I shall therefore find that the pursuer's averments are irrelevant, and shall further sustain the defenders' third plea-in-law."

The pursuer reclaimed, and argued—The action was relevant. There was a relevant statement in record that if the pursuer had possessed £400 in March 1893 she would not have required to sacrifice her properties in France at a price much below their value. Two out of the three trustees knew that she was in want of this money, because they had been personally applied to by her at that date. The trustees knew or ought to have known that they had money belonging to the pursuer in their possession. They therefore were in the wrong in retaining in their possession money which was not their own, especially when they were aware that the person to whom the money belonged was in dire need of money and was making applications to them for money. The defenders were liable not merely for the interest on the money retained but also for any damage arising to the pursuer from the wrong done to her. Among the consequences resulting from the pursuer not having this money was the sale of her property at a price much below its true value, and the defenders were liable for the loss thus sustained by her. Opinion of Bramwell, B., in *Gee* v. *Lancashire and Yorkshire Railway Company*, 1860, 6 H. and N. 218; *Larios* v. *Bonany y Gurety*, 1873, L.R., 5 P.C. App. 346.

Counsel for defenders were not called on.

At advising—

LORD YOUNG—In this case the Lord Ordinary has dismissed the action, and I am of opinion that his judgment is right on the grounds very fully and clearly stated in his note. I think that the defenders might and possibly ought to have ascertained after the trust-estate came into their possession that this sum of £1250 in their hands belonged to the pursuer, and that they might and possibly ought to have informed her sooner that they had the money, but I am not able from the statements made by her on record to impute to them any actionable *culpa* involving them in a claim of damages. It would require a case very emphatically showing *culpa* to entitle the owner of money in the possession of another who has never been asked to hand it over to damages beyond interest from such a holder. I do not think such a case has been stated here. I have said that the defenders might and possibly ought to have ascertained sooner than they did that money belonging to the pursuer was in their possession, but I also think that the pursuer might and possibly ought to have ascertained that money belonging to her was in the hands of her first husband's trustees. I concur in the conclusion which the Lord Ordinary has arrived at, and on the grounds stated by him, that there is here no relevant claim for damages.

LORD TRAYNER—I agree. I think that the grounds stated by the Lord Ordinary are sufficient to support the findings in his interlocutor. I would only observe that the cases quoted by Mr Abel are cases of breach of contract, and therefore cannot relevantly be considered in deciding the present.

The LORD JUSTICE-CLERK and LORD MONCREIFF concurred.

The Court adhered.

Counsel for the Pursuer—Abel. Agent—James Anderson, Solicitor.

Counsel for the Defenders—W. Campbell—Fleming. Agents—Tods, Murray, & Jamieson, W.S.

Tuesday, May 25.

OUTER HOUSE.

[Lord Pearson.

CADELL, PETITIONER.

Entail—Improvement Expenditure—Bond of Annual-Rent — Entail Amendment (Scotland) Act 1875 (38 *and* 39 *Vict. cap.* 61), *sec.* 8.

Section 8 of the Entail Amendment (Scotland) Act 1875 provides—"It shall be lawful for an heir of entail in possession of an entailed estate in Scotland holden by virtue of any tailzie dated prior to 1st August 1848 (notwithstanding any provision to the contrary contained in the tailzie), who has obtained the authority of the Court to borrow money under this Act on the security of the estate, to charge the fee and rents of such estate other than the mansion-house, offices, and policies thereof, or the fee and rents of any portion of such estate other than as aforesaid, with a bond of annual-rent binding himself and his heirs of tailzie to make payment of an annual-rent for twenty-five years from and after the date of such authority of the Court, such annual-rent to be payable by equal moieties half yearly, and to be at a rate not exceeding seven pounds two shillings per annum for every one hundred pounds so authorised to be borrowed, and so in proportion for any greater or lesser sum."

An heir of entail who had obtained authority to charge the estate with a certain amount, executed a bond of annual-rent for £7, 2s. for each £100 of the amount so authorised. For this bond he received a loan in excess of the amount authorised to be charged. *Held* that this was a competent method of exercising the powers conferred by the section quoted above.

James John Cadell, heir of entail in possession of the estate of Barnton in the county of Stirling, presented a petition for authority to charge money expended in improvements against the estate, in the manner provided by section 8 of the Entail Amendment (Scotland) Act 1875 (quoted in rubric), and obtained by interlocutor dated

20th March 1897 authority to charge the said estate with a sum expended by him in the improvement of the estate, which together with the expenses of the application for authority to charge, amounted to £3785. The interlocutor, after a finding that the sum in question was *bona fide* expended by the petitioner in the improvement of the estate, proceeded as follows—"Grants warrant to and authorises the petitioner to execute at the sight of C. S. Rankine Simson, W.S., in favour of himself or of any person or persons he may think fit, or of any person or persons who may advance the money, a bond or bonds of annual-rent in ordinary form over the said entailed estate or any part or parts thereof other than the mansion-house, offices, and policies thereof, binding himself and his heirs of tailzie to make payment of an annual-rent during the period of twenty-five years from and after the date of this decree, or during such part of the said period of twenty-five years as shall remain unexpired at the date or dates of said bond or bonds, such annual-rent not exceeding the sum £7, 2s. for every £100 of the said sum of £3785."

Mr Cadell exercised the power thus conferred to the extent of £3000 by granting a bond of annual-rent in favour of the Edinburgh Life Assurance Company for £213 (being at the rate of £7, 2s. per cent on £3000). For this bond he received from the company the sum of £3436, 5s. 9d.

Mr Rankine Simson in presenting his report on the bond, called the attention of the Lord Ordinary to the fact that the amount received by the petitioner was thus in excess of the capital amount he was authorised to charge, and pointed out that the sum of £3000 could have been obtained for an annual-rent of £186.

The Lord Ordinary approved of the bond.

Counsel for the Petitioner—F. M. Anderson. Agents — Mackenzie & Kermack, W.S.

Friday, May 14.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

ANNAN *v.* HUTTON (ANNAN'S CURATOR BONIS).

Judicial Factor—Curator Bonis to Minor — Liability of Curator for Investment ultra vires—Accountant of Court—Pupils Protection Act 1849 (12 *and* 13 *Vict. c.* 51), *sec.* 13.

Where in an action raised by a ward against his *curator bonis* to make good the loss accruing on an improper investment of the curatorial funds, the curator founded upon section 13 of the Pupils Protection Act 1849 as relieving him of liability, in respect that the Accountant of Court had for several years passed the said investment in the curator's accounts,—*held* that the section in question did not limit the curator's responsibility at common law, and that he must consequently be found liable to make good the loss.

On 13th December 1895 Jessie Annan, with consent of her sister, raised an action against James Hutton, C.A., Glasgow, her *curator bonis*, to have it declared that a loan of £1750 made by the defender in February 1885 to the Greenock Harbour Trust upon a bond was not an investment of the ward's estate authorised or warranted either at common law or by the Trusts (Scotland) Amendment Act 1884, and was *ultra vires* of him as curator foresaid. There was also a conclusion to have the defender ordained to invest the said sum of £1750 in any of the stocks or securities enumerated in sections 2 and 3 of the said Act; and there was an alternative conclusion for payment by the defender of the aforesaid sum with interest.

The defender admitted that he had granted the loan to the Greenock Harbour Trust on the security of a bond, the material terms of which will be found *supra*, p. 450.

The defender averred that the loan was duly entered as an investment of the curatorial funds in the accounts lodged by him with the Accountant of Court for the years ending 31st March 1886, 1887, and 1888, and that no objection was taken by the Accountant to the investment.

It appeared that the Greenock Harbour Trust was declared to be insolvent on 11th May 1887; and that in his report on the defender's accounts for 1888-89 the Accountant of Court remarked as follows—"A sum of £1750 was invested by the factor on Greenock Harbour Trust Bond which is not yet due. When the date of payment arrives, this bond should be realised. Meantime all questions are reserved."

In a note to his report the Accountant of Court, in reply to a letter from the defender, wrote—"The words referred to in the factor's letter of 12th April imply that, should there be a loss on realisation of the bond of the Greenock Harbour Trust, parties interested are not to be prejudiced by the investment having been passed by the Accountant."

The investment, if realised, would at the current market price have fetched about £38 per cent.

The defender pleaded, *inter alia*—"The pursuer's statements are irrelevant and insufficient to support the conclusions of the action."

Two questions were raised in the action —(1) Whether the investment of the ward's funds in a bond of the Greenock Harbour Trustees was within the class of investments sanctioned by the Trusts Act 1884? and (2) Whether, assuming that to be the case, this particular investment was a good one of its class?

The former question was disposed of and settled in the negative in the case of *Bringloe* v. *Cowan's Trustees*, Feb. 26, 1897, *ante*, p. 449. The latter question, though