Act and a number of decisions showed that the term "dwelling-house" was not confined to premises which were slept in —*London Library* v. *Carter*, May 24, 1890, 2 Tax Cases, 594, Law Times, vol. 62, p. 466. The *dicta* of Baron Kelly were not approved in subsequent cases, and the point was specially raised in the case of the *Glasgow Coal Exchange Company*. (2) Alternatively, the building clearly was a "hall or office," and has been rated as such. The exemption could not be said to apply, for the appellants did not occupy the buildings for livelihood or to gain a profit.

At advising—

LORD PRESIDENT—In my opinion the Commissioners are right, but my judgment is rested solely on the 5th rule of Schedule B of the Act 48 George III. cap. 55. I think that these buildings consist of "halls" in the sense of that rule, and they are in fact (and without challenge) charged with the payment of poor and school rates (the requirement of the rule being thus satisfied). The argument that they are not halls in the sense of the rule was very weak, and consisted merely of a suggestion that the word "hall" was used as synonymous with office, or at least was meant to apply only to the premises of the trade companies in London. So far as the statute shows, this theory is fanciful.

The appellants' claim for exemption under sub-section 2 of sec. 13 of the Customs and Inland Revenue Act 1878 is untenable, for this plain reason, that the exemption is conferred on premises occupied for the purpose of any trade or business, or a profession or calling by which the occupiers seek a livelihood or profit. Now, it is set out in the case that the occupiers here are the General Trustees of the Free Church; they do not occupy the premises for any trade or business, or calling or profession by which they seek a livelihood or profit.

LORD ADAM—I am of the same opinion. I have never been able to see how the appellants got out of the clear enactment of Rule V. of Schedule B of the Act of 48 Geo. III. The description given of the premises, as your Lordship has said, is halls and offices connected therewith, which is just the description of premises specified in Rule V.; and then it is admitted in this case that the Assembly Hall and the halls in question are subject to the payment of rates, and in that case I do not think it is necessary to say more about the other grounds on which it is sought to assess these buildings.

LORD M'LAREN and LORD KINNEAR concurred.

The Court affirmed the determination of the Commissioners and sustained the assessment.

Counsel for the Appellants—J. B. Balfour, Q.C.—Macphail. Agents—Cowan & Dalmahoy, W.S.

Counsel for the Respondents—Sol.-Gen. Dickson, Q.C.—A. J. Young. Agent—P. Hamilton Grierson, Solicitor of Inland Revenue.

Thursday, February 4.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

GUTHRIE *v.* PATERSON AND OTHERS (PATERSON'S TRUSTEES).

Succession — Destination — Destination in Moveable Bond—Bond of Clyde Navigation Trust.

It is a well-established rule of law (illustrated by *Walker's Executor* v. *Walker*, June 19, 1878, 5 R. 965, and *Connell's Trustees* v. *Connell's Trustees*, July 16, 1886, 13 R. 1175) that a destination in a moveable bond is effectual.

This principle *applied* to the case of a bond of the Clyde Navigation Trust, taken "payable to A and B, and the survivor of them," where B survived, and it was proved that A had authorised B to take the bond in these terms and had delivered it to B.

Observed that the evidence of the donee alone, without corroboration, would not have been sufficient to prove the authorisation.

Succession—General Revocation—Evacuation of Prior Special Destination in Moveable Bond.

A general revocation does not necessarily or usually affect a previous settlement or destination of a special subject by the same testator.

This principle *applied* where the true debtor in a bond of the Clyde Navigation Trust, taken payable to herself and B and the survivor of them, had subsequently executed a general revocation of all previous deeds of settlement.

Expenses—Judicial Factor—Personal Liability—Expenses Refused to Successful Litigant.

Circumstances in which a judicial factor on the estate of a liferentrix under a trust-disposition and settlement *held* personally liable in expenses to the trustees thereunder, against whom he had unsuccessfully raised an action of accounting.

Circumstances in which a successful defender in an action of accounting *held* not entitled to expenses.

By trust-disposition and settlement, Robert Paterson, innkeeper, Holytown, who died in 1882, conveyed his whole means and estate to trustees, directing them, *inter alia*, to pay the liferent thereof to his widow. The said trustees accepted office, and appointed Daniel Paterson, a son of the testator and one of their own number, to be their factor. Mrs Jane Gray or Paterson, the liferentrix, died in July 1893, and the executor nominated by her having declined office, and there being a conflict of

interests among her next-of-kin, David Guthrie, C.A., Glasgow, was appointed judicial factor on Mrs Paterson's estate.

On 31st March 1894 the judicial factor raised an action against Mr Paterson's trustees, in which he concluded for (1) decree that the trustees should produce a full and particular account of their management and intromissions of and with Robert Paterson's estate, and of Daniel Paterson's intromissions therewith as their factor, and should make payment to the pursuer of £13,000; (2) decree that Daniel Paterson should produce an account of his intromissions with the estate of his mother Mrs Jane Gray or Paterson, and make payment to the pursuer of £13,000; and (3) declarator that five bonds granted by the Clyde Navigation Trust in favour of Mrs Jane Paterson and the defender Daniel Paterson, and the survivor of them, were the property of Mrs Jane Paterson, and formed part of her estate at her death, and now belonged to the pursuer as judicial factor thereon.

The pursuer averred that the trustees "negligently and wrongfully failed to exercise any supervision over the defender Daniel Paterson's actings as factor, or to obtain from him any accounts of his intromissions with the trust-estate. The said defender also did not account for his said intromissions to his mother Mrs Paterson."

The pursuer further averred that on entering upon office he found Mrs Paterson's estate to amount to £3500 or thereby, whereas, taking into account a legacy of £1000 from her husband, her liferent, and the small scale of her expenditure, it ought to have amounted to £13,000. Part of her estate consisted of Clyde Navigation Trust bonds to the extent of £1950, taken in favour of herself and Daniel Paterson and the survivor, and the pursuer averred that the money invested therein belonged to Mrs Paterson, and that Daniel Paterson had taken the bonds in these terms without any authority from her.

The pursuer also averred—"(Cond. 10) The pursuer is informed, and believes and avers, that Mrs Paterson was entirely subject to the influence, control, and dominion of her son the defender Daniel Paterson. She relied implicitly upon him for guidance in all matters of business, knowing that he was one of her husband's trustees and their factor. Knowing also that it was his duty to attend to her interests, she signed any deeds, receipts, or letters which he asked her to sign without objection or inquiry. Since her husband's death the said defender has managed generally all Mrs Paterson's pecuniary and business affairs, and he has uplifted and still retains the greater part of her means and income, including the profits of the said hotel business. If in the course of the process to follow hereon the defenders Robert Paterson's trustees can produce receipts or vouchers which are held to have the effect of discharging *pro tanto* the said trustees and Daniel Paterson as their factor, such receipts or vouchers were obtained by the defender Daniel Paterson from Mrs Paterson without any money or other consideration being received by her therefor. He procured the said vouchers by abusing the trust and confidence which she reposed in him, and by the exercise of undue influence and dominion over her. He never gave her any account of the moneys belonging to her with which he thus intromitted."

The pursuer likewise founded upon a deed of revocation and appointment granted by Mrs Paterson on 2nd June 1893, in the following terms—"I . . . do hereby revoke and cancel all deeds of settlement and codicils executed by me in their whole heads and clauses, . . . and I declare it to be my wish that my estate shall at my death go to my nearest heirs whomsoever, . . . and I appoint James Graham junior my executor."

The defenders, the trustees, averred that by special arrangement, authorised by Mr Paterson's settlement, the income of the trust collected by Daniel Paterson was paid directly by him to the liferentrix, and they produced a statement of his intromissions with the trust-estate showing receipts and payments duly vouched down to Whitsunday 1893. They further expressed their willingness to pay to the pursuer the net balance of £5, 19s. in their hands.

The defender Daniel Paterson averred that he kept regular accounts as factor; that when Mrs Paterson executed the revocation founded on she was weak and facile; that the sums contained in the five Clyde Navigation Trust bonds were contributed in equal shares by himself and Mrs Paterson; and that Mrs Paterson was well aware of the terms of the destinations in the said bonds.

The bonds referred were taken payable "to the said Mrs Jane Gray or Paterson and Daniel Paterson, and the survivor of them, and their, her, or his executors, administrators, and assigns."

The pursuer, in addition to pleas-in-law sustaining the conclusions for count, reckoning, and payment, pleaded—"(3) The said bonds being the property of the deceased Mrs Paterson, and the defender Daniel Paterson having had no authority to insert the said destination in his own favour, the pursuer is entitled to decree of declarator, delivery, and adjudication, as concluded for, with expenses."

The defenders, the trustees, pleaded that the action was unnecessary.

The defender Daniel Paterson pleaded, *inter alia*—"(5) On a sound construction of the terms of the five bonds mentioned in the summons, the pursuer is not entitled to declarator as concluded for, and the defender ought to be assoilzied *quoad* the third conclusion."

A proof before answer having been allowed, the defender Daniel Paterson deponed—"The £1950 consisted of savings from the rents and savings from my business. My mother and I agreed to put by our money in the bank in our joint names, and it was in the bank in the joint names on deposit-receipt before it went into the Clyde Trust. The deposit-receipts were in name of my mother and I and the survivor. The money was

afterwards uplifted from the deposit-receipt and, along with any other savings we had by us, put into the Clyde Navigation Trust in name of my mother and I and the survivor. I made that investment at my mother's request. I generally uplifted the interest, and my mother and I halved it between us. I retained the one-half and paid the other half to her." He further deponed in cross-examination that up to 1889 Mrs Paterson had taken charge of the bonds and coupons herself, but that in that year she handed them to him. In 1891 he handed the bonds to the law-agents for the trustees, retaining the coupons, which he regularly cashed for Mrs Paterson. "So far as I remember, it was not I who applied for the Clyde Trust bonds; but my mother, I think, was with me at the Clyde Trust office on one occasion. I do not think I ever got authority in writing from my mother with regard to these bonds. It was an understood thing between us that whatever savings we had should be put by in our joint names, payable to the survivor. My mother told me that each time an investment was made. I did not apply to the Clyde Trust in writing; I generally called at the office. I would fill up a slip giving the directions about the investment. When the bonds were prepared they were posted out to Woodend, addressed to me, and were placed in the safe. They were open to my mother's inspection, and she often took them out and looked at them, and counted them up. Part of the money that was invested in those bonds was taken out of the bank, where it was in the joint names of my mother and me and the survivor. The deposit-receipts were payable to my mother or me or the survivor. The bonds were made payable to the survivor also. I think the form in which it was expressed was different in the bonds from what it was in the deposit-receipts, but in each case the money was payable to either or survivor."

James Graham junior, writer, Glasgow, called for the trustees, deponed with reference to the sale of a Clyde Navigation Trust bond to him by Mrs Paterson in 1891—"At Mrs Paterson's request I granted a cheque in favour of Daniel in payment of the bond. I do not remember the exact words Mrs Paterson used, but I understood she wished it made payable to him, because he attended to her money matters for her, and I looked upon it as a natural thing knowing that she trusted him. I am perfectly satisfied that she knew the terms in which the bond had been taken, and that she was fully aware of the nature of the transaction."

Andrew Mather, joiner, called for the defender Daniel Paterson, deponed, with reference to a sum of money he had borrowed from Robert Paterson—"After Mr Paterson's death I called on Mrs Paterson to pay my interest. She was always pleasant when I paid it. I put the money on the table, and she whiles counted it, and at other times she did not. In March 1888 I wanted the interest reduced to 4½ per cent., and I saw Mrs Paterson about it, and she said she would think over it and let me know. She agreed at the term of Whitsunday 1889 to reduce the interest. When talking over the matter she told me that she and Daniel had money invested jointly in the Clyde Trust. She mentioned that when she was talking about the interest. She said she would let me have it at 4½ per cent. as it was more than she was getting for her money there. . . . Mrs Paterson was a shrewd, careful, and saving woman. She could always look after herself in any business I had to do with her."

It further appeared from the proof that the trustees, when called upon to account in Mrs Paterson's lifetime, had put the blame of their delay to do so on Daniel Paterson, and that after the action was raised they lodged three separate statements or accounts, the last not produced until after the case had been discussed in the Procedure Roll, but showing beyond dispute that the whole income of the trust-estate had been paid to Mrs Paterson or to Daniel Paterson as her agent. Daniel Paterson, as the proof disclosed, had kept no regular account of his administration of his mother's affairs, and when he did give in an account many of the items for which he had taken credit were unvouched.

On 30th April 1896 the Lord Ordinary (KYLLACHY) pronounced an interlocutor, in which, *inter alia*, he found that the pursuer, as now representing the liferentrix, "has no claim against the trustees for accounting, or at all events, for further accounts and vouchers than those already produced;" and found further that, "in so far as the pursuer has a claim of accounting against the individual defender as factor for the trustees, the accounts produced are correct and sufficiently vouched;" with respect to the Clyde Trust bonds, he found it "not proved that the said bonds were the sole property of the said Mrs Paterson: Finds further that it is not proved that the destination therein contained was inserted without Mrs Paterson's authority: Finds that in the circumstances disclosed in evidence the presumption is that she knew and authorised the terms of said destination: Finds that said destination operated as a bequest of Mrs Paterson's share of said bonds to the individual defender, and that the same was not revoked by the general revocation contained in the deed executed by Mrs Paterson on 2nd June 1893: Therefore assoilzies the individual defender from the third conclusion of the summons, and decerns," &c.

Opinion.—"The findings of the above interlocutor perhaps sufficiently explain themselves, but the Lord Ordinary may say in a word, with respect to the matters of fact to which the proof was mainly directed, that he prefers the evidence of the defenders to that of the pursuer. In particular, he is satisfied that the late Mrs Paterson was perfectly capable of understanding and looking closely after her pecuniary rights, and that she did so, and that if her son Daniel got more from her during her life than her other children, he did so because such was her wish. The Lord Ordinary

does not believe that she was ill-used by Daniel. Neither does he believe that from fear or otherwise she allowed him to appropriate her means. That she placed confidence in him he does not doubt, but that he abused that confidence, and that she acquiesced in his doing so, looking forward to a reckoning at some future time or at her death the Lord Ordinary does not believe.

"With respect to the separate matter of the Clyde bonds, the Lord Ordinary has had some difficulty. He finds nothing in the evidence to displace the presumption that the bonds belonged to the mother and son jointly, the fact that the contributions were unequal being quite consistent with that conclusion. But he has had doubt whether there was sufficient evidence to prove or presume that the destination to the survivor was authorised by the deceased; and he has also had doubt whether the deed of revocation of June 1893 might not be held to strike at special bequests of the kind in question. On consideration, however, he has not seen his way to give effect to these doubts. There is some direct evidence that the old lady knew the terms of the bonds. Looking to the terms of her settlement as then existing, the destination therein expressed in Daniel's favour was not unnatural, and it is, the Lord Ordinary thinks, improbable that a person of Mrs Paterson's disposition would have remained or could well have been kept ignorant of the terms of the documents which represented so large a part of her capital. As to the deed of revocation, whatever may have been the intention, the language is, in the Lord Ordinary's opinion, too restricted to cover the bequest in effect constituted by the special destination in the bonds."

On 30th July 1896 the Lord Ordinary pronounced an interlocutor in which he found that the sums taken credit for by the factor, and which fell to be disallowed, amounted to £139; therefore decerned against the defenders Paterson's trustees and the defender Daniel Paterson for payment of said sum, with interest thereon at the rate of three per cent. per annum from the date of Mrs Paterson's death until payment; *quoad ultra* assoilzied the whole defenders from the conclusions of the summons; "finds the pursuer liable in expenses to the defenders Paterson's trustees; finds him also liable in expenses to the defender Daniel Paterson, subject to modification."

Opinion.—"I have no doubt that the pursuer must be held liable, and personally liable, in the bulk of the expenses of this litigation. The only question is as to modification.

"As against the trustees I see no ground for modifying the expenses. I think the litigation has proceeded on wrong lines from the first; and I also think that the pursuer, if he had exercised reasonable caution and had taken reasonable means of informing himself of the facts of the case, would have been less ready to launch into a litigation which has so far proved so unfortunate, the more especially as it involved the making of serious charges against respectable people—charges which I think ought not to have been made on slender grounds. Therefore I have no difficulty about the pursuer's liability for the expenses of the trustees. The trustees, so far as I can see, do not appear to have been at all in default. Two of their number, the widow (the pursuer's author) and her son Daniel, the individual defender, had (barring certain legacies which were well secured) the whole interest under the trust. The one was liferentrix, the other was residuary legatee, and the two lived together, and during the whole period of the trust the arrangement on which they and the trustees acted was that Daniel, who was at his mother's instance appointed factor to the trust, should manage everything and account to her direct. I cannot think that this was an unusual or unreasonable arrangement, and I think the pursuer, whether or not he had at first evidence that such an arrangement had been in fact made, had at least the statement to that effect of the trustees' agents Messrs Graham, and ought at least to have considered whether the usage and practice of the trust, acquiesced in by his author, the liferentrix, during so long a period, admitted of any other interpretation. But the factor does not seem to have so thought. He seems to have considered that the trustees were nevertheless bound to produce accounts of charge and discharge formally vouched—such accounts as they would have had to produce at the call of a beneficiary who had left the whole administration in their hands, and to whom they had never accounted from first to last. That position was, in my judgment, entirely untenable, and the factor, in bringing this action against the trustees, did so at his own risk, and must take the consequences.

"The question whether there should be expenses awarded to Daniel Paterson is not quite in the same position. Daniel, as factor for the trust, was probably bound to render accounts to his mother, if his mother required them, or if the manner in which the trust was administered between him and his mother required accounts. But it did not follow that he was bound to preserve vouchers for all these years for every item of expenditure—he and his mother having, as I have said, the whole interest between them, and the mother being satisfied for all these years that all was in order. Daniel's position therefore was a position I should imagine, common enough in such circumstances, and at all events, a position which should have suggested caution on the pursuer's part before assuming that he was entitled, even from Daniel, to an account of charge and discharge with every item formally vouched. At the same time the case must, I suppose, be taken on the footing that Daniel was bound to keep and produce accounts of the trust, and it is quite certain that until the action was raised, Daniel had not, although called upon to do so at the instance of the pursuer, produced to the trustees any account at all. A list of the investments

of the estate seems to have been furnished. But that was all, and it may be that, all things considered, he (Daniel) was somewhat dilatory in making up such accounts as he ultimately made up, and which accounts I have held sufficient. On the other hand the action having been brought, there is no doubt that as soon as it was brought there was lodged with Daniel's defences or with the trustees' defences—it does not matter which—an account showing the income of the trust-estate and its disposal during the period of the liferent; and there were also produced along with that account certain pass-books, &c., which I have held to vouch sufficiently all Daniel's payments to his mother in so far as he was bound to vouch them. There may have been one or two further vouchers which were not produced at first, but practically Daniel's answer to the action was production of an account with sufficient vouchers.

"But then it is said that there was not produced along with the account any explanation by him or by the trustees as to the coupons of the trust investment having been from the first entrusted to the old lady, and as to her having cashed these coupons for herself. That is quite true. It was not until objections and answers were ordered that that fact came out. But still it was a fact which the factor might have ascertained on making inquiry, and which I daresay the Messrs Graham would have told him if he had asked them. At all events, that explanation was tabled before the second discussion in the Procedure Roll, or before the incurring of any serious expense. And that being so, the only question is, what amount of modification I am to make upon the award of expenses against the pursuer. I think, as I have said, that Daniel was a little slack in not at once realising his position, and in not at once tabling his accounts with the necessary explanation; but I hold that at all events before the second discussion in the Procedure Roll Daniel had made, or the trustees for him had made, all the explanations which were necessary, and had also tabled all the necessary documents: and therefore what I propose to do is to allow Daniel's expenses, subject to modification, which will probably extend to the expenses up to the lodging of the third account—30th November—when all the necessary explanations were before the parties. I shall know when the account comes to be taxed what Daniel's expenses are up to that period. I shall also have in view in fixing the modification the fact that Daniel's has to account for a sum of £144 brought out in the final account which he produced.

"As to the pursuer's responsibility, I see no ground for departing from the rule that a judicial-factor—like a trustee in bankruptcy—litigating, does so at his own risk. I do not consider the case here one specially favourable. I think the pursuer, to say the least, was unduly credulous. He accepted without due inquiry the statements of the parties whom he ought as a man of the world to have distrusted. At all events he ought to have more fully informed himself of the facts of the case, and ought to have hesitated before making the charges against the defenders which he did make. On the whole, I see no reason for holding the pursuer otherwise than personally liable—that is to say, unless the funds in his hands are sufficient, as I hope they are, for his relief."

The pursuer reclaimed, and argued—(1) On the question of expenses. (*a*) As regards Paterson's Trustees. The judicial factor when he entered upon office was bound to raise an action against them. He saw what their attitude had been when called upon to account by Mrs Paterson herself. The appointment of Daniel Paterson as factor in no way discharged the trustees—M'Laren on Wills, 1228; *Edmond* v. *Blaikie & Anderson*, June 29, 1866, 4 Macph. 1011; *Carruthers* v. *Carruthers*, July 13, 1896, 23 R. (H.L.) 55. The trustees should have been found liable in expenses to the pursuer, because it was owing to them that the action and proof had become necessary, or at least neither party should be found entitled to expenses. In any event, the pursuer should not be found personally liable in expenses, but only "as judicial factor"—*Craig* v. *Hogg*, October 17, 1896, 24 R. 6, 34 S.L.R. 22, referred to. (*b*) As regards Daniel Paterson individually, if the pursuer was right in his contention as to expenses in a question with the trustees, *a fortiori* he was right as to the Lord Ordinary's finding with reference to expenses in a question with Daniel Paterson. (2) On the question of the Clyde Trust bond the Lord Ordinary was wrong. The defender Daniel Paterson had failed to prove that he was authorised to take the bond in these terms. But in any event the destination had not the effect of a testamentary conveyance to Daniel Paterson. That was well established in the case of deposit-receipts, and the cases with regard to other securities could be distinguished or ought to be reconsidered—*Walker's Executor* v. *Walker*, June 19, 1878, 5 R. 965; *Connell's Trustees* v. *Connell's Trustees*, July 16, 1886, 13 R. 1175, referred to. In any event, the revocation executed by Mrs Paterson revoked the destination—*Campbell* v. *Campbell*, July 8, 1880, 7 R. (H.L.) 100.

The argument for the defenders is sufficiently indicated in the opinions of the Lord Ordinary and Lord M'Laren.

LORD M'LAREN—The questions to be considered under this reclaiming-note arise out of an accounting instituted by the judicial factor on the estate of the deceased Mrs Jane Gray or Paterson against her husband's testamentary trustees and her son David Paterson, who managed her investments in her lifetime.

The greater part of the argument which we heard was directed to the question of the incidence of the expenses of the action of accounting, which are dealt with in the Lord Ordinary's interlocutor of 9th July 1896. But a question was also argued as to the right to sums amounting to £1950, which is considered under the interlocutor of 30th

April 1896, and this question naturally falls to be first considered.

(1) By the third conclusion of the summons it is sought that it shall be found and declared that the five bonds there enumerated bearing to be granted by the Clyde Navigation Trustees in favour of the said Mrs Jane Gray or Paterson and the defender Daniel Paterson (her son), and the survivor of them, were the property of Mrs Paterson, and formed part of her estate at her death, and now belong to the pursuer as judicial factor on her estate, leaving always the defender's claim for an accounting for his share of the said bonds as one of the next-of-kin.

I understand that the five bonds are expressed in identical terms as regards the destination or obligation to pay. One of them is printed in the appendix to the proof, and under it the obligants bind themselves to pay to Mrs Jane Gray or Paterson and David Paterson, and the survivor of them, and their, her, or his executors, administrators, or assignees the principal sum of £1000.

The defender's statement is that the bonds were investments of the savings of his mother and himself, and that the destination was inserted by the authority of Mrs Paterson and himself, and with the intention that it should receive effect as a destination, and that the right to the sum secured by the bond should pass to the survivor. It will thus be seen that the defender's case involves a question of law and also a question of fact, that the destination was inserted in the bonds at the desire of Mrs Paterson or with her authority.

If the question of law were open to consideration, there is much to be said in favour of the pursuer's contention that a destination in a document of debt like a moveable bond ought not to have a testamentary operation. Destinations in the title-deeds of heritable estate stand in a different position. They operate as a devolution of the estate, because according to the common law a grant by the superior containing a destination was the proper mode of regulating the succession to land, and because there could be no reason or motive for the insertion of such a destination at the request of the grantee, except that it was the wish of the grantee that the persons named in the deed should take the estate in succession to himself. But as regards moveable estate, the proper mode of settling the succession is by a will or testamentary trust, and again it cannot be said that the regulation of the succession is the only motive that would account for the insertion of what is called a destination in a moveable bond or document of title, because there is another reason for inserting the name of two persons as payees, viz., the convenience of having a second person who is in a position to give a discharge of the debt or interest in the case of illness or death of the first.

These considerations, I may point out, have received effect in the rule, now firmly established, that no testamentary effect is to be given to destinations in bank deposit-receipts, and I think it is regrettable that a different rule should be applied to the construction of moveable obligations. But in the later cases—and I may refer especially to *Walker*, 5 R. 965, and *Connell's Trustees*, 13 R. 1175—the rule which gives effect to such destinations in bonds was considered to be too firmly established to be disputed, and while it is not to be overlooked that the element of mandate may enter into the design of the creditor in taking the bond payable to himself and another person, this consideration can only have weight to the effect of casting on the second payee or survivor the *onus* of proving as conditions of the right which he claims, first, that the destination was inserted with the authority of the true creditor or investor, and secondly, that the bond was delivered to the person claiming under it as his proper writ.

In the present case we have the evidence of Mr David Paterson that he made the investments for his mother, and that she gave authority for taking them payable to her and himself and the survivor. The Lord Ordinary states that he believes the evidence of Mr Paterson, and I need hardly say that in a matter depending on credibility this is a very important element. But I must also add that the evidence of a donee is insufficient to prove donation, or what is equivalent to donation, if uncorroborated, and I have therefore considered the proof to see whether it offers the necessary corroboration. Two witnesses speak of Mrs Paterson's knowledge and approval of the terms of these bonds. Mr Graham, the family solicitor, speaking of a bond which was expressed in similar terms to these in question, and which for some reason was transferred to a purchaser, says—"I am perfectly satisfied that she (Mrs Paterson) knew the terms in which the bond had been taken, and that she was fully aware of the nature of the transaction." Another witness, Mr Mather, who describes himself as an old friend of Mrs Paterson, says, that in the course of conversation on business matters, Mrs Paterson told him that she and her son David had money invested jointly in the Clyde Trust. I think this sufficient corroboration of the defender's evidence, and that we must take it that the destination is the act of Mrs Paterson. On the matter of delivery, I think the defender had all the possession of the bonds which was possible in the nature of the case, but even if it be supposed that he held them as his mother's agent, this might prevent the destination taking immediate effect, but would not interfere with the testamentary effect of the destination. There remains the question of revocation under Mrs Paterson's will or codicil of 2nd June 1893. Now, in the analogous case of heritable destination, upon which the chapter of the law is entirely founded, the case stands thus: If the owner of property holds it in virtue of the deed of another man who has left it to him and his heirs, a deed of revocation and new conveyance in general terms will take effect on the standing destination. But a general revocation or general conveyance will not

necessarily or usually affect a previous settlement or destination of a special subject by the same testator, because the destination is like a special legacy, and is presumed to be excepted. This distinction is clearly explained in the Lord Chancellor's opinion in *Campbell* v. *Campbell*, and runs through all the decisions. In the absence of anything to show that Mrs Paterson had the bonds in view in executing the deed of 2nd June, I am unable to hold that the deed operated as a revocation of the destination in the bonds. I am therefore for adhering to the interlocutor of 30th April 1896.

(2) I shall deal more briefly with the question of the expenses of the action. The Lord Ordinary has found the pursuer liable in expenses to the defenders Paterson's trustees, and has found him also liable in expenses to the defender Daniel Paterson, subject to modification.

Now, it is to be observed that this is not an action of accounting or distribution in relation to the estate of Mrs Paterson's husband. Under the will of Mr Paterson, Mrs Paterson had a general liferent of her husband's estate, and the action only calls for an accounting in relation to Mrs Paterson's estate, which of course includes her liferent. In fact, her estate consists entirely of the savings from her capital. But if anything is proved in the case, it is proved beyond dispute that the trustees regularly paid over the income of her husband's estate to Mrs Paterson, or, which is the same in legal effect, to her son as her agent with her authority. It may have been quite right to call the trustees as defenders for their interest; but as soon as they produced evidence of the payment of income to Mrs Paterson's nominee, they ought to have been informed that the judicial factor was satisfied and that there was no need for their further appearance in the case. Their appearance in the case throughout the course of the litigation is the consequence of the pursuer's original act in calling them as defenders, a position from which they have never been freed, and as they have successfully discharged themselves, I am of opinion that they are entitled to their expenses, and that this part of the interlocutor of 9th July is right.

As regards the question between the pursuer and Mr Daniel Paterson, I have felt this to be a question of much difficulty, and I am very unwilling to interfere with the discretion of the Lord Ordinary in dealing with this question. The pursuer cannot get expenses from Mr Paterson, because he has failed in all the important questions raised in the accounting. But he was placed in a position of some embarrassment from the circumstance that Mr Paterson had not kept regular accounts of his administration of his mother's affairs. This may be explained by the trust which his mother reposed in him, but his own statement that his mother trusted him is hardly an answer to a judicial factor who represents the interests of next-of-kin. When an account was given in, the judicial factor was not relieved from his obligation to call the defender to account, because many of the items were unvouched, and it appeared that some of the questions raised, and especially this question about the right to the Clyde Navigation bonds, depended on oral evidence. I do not think that the judicial factor was bound to accept the defender's statement that these bonds were taken in the terms which have been considered with Mrs Paterson's authority. The defender ought to have got a mandate from his mother instructing the preparation of the bonds in these terms, and it was the neglect of this proper precaution that necessitated the parole proof. In these circumstances I have come to be of opinion that as between the pursuer and the defender Daniel Paterson there ought to be no finding of expenses to either party.

I observe that the Lord Ordinary has found the pursuer liable to the trustees without the qualifying words "as judicial factor," and according to the views expressed by the majority of the Court of Seven Judges in a recent case this imports a direct liability to Paterson's trustees irrespective of the existence of factory estate. We do not propose to alter this finding, and it will be for the pursuer to find the means of paying these expenses. Whether he has relief against the next-of-kin on the ground that he was protecting their interests is a question which, as I think, cannot be decided in this process, because the next-of-kin are not parties to the process, and we cannot make any finding which will prejudge these rights. I move your Lordships accordingly to adhere to the interlocutor of 30th April, and to vary the interlocutor of 9th July 1896 by leaving out the finding of expenses in favour of Daniel Paterson, and in place thereof to find no expenses due to or by the defender Daniel Paterson.

LORD ADAM concurred.

LORD KINNEAR—I am also of the same opinion. I agree with Lord M'Laren that if the question had been still open it would require serious consideration whether terms of destination in such an instrument as a Clyde Trust bond ought to have the same legal effect as a proper destination in a conveyance of land. I think with his Lordship that that question is now settled by a series of decisions the authority of which is beyond dispute. I therefore agree in the conclusion to which Lord M'Laren has come.

The LORD PRESIDENT concurred.

The Court adhered to the interlocutor of 30th April, and varied the interlocutor of 9th July 1896 by leaving out the finding of expenses in favour of Daniel Paterson, and in place thereof finding no expenses to or by the defender Daniel Paterson; *quoad ultra* adhered.

Counsel for the Pursuer—W. Campbell—Clyde. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Defenders, Paterson's Trustees — C. K. Mackenzie. Agents — Graham, Johnston, & Fleming, W.S.

Counsel for the Defender Daniel Paterson—Watt — Guy. Agent — Walter C. B. Christie, W.S.

Friday, February 5.

FIRST DIVISION.

THE SOCIETY OF SOLICITORS IN ABERDEEN *v.* SIM.

Process—Law Agent—Petition and Complaint — Proof — Law-Agents (Scotland) Act 1873 (36 *and* 37 *Vict. cap.* 63).

In an application presented under the Law-Agents Act 1873 at the instance of a local society of solicitors, to have the name of S, one of their number, struck off the roll of enrolled law-agents for fraud and embezzlement, *held* that before the prayer of the petition was granted, the petitioners must prove their averments, S having been neither convicted nor fugitated.

This was a petition and complaint presented by the Society of Solicitors in Aberdeen, craving to have the name of William Sim struck off the roll of enrolled law-agents.

The petitioners averred that William Sim was a law-agent who up to October 1896 practised as a solicitor and law-agent in Aberdeen, but that on or about the 9th of that month, his affairs having become embarrassed, he disappeared, "having, it is believed, left the country."

The petition continued—"Since the disappearance of the said William Sim, it has transpired that while practising in Aberdeen he had been guilty of conduct unbecoming a solicitor, and in fact fraudulent. In course of the years 1893-95 and 1896, when he was in financial difficulties, he borrowed money from clients on the security of properties belonging to him, on representations that the properties were unencumbered, and that these loans would constitute first charges on the properties, whereas he well knew that the properties were heavily burdened and altogether inadequate as security for the loans. He also received money from clients upon the assurance that he would invest it upon first-class securities, which moneys he made no attempt to invest, but appropriated to his own uses." Certain specific instances of such fraudulent conduct on Sim's part were then condescended on.

It was further averred that Sim's estate was wholly insufficient to meet these liabilities, that he had fled the country, that a warrant had been issued for his apprehension, and that his estates had been sequestrated.

The petitioners founded upon section 22 of the Law-Agents (Scotland) Act 1873 (36 and 37 Vict. cap. 63), which enacts that "Every enrolled law-agent shall be subject to the jurisdiction of the Court in any complaint which may be made against him for misconduct as a law-agent, and it shall be lawful for the Court, in either Division thereof, to deal summarily with any such complaint, and to do therein as shall be just."

They also founded upon the enactment of section 14 of that Act, that "the name of any person shall be struck off the said rolls —(1) in obedience to the order of the Court, upon application duly made and after hearing parties, or giving them an opportunity of being heard."

The Court ordered service upon Sim, and appointed answers to be lodged by him, if so advised, within six weeks.

The petition having been served edictally upon Sim, and no answers having been lodged within that period, counsel for the petitioners moved that the prayer of the petition be granted.

At advising—

The LORD PRESIDENT delivered the judgment of the Court to the following effect:—This is an application to have the name of William Sim struck off the roll of enrolled law-agents on the ground that he has been guilty of fraud and embezzlement. The petitioners' motion is that the prayer be granted.

The Court consider the application premature. The accused person has neither been convicted nor fugitated. Unless the petitioners are prepared to prove their averments, it is for their consideration whether they should not in the meantime withdraw their petition.

Counsel for the petitioners having thereupon moved for a proof, the Court allowed the petitioners a proof of their averments.

Counsel for the Petitioners—W. Brown. Agents—Henry & Scott, W.S.

Friday, February 5.

FIRST DIVISION.

THE LOCAL GOVERNMENT BOARD FOR SCOTLAND *v.* COUNTY COUNCIL OF ELGIN.

Local Government—Public Health—Water Supply—Cost Exceeding Limit of Assessment.

The Local Government Board for Scotland presented a petition and complaint under section 97 of the Public Health Act 1867, against the County Council of E, craving to have them ordained to procure a suitable water supply for the district of H. The petitioners averred that the present sources of supply for H were inadequate and dangerous; that the County Council had delayed for a long period to deal with the matter, and had no present intention of trying to remedy the evil; that the Board had frequently called upon the County Council to do their