

session of the deposit falls to be ascribed to the Ramsay trust, to which the money belonged as part of the Ramsays' estates, from which it had never been paid away to the creditor to whom it had been allocated as dividend. On this footing the liability of the defender is the same as would have been the liability of David Thomson had he been still alive, or as would have been the liability of any person representing the Ramsay trust after David Thomson's death, and so having right to the deposit as creditor of the bank; and such liability being a liability to make forthcoming trust estate, set apart as such and extant in the hands of the trust holder, to the true beneficiary, would not have been extinguished by the negative prescription.

I accordingly concur in the order which your Lordships propose.

LORD MACKENZIE—The Lord Ordinary has sustained the defender's plea of prescription upon an argument in which the pursuer maintained that "he has the same right to demand payment to-day from the defender as he would have had against the bank when the money was handed over to the defender." As the argument was developed in the Inner House it became apparent that the pursuer's true position is that his claim as now representing the beneficiary in the deposit-receipt in the sequestrated estate of Bertram, Gardner, & Company is not against the bank but against the successor of David Thomson. Now David Thomson held the fund in a fiduciary capacity and prescription could not be pleaded by him, the money being extant and available. The King's and Lord Treasurer's Remembrancer succeeded to David Thomson under the order of the Court. One trustee has been succeeded by another. There is in this view no room for the plea of prescription. The order of Court was made under the Consignation Act of 1895. None of the categories of that Act fits the fund here in question. The defender's argument was that the person having possession of the money within the meaning of section 16 of the Act was the bank. It is sufficient to say that the bank were the debtors, and that the only person *in titulo* to grant them a discharge was David Thomson's successor. The claim in this action is against David Thomson's statutory successor, the King's and Lord Treasurer's Remembrancer. The opening words of section 16 of the Act are directly applicable. The nature of the claim is the same as it would have been against a judicial factor appointed to administer the contents of the deposit-receipt. The King's and Lord Treasurer's Remembrancer is bound to account just as his predecessor would have been. The fallacy in the argument the pursuer presented to the Lord Ordinary is in supposing that the King's and Lord Treasurer's Remembrancer is identified with the bank. For these reasons I am of opinion that the plea of prescription should be repelled, and that the case should be remitted to the Lord Ordinary in order that the defender may lodge an account.

The LORD PRESIDENT (CLYDE) did not hear the case and delivered no opinion.

The Court recalled the interlocutor of the Lord Ordinary, repelled the pleas-in-law for the defender, and appointed the defender to lodge an account.

Counsel for the Pursuer—Macphail, K.C.—Ingram. Agents—P. Adair & Company, S.S.C.

Counsel for the Defender—Lord Advocate (Morison, K.C.)—A. R. Brown. Agent—Thomas Carmichael, S.S.C.

Thursday, June 10.

FIRST DIVISION.

NORTH OF SCOTLAND AND ORKNEY AND SHETLAND STEAM NAVIGATION COMPANY, LIMITED—PETITIONERS.

(*Vide supra*, p. 117.)

Company—Alteration of Constitution—Memorandum of Association—Objects—Form of Objects Clause—Extension of Objects—Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) sec. 9.

In the case of a shipping company substituting for copartnership a memorandum and articles, the Court confirmed a memorandum of association in which the objects-clause (1), as to form, went beyond a strict statement and definition of the objects and included a variety of powers designed to secure the objects, and (2) contained provisions enabling the company, which was formerly for carriage by land and sea, (a) to carry by air, and to perform functions and exercise powers subsidiary thereto; (b) to acquire and take over the business, property, goodwill, and liabilities of any other company carrying on a business of a similar nature, or possessed of property suitable for the purposes of the company, and to arrange to share profits or co-operate with such a company; (c) to lend money to customers; (d) to obtain Provisional Orders, or Acts of Parliament, or Orders of the Board of Trade to enable the company to carry its objects into effect, or for effecting any modification of its constitution; (e) to dispose of generally, including to sell, any part of the property and rights of the company; and (f) to promote freedom of contract, and to resist, insure against, counteract, and discourage interference therewith, and to subscribe to any association or fund for any such purposes—and refused to confirm an interpretation clause to the effect that each paragraph in the objects clause should not be limited or restricted by inference drawn from the terms of any other paragraph or from the name of the company. The petitioners in the course of the proceedings departed from the following in the proposed objects-clause—Provisions enabling the company (a) to operate as marine insurers apart from insurance

incidental to its own business as carrier; (b) to amalgamate with any company carrying on a similar business or possessed of property suitable for the purposes of the company; (c) to lend money, without the restriction limiting it to customers; (d) to sell, transfer, or dispose of the whole business, property, or rights; (e) to obtain Provisional Orders, Act of Parliament, or Orders of the Board of Trade "for any other purpose which may seem expedient."

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts—Section 9—" (1) Subject to the provisions of this section a company may by special resolution alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—(a) To carry on its business more economically or more efficiently; or (b) to attain its main purpose by new or improved means; or (c) to enlarge or change the local area of its operations; or (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or (e) to restrict or abandon any of the objects specified in the memorandum."

The North of Scotland and Orkney and Shetland Steam Navigation Company, Limited, *petitioners*, presented a petition for confirmation of alteration of constitution and extension of objects. At an earlier stage of the case (see *supra*, p. 117) the Court had continued the petition to have matters of procedure therein put right.

The *objects* of the *petitioners* as set forth in the *proposed memorandum* of association were—" (a) To establish and maintain lines of steam or other ships between the ports of Leith, Aberdeen, Wick, Kirkwall, Lerwick, and any other ports, or between any other ports in any part of the world, and also airships, aeroplanes, seaplanes, or other aircraft between the foresaid towns, or places near the said towns, or between any other towns or places in any part of the world which may seem to the directors expedient, and generally to transport passengers, mails, troops, munitions of war, live stock, meat, corn, and other produce, and all treasure and merchandise of all kinds, and to purchase, sell, build, or otherwise acquire, charter, hire, equip, sail, repair, let to hire ships and vessels, airships, aeroplanes, seaplanes, or other aircraft, locomotives, engines, waggons, and cars, and to employ the same in the conveyance of passengers and goods and otherwise in the business of the company. (b) To carry on all or any of the following businesses—that is to say, shipowners and shippers, tourist agents and contractors, general carriers by land, air, and water, wharfingers, lightermen, railway and forwarding agents, warehousemen, hotelkeepers, purveyors, refreshment caterers and contractors in all their respective branches, licensed or otherwise, on board the company's ships or vessels, airships, aeroplanes, seaplanes, or other aircraft, or on land, and any other businesses which may seem to the company capable of being conveniently carried on in connection

with the above, or calculated directly or indirectly to enhance the value of, or render profitable, any of the company's property or rights. (c) To insure with any other company or persons against losses, damage, risks and liabilities of all kinds, which may affect this company or any of its customers, shippers or others, in relation to goods conveyed or warehoused or intended to be conveyed or warehoused by this company [and also to carry on the business of marine insurance and marine accidental insurance in all its respective branches, and to effect reinsurance and counter-insurance, and also to accept whole or any part of such risks and liabilities of this company as underwriters] provided that nothing herein contained shall empower the company to carry on the business of assurance or to grant annuities within the meaning of the Assurance Companies Act 1909, or to re-insure or counter-insure any risks under any class of assurance business to which that Act applies. (d) To [amalgamate with any company carrying on any business which this company is authorised to carry on or possessed of property suitable for the purposes of this company, or to] acquire, *carry on* and undertake the whole or any part of the goodwill, business, property and assets, and undertake the liabilities of any [such] company, *carrying on any business which this company is authorised to carry on or possessed of property suitable for the purposes of this company*, and to pay therefor, or for any other purchase made by the company in cash or in shares, stock, debentures or debenture stock of the company, or partly in one or partly in another of such modes, or to enter into any arrangement for sharing profits or co-operation with any such company. (e) To take or otherwise acquire and hold shares in any other company having objects altogether or in part similar to those of this company, or carrying on any business capable of being conducted so as directly or indirectly to benefit this company, or to promote any company or companies in the United Kingdom or elsewhere for the purpose of acquiring all or any of the property, rights, and liabilities of this company, or for any other purpose which may seem directly or indirectly calculated to benefit this company, and to place or guarantee the placing of, underwrite, subscribe for, or otherwise acquire all or any part of the shares or securities of any such company as aforesaid. (f) To enter into any arrangements with any governments or authorities, supreme, municipal, local or otherwise, that may seem conducive to the company's objects, or any of them, and to obtain from any such government or authority any rights, privileges, and concessions which the company may think it desirable to obtain, and to carry out, exercise, and comply with any such arrangements, rights, privileges, and concessions. (g) To remunerate the employees of the company in proportion to or out of the returns or profits of the company; to establish and support or aid in the establishment and support of associations, institutions, funds, trusts,

and conveniences calculated to benefit employees or ex-employees of the company or the dependants or connections of such persons, and to grant pensions and allowances and to make payments towards insurance, and to subscribe or guarantee money for charitable or benevolent objects or for any exhibition, or for any public, general, or useful object. (h) To erect, purchase, feu, take on lease or exchang, hire, or otherwise acquire or sell any real and personal property, and any rights or privileges, and to equip, hold, maintain, work, and let piers, wharves, slips, docks, aerodromes, hangars, air-craft factories, roads, railways, tramways, water rights, rights of carriage or of passage, water-courses, flumes and dams, telegraphs, telephones, and canals, and any other works and buildings necessary or convenient for the purposes of the company; also to extend, repair, or alter any of these, and to contribute by way of guarantee, money-payment, or otherwise towards the construction, equipment, maintenance, or carrying on of the same. (i) To construct, maintain, and alter any buildings or works necessary or convenient for the purpose of the company. (j) To invest and deal with the moneys of the company not immediately required in such manner as may from time to time be determined. (k) To lend money [to such persons] and on such terms as may seem expedient, [and in particular] to customers and others having dealings with the company, and to guarantee the performance of contracts by any such persons. (l) To borrow or raise or secure the payment of money in such manner as the company shall think fit, and in particular by way of loan, discount, cash-credit, overdraft, or guarantee, or upon bills of exchange, promissory-notes, bonds, bonds and dispositions in security, mortgages, cash-credit bonds, debentures, debenture stock, perpetual or otherwise, deposit-receipts, interim receipts, or in any other manner, and to grant security for all or any sums so borrowed or for which the company may be or may become liable, or for the performance by the company of any obligation that may be incurred or undertaken by the company, or any manager or other duly authorised person, and by way of such security to assign, dispo, mortgage, pledge the whole or any part of the property, heritable or moveable, real or personal, or the assets or revenue of the company, both present and future, including its uncalled capital, or to assign, dispo, transfer, or convey the same absolutely or in trust, and to give lenders or creditors power of sale and all other usual and necessary powers; to create and issue at par or at a premium or discount bonds, debentures, mortgage debentures, debenture stock, and other securities payable to bearer or otherwise, and either perpetual or redeemable or repayable with or without bonus or premium and either at a fixed date or by drawings, and to purchase, redeem, or pay off any such securities. (m) To enter into, carry on, prosecute, and defend all arbitrations, suits, contracts, agreements, negotiations, legal and other proceedings,

compromises, arrangements, and schemes, and to do all other acts, matters, and things which shall at any time appear conducive to or expedient for the protection of the goodwill, business, property, or assets of the company. (n) To remunerate any person or company for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any of the shares in the company's capital, or any debentures or debenture stock or other securities of the company, or in or about the formation or promotion of the company or the conduct of its business, or in the formation of any company promoted by this company. (o) To draw, make, accept, indorse, discount, execute, and issue promissory-notes, bills of exchange, bills of lading, charter-parties, warrants, debentures, cheques, drafts, and other negotiable or transferable instruments. (p) To distribute any of the property of the company among the members in kind, and in particular any shares, stocks, debentures, or securities of other companies belonging to the company, or of which the company may have the power of disposing. (q) [To sell, transfer, or dispose of the undertaking, property, rights, real or personal, and business of the company, or any part thereof, for such consideration as the company may think fit, and in particular for cash or for shares, debentures, or securities of any other company, or partly in one and partly in another or others of such modes]. (r) To obtain or concur with others in obtaining any Provisional Order or Act of Parliament or Order of the Board of Trade for enabling the company to carry any of its objects into effect, or for effecting any modification of the company's constitution, [or for any other purpose which may seem expedient], and to oppose or join with others in opposing any Provisional Order or Act of Parliament or Order of the Board of Trade, or any proceedings or applications which may seem calculated, directly or indirectly, to prejudice the company's interests. (s) To sell, improve, manage, develop, exchange, lease, mortgage, enfranchise, dispose of, turn to account, or otherwise deal with [all or] any part of the property and rights of the company. (t) To do all or any of the above things as principals, agents, contractors, trustees, or otherwise, and by or through trustees, agents, or otherwise, and either alone or in conjunction with others. (u) To do all such other things as are incidental or conducive to the attainment of the above objects. (v) To promote freedom of contract, and to resist, insure against, counteract, and discourage interference therewith, and to subscribe to any association or fund for any such purposes. (w) It is hereby declared that the word "company" in this clause shall be deemed to include any partnership or other body of persons whether incorporated or not incorporated, and whether domiciled in the United Kingdom or elsewhere, [and the intention is that the objects specified in each paragraph of this clause shall, except where otherwise expressed in such paragraph, be in no wise limited or restricted by

reference to or inference from the terms of any other paragraph or the name of the company].”

Note.—The parts above in square brackets were not sanctioned, and the parts in italics were added and sanctioned, by the Court.

The petitioners *averred* — “13. That the objects contained in the said third clause of the proposed memorandum (in so far as they are not merely declaratory of what the company is at present doing and is entitled to do without express power in its existing constitution) are all calculated to enable the company to carry on its business more economically or efficiently, or to attain its main purpose by new or improved means, or to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company.”

On 5th April 1920 a remit was made of new to Mr Alfred Shepherd, W.S., who in his *second report* stated — “Your Lordships of this date (November 26, 1919) held that the . . . procedure was invalid, and continued the petition so that the company might have an opportunity of beginning again *de novo* if they so desired. The company have taken advantage of the opportunity thus afforded to them, and on the 6th and 27th February 1920 held fresh extraordinary general meetings at which a resolution was passed and confirmed as a special resolution of the company in the following terms— ‘That the memorandum and articles of association submitted to this meeting, and for the purpose of identification signed by the chairman thereof, be and the same are hereby approved, and that, pursuant to the provisions of the Companies Act 1908, sections 9 and 284, the form of the company’s constitution be altered by substituting such memorandum of association with extended objects as therein set forth, and such articles of association, for the company’s deed of settlement dated 7th November 1846 and subsequent dates, and for all regulations of the company subsequently made and now in force, and that the directors be and they are hereby authorised to make the necessary application to the Court in terms of the said Act.’ By interlocutor dated 16th March 1920 your Lordships allowed the company to amend the petition by deleting the references therein to the meetings formerly held and to the resolutions purported to be passed thereat, and by substituting a reference to the two meetings above mentioned and to the special resolution above quoted. These amendments include the necessary alteration of the prayer of the petition. The petition is therefore now based entirely upon the said special resolution. The petition as amended was ordered by the said interlocutor to be of new intimated and advertised. This has been duly done, the *inducia* have expired, and no answers have been lodged. The procedure in connection with and at the said extraordinary general meetings of the company held on 6th and 27th February has been regular, and the said special resolution above quoted was duly passed and confirmed thereat. The company have now accordingly, subject to

confirmation by the Court, validly adopted the memorandum of association with extended objects and the articles of association referred to in the said resolution, and it only remains for your Lordships to consider the form and terms of the said memorandum and articles. . . .

“The proposed articles of association appear to be in order, but the reporter in his previous report . . . directed your Lordships’ attention to the objects clause of the memorandum of association proposed, and to certain important opinions which had been expressed in the House of Lords with reference to the proper form and contents of the objects clause of a memorandum of association. These matters were not dealt with at the former discussion before your Lordships, which was confined to the question of the validity of the preliminary procedure. Subject therefore to such modifications, if any, as your Lordships may on consideration deem to be necessary upon the objects clause of the memorandum of association, the reporter is of opinion that the alteration of the form of the company’s constitution and the alterations made with respect to its objects may now be confirmed by the Court.”

The passages referred to in the *first report* were — “The formal clauses of the memorandum are in order, but the reporter considers it necessary to direct your Lordships’ attention to clause iii of the memorandum — the objects clause. This clause which is set out in the petition contains twenty-three paragraphs setting forth the objects of the company. Objects clauses of this type are common if not universal among companies which are formed to-day, and they include under the heading of the objects of the company many things which are not objects but really powers—as, *e.g.*, the drawing and making of bills of exchange and promissory-notes — by means which it is proposed to accomplish the objects properly so called. But the clause in the present memorandum does include, in addition to the primary objects of the company to establish and maintain lines of steam or other ships for the carriage of passengers and goods, a variety of other objects ranging from the erection and working of aircraft factories to the promotion of freedom of contract. It contains also a provision in the last paragraph that the objects specified in each paragraph of the clause shall, except where otherwise expressed in the paragraph, be in no wise limited or restricted by reference to or inference from the terms of any other paragraph or the name of the company.

“While, as already stated, object clauses such as that in the present case are common, and while the present memorandum would no doubt be accepted by the registrar in the case of a new company being incorporated, the reporter considers it to be his duty, seeing that judicial sanction is required to the adoption by the company of the memorandum here in question, to direct your Lordships’ attention to the fact that objects clauses of this kind were the subject of severe comment by the House of Lords

in the recent case of *Cotman v. Brougham*, [1918] A.C. 514. All the learned Lords advert to the nature of the memorandum in that case, and question whether it is in such a form as to comply with the requirements of the Companies (Consolidation) Act. The House, however, did not find itself in a position in that case to determine the point owing to the statutory finality of the registrar's certificate of incorporation. Your Lordships are not so hampered in the present case, as the memorandum now in question only becomes operative when, and to the extent to which, the adoption of it by the company is confirmed by the Court.

"The question of what are the true requirements of the Act as to the statement of a company's objects in its memorandum are, however, fully discussed by Lord Wrenbury in his opinion in *Cotman v. Brougham* before referred to. The learned Lord says at p. 522—'I cannot doubt that when the Act says that the memorandum must "state the objects," the meaning is that it must specify the objects, that it must delimit and identify the objects, in such plain and unambiguous manner as that the reader can identify the field of industry within which the corporate activities are to be confined.' After explaining the purpose of such a provision in the Act, and the distinction between the objects of a company and the powers of a company (which latter his Lordship says ought not to be specified in the memorandum) Lord Wrenbury proceeds (p. 523)—'There has grown up a pernicious practice of registering memoranda of association which under the clause relating to objects contain paragraph after paragraph not specifying or delimiting the proposed trade or purpose, but confusing power with purpose, and indicating every class of act which the corporation is to have power to do. The practice is not one of recent growth. . . . It has arrived now at a point at which the fact is that the function of the memorandum is taken to be not to specify, not to disclose, but to bury beneath a mass of words the real object of the company with the intent that every conceivable form of activity shall be found included somewhere within its terms. The present is the very worst case of the kind that I have seen. Such a memorandum is not, I think, a compliance with the Act.'

"The objects clause of the memorandum in the case of *Cotman v. Brougham* contains thirty paragraphs. That in the present case contains twenty-three paragraphs, and both include a provision designed to make each paragraph independent of all the others—a provision described by Lord Finlay, L.C., in *Cotman's* case as 'extraordinary.'

"It is right that the reporter should also point out that in the case of *The London and Edinburgh Shipping Company, Limited*, 1909 S.C. 1, the other Division of the Court of Session sanctioned the adoption by that company of a memorandum the objects clause of which contained twenty-two paragraphs. The general question of the form of the memorandum was not,

however, brought before the Court in the case mentioned, and the objects specified were much more limited and homogeneous than in the present case and were approved by the reporter. The objects clause in the *London and Edinburgh* case did, however, contain a provision making each paragraph thereof independent of the others, and this provision was brought by the reporter to the notice of the Court and was sanctioned.

"In these circumstances it seems to the reporter to be a matter for your Lordships' consideration whether, assuming the special resolution to have been held to be duly passed and confirmed, your Lordships are prepared to confirm the alteration of the company's constitution by the adoption of the memorandum in its present form.

"If your Lordships are prepared to give sanction to the memorandum in its present form there are certain of the objects therein contained to which it seems necessary to direct your Lordships' attention.

"As stated above the memorandum contains an alteration of the company's objects. . . . The company is at present a carrier of passengers, goods, and mails by sea, and of goods by land, so far as that is involved in the collection and delivery of goods carried by the company by sea. It is now proposed that the company should be authorised, *inter alia*, to establish and maintain lines of airships, aeroplanes, seaplanes, or other aircraft (paragraph (a)), to equip, hold, maintain, work, and let aerodromes, hangars, and aircraft factories (paragraph (h)), to carry on the business of marine insurance and marine accidental insurance in all its respective branches (paragraph (f)), to lend money to such persons as may seem expedient (paragraph (k)), to sell, transfer, or dispose of the undertaking of the company (paragraph (g)), to obtain any Provisional Order or Act of Parliament not only for enabling the company to carry any of its objects into effect but also for any other purpose which may seem expedient (paragraph (r)), to promote freedom of contract, and to resist, insure against, counteract, and discourage interference therewith (paragraph (v)).

"In view of the provision in the memorandum declaring each paragraph to be independent of the others, any of these objects, if sanctioned, would enable the company completely to change its character. Some of them, *e.g.*, the general power to lend money and the power to sell the undertaking, have already been refused by the Court. (See *London and Edinburgh Shipping Company, supra*, and *John Walker & Sons, Limited*, 1914 S.C. 280.) The reporter finds it difficult to bring any of the objects above mentioned within the scope of the alterations of objects allowed by section 9 of the Companies (Consolidation) Act."

Argued for the petitioners—The form of the objects clause was quite usual, and similar forms were to be found in all the recent cases. There was nothing restrictive in the original contracts of copartnery. *Cotman v. Brougham*, [1918] A.C. 514, *per* Lord Wrenbury at p. 522, was *obiter*, and

in any event legislation was the only appropriate remedy for the abuse there adverted to. (a), (b), and (h) of the objects introduced carriage by air, but the general business of the petitioners was carriage—by air was simply a new mode of carriage, and its introduction was modernising the business methods of the petitioners. The part in square brackets in (c) was dropped. (d) contained power to amalgamate; that power had not been objected to by the reporter; it was a useful power, and had been sanctioned, at least where there was already power to amalgamate—*Union Bank of Scotland*, 1918 S.C. 21, 55 S.L.R. 62; *Aberdeen Steam Navigation Company*, 1919 S.C. 464, 56 S.L.R. 343; *Macfarlane, Strang, & Company*, 1915 S.C. 196, 52 S.L.R. 113—but it had been refused in the earlier case of *John Walker & Sons*, 1914 S.C. 280, 51 S.L.R. 246. Palmer's Company Precedents, 11th ed., part i, p. 504, was referred to. (k), power to lend money, would be restricted to power to lend money to customers, and for that there was authority—*London and Edinburgh Shipping Company*, 1909 S.C. 1, 46 S.L.R. 85. In view of the decision in *Walker's* case (q) was dropped. The petitioners were willing to drop out of (r) the words "or for any other purpose which may seem expedient;" with that alteration the power to promote provisional orders, &c., should be sanctioned. Similarly, subject to the deletion of the words "all or," the power to sell (s) should be sanctioned—*Walker's* case (*cit.*). (v), Power to promote freedom of contract, &c., was found in practice—Palmer (*op. cit.*), i, p. 516. The words at the end of (w) were designed to prevent freedom of operation arising out of the rule of *ejusdem generis* and should be sanctioned—Palmer (*op. cit.*), i, p. 513; *London and Edinburgh Shipping Company's* case, though *Walker's* case was *contra*.

The Court confirmed the form of the petitioners' constitution and the alterations made with respect to the objects of the company as above shown.

Counsel for the Petitioners—Macmillan, K.C.—Cooper. Agents—Macpherson & Mackay, W.S.

Friday, July 2.

FIRST DIVISION.

[Lord Hunter, Ordinary.
[Lord Anderson, Ordinary.

OVENSTONE v. DUNDEE DISTRICT COMMITTEE OF FORFAR COUNTY COUNCIL.

Process—Jurisdiction—Declarator—Road—Competency—Taking Material for Road Purposes—Declarator in Court of Session that Road Authority not Entitled to Take from Place in Question—General Turnpike Act (1 and 2 Will. IV, cap. 43), sec. 80.

Held per Lord Hunter (Ordinary) that notwithstanding the proviso to section 80 of the General Turnpike Act

1831 giving the Sheriff power to "authorise or prohibit" the road authority to take materials for road purposes, an action of declarator in the Court of Session to have it declared that the road authority was not entitled to take material from the place in question was competent.

Local Government—Roads and Bridges—Statute—Construction—Taking Material for Repair—"Policy"—"Inclosed Ground Planted as Shelter to a House"—Roads and Bridges (Scotland) Act 1878 (41 and 42 Viet. cap. 51), sec. 123, incorporating General Turnpike Act (1 and 2 Will. IV, cap. 43), sec. 80.

In an action to restrain a district committee from taking road material from ground in the proximity of a mansion-house, *held* upon the evidence in the case (*rev. judgment of Lord Anderson, Ordinary*) that the ground in question was "inclosed ground planted as shelter to a house" within the exception in the General Turnpike Act, section 80.

Opinion per Lord Anderson that a policy in the sense of the Turnpike Act was the "ground in the vicinity of a mansion-house dedicated in a greater or less degree to its service, with the objects of securing privacy, effecting ornamentation, and providing shelter.

The General Turnpike Act (1 and 2 Will. IV, cap. 43) enacts—Section 80—"It shall be lawful for the trustees of any turnpike road or any person authorised by them to search for, dig, and carry away, materials for making or repairing such road and the footpaths thereof, or building, making, or repairing any . . . bridge, or any other work connected with such road, from any common land, open uncultivated land, or waste . . . without paying any surface damages or anything for such materials . . . and also it shall be lawful for such trustees and other persons authorised by them as aforesaid to search for, dig, and carry away any such materials in or out of the inclosed land of any person where the same may be found, and to land or carry the same through or over the ground of any person (such materials not being required for the private use of the owner or occupier of such land, and such land or ground not being an orchard, garden, lawn, policy, nursery for trees, planted walk or avenue to any house, nor inclosed ground planted as an ornament or shelter to a house, unless where materials have been previously in use to be taken by the said trustees), making or tendering such satisfaction for stones to be used for building and for the surface damage done to the lands from whence such materials shall be dug and carried away or over or on which the same shall be carried or landed as such trustees shall judge reasonable. . . . Provided always that before taking such materials from any inclosed land from which the same shall not previously have been in use to be taken, fourteen days previous notice in writing, signed by two trustees, shall be given to or left at the usual residence of the proprietor and