whose title is vested upon the trust-deed alone. Now this is an action brought by the trustees on the allegation that the pastoral tie between the defender and the congregation having been severed, he was no longer entitled to the use or occupation of the church building as minister of the congregation, and it is not only brought with the consent of the General Assembly, but the General Assembly is a party to the action.

The only answer put in is by the defender, the minister whose connection with the congregation has been brought to an end, and he is not defending with the consent of the General Assembly. The question therefore we have to consider is whether upon the terms of the trust-deed the present possession of the buildings is to be vindicated by the trustees, with the concurrence of the body to whom they are subject in terms of the trust. I quite agree that that really raises no question which can be seriously disputed, and that the Lord Ordinary's interlocutor should be affirmed.

LORD ADAM and LORD M'LAREN concurred.

The Court adhered.

Counsel for the Pursuers and Respondents — Guthrie, K.C. — Orr. Agents— Cowan & Dalmahoy, W.S.

Counsel for the Defender and Reclaimer — Guy — W. Thomson. Agent — John Veitch, Solicitor.

Saturday, December 7.

SECOND DIVISION.

[Lord Pearson, Ordinary.

BROWNE'S TRUSTEE *v.* ANDERSON.

Assignation — Intimation — Sufficiency of Intimation — Spes successionis — Bankruptcy—Intimation of Assignation to One of Two Trustees who afterwards became Sole Trustee.

In April 1888 A, for onerous causes, assigned to B a *spes successionis* which he had in the estate of his late father, which was then in the possession of A himself and another as testamentary trustees. The assignation was intimated to the law-agents of the trust, and was acknowledged by them, but it was not acknowledged by the trustees themselves. In 1892 A's co-trustee died, and he became sole trustee. In June 1888 A was sequestrated. In 1897 the *spes successionis* in question became a right of property in A. In a competition between the assignee under the assignation of April 1888 and the trustee in A's sequestration, who maintained that the assignation was not effectual as against him, because it had not been sufficiently intimated — *held* that the claim of the assignee was preferable, in respect that intimation or its equivalent had at latest been effectually operated when A became sole trustee in 1892, at which date the subject of the assignation, being merely a *spes successionis* had not passed to the trustee in the sequestration.

Assignation—Intimation of Assignation—Intimation of Assignation to Law-Agent of Trust

Opinion (*per* Lord Justice-Clerk and Lord Moncreiff) that as a general rule an assignation of rights in a trust estate is sufficiently intimated to trustees by intimation to their law-agents—Lord Trayner *reserving* his opinion on this question, but *observing* that it is difficult *prima facie* to see why, if intimation of an assignation to a factor managing an estate is sufficient as intimation to his principal, intimation to the law-agents of a trust should not be held sufficient as intimation to the trustees for whom they act.

By assignation dated 11th April 1888 Robert Bennett Browne, marine insurance broker, Glasgow, assigned to Henry David Anderson and Colin Dunlop Donald, and the survivor of them, as trustees for certain purposes, his whole right and interest, present, future, or contingent, in the estate of his father the deceased James Browne under his trust-disposition and settlement dated 25th January 1842. This included a *spes successionis* to a share of the residue of James Browne's estate which was held by Robert Bennett Browne and Duncan C. Brown, who was also in business in Glasgow, as trustees under the settlement, in trust for the truster's daughter Isabella for her liferent allenarly and her issue in fee, and failing such issue for the survivors of the truster's children.

On 20th April the assignation was sent by the assignees' agents to Messrs Andersons & Pattison, writers in Glasgow, as agents for James Browne's trustees, with a request that they should "get an acknowledgment of intimation by Mr James Browne's trustees endorsed thereon, and thereafter return it to us." They also enclosed a copy of the assignation for the trustees' use. The deed was returned on 24th April, having endorsed thereon an acknowledgment in the following terms:—"*Glasgow, 20th April* 1888.—As agents for the trustees of the deceased James Browne, insurance broker in Glasgow, we acknowledge to have received of this date intimation of the foregoing assignation.—ANDERSONS & PATTISON, Agents for Mr Browne's trustees." The assignation and docquet were entered by the agents in the sederunt-book of the trust prior to the next ensuing meeting of the trustees.

In May 1888 Robert Bennett Browne stopped payment, and his estates were sequestrated on 28th June, Andrew Simpson M'Clelland, C.A., Glasgow, being appointed trustee.

In August 1892 Duncan C. Brown died and Robert Bennett Browne became the sole trustee on his father James Browne's trust estate. He remained sole trustee till

October, when he assumed Andrew Macewan, accountant, Glasgow, as a trustee.

On 8th December 1897 Miss Isabella Browne died unmarried, and the only survivor of the truster James Browne's children at that date being Robert Bennett Browne, he then became entitled to the fee of the share which had been liferented by Isabella Browne.

Thereafter Robert Bennett Browne and Andrew Macewan, as trustees on James Browne's estate, raised an action of multiplepoinding for the purpose of deciding, *inter alia*, to whom the fee of the above share was to be paid. The fee of this share constituted four-fifths of the fund *in medio*.

Claims were lodged (1) by Henry David Anderson, who claimed the share as the survivor of the two assignees in the assignation of 11th April 1888; and (2) by Andrew Simpson M'Clelland as trustee on the sequestrated estate of Robert Bennett Browne, who claimed the share as an asset of the bankrupt which had passed by his sequestration to his creditors.

The claimant M'Clelland pleaded, *inter alia*—"(2) The said assignation not having been intimated to the trustees of the late James Browne, is void and of no effect in competition with the claimant."

Proof was led.

On 26th June 1901 the Lord Ordinary (PEARSON) sustained the second plea-in-law for the claimant Andrew Simpson M'Clelland, trustee on the sequestrated estates of Robert Bennett Browne, and ranked and preferred him to four-fifths of the fund *in medio*.

Opinion.—"The fund *in medio* in this multiplepoinding was the share of the estate of the late James Browne, which was liferented by his daughter Isabella. Robert Bennett Browne has already been found entitled to four-fifths of that share on the death of Isabella without issue, which happened in 1897.

"In and prior to 1888 Mr R. B. Browne carried on business in Glasgow as an insurance broker and underwriter, but in May of that year he stopped payment, and his estates were sequestrated on 28th June. His interest in the fund *in medio* is now claimed (1) by Mr M'Clelland, C.A., the trustee in his sequestration, and (2) by Mr Henry Anderson as surviving trustee, under an assignation dated 11th April 1888, whereby Mr R. B. Browne assigned to trustees his whole interest in the estate of his father. The trust purposes were expressed in a relative agreement dated 18th to 21st April 1888, whereby certain friends of Mr R. B. Browne undertook to provide him with a cash-credit of £6000 for use in his business, he undertaking to assign to trustees for them, *inter alia*, his interest in his father's estate in security.

"The first question raised is, whether the assignation in security was duly intimated to the trustees of the late James Browne. The trustee in bankruptcy maintains that it was not, and that the assignation is therefore of no effect in competition with his own title as trustee in the sequestration of R. B. Browne.

"The facts on which this question depends are these:—In 1888 the trustees of the late James Browne were his son Mr R. B. Browne and his son-in-law Mr Duncan Brown. The assignation in security being executed by Mr R. B. Browne on 11th April, was on 20th April sent by the assignees' agents to Messrs Andersons & Pattison, writers in Glasgow, as agents for James Browne's trustees, with a request that they should 'get an acknowledgment of intimation by Mr James Browne's trustees endorsed thereon, and thereafter return it to us.' They also enclosed a copy of the assignation for the trustees' use. The deed was returned on 24th April, having endorsed thereon an acknowledgment in the following terms:— *Glasgow, 20th April* 1888.—As agents for the trustees of the deceased James Browne, insurance broker in Glasgow, we acknowledge to have received of this date intimation of the foregoing assignation—ANDERSONS & PATTISON, Agents for Mr Browne's trustees.'

"It is urged, in the first place, that this is in itself sufficient without the assignation being brought to the knowledge of the trustees at all. It is true that Messrs Andersons & Pattison were the trustees' law-agents, and in that capacity managed the business of the trust in the usual way. But they had no express authority to accept such intimations on behalf of the trustees, nor are there any circumstances in the case from which such authority can be inferred. The trustees were both business men residing in or near Glasgow, and attending meetings in the agents' office from time to time, and in such circumstances I know of no authority for holding that intimation to the law-agents as for the trustees is enough.

"It is said to have been brought to the knowledge of the trustees by the assignation and docquet having been entered in the sederunt-book of the trust. This was done prior to the next ensuing meeting of trustees, and the suggestion is that the trustees must be held to have known the contents of the sederunt-book, and that they would see the engrossment of the deed with the agents' acknowledgment at the next meeting which they attended. This is not proved and can hardly be presumed, but even were it otherwise, the next ensuing meeting did not take place until after the sequestration.

"The next contention is founded on the specialty that R. B. Browne, one of the two trustees to whom the assignation should have been intimated, was himself the granter of it. This may, I think, be taken as equivalent to intimation to him, and the question is, whether intimation to one of two trustees is sufficient to divest the cedent. That the relations between the trustees themselves may be such as to render this sufficient is conceded. This is illustrated by the case of *Jamieson*, 14 R. 644, where one of two trustees being ill, intimation to the other trustee was sustained as sufficient, he being practically the sole acting trustee, and having the

trust funds in his hands. That case was decided on its special circumstances, and does not affirm that intimation to one of two trustees is in ordinary circumstances sufficient. That proposition would have afforded a clear and simple ground of decision in that case if the Court had been prepared to affirm it in general terms. Here neither of the trustees was in any exceptional position as regards the trust fund or its management. And as I can see no difference in principle, so far as divestiture is concerned, between the case of one or two trustees, and one of three or more, the contention comes to this, that where one of a body of trustees happens to grant an assignation of a fund held by the trustees no further step is required to invest the assignee in the right.

"In the present case there is this further specialty, that four years afterwards R. B. Browne's co-trustee died, and that R. B. Browne (the cedent) was the sole trustee of James Browne from August 1892 until October, when he assumed a colleague. It is contended that in August 1892, by the death of the co-trustee, the intimation became complete, even assuming it had previously been ineffectual. But even if the death could be supposed to have this result, which I think it could not, the sequestration had intervened.

"I therefore hold that the exclusive plea stated for the trustee in bankruptcy must be sustained, unless the trustee is barred from stating it. [*His Lordship then referred to questions not dealt with in this report.*] But it is unnecessary to enter into this question, as I am prepared to sustain the trustee's second plea-in-law and to rank him in terms of his claim."

The claimant H. D. Anderson reclaimed, and argued—The assignation had been sufficiently intimated to the trustees of James Browne. (1) It had been intimated to the recognised agents of the trust. The object of intimation was that anyone who was asked to take an assignation of the same securities or effects might be able to find out that a prior assignation had been made. This he would do by going to the agents of the trust. Intimation to the agents had been held to be an effective notification to the trustees—*Earl of Aberdeen* v. *Earl of March*, April 9, 1730, 1 Paton's App. 44; *Rickards* v. *Gledstanes*, 1862, 31 L.J., Ch. 142; *Willis* v. *Greenhill*, 1861, 31 L.J., Ch. 1. (2) Where there were two trustees, intimation to one trustee was good intimation to them both—Stair, iii. 1, 10; Erskine's Institutes, iii. 5, 5; *Jameson* v. *Sharp*, March 18, 1887, 14 R. 643, 24 S.L.R. 453. Now, here there had been good intimation to one of the trustees at the date of the assignation, because the assignor was one of the trustees, and that was sufficient intimation — *Creditors of Lord Ballenden* v. *Countess of Dalhousie*, March 28, 1707, M. 865; *Turnbull* v. *Stewart*, June 12, 1751, M. 868; *Miller* v. *Learmonth*, May 17, 1870, Paterson's H.L. Appeals, 1777, 42 S.J. 418; *Paul* v. *Boyd's Trustees*, May 22, 1835, 13 S. 818. (3) On the death of Duncan C. Browne in 1892 Robert Bennett Browne became the sole trustee, and he being the assignor, had then sufficient intimation of the assignation, in terms of the cases last quoted. In these three separate ways the assignation had been intimated to the trustees, and his claim should be sustained.

Argued for the claimant Andrew Simpson M'Clelland—There had been no intimation of the assignation to James Browne's trustees. (1) As a general rule intimation to a law-agent was not sufficient intimation to his employer—Bell's Lectures on Conveyancing, 318. In the case of a corporation or limited company, intimation to an official might be sufficient, but there was no authority in Scotland that an intimation to a law-agent of a trust was equivalent to intimation to the trustees. The case of a factor was different from that of a law-agent. It was a question of fact whether or not intimation to a factor was sufficient. If the factor had control of the funds, intimation to him would possibly be good. But intimation to a law-agent was quite another matter. Such intimation had never been held to be sufficient in Scotland. (2) Intimation to one trustee was not sufficient intimation to all the trustees—*Hill* v. *Lindsay*, February 7, 1846, 8 D. 472; *Watt's Trustees* v. *Pinkney*, December 21, 1853, 16 D. 279, opinion of L. P. M'Neill, 286. Trustees were not *correi debendi*, so the references to Stair and Erskine had no bearing on the present case. (3) A bad intimation could not be made good by the death of one of the trustees. The Lord Ordinary's interlocutor should therefore be affirmed.

At advising—

LORD JUSTICE-CLERK—By the interlocutor under review the Lord Ordinary has sustained the second plea-in-law of the trustee on the sequestrated estate of Robert Bennett Browne, to the effect that the assignation by Robert Bennett Browne of a prospective interest in James Browne's estate, granted by him in 1888, not having been intimated to the trustees of the fund, is null and void in competition with the trustee.

The intimation was made on 20th April 1888, and the sequestration of Robert Bennett Browne took place on 28th June of the same year. At the time of the assignation he had only a *spes successionis*, as it was only by his surviving a sister that he could take anything. In fact nothing came to him till 1897.

On the question of intimation the following are the facts—(1) Robert Bennett Browne was himself a trustee; (2) the intimation was made to the truster's law-agents, and acknowledged by them; (3) it was at once engrossed by them in the sederunt book of the trust; and (4) in 1892 the only other trustee died, and thus Robert Bennett Browne, the granter, became the sole trustee.

If it were necessary to decide this case upon the question whether intimation to the trustees through their agents was sufficient, I would be inclined to hold that it

was. There is no fixed form or procedure for giving such a notice, and certainly in ordinary business a communication to the recognised acting agents of a trust would be held to be sufficient for notifying the trustees of any matter of which it was necessary to give them notice. It appears to have been so held in some of the English cases, and the case of the *Earl of Aberdeen*, which went to the House of Lords, tends in the same direction. It is true that in that case the agent was the agent in management of the property, but I do not think that makes it a stronger case in comparison with law-agents of a trust.

But it is unnecessary, in the view I take of another of the points in the case, to give a positive decision on that question. For I am of opinion that there was sufficient intimation to the trustees on other grounds. There were meetings of trustees of later date than the time when the engrossing in the sederunt-book took place, and particularly in 1890, and it is to be presumed that the trustees knew the contents of their own sederunt-book. But further, even if they did not, one trustee did not require formal intimation. He was himself the granter. Whether his being in the position of having intimation by being the granter is sufficient to constitute the assignation an intimated assignation to the trust or not, when the event occurred by which he became the sole trustee, it is difficult to see how it could be held that the trust was without intimation of the assignation. Now, that event occurred five years before any right emerged to the assignor. In these circumstances it appears to me not to be possible to hold that this was not an intimated assignation, and that when the right emerged the trustee in Robert Bennett Browne's sequestration could carry off the subject of the assignation to the defeat of the interests of onerous assignees to whom the *spes successionis* had been made over nearly ten years before.

Such being my view of the question as regards intimation, it is unnecessary to consider the question of bar as against the trustee in bankruptcy. I would move your Lordships to recal the interlocutor of the Lord Ordinary, and to repel the claim for the trustee on the sequestrated estate of Robert Bennett Browne.

LORD TRAYNER—The fund *in medio* in this case is the share of the residue of the late Mr James Browne's estate, which by his settlement was destined to his daughter Isabella. By that settlement Mr Browne directed his trustees to hold the shares falling to his daughters for their liferent use allenarly and their issue in fee, and failing such issue "then to the survivors of my said children." Miss Isabella Browne received the liferent of her share until her death, which happened on 5th December 1897. The only survivor of the testator's children at that date was Robert Bennett Browne, who then became entitled to the fee of Isabella's share. On 11th April 1888 Mr Robert Bennett Browne assigned to the claimant Mr Anderson, and to the now deceased Mr Colin Dunlop Donald, and the survivor of them, "the whole right, title, and interest of whatever nature, and whether present, future, or contingent," then vested or which might thereafter become vested in him, whether in his own right or as succeeding to any other party having interest in the funds and estate of his deceased father James Browne, under and in virtue of his (James Browne's) settlement. Mr Robert Bennett Browne was sequestrated on 28th June 1888, and the claimant Mr M'Clelland is the trustee on his sequestrated estates. This latter claims the fund *in medio* as an asset of the bankrupt which passed by the sequestration to his creditors, while Mr Anderson claims it as assignee under the assignation I have mentioned.

From what I have said it is plain that at the date of his sequestration Robert had only an expectancy in regard to Isabella's share. Such a right, it is now well settled, does not pass by sequestration to the bankrupt's trustee or creditors. But when the expectancy became a vested right of property in Robert by Isabella's death in December 1897 it would pass to the trustee as an asset of the bankrupt if there was no preferable right existing to exclude the trustee's claim. It cannot be doubted that the assignation in favour of Mr Anderson formed such a preferable right if that assignation was perfected by intimation. And the question before us really turns on this, Was that assignation duly intimated? If it was, Mr Anderson must prevail in the competition. Now, the assignation (so far as it need here be considered) was an assignation of a *spes successionis* to a fund in the hands of Mr James Browne's trustees, and to them accordingly intimation of the assignation had to be made. In point of fact, intimation of the assignation was made about a week after the date of its execution to the law-agents for Mr James Browne's trustees, who were advising the trustees in the administration of the trust affairs. It is maintained by the claimant M'Clelland that said intimation was ineffectual. Whether that is so or not is a matter upon which I give no opinion, because I do not think it necessary to the decision of the question before us, remarking only that it is difficult *prima facie* to see why if intimation of an assignation to a factor managing an estate is sufficient as intimation to his principal (which has been held) intimation to the law-agents of a trust should not be held sufficient as intimation to the trustees for whom they act. It is unnecessary, however, as I have said, to give any decision on this point. In 1892, five years before Robert's expectancy became a right of property, Robert was the sole surviving and acting trustee under his father's settlement. He was the granter of the assignation, and therefore in 1892, as sole trustee, had knowledge that such an assignation existed. The only purpose of intimation is that the holder of the thing or fund assigned should be made aware of the existence of the assignation, and by such knowledge charged with the duty of

preserving the thing or fund for behoof of the assignee, instead of, as formerly, for behoof of the cedent. This knowledge Robert, as sole trustee under his father's settlement, had, and such knowledge was equivalent to the most formal intimation. Where the granter of an assignation also holds the position of the person to whom intimation of it should in ordinary course be made, no intimation is necessary. He intimates it to himself as trustee when he grants it as assigner. The authorities cited by Mr Anderson's counsel sufficiently support this view. The case therefore stands thus—the assignation, valid in itself and habile to carry the expectancy granted by Robert in April 1888, was intimated to him as sole trustee of his father in 1892, and was therefore perfected before the expectancy became a right of property. The only answer to this put forward by Mr M'Clelland (the trustee in bankruptcy), and apparently sustained by the Lord Ordinary, is, that the sequestration prevented anything being done after its date to perfect or complete the assignation. I could understand this if it meant that the bankruptcy prevented Robert from doing anything to make the assignation more complete or effectual after sequestration than it was before. But Robert did nothing of that kind. Intimation of the assignation made to him in 1892 (or what was then in law equivalent to intimation) was not his act—it was the act of the assignee. Robert could not prevent such intimation, and Robert's sequestration did not prevent Mr Anderson from making his right effectual if he could. He was not affecting by diligence or otherwise any fund or estate which the creditors could then claim as part of the bankrupt's estate. Indeed, in 1892 there was no right to compete with Mr Anderson's, for the trustee in bankruptcy had no title or right whatever to the expectancy at that date. Accordingly I am of opinion, without going into any of the other questions argued before us, that when the expectancy became a right of property in 1897 it was carried to Mr Anderson by the assignation in his favour which was perfected by intimation (or what was equivalent to intimation) at the latest in 1892, and that lay before any right emerged to which the trustee in bankruptcy could lay claim. I am therefore for recalling the Lord Ordinary's interlocutor and preferring Mr Anderson to the fund *in medio*.

LORD MONCREIFF—The material dates in this case are these. The assignation was dated in April 1888. Robert Bennett Browne was sequestrated in June 1888. Until 1897 his interest in his father's succession, which he assigned, was only a *spes successionis*, and therefore, notwithstanding his bankruptcy, did not pass to his trustee in any case until 1897. In 1892 Robert Bennett Browne's co-trustee, Duncan Campbell Brown, died, and thereupon Robert Bennett Browne became sole trustee.

At the date of the assignation Andersons & Pattison, writers, Glasgow, were agents for the trustees of James Browne, and continued to act as such for many years afterwards. They took a general management of the trust affairs. Mr J. P. Anderson describes their duties thus — "The factors drew the income and paid it to the liferenters, but whenever it came to any dealing with capital, that was brought under our firm's charge — any matter of investment. It was committed to us to advise the trustees about investments. Capital transactions went through our office; otherwise our management of the business of the trust was law-agency."

Mr W. P. Anderson says:—"Our firm did everything except the collection of the income and the handing it over to the liferenters."

The assignation was intimated by M'Grigor, Donald, & Company to Andersons & Pattison by letter dated 20th April 1888; and it was returned by the latter with an acknowledgment of intimation by them as agents for James Browne's trustees; and M'Grigor, Donald, & Company paid Andersons & Pattison their fees in connection with the matter. The assignation and acknowledgment of intimation endorsed thereon is printed.

The question is whether the assignation was sufficiently intimated to the trustees of James Browne. On more than one ground I am of opinion that it was.

(1) I think it was within the province of the agents of the trust to accept intimation of an assignation. J. P. Anderson says—"It was quite a common thing for law-agents to accept intimation such as this without any communication to the trustees. I say that generally. I do not refer to this trust, but to the practice at that time in our office and in other offices also." There is no evidence to the contrary, and so far as my experience goes the practice is correctly described.

(2) But it is unnecessary to rest our judgment on this ground, because Duncan Campbell Brown died in 1892 and Robert Bennett Browne then became sole trustee. At that time Robert Bennett Browne's interest in his father's trust was only a *spes successionis*, and therefore, not being property, it had not passed to his trustee under the vesting clause of the Act, and he was at full liberty to deal with it.—*Trappes* v. *Meredith*, 10 Macph. 38, 9 S.L.R. 29; *Reid* v. *Morrison*, 20 R. 510, 30 S.L.R. 477; and *Grant* v. *Green's Trustee*, 38 S.L.R. 733.

Now, Robert Bennett Browne being the assigner, no intimation to him or acknowledgment by him was required; and therefore when his right became absolute in 1897, which was the earliest date at which his trustee could have acquired it, it had already passed to his assignee, and the assignee's right was complete.

I am therefore of opinion that there was here sufficient intimation, and that the Lord Ordinary has taken too narrow a view of the matter.

LORD YOUNG was absent.

The Court recalled the interlocutor of the Lord Ordinary, repelled the claim of

the claimant Andrew Simpson M'Clelland, trustee on the sequestrated estate of Robert Bennett Browne, and preferred the claimant H. D. Anderson to four-fifths of the fund *in medio*.

Counsel for the Claimant and Reclaimer H. D. Anderson — W. Campbell, K.C. — Younger. Agents—Bell & Bannerman, W.S.

Counsel for the Claimant and Respondent A. S. M'Clelland—H. Johnston, K.C. —Leadbetter. Agents—Forrester & Davidson, W.S.

Agents for the Pursuers and Real Raisers —Campbell & Smith, S.S.C.

Tuesday, December 10.

SECOND DIVISION.

[Lord Low, Ordinary.

CASTANEDA *v.* CLYDEBANK ENGINEERING AND SHIPBUILDING COMPANY, LIMITED.

Title to Sue—Foreign Monarchical State—Foreign—Breach of Contract to Build War Vessels—Action by Minister of Marine.

The only person who has a good title to sue an action in the courts of this country for the purpose of vindicating the rights of a foreign monarchical state against a person subject to the jurisdiction of the Scottish courts is the monarch himself.

In 1896 a contract to build four torpedo boat destroyers for the Spanish Navy was entered into between A, chief, and B, Commissary of the Spanish Royal Naval Commission, London, "both in the name and representation of His Excellency the Spanish Minister of Marine in Madrid, hereinafter called the Spanish Government," and a Scottish shipbuilding company. The contract provided that it was to have no legal power until ratified by the Spanish Government. C was at that time the Spanish Minister of Marine at Madrid. The contract was duly ratified by the Spanish Government. In 1900, D, then Spanish Minister of Marine at Madrid, E, then chief of the Spanish Royal Naval Commission, London, F, the Commissary of the same, and the said Spanish Royal Naval Commission, raised an action against the shipbuilding company for breach of the contract of 1896 upon the ground that the torpedo boat destroyers had not been delivered within the time specified in the contract, and that loss and damage had been sustained by the Spanish Government owing to the delay. The pursuers averred that both in making aud enforcing contracts relating to war vessels the Government of Spain was by the law of Spain represented by the Minister of Marine.

Held (*rev.* judgment of Lord Low, *diss.* Lord Young) that the contract having been made on behalf of the Spanish Government, and solely in its interest, the King of Spain alone could have a title to sue an action upon the contract in the Scottish courts, and that therefore the pursuers had no title to sue.

Title to Sue — Action Brought by Person Not Entitled to Sue — Ratification pendente lite by Person Entitled to Sue — Process.

A raised an action against B. In the condescendence A stated that he had been expressly authorised by C to prosecute the action. On B pleading "No title to sue," A lodged in process a mandate signed by C, but dated after the raising of the action. In this mandate C declared that the action had been instituted with his sanction and approval, and authorised A to prosecute it, with full power and authority to act in the matter as if the action had been raised in C's name.

It having been decided that A had no title to sue, and that C alone was entitled to do so, *held* further that the defect in the instance of the action could not be cured by C's ratification.

By contract dated 4th June 1896 made between His Excellency Commodore Don Manuel De La Camara, Chief of the Spanish Royal Naval Commission, 65 and 66 Chancery Lane, London, and Don Nicolas Prat, Commissary of the same, both in the name and representation of His Excellency the Spanish Minister of Marine in Madrid, thereinafter called the Spanish Government, on the one part, and James and George Thomson, Limited, engineers and shipbuilders, Clydebank, Scotland, in their own name and representation, thereinafter called the contractors, on the other part, the contractors in the first article of the contract undertook to build for the Spanish Government two twin torpedo boat destroyers each of about 380 tons load displacement, of materials and dimensions and fitted with machinery, guns, torpedo tubes, and torpedoes in accordance with specifications and plans mutually signed, the guns, torpedo tubes, and torpedoes being supplied by the Spanish Government.

By the second article of said contract the contractors undertook that the said vessels should be finished, complete and ready for sea—the first vessel in six and three-quarter months, and the second vessel in seven and three-quarter months, from the signing of the contract and the accompanying specifications and plans.

By the third article of the contract it was provided that the penalty for late delivery should be at the rate of £500 per week for each vessel not delivered by the contractors in the contract time; and by the fourth article of the contract it was provided that should the delivery of either of the vessels be delayed by *force majeure* the time should be correspondingly extended, and no penalty should be exacted for such delay.