

course—when being assessed for income tax in the year 1908-9—and paid income tax for that year without claiming any return. The question thus raised depends on the meaning of section 66 (2) of the Finance Act 1910, and particularly of the words “estimated in the same manner as,” contained in that sub-section. That section says that “For the purposes of the super tax, the total income of any individual from all sources shall be taken to be the total income of that individual from all sources for the previous year.” Pausing there, the first thing that is apparent is that a new return and a comprehensive return is required, embracing every item of income, whether falling under Schedule A, B, C, D, or E, and whether the tax has been assessed or has been deducted at the source. Is that return to be merely a combination of previous returns made under the different schedules? Clearly not; for no previous return includes income which is taxed at the source. Nor is there anything to indicate that the Special Commissioners are bound by the previous assessments or barred from going behind them.

The sub-section then proceeds to say that the total income from all sources is to be “estimated in the same manner as the total income from all sources is estimated for the purpose of exemptions or abatements under the Income Tax Acts.” It says it is to be estimated, not is to be taken as it has been estimated, and accordingly an estimate in “manner” prescribed is required.

“In manner” prescribed throws the individual making the return back immediately on the Customs and Inland Revenue Act 1890, section 23 (1), which provides that where any person shall sustain a loss in the occupation of land for the purposes of husbandry only, it shall be lawful for him, upon giving notice in writing to the surveyor of taxes for the district within six months after the year of assessment, to apply to the General Commissioners under the Income Tax Acts “for an adjustment of his liability by reference to the loss and to the aggregate amount of his income for that year estimated according to the several rules and directions of the said Acts.” It does not appear to me that the six months’ limitation applicable to adjustment of liability by reference to the loss and to the aggregate amount of income, in regard to the assessment for ordinary income tax, has anything to do with the “manner” of estimating income, or is a condition of the operation which the individual is called on to perform for the benefit of the Special Commissioners dealing with super tax. The manner of estimating total income is clearly that of the “several rules and directions” of the Income Tax Acts.

That super tax and everything connected with it is something quite apart from income tax is, if it were necessary, clearly shown by the four special rules which are appended to the sub-section (2) which I have just examined.

I therefore think that the Special Com-

missioners are bound to consider the appellant’s demand for deduction in respect of his farming losses.

A subsidiary question is raised in the case. But it became clear at the bar that there had been a misapprehension, which renders it impossible to determine that question on the case as stated, and leaves it very probable that on fuller explanation the matter may be adjusted.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD MACKENZIE did not hear the case.

The Court reversed the determination of the Special Commissioners in article 5 of the Case allowed deductions under heads (b) and (c) of article 4 of the Case of such losses as the appellant might instruct, and remitted to the Special Commissioners to determine the amount of the said losses to be allowed under heads (b) and (c).

Counsel for Appellant—Horne, K.C.—Lippe. Agents—Maxwell, Gill, & Pringle, W.S.

Counsel for Respondents—Sol.-Gen. Anderson, K.C.—J. A. T. Robertson. Agent—Sir Philip J. Hamilton Grierson, Solicitor for Inland Revenue.

Friday, July 12.

FIRST DIVISION.

[Lord Hunter, Ordinary.]

BROWER’S EXECUTOR v. RAMSAY’S TRUSTEES.

Trust—Administration—Duty of Trustees—Security Writs Kept in Foreign Country—Effect of Legal Assignment of Fee on Duty of Trustees.

A testatrix directed her trustees to pay the whole free income of her estate to her husband during his life and on his death to pay over her whole estate to her brother, a domiciled American. She gave special power to her trustees to retain the securities in which her estate was invested at the time of her death, or to alter and vary them, and to invest in similar securities, and with regard to her American securities she expressed her desire that her trustees should be guided by the advice of a certain American trust company, and she further gave her trustees power to invest in any American security approved of by the said trust company. During the subsistence of the liferent an American creditor of the fiar obtained in absence a decree for a debt, and in the forthcoming following thereon, after the fee had been unsuccessfully exposed for sale, obtained a decree adjudging it.

Held (1) that the trustees might in the ordinary course of administering the trust keep the American securities

in America, and (2) that the legal assignation of the fee did not affect the matter, for that it was not the duty of the trustees in order to fortify the position of the legal assignee to do anything which they would not have done in the ordinary course of administration.

Mrs Jenny V. Brower, *pursuer*, raised an action against Harry Cheyne, W.S., and another, the Hon. Mrs Ramsay's trustees, *defenders*, in which she, *inter alia*, sought declarator that the defenders were bound on the expiry of the liferent given by the Hon. Mrs Ramsay to her husband the Hon. Charles Maule Ramsay, to make payment to her or her assignees of the whole trust estate, and sought an accounting by the trustees of their intrusions in order that the amount might be ascertained.

Mrs Brower at a later stage also presented a note of suspension and interdict against the trustees to have them interdicted from removing from Scotland certain securities constituting the trust estate.

While the cases were pending before the Lord Ordinary Mrs Brower died on 14th February 1912, and on 13th March 1912 A. Vedder Brower, her sole accepting executor, was sisted as pursuer in her place.

The *circumstances* in which the actions were brought appear from the opinion of the Lord Ordinary (HUNTER), who on 16th March 1912 pronounced in the action of declarator and accounting the following interlocutor:—“... (1) Repels the objections for the pursuer to the accounts lodged by the defenders contained in the closed record on these and answers thereto, and also in the further objections; and (2) in respect the pursuer does not now insist upon any of the conclusions of the summons other than accounting, assoilzies the defenders from the whole conclusions of the summons, and decerns. . . .”

On the same date in the action of suspension and interdict the Lord Ordinary refused the prayer of the note and decerned.

The opinion appended to the interlocutor in the action of accounting was as follows:

Opinion.—“I have to deal with questions arising in two actions raised by a Mrs Brower, an American lady, against the trustees of the late Mrs Ramsay, who died on 18th June 1904. One of the trustees so appointed and acting is Mr Ramsay, the husband of the testatrix; the other is Mr Cheyne, a Writer to the Signet in Edinburgh. According to the averments of the trustees in their third statement of facts in the action of suspension and interdict against them, to which I shall subsequently refer, ‘Mrs Ramsay, who was an American, married the respondent Mr Ramsay on 28th May 1885. Mr and Mrs Ramsay resided for several years prior to Mrs Ramsay’s death at No. 48 Grosvenor Street, London, which belonged to Mrs Ramsay, and which was the only residence belonging to either of them. As Mrs Ramsay’s only residence has been in London, and as she owned the house in Grosvenor Street on a leasehold title,

while her estate was mainly invested in American securities, probate was taken out in England by her executor on 5th October 1904, and the principal trust-disposition and settlement was, in terms of the Act 20 and 21 Vict. cap. 77, registered in the Principal Probate Registry of the High Court of Justice, where it is retained in accordance with the provisions of the statute. The trust has been and still is being administered in London on the instructions of the respondent. Messrs Upperton & Company, solicitors, 14 Lincoln’s Inn Fields, London, W.C., who were the truster’s solicitors, are now the solicitors in the trust. Messrs Mackenzie & Kermack, W.S., Edinburgh, merely act as law agents in Scotland on instructions received from, and information supplied by, Messrs Upperton & Company, and are not, as stated by the complainer, the law agents in the trust.’ No plea, however, in either action is taken to the jurisdiction of the Scots Courts. For the purposes of the opinion which I am about to express I assume, though I am not prepared in the absence of further argument to find, that the trust is a Scots trust.

“In terms of her settlement Mrs Ramsay bequeathed the whole free income of her estate to her husband, and directed that on the death of her husband the whole of her estate should be paid over to her brother Mr Garrison, who is an American.

“Mrs Brower, who had certain claims against Mr Garrison, arrested his reversionary interest in Mrs Ramsay’s estate in the hands of the trustees so as to found jurisdiction against him in the Scots Courts, and proceeded with an action against him. Her action was undefended, and she obtained decree against Mr Garrison on 19th August 1908 for sums amounting in all to £11,228, 12s. 1d. In her action Mrs Brower on 20th July 1908 had arrested Mr Garrison’s interest in Mrs Ramsay’s trust on the dependence of the action and in security of the sums sued for. Having obtained her decree, Mrs Brower then raised an action of forthcoming against Mr Garrison as principal debtor and Mrs Ramsay’s trustees as arrestees. This action was also undefended. In the course of proceedings therein the Court on 31st May 1910 remitted to an actuary to value the reversion, and, a report having been obtained that the present value of the reversion was £9664 or thereby, the Court appointed the reversion to be exposed to public roup at the upset price of £10,000. This was done; but no offer of the upset price was made, and thereafter, by decree dated 8th July 1910, the reversionary right of Mr Garrison was in the action of forthcoming adjudged to belong to Mrs Brower.

“Possessed of the decrees to which I have referred, Mrs Brower at once made application to the trustees to submit their accounts to her as being in right of the reversion of the trust estate. Correspondence between the agents passed, and certain accounts were submitted by the agents of the trustees to the agents of Mrs

Brower. I may add that I can find no indication of the trustees wrongfully withholding from her any information to which she was entitled. A question appears to have arisen between the parties as to the incidence of the cost of the information supplied. The first of the two actions with which I have to deal was accordingly raised by Mrs Brower.

"In that action the pursuer seeks to have it declared that Mrs Ramsay's trustees, who are the defenders, are bound, on the expiry of Mr Ramsay's liferent, to make payment to her or her assignees of the whole trust estate, and asks for an accounting by the trustees of their whole intromissions with the trust estate in order that the amount of the residue at the date of signeting the summons, or as at such other date as the Court may fix, may be ascertained. There are also other conclusions as to a continuous annual accounting, exhibition of the principal will, and sequestration of the estate, to which I need not refer in detail.

"On 2nd March 1911 Lord Guthrie appointed the defenders to lodge in process by 9th March 1911 accounts of their intromissions with the capital of the trust estate. Objections to the accounts and answers thereto were duly lodged by the parties, and a record thereon was made up and closed on 18th October 1911. Thereafter the cause was appointed to be put to the Procedure Roll, and a discussion took place before Lord Guthrie, who on 7th December 1911 pronounced an interlocutor appointing the defenders, within one month, to lodge in process the security writs representing the capital of the trust estate taken credit for in the account. In making this order his Lordship explains in a note that he had formed no opinion as to the reasonableness of the pursuer's demand for an accounting.

"The security writs, which for the most part were retained in New York, were, in obedience to Lord Guthrie's order, brought to this country, and the pursuer has had a full opportunity of criticising the defenders' conduct in reference to their holding of them. As a result of the examination of these writs by her agents in this country the pursuer prepared further objections to the defenders' accounts, which on 13th March 1912 I allowed to be received. The discussion in the Procedure Roll took place before me on the 14th March, but, as I have formed the opinion that all the pursuer's objections fall to be repelled, I have not found it necessary to pronounce an order upon the defenders to answer these last objections.

"In a letter written by the pursuer's agents to the defenders' agents on 1st August 1911, it is stated that the pursuer objects to the trustees investing on 'the security of real estate abroad, as to do so might cause loss or at least inconvenience to her in the future, or in such loans as might make it possible for any foreign court to have jurisdiction in connection with any question which might be raised regarding same.' In the last objection

stated by her to the defenders' accounts she sums up her contention by maintaining that 'she is entitled to call upon the defenders to take steps to have the trust estate invested in such form and in such securities deposited in such custody in this country as will not expose the rights which she holds under the decrees of the Court of Session in her favour to defeat by Mr Garrison or his creditors.'

"The pursuer's counsel asked me to allow them a proof of two averments of American law made by them in their further objections. The first of these averments is to the effect that 'according to American law, where notice of a trust in the person of the mortgagee is given to the mortgagor on the face of the mortgage, the mortgagor is bound to see to the application of the sum contained in the mortgage in terms of the trust, and is entitled to make payment direct to the beneficiary entitled to the same in terms of the trust disclosed.' She says that, in the case of certain of the American investments on mortgage, the mortgagor has notice of the trust in Mr Garrison's favour, but not of the decree in her favour. The second averment is—'The pursuer believes and avers that according to American law the custodiers of security writs, if notified of a trust affecting same, would be entitled and bound to deliver the same to the beneficiary entitled absolutely thereto. On the death of the defender Mr Ramsay, the pursuer believes and avers that Mr Garrison would accordingly be entitled to demand delivery of the security writs if deposited with the said trust companies on receipt in the terms of those produced, and thus to defeat the rights of the pursuer.' The trust companies referred to have until recently held in their hands securities of the trust under receipts granted to the trustees, Nos. 45 and 46 of process.

[No. 45 of process was headed "Memorandum of Securities held by the Metropolitan Trust Company of the City of New York for safe keeping for account of the estate of Martha E. Ramsay." A list of the securities followed, and was certified by the said company as a correct list of the securities held in the above account. No. 46 of process was headed "Memorandum of Securities held by the North-Western Company" and proceeded—"North-Western Company hereby certifies that it holds as agent for Charles Maule Ramsay and Harry Cheyne as trustees under the last will and testament of Martha Estelle Ramsay the following papers:— . . ."]

"The pursuer supports her objection to the account, and in particular her application for a proof upon the points referred to, upon the ground that the vouchers do not properly instruct the capital of the estate unless they show that the securities are taken in such form as to protect her rights under the decrees which she has obtained.

"It has to be kept in view that the pursuer does not maintain that the investments are not such as the defenders are entitled to hold in terms of the trust which

they are administering. She could hardly successfully do so, as Mrs Ramsay in her will provided—'And I give special power to my said trustees and executors to retain the whole or any part of my means and estate in the securities in which the same may be at the time of my death, or to alter and vary these securities and to invest any part of my means and estate in securities of a similar kind to those held by me at the time of my death, hereby declaring that as regards any American securities which I may hold at the time of my death it is my wish and desire that my trustees and executors should be guided by the advice of the Metropolitan Trust Company of the City of New York, and that my trustees and executors shall have full power to invest in any American security approved by the said Metropolitan Trust Company.'

"A creditor who has attached by decree of furthcoming the interest of a beneficiary is, or may be, entitled to know that the trustees have made proper investments within their power under the trust, and to see that payment or conveyance is not made to the beneficiary in defiance of his decree. I know of no authority, however, in legal decision or principle to justify the proposition that he is entitled to impose new and additional positive obligations upon the trustees, necessitating an inquiry into foreign laws as to a possible competition between that creditor and the beneficiary, or his other creditors, as to foreign investments lawfully held by them, and necessitating, it may even be, an entire rearrangement of the trust securities.

"I am not, therefore, prepared to allow the pursuer a proof of American law on the points referred to, and as no other objection except the one I have dealt with was argued, I repel the whole of the pursuer's objections to the defender's accounts, both those contained in the record on the objections and answers and those contained in the further objections.

"As I have already indicated, there are other than accounting conclusions in the summons. Lord Guthrie in the opinion expressed by him when ordering accounts reserved consideration thereof, but as I invited argument thereon, and as I understand the pursuer does not desire to insist upon any of them if I am against her upon the question in the accounting with which I have dealt, I am prepared to assoilzie the defenders from the whole conclusions of the first action raised against them.

"The second action arose in this way: To obtemper Lord Guthrie's order upon them to exhibit to the pursuer in this country the security writs of the trust, Mrs Ramsay's trustees got these writs transmitted from the Metropolitan Trust Company of New York and the North-Western Trust Company of St Paul, Minnesota. While the deeds were still in this country Mrs Brower presented a note of suspension and interdict in the Bill Chamber against the trustees to have them and all others acting under them interdicted, prohibited, and discharged 'from with-

drawing and removing furth of Scotland any of the documents of title of the securities which constitute the trust estate in their hands or under their administration except for such temporary purposes as may be necessary in the ordinary and proper course of administration of the said trust estate; and further, and in particular, from transmitting to the United States of America, or elsewhere furth of the jurisdiction of the Court of Session, for the purpose of deposit and retention there, the documents of title forming Nos. 57 to 150 inclusive of the process in the action at the instance of the complainer against the respondents as trustees foresaid, the summons in which was signed on 29th November 1910, and which is presently in dependence before Lord Hunter (Ordinary).'

"From her averments it would appear that the complainer is apprehensive lest, if the securities are retained abroad the American Courts might claim jurisdiction over them on the death of the life-renter. Although an American, she has obtained against another American a decree in absence in Scotland. She does not, however, desire that either this decree or the decree of furthcoming which followed thereon should be submitted to challenge in the courts of her own country.

"The respondents explain in their answers that the trust estate was at Mrs Ramsay's death, and still is, invested almost entirely in American securities. They further explain that in accordance with express directions of the truster they have acted in all questions connected with the trust investments on the advice and under the guidance of the Metropolitan Trust Company of the City of New York. In article 6 of their statement of facts they say—'In consequence of the nature of the trust and the character of the investments, the respondents have from time to time found it necessary and expedient for the proper administration of the trust to deposit for safe custody most of the security writs with either the said Metropolitan Trust Company or with the North-Western Trust Company of St Paul, Minnesota. The security writs were held by both companies to the order of the respondents, and could only be uplifted by the defenders or the survivor of them.'

"In support of the complainer's application I was referred to two cases, *Maclachlan v. Meiklan*, 1857, 19 D. 960, and the well-known case of *Orr Ewing*, 11 R. 600, *rev.* 13 R. (H.L.) 1. In the former of these cases the trustee in whose favour a bond and disposition in security had been granted was found 'entitled to interdict against the deeds constituting the provision and his trust and security, and the title-deeds of the estate, being removed beyond the jurisdiction of the Court of Session.' That case, however, affords no warrant for a beneficiary intervening in a trust and asking that trustees should be restrained by the Court from exercising their discretion as to the place for depositing the security writs. The question did arise in the *Orr Ewing* case, where, in an action by bene-

ficiaries against trustees, there were conclusions, *inter alia*, for declarator that the trustees were not entitled to deposit the title-deeds, writs, or evidents of the estate in the custody of any court furth of Scotland, and for interdict against their removing the title-deeds beyond the jurisdiction of the Scottish Courts, or alternatively, to the conclusion for interdict for sequestration of the trust estate and appointment of a judicial factor. In the Inner House decree was pronounced in terms of the declaratory conclusions of the summons, and a judicial factor was appointed. The House of Lords although adhering to the judgment of the First Division so far as the appointment of a judicial factor was concerned, reversed the judgment so far as finding in terms of the declaratory conclusions of the summons. At the foot of p. 4 of 13 R. (H.L.) the Lord Chancellor said—“The first declaration seems to assume that there is something in the terms of the trust created by John Orr Ewing's will prohibitory of, or repugnant to, any administration of the trust estate elsewhere than in Scotland; and the Lord President has treated the pursuers' demand as, for that reason, *ex debito justitiæ*, saying, “If the defenders, as trustees and executors had voluntarily proposed to remove the estate out of Scotland for the purpose of carrying on the administration elsewhere, it will hardly be disputed that the pursuers would have been entitled by interdict to prevent this being done.” For that view I am unable to discover any foundation in the terms of the trust-disposition and settlement. It is true that the trust is created by a Scottish deed and is technically a Scottish trust. But there are no words requiring the administration of the funds belonging to the residuary estate, when realised by the trustees, to be in Scotland only. On the contrary, the trustees are authorised to invest the whole or any part of those funds in real securities (not restrained to Scotland), or in personal securities of certain specified kinds, in any part of Great Britain or Ireland, or of the British Colonies or Dominions. If in the honest exercise of those powers they had invested those funds in English securities, they would have been acting in accordance with their trust, and I do not understand on what principle they could have been interdicted from so doing. The fact that they have not done so cannot alter the terms of the trust or justify a declaration not warranted thereby.” Lord Blackburn at the foot of page 20 of the same report says—“If a majority of the trustees at any time came to reside in England, and *bona fide* thought it best for the interest of the estate that the whole funds should be vested in English securities and managed in England, there is nothing expressed in the deed to prevent their doing so. I cannot, notwithstanding what is said by the Lord President, think that there would have been any ground for an interdict to prevent them from doing so.”

“A case may be made by a beneficiary of so exceptional a character as to justify

the Court in interfering with trustees in the exercise of the discretion which I think they possess of selecting such place as they think most suitable for the custody of the security writs of the trust. But I am of opinion that no relevant averments have been made by the complainer to support the present application. I shall therefore refuse interdict and dismiss the note.”

The pursuer reclaimed, and argued—The trust was a Scottish trust, and it was the duty of the trustees to keep the security writs within the jurisdiction of the Scottish Courts. It was their duty to protect the interest of the beneficiary, who was now the pursuer. The duties of the trustees might vary according to who was the beneficiary, and they might have different duties now that the pursuer was beneficiary than they had when Garrison was. As matters now stood, they averred that Garrison on the death of the liferenter could get delivery of the security writs.

Argued for the defenders—The averments of American law were not sufficiently precise to be admitted to probation. The term “American” law was in itself vague. In any case, however, no good reason had been put forward why the trustees, especially in view of the particular directions of this trust deed, should not keep the trust deeds in America so far as was necessary for purposes of management. The duties of the trustees in administering the trust were not altered by the fact that the pursuer stood now in the shoes of the beneficiary. Reference was made to *Orr Ewing's Trustees v. Orr Ewing*, July 24, 1885, 13 R. (H.L.) 1, 22 S.L.R. 911.

LORD PRESIDENT—The deceased Mrs Charles Ramsay left a will by which she gave her whole property to trustees consisting of her husband, Hon. Charles Ramsay, and Mr Cheyne, a domiciled Scotsman. The trustees were to hold her property in order to give the liferent of the property to her husband if he survived her, and upon the expiration of that liferent the fee was to go to her brother, Mr Garrison, an American subject. She gave, in her settlement, particular directions that the trustees might continue all her American investments. There was an investment clause which gave a power to invest the trust funds in American investments—I mean a clause with power to invest in other than what are called trust investments in this country; and, in particular, there was a special direction that she hoped her trustees in the management of her estate would be guided by the advice of a certain financial company in New York. Mrs Ramsay died and the trustees entered into possession, and have since administered the fund up to the present time, and—Mr Ramsay still being alive—have paid the proceeds of the funds year by year to Mr Ramsay.

Now it seems that Mr Garrison, the fiar, had incurred debts in America, and Mrs Brower, one of his American creditors, came over to this country, founded jurisdiction against him by an arrestment in

the hands of the trustees *ad fundandam jurisdictionem*, and obtained in absence a decree for the debt due to her. Having obtained that decree, she then raised an action of furthcoming against the trustees. That action also was not defended, and in that action, after unsuccessfully exposing for sale the fee—the enjoyment of which, of course, cannot be had until after the death of Mr Ramsay, which may not occur for many years yet—she obtained a decree adjudging the fee to belong to her.

In following out that decree she raised an action of count and reckoning against the trustees. She could not raise one of payment, because there is no present debt due to her; but she maintained, and maintained successfully, before the Court that she was entitled to see the accounts of the trustees and the security writs in order to satisfy herself that the trustees were not paying away the trust estate. The trustees acceded to that. They lodged their accounts and replied to such objections as were made to them; and they also, upon a special crave, got up all the security writs and produced them in process—I say got up, because as a matter of fact the trustees, for their own convenience, kept the security writs to a great extent in America, the investments being largely American.

The question that has now arisen, and the only question that was argued before your Lordships upon this reclaiming note, is this—the pursuer in the action, the holder of this decree of furthcoming, who is now Mrs Brower's executor—she having died while the action was pending before the Lord Ordinary—first of all objects to the security writs going back to America. His objection is founded really upon two grounds. He objects to their being in America at all, and he makes averments to this effect. He says that “if the security writs are left in America I offer to prove—if I am allowed a proof—that by American law Mr Garrison, the fiar, on the death of Mr Ramsay, the liferenter, will be himself entitled without help from the trustees, and indeed in spite of them, to demand and obtain delivery of the security writs from the trust companies with whom they are deposited, if they have been notified of the trust; and in any case, that the American Courts will not respect the decree that has been obtained in the Scottish Courts as excluding all other and competing claims, but will allow any other creditors of Mr Garrison, of whom I believe there are plenty, to come in; and accordingly the advantageous position that I have at present secured will be defeated; and as this is a Scottish trust, and I am in possession of a decree obtained in a Scottish Court, that is an order that I am entitled to obtain from the Court.”

The Lord Ordinary has not given effect to that. I am of opinion that the Lord Ordinary's judgment is right. In the first place, I think that, quite apart from the general law laid down in *Orr Ewing's* case, 11 R. 600, *rev.* 13 R. (H.L.) 1, it would be impossible to say of this trust, looking to

the particular injunction that I have already mentioned, that it was in any sense a breach of trust to keep the security writs in America. On the contrary, I think the testatrix obviously contemplated that the security writs might be kept there.

I next come to the more formidable objection as to the alleged possibility of Mr Garrison obtaining delivery of the security writs, and as to the effect which the fact of the writs being in America may have upon the action of future creditors. The solution of that question lies in this—we are only here and our jurisdiction can only be invoked in this count and reckoning to prevent anything of the nature of breach of trust. There is no question of asking for payment, because the trustees are not due any money; they are paying that regularly to the liferenter. It is only if there is a breach of trust that they can be restrained. Now I cannot see that they are guilty of breach of trust because through an action of theirs which is otherwise legal, there is danger, not truly to interests of the beneficiary, but to the particular way in which Mrs Brower obtained her assignment of the right of a beneficiary. She only came here, of course, as the assignee of the beneficiary. She was not here a free assignee but a forcible assignee, if I may coin a phrase. She forced herself, through process, into Mr Garrison's shoes; but the objection which she stated, and which her executor now insists in, does not disclose any danger to the right which Mr Garrison would have claimed if he had been left in, but is an objection which has to do with the way in which she forced herself into Mr Garrison's shoes.

Now of course I quite agree that it is not in the mouth of our Court to say that the way in which she forced herself in was wrongful, for it was done under the processes of this Court; but, none the less, it does not seem to me that it is the duty of the trustees, in order to fortify the position to which this forcible assignee has attained, to do something which they would not have done in the ordinary course of administration of the trust, for this is not a matter of protecting the trust estate against the depredations of what I may call outsiders.

Accordingly upon the whole matter I am of opinion that the Lord Ordinary's judgment is right and that the reclaiming note should be refused.

LORD JOHNSTON—I agree with your Lordship that the judgment reclaimed against should be affirmed, and for the reasons so lucidly expressed by the Lord Ordinary who pronounced it.

Mrs Brower, who is an American, by the use of a method of constituting jurisdiction intended to enable a native of this country to obtain justice against a foreigner without the necessity of following him to the Courts of his own country, obtained a decree in absence in this Court against another American. Even when used for the purpose for which it was introduced, this mode of founding jurisdiction is liable

to result in injustice. But its use by one foreigner against another foreigner is not unlikely to be an abuse which does not warrant any peculiar consideration being accorded to the user. By following out the process so commenced, and availing herself of the forms of our procedure, Mrs Brower, still in absence, has succeeded in vesting herself with an ostensible title to her alleged American debtor's interest in this trust estate, and that trust estate by no means clearly a Scots one. Until she has a contradictor this Court must recognise the title she has so acquired. But it is a title to a reversion. She has no present exigible interest, as the trust estate is held for another in liferent. Under the procedure she has followed, Mrs Brower assumes the place of the fiar, and is entitled to require that the trust be administered precisely as he might have required, that is, as the trustee directed but no more. The trustees owe their powers to the truster, and their duty is to carry out the trust as imposed on them by him. But Mrs Brower takes higher ground. She maintains that they have new and different duties imposed upon them by her having acquired the rights of the fiar, and demands that they shall so conduct the trust as to protect, not the interest of the fiar or her interest as in his right, but her title to that interest. Being evidently apprehensive that her title is not beyond challenge, she demands that the trustees shall take steps not required by their duty to the truster or to the fiar, which may obviate certain risks to her title. With that the trustees have no concern, and they are not so to be drawn away from the administration of their trust according to its terms.

I would add that I think that Mrs Brower has received from the trustees and from the Court an amount of consideration beyond what she was entitled to. The form of her action is virtually an attempt to throw this estate into Chancery, quite unprecedented in our practice, and I desire to reserve my opinion as to the competency of her proceeding and as to whether she was entitled even to the rope she has had. She has, in my opinion, received more than courtesy from the trustees, and more than consideration from the Lord Ordinary who had the earlier conduct of the cause.

LORD SKERRINGTON—I agree with your Lordship in the chair.

LORD KINNEAR and LORD MACKENZIE were sitting in the Extra Division.

The Court in both actions adhered to the interlocutor of Lord Hunter, dated 16th March 1912, and refused the reclaiming note.

Counsel for the Pursuer and Complainer (Reclaimer)—Macmillan, K.C.—Lord Kinross. Agents—Guild & Shepherd, W.S.

Counsel for the Defenders (Respondents)—Macphail, K.C.—Stewart. Agents—Mackenzie & Kermack, W.S.

Friday, July 12.

FIRST DIVISION.

[Lord Cullen, Ordinary.]

STIRLING COUNTY COUNCIL v.
FALKIRK MAGISTRATES.

Process—Title to Sue—Burgh—Rates and Assessments—Ultravires—Action by Ratepayer Challenging Legality of Assessment—Popularis actio—Expenses of Unsuccessful Provisional Order.

The magistrates of a burgh which had unsuccessfully promoted a Provisional Order for, *inter alia*, the extension of the burgh boundaries, resolved to defray the expenses connected therewith by annual instalments out of the burgh rates. Certain of the ratepayers (who had paid their assessments for the year in question) thereupon raised an action against the magistrates, in which they craved the Court (1) to find and declare that the defenders were not entitled to levy or exact any rates from "the pursuers or other ratepayers in the burgh" to be applied, directly or indirectly, towards payment of these expenses; and (2) to interdict the defenders from doing so. The Lord Ordinary having sustained the defenders' plea of no title to sue, the pursuers reclaimed, and at the hearing in the Inner House restricted the action to the protection of their own patrimonial interests by deleting the words "or other ratepayers in the burgh."

Held that the pursuers had a good title to insist in their demand.

Ewing v. The Glasgow Commissioners of Police, January 19, 1837, 15 S. 389, *aff.* August 16, 1839, M'L. & Rob. App. 847, *distinguished*.

Process—Declarator—Competency—Action by Ratepayers Challenging Legality of Burgh Assessments—Promotion Expenses.

Held that ratepayers of a burgh who challenged the legality of an assessment for promotion expenses were entitled to raise a declarator to try the question, and that they were not bound to proceed by way of a suspension of the alleged illegal assessment.

Police—Rates and Assessments—Ultravires—Expenses of Unsuccessful Provisional Order—Right to Defray Expenses out of Burgh General Assessments.

Held that the magistrates of a burgh who had unsuccessfully promoted a Provisional Order for the extension of the burgh boundaries and for other purposes were not entitled, either under the burgh statutes or at common law, to defray the expenses connected therewith out of the burgh general assessments.

On 14th January 1912 the County Council of Stirling and others, owners and ratepayers within the burgh of Falkirk, *pur-*