorporated by royal charter.

The Society of Accountants in Edinburgh were incorporated by royal charter in 1854. The Institute of Accountants and Actuaries in Glasgow were incorporated by royal charter in 1855. The Society of Accountants in Aberdeen were incorporated by royal charter in 1867. These three societies are the only bodies of accountants in Scotland who are incorporated by royal charter. The conditions of membership are in each