The defenders reclaimed.

The arguments of the parties are sufficiently indicated in the foregoing abstract of the pursuer's minute and the defenders' answers thereto. On the point whether the value of the manse should be taken into account, the defenders cited *Stewart* v. *Glenlyon*, May, 20, 1835, 13 S. 787.

LORD PRESIDENT—At this stage of the case the question to determine is, what is a competent and legal stipend computed upon the footing that the minister is, as the decree bears, to have over and above it a house and a cow's grass and communion elements. Now, that is a question to be determined with reference to the circumstances of the incumbency, and light doubtless is to be derived from similar or nearly similar cases, especially in the neighbourhood, and from what may be called the general payment in the profession. Now, the Lord Ordinary who decided the case happens to have had considerable experience in determining, I will not say the same question, but the similar question which arises when augmentations are asked for in the Court of Teinds, and though he has specifically mentioned a set of considerations as to the previous practice in this parish, which perhaps have less bearing, his primary proposition is that he has carefully considered the circumstances of this benefice as set out in the appendix containing the minute and answers. Now, the minute and answers carefully go over the whole range of considerations which seem to be relevant to the determination of this question. I shall only say that looking to the population of this place, to the duties which the local circumstances seem to give rise to, to the character of the population, and having regard also to the emoluments of neighbouring ministers, it seems to me that the Lord Ordinary's figure is a very fair one.

I should perhaps consider it legitimate in the present case to take into account the existence of the glebe. As I have already mentioned, the manse and the cow's grass are expressly declared in the decree to be over and above the stipend, and therefore they cannot be taken into account. But suppose you do take into account the fact that this benefice has the advantage of a glebe, that would not substantially displace the legitimacy of the Lord Ordinary's conclusion, and I say that having regard to the other and similar cases noted in the various papers. Doubtless this is a question which might strike different minds differently, but upon the whole I am satisfied with the Lord Ordinary's decision.

LORD ADAM—So am I. I think the true question is whether this is a competent and legal stipend, giving effect to the considerations your Lordship has mentioned. I think the most material consideration to look to is the circumstances of the benefice itself, and what is the sort of average stipend in the surrounding and neighbouring parishes. Looking at the statements here, I do not think that the sum fixed by the Lord Ordinary is anything else than a competent stipend.

LORD M'LAREN and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuer—Jameson—W. Campbell. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for the Defenders—Guthrie—Hunter. Agent—John Macmillan, S.S.C.

Friday, February 26.

FIRST DIVISION.

[Lord Pearson, Ordinary.

BRINGLOE (FERRIE'S *CURATOR BONIS*) *v.* COWAN'S TRUSTEES.

Judicial Factor—Curator Bonis—Investment of Funds—Harbour Trust Bonds—Real or Heritable Security—Security of Rates Levied by Municipal Corporation—Trusts (Scotland) Amendment Act 1884 (47 *and* 48 *Vict. cap.* 63), *sec.* 6.

A harbour trust, composed of the magistrates and town council of a burgh and of certain members elected by shipowners and others, was authorised to borrow money on mortgage by a private Act of Parliament, which enacted that upon the application of any creditor the payment of whose principal and interest should be in arrear to the extent of £5000, a judicial factor should be appointed to receive the whole or part of the rates, duties, and other revenues of the trust until all arrears were paid off.

A *curator bonis* lent £1700 of the curatorial estate to the harbour trust on a bond by which the trustees assigned to him all and sundry the rates, duties, and other revenues of the trust, subject to the provisions of the said Act, until the said sum should be paid.

Held (*rev.* judgment of Lord Pearson) that this was not a legitimate investment of curatorial funds either at common law or under the Trusts (Scotland) Amendment Act 1884, and that the *curator bonis* was therefore liable for any loss incurred on the investment, on the ground (1) that it was not an investment in real or heritable security, and (2) that it was not an investment in bonds or debentures secured on rates or taxes levied by a municipal corporation.

Greenock Harbour Trustees, January 31, 1888, 15 R. 343, *followed.*

Breatcliff v. *Bransby's Trustees*, January 11, 1887, 14 R. 307; *Grainger's Curator*, February 23, 1876, 3 R. 479; and *Lloyd's Curator*, December 1, 1877, 5 R. 289, *distinguished.*

Haldane v. *Girvan and Portpatrick and Junction Railway Company*, March

18, 1881, 8 R. 669, and July 20, 1881, 8 R. 1003, *explained* and *commented on, per* Lord Kinnear.

Opinion (*per* Lord Adam) that a *curator bonis* is entitled to retain an investment taken prior to the Trusts Amendment Act 1884, which he would have been entitled to take subsequently to that Act.

The circumstances in which the question in dispute in this case arose are thus narrated in the opinion of Lord Adam:—"The late Mr Cowan was appointed *curator bonis* on the estate of Mr Ferrie. On the 8th June 1895 Mr Cowan's appointment was recalled on the ground of age and ill-health, when Mr Bringloe was appointed *curator bonis* in his place. In the course of auditing Mr Cowan's accounts, with a view to his discharge, it appeared that he had, in the course of his management of the curatorial estate, invested in May 1882 a sum of £300 on a mortgage by the trustees of Port-Glasgow Harbour, and two further sums of £700 and £1000 in September 1882 and May 1887 respectively on mortgages or assignments by the trustees of the Port and Harbour of Greenock. As it appeared that a considerable loss would result to the estate on realising these investments, Mr Bringloe objected to Mr Cowan receiving credit for them, on the ground that they were not within the class of securities on which a *curator bonis* was, at his own hand, entitled to invest the curatorial estate. Mr Cowan has since died and is now represented by his trustees, who have been sisted as petitioners in his place."

Mr Bringloe accordingly on August 30th 1895 presented a note to the Court craving instructions for his future guidance and objecting to the former curator or his representatives being discharged.

He further lodged a minute stating the loss on the Greenock Harbour Trust bonds at £1036, exclusive of arrears of interest, and on the Port-Glasgow Harbour bond at £210.

The assignments of £700 and £1000 in favour of Mr Cowan were in these terms—"By virtue of the Greenock Port and Harbours Acts, 1866, 1867, 1872, and 1880, the trustees of the Port and Harbours of Greenock . . . do hereby bind themselves to pay to the said James Cowan, as *curator bonis* foresaid, and to his successors in office, and his or their assigns, the principal sum . . . together with interest on the said principal sum at the rate of four pounds per centum per annum, payable half-yearly (per coupons or interest warrants delivered herewith), or in the option of the said James Cowan or his foresaids, the said principal sum shall thereafter, in virtue hereof, remain as a loan to the said trustees until the expiry of a further term of years to be afterwards agreed on . . . and subject to the provisions of the said Acts, the trustees do hereby assign and make over to the said James Cowan, as *curator bonis* foresaid, and to his successors in office, and his or their assigns, all and sundry the rates, duties, and other revenues of the trust, payable to the trust in virtue of the said Acts, and all their right, title, and interest of, in, and to the same, to be held by the said assignee and his foresaids until the said sum, with the interest thereof, shall be fully satisfied and paid."

The Greenock Port and Harbour Act 1880, section 69, enacts that the mortgagees may enforce payment of arrears of interest and principal, or principal and interest due on a mortgage, by the appointment of a judicial factor, provided that the amount owing to the mortgagees by whom the application for a judicial factor shall be made shall not be less than £5000 in the whole.

Section 70 enacts that the Sheriff may on any such application appoint some person to receive the whole or any competent part of the rates and duties and other revenues of the trust, until all the arrears of interest or of principal, as the case may be, then due on the outstanding mortgages, together with all costs, including the charges of receiving the said rates and duties and other revenues be fully paid. It further enacts that upon such appointment being made all such rates, duties, and other revenues shall be paid to or received by the person so appointed; and that the money so received shall be so much money received by or to the use of the mortgagees, and that so soon as the full amount of any interest or principal in arrear and costs has been so received, the power of such judicial factor shall cease. The section also provides that such judicial factor shall distribute among all the mortgagees to whom interest or principal shall be in arrear, the rates and duties and other moneys which shall come into his hands, having respect in such distribution to the priorities if any of such mortgagees.

At the time when these investments were made, the Greenock Harbour Board consisted of the Magistrates and Town Council of Greenock, and of nine persons elected by owners of or in ships to a certain extent registered in the port of Greenock, and by certain ratepayers paying rates leviable on vessels or goods.

The Trusts (Scotland) Amendment Act 1884 (47 and 48 Vict. cap. 63), sec. 3 (*b*) authorises a *curator bonis* to invest the funds of the estate in loans; (10) "on real or heritable security in Great Britain;" and (12) "on bonds, debentures, or mortgages secured on rates or taxes levied under the authority of any Act of Parliament by Municipal Corporations in Great Britain authorised to borrow money on such security."

On 23rd July 1896 the Lord Ordinary (PEARSON) pronounced an interlocutor finding that the debentures in question were legitimate investments of curatorial funds and that the petitioners were not liable for the loss which had been incurred or might be incurred thereon.

Opinion.— . . . "The investments are now challenged on the ground that they are not within the classes of investment open to trustees and judicial factors. If the class of investments were legitimate, it

is not contended that liability has been incurred by reason of their being in themselves improvident or improperly selected.

"The investments are sought to be supported on three separate grounds—(1) that they are investments on heritable or real security, and so within both the common law rule and the Trusts (Scotland) Act 1884; (2) that they are analogous to investments which the Court has already recognised, and that it would be no undue extension of the rule to hold these as legitimate investments in judicial factories; and (3) that they are mortgages secured on rates or taxes levied under Act of Parliament by municipal corporations with borrowing powers, and therefore fall within the express words of sec. 3, sub-sec. 12, of the Act of 1884.

"I have arrived, though with difficulty, at the conclusion that they may be supported on the first of these grounds. It is true that the terms of the assignments themselves do not expressly include the undertaking, which is largely or in great part heritable. In the Greenock Harbour assignments the trustees assign, subject to the provisions of the Acts, 'all and sundry the rates, duties, and other revenues of the trust payable to the trust in virtue of the said Acts, and all their right, title, and interest of, in, and to the same.' And in the case of the Port Glasgow Harbour there is assigned a proportion of the 'rates, revenues, and other moneys' leviable under the Act. In this respect these securities differ from the ordinary railway mortgage, which assigns 'the said undertaking and all the tolls and sums of money arising by virtue of the Act.' But there is here, as in the case of railways, and in terms substantially the same, a power to apply for the appointment of a judicial factor, as the prescribed mode in which the security is to be worked out, and notwithstanding the important difference in form to which I have adverted, it appears to me that in substance the security obtained is a security over the undertaking in the same sense and to the same effect as in the case of a railway. Now railway mortgages have been expressly held, in the matter of trust investments, to fall within the expression 'investment upon real securities,' as used in an English will—*Breatcliff* v. *Bransby's Trustees* (1887) 14 R. 307.

"There is a peculiarity in the case of the Greenock Harbour assignments, which might be considered to touch this point. The report of the special case discloses that in a certain class of the assignments, namely, those issued in the form prescribed by the Act of 1872, there were assigned in security not only 'the rates, duties, and other revenues of the trust,' but also 'the works and property of the trust.' The dispute there raised being between different classes of security-holders, it was contended by those who held assignments in this form that they thereby got an additional security upon which real diligence could be expede. This view was negatived, it being held that the insertion of the words 'works and property of the trust' was really 'not meant to have any practical effect at all.' Thus all were held to be on one level as regards the extent of the security, and those holding assignments in the form now in dispute declared to be in no worse position than those who had an express assignment to the works and property. Accordingly this point is rather favourable than otherwise to the view contended for by Mr Cowan's executors.

"Looking to the substance of the thing, and having regard to the decision in the case of *Breatcliff*, I think the investments may be supported as being truly loans on real or heritable security. They were indeed a postponed class of securities, but, as I have said, no question was raised as to the propriety or judiciousness of the investments, if they are otherwise admissible. It is right I should add that no separate argument was submitted as to the Port-Glasgow Harbour Mortgage, it being assumed that this is in all material respects in the same case as the others."

The *curator bonis* reclaimed, and argued —The Lord Ordinary was wrong and the Greenock Harbour bonds were not legitimate investments. (1) At common law and under the Act of Sederunt, February 13, 1730, the only investments competent as a general rule to a judicial factor or *curator bonis* were Government securities and heritable bonds. *Robertson* v. *Elphinstone*, May 28, 1814, F.C., and *Philip, Petitioner*, November 22, 1827, 6 S. 103, cited to illustrate the position of a *curator bonis*. That proposition was clearly established by the cases of *Haldane*, December 28, 1848, 11 D. 286, and *Dalgleish*, February 13, 1849, 11 D. 1030; see also Fraser, P. & C., 236, 475. In *A B*, June 29, 1854, 16 D. 1004; *Robertson*, 26 S.J. 547, the Court refused to approve of the accounts of a judicial factor who had invested a large portion of the funds belonging to the trust-estate in railway securities. It was quite true that the Court had power to relax the general rule and to authorise investments of another class if it thought expedient. This power had been exercised in the case of *Grainger's Curator*, February 23, 1876, 3 R. 479, where an investment on the security of rates leviable by a public body had been sanctioned; and in that of *Lloyd's Curator*, December 1, 1877, 5 R. 289, where the debentures of a railway company had been approved of. But the securities there were of a much superior type to Greenock Harbour bonds, and had been approved by the Court specifically on their merits. (2) It was contended on the other side that the Trusts Amendment Act 1884 had expressly authorised investments on real or heritable security and in debentures secured on rates and taxes leviable by a municipal corporation. Did the Greenock Harbour bonds fall within either of these heads? (*a*) The Act of 1884 did not in any way extend the meaning of the term "heritable security." The basis of a heritable security was the land itself, and the conveyance of the land and subsequent infeftment were what constituted its peculiar quality — Menzies' Conveyancing, p.

804. It also implied the power of making the security readily available in the event of the debtor's default. In the Greenock Harbour bonds there was no conveyance of the subject itself, nor was any means afforded to the creditor of realising the security. On the contrary, unless the sum in arrear amounted to £5000, he could not apply for the appointment of a judicial factor, and even if he could, no power to sell the undertaking was conferred by the statute on the judicial factor. It was the absence of these two essential features which distinguished the present case from that of *Breatcliff* v. *Bransby's Trustees*, January 11, 1887, 14 R. 307, where, it was also to be observed, the Court was construing not a Scotch Act of Parliament but an English will. Moreover, here the powers of the judicial factor were strictly limited to receiving the revenues of the trust. He had no power of administration or management, whereas in *Haldane* v. *Girvan and Portpatrick Junction Railway Company*, March 18, 1881, 8 R. 669, and July 20, 1881, *ibid.* 1003, it was held that a judicial factor appointed under the Railway Companies Act 1867 had sole and exclusive power to manage the undertaking, — *Gardner* v. *London, Chatham, and Dover Railway*, 1867, L.R., 2 C.A. 201, also referred to. The terms of the assignment here were analogous to those in *Dundee Union Bank* v. *Dundee and Newtyle Railway Company*, January 25, 1844, 6 D. 521. In any event, the question had really been finally determined by the decision of the Court in the special case brought by the *Greenock Harbour Trustees*, January 31, 1888, 15 R. 343. (*b*) If the Greenock Harbour bonds were not a heritable security, no more were they a security upon rates leviable by a municipal corporation. The Harbour Trustees were not a municipal corporation, though the members of the Greenock corporation were of their number, nor were the rates and dues which they were entitled to levy for the use of the harbour the rates contemplated by the Act of 1884, which were plainly rates and taxes leviable by assessment on a community.

Argued for the petitioners, Cowan's Trustees—The Lord Ordinary was right, and Mr Cowan's representatives were entitled to take credit for the sums invested in the Greenock Harbour bonds. (1) *At common law.* — The idea had been expressly repudiated in *Grainger's Curator, ut sup.*, that there was any hard and fast rule limiting a curator's investments to Government stock or heritable securities. The true view of a curator's position was this—he was entitled to invest in anything in which a trustee was entitled to invest, but if he obtained the sanction of the Court, whose servant he was, and to whom he was accountable, he might make investments never permitted to trustees. The cases cited for the *curator bonis* amply showed that the Court was in the habit of granting considerable latitude in investment to curators, and it must be borne in mind that the investment here in question must not be judged by results but by the test—was it an investment which the Court would have sanctioned when it was originally made? (2) *Under the statute.*—It might be quite true from a strict conveyancing point of view that a conveyance of the land itself was necessary to constitute a heritable security, but the words "real or heritable" in the statute must receive a more liberal interpretation. The word "real" had been construed, and that subsequently to the Act of 1884, so as to include railway debentures — *Breatcliff, ut sup.* Here there was an actual conveyance, if not of the harbour, at least of the fruits of the undertaking, so that there was something more than the mere personal obligation of the trustees. Besides, the judicial factor when appointed had a right to enter upon and to take personal possession of the undertaking. (*b*) Even if the harbour bond were not a heritable security, it was secured on the rates of a municipal corporation. The harbour was originally the harbour of a burgh of barony, and so long as it was administered by the municipality there could be no doubt as to the nature of the security. No doubt a harbour trust had been set up, but the rates levied by the trust were corporation rates none the less. There was nothing in the statute to indicate that the rates alluded to must be imposed on everyone alike. Differential rates were quite familiar and depended on the value given for them as well as on the value of property. Water rates were an example, and it would surely not be contended that they were outside the statute.

At advising—

LORD ADAM—[*After narrating the facts and citing the terms of the statute, and of the assignment as above set forth, his Lordship proceeded*]—Such is the investment or security in question taken by the judicial factor. It was maintained that it fell within the class of investments which a judicial factor was entitled to take under section 3 (*b*) of the Trusts (Scotland) Act 1884, which, *inter alia*, authorises investments of trust or curatorial funds on real or heritable securities in Great Britain, and that this was a real security in the sense of the Act, or, if not so, that it was at anyrate a mortgage secured on rates and taxes levied under the authority of an Act of Parliament by a municipal corporation authorised to borrow money on such security, which is also permitted by the said Act.

The Lord Ordinary has arrived at the conclusion, although, as he says, with difficulty, that the competency of the investment by the curator may be sustained on the first of these grounds. I have been unable to arrive at the same conclusion. It will be observed that only one of the investments in question was taken subsequent to the Act of 1884, but if the curator would have been entitled to take such investments after the passing of the Act, it may well be maintained that he was entitled to retain them after the passing of the Act although taken before.

It will be observed that what is assigned

by the mortgage in security of the debt are "All and sundry the rates, dues, and other revenues of the trust." There is no conveyance or assignation of "the undertaking" itself in security of the debt. There are no means provided by the Harbour Acts by which the heritable subjects or real property of the trust can be attached or realised for payment of the creditors. As I have pointed out, the duty of any judicial factor who may be appointed under these Acts is limited to receiving and distributing the rates, dues, and other revenues of the trust. Moreover, the curator as an individual creditor could not put this remedy in force, because his debt is under the requisite amount of £5000. Neither do I know of any process by which at common law the real property of the trust could be attached.

Moreover, it appears to me that when the Trust Act authorised curators to invest in real securities, it meant securities of which the value of the real subjects pledged should be alone or primarily looked to or regarded as sufficient to secure repayment of the proposed loan. But in making a loan of the kind in question, the lender does not look to the value of the real property as being a sufficient security for payment of his debt. What he primarily, if not solely, looks to, and in this case what he could only look to, is the amount of revenue earned by the Harbour Trustees as owners of a harbour—that is, harbour dues and rates, which are by the Harbour Acts appropriated to payment of the mortgages. I cannot think that a loan of this character is a loan on real or heritable security in the sense of the Act.

The Court had to consider this question in the case of the *Greenock Harbour Trustees*, 15 R. 343. The late Lord President there said—"It must be observed that the securities which are granted for money advanced under this Act (1880) are not real securities in any proper sense of the term. There is nothing done by that Act to confer or make a real security." This opinion was concurred in by the rest of the Court. I also concur in it, and think that the loan cannot be supported on the ground that it is a loan on real security.

With reference to the case of *Breatcliff*, 14 R. 307, which seems mainly to have influenced the Lord Ordinary's opinion, that case appears to me to be essentially different from the present. In that case it was held that an English will which empowered the trustees to invest on real security, authorised an investment on a railway mortgage. The ground of the judgment will be found in the opinion of the Lord Ordinary (Lord Kinnear). "The question is," he says, "whether a mortgage of the Girvan and Portpatrick Railway is a real security within the meaning of the power. I think it is, because it gives the mortgagee the security of the whole undertaking—that is, the whole real and moveable property of the company. It is true that it is a security that cannot be made available to the creditor by the ordinary diligence of the law. But he has a different kind of diligence in his right to obtain the appointment of a judicial factor through whose administration the undertaking may be managed or disposed of for the benefit of the company's creditors. The mortgagee has therefore the security of the real property, which is what is meant by real security."

In this case the mortgagee has not the security of the undertaking, that is, the real property of the trust, and a judicial factor would have no power to dispose of it for the benefit of the creditors.

The investment was further supported on the ground that it fell within section 3 (b) (12) of the Trust Amendment Act as being a mortgage secured on rates or taxes levied under the authority of an Act of Parliament by a municipal corporation authorised to borrow money on such security.

The Greenock Harbour Trustees, which is the corporation granting the mortgages in question, consisted at that date of the Magistrates and Council of Greenock, and of nine persons elected by owners of or in ships to a certain extent registered in the port of Greenock, and by certain ratepayers paying rates leviable on vessels or goods. I am clearly of opinion that such a compound body cannot be considered a municipal corporation in the sense of the Act. I think a municipal corporation there means a town council or county council or some similar body. I also doubt whether the rates and duties which the trustees are entitled to levy, and which are payments made in return for services rendered, are of the nature of the rates or taxes referred to in the Act, and which rather appear to me to be rates or taxes for payment of which the municipal corporation is entitled to assess the community.

The only question which remains is, whether the curator, in the exercise of his powers at common law, was entitled to make the investment in question. On this part of the case we were referred to the case of *Grainger's Curator*, 3 R. 479. In that case the Court did no more than sanction the retention of certain investments which had been made by the curator. These investments were secured on rates leviable under the Aberdeen County and Municipal Buildings Act, the Sheriff Court Houses Act, and the Aberdeenshire Road Act, and were reported by the Accountant of Court to be unexceptionable. These investments appear to be different in character from the present. There was no element of speculation in them. The sufficiency of the security depended solely on the power of assessing the community, whereas in this case the sufficiency of the security depended, as the result has shown, on the success or non-success of the Harbour Trustees in carrying on their business as owners of the port and harbour of Greenock.

In the case of *Lloyd's Curator*, 5 R. 289, the Court held that railway debentures are not excluded from the class of investments allowed for factory funds if the judicial factor and the Accountant thought the security a good one of its class. I have already had occasion to point out the difference be-

tween a railway debenture and an investment like the present, and I do not think that there is anything to be found in these cases to entitle the *curator bonis* to make the investments in question—and prior to these cases I do not think there was any law or practice entitling him to do so.

As I have said, no separate argument was addressed to us as regards the Port-Glasgow Harbour Mortgage, and on the whole matter I am of opinion that the Lord Ordinary's interlocutor should be reversed.

LORD M'LAREN concurred.

LORD KINNEAR — I am of the same opinion. I only desire to add, with reference to the case of *Breatcliff* v. *Bransby's Trustees* (14 R. 307), that I think with Lord Adam, that that case decides only that certain railway mortgages were within the class of securities authorised by a particular will. The decision rules so much as is necessary for that purpose and nothing more. Counsel for the respondent referred to observations that were made in that case for the purpose, as I understood the argument, of showing that there is not really any such material difference between the position of a judicial factor on a railway undertaking under the Act of 1867—Railway Companies (Scotland) Act 1867 (30 and 31 Vict. cap. 126), sec. 4)—and the position of a judicial factor appointed under the Acts now in question, as Lord Adam has held, and as I think rightly held, inasmuch as the Court has ascribed to the judicial factor in the case of *Breatcliff* (14 R. 307) powers which he does not really possess, because it was said, and I think quite rightly, that a judicial factor cannot at his own hand dispose of a railway undertaking by selling it as a going concern. Now, I think the phrase on which that argument was based is not very exact, and if it were intended, which does not seem probable, to indicate that a judicial factor could sell a railway undertaking at his own hand, then I should think it unsound. Because it cannot be maintained that the duties which Parliament has imposed and the powers which it has conferred upon the statutory corporations could be transferred in that way by an ordinary contract of purchase and sale so as to enable the seller effectually to make over and deliver the subject of the contract to a purchaser. But then if that were a just criticism it would only shake the authority of *Breatcliff* (14 R. 307), and would certainly afford no reason for carrying that decision further. But I see no reason to doubt that the powers of the judicial factor were quite correctly appreciated in the case of *Breatcliff*. The real distinction which there is between the case of a judicial factor on the undertaking of a railway company under the statute of 1867, and the officer who may be appointed upon the application of the mortgagees in this case, is very clearly brought out in the first case of *Haldane* v. *The Girvan & Portpatrick Railway Company* (8 R. 669), where the Lord President points out that by the appointment of a judicial factor under the statute then in question a new kind of diligence is given to the creditors in place of the ordinary rights of which the Legislature had deprived them to the public benefit. And his Lordship makes it very clear what are the powers of a judicial factor, and that he actually enters into possession of the entire undertaking of the railway for the benefit of the creditors, with full powers of management for their benefit, and therefore his appointment enables the creditors, through him, to enter into possession of the subject of the security. That he may carry out his powers by ultimately disposing of the railway is made clear by the second case of *Haldane* v. *The Girvan & Portpatrick Railway Company* (8 R. 1003), because there the Court dismissed an application by the judicial factor to authorise him to receive offers for the sale of the railway on the ground that it was superfluous, inasmuch as he had that power of necessity by his appointment, and was quite entitled and justified in making arrangements for receiving offers for a sale provisionally. But then his Lordship added, what is very obvious, he could not carry out any contract of sale, and therefore could not make a binding contract of sale without coming to the Court for powers to apply for an Act of Parliament to carry out the contract. But the result of his position is that he is enabled to manage, and in certain circumstances to realise the subject of the security for the benefit of the creditors.

Upon the other points of the case I agree entirely with all that Lord Adam has said.

LORD PRESIDENT concurred.

The Court recalled the interlocutor of the Lord Ordinary, found that the £300 debenture of the Port-Glasgow Harbour Trust and the £700 and £1000 debentures of the Greenock Harbour Trust "are not legitimate investments of curatorial funds, and that the petitioners, the trustees and executors of the said James Cowan, . . . are liable for the loss which has been incurred or may be incurred thereon;" found the said petitioners as such trustees and executors liable in the expenses of the proceedings since 30th August 1895, and remitted, &c.

Counsel for the *Curator Bonis* and Reclaimer—H. Johnston—Dewar. Agents—Cornillon, Craig, & Thomas, S.S.C.

Counsel for the Petitioners and Respondents—Balfour, Q.C.—W. K. Dickson. Agents—Menzies, Black, & Menzies, W.S.