I do not think that any blame attaches to Mr Grace in respect of any part of this transaction. I think he acted, as far as I can see, properly throughout. If any blame attaches to anybody, perhaps some blame was attributable to Mr Lyon, because I think it was his duty to have obtained and preserved in the handwriting of these ladies, or the survivor of these ladies, clear proof that this was her own will, and I think it is possible that if Mr Robertson had not been living and had not been examined some sort of suspicion might have arisen, because there was one rather curious point. He was told to go to Mr Grace for directions. If that had not been explained there might have been some suspicion excited, but it turns out that the direction which he was told to go to Mr Grace for was simply to find out in what street or at what place the lady was living. I do not think there is any ground for the suspicion which has been cast upon Mr Grace at the bar, and I entirely agree that the judgment of the Court below ought to be affirmed with costs.

LORD BRAMPTON—I also entirely concur in the judgment which has been delivered by the Lord Chancellor. I have myself very carefully and diligently considered every portion of the evidence adduced against Mr Grace in this inquiry, and having done so I have come to the conclusion at which my noble and learned friends have arrived, that there is not a particle of evidence throughout the whole case which justifies any imputation upon either Mr Grace or his son of any misconduct or fraud or dishonesty in the whole course of the transaction. I think it right to express myself personally in this way, although I entirely concur in every comment which has been made by the Lord Chancellor in delivering his judgment.

LORD ROBERTSON—I also agree. Upon the general facts of the case I think it is quite well made out that this will was the deliberate act of these ladies, looked forward to, considered, and deliberately adhered to; but I think it right to point out that the question which your Lordships have to consider is perhaps narrower. It is rather in justice to the respondent that I make that general observation. If the case be looked at more strictly, it appears to me that we have first to make up our minds whether this will was prepared and carried through to execution by Mr Grace or not. If it was, then, according to the authorities which have been cited, it would fall upon Mr Grace to establish that this was the volition of the testatrix; but, on the other hand, if it was not prepared and carried through to execution by him, but by another, then there is no law which has been cited to us, or which I know, would compel us to put Mr Grace to proof that a will which he did not prepare or carry through to execution, but which was in his favour, was the deliberate intention of these ladies. If Mr Grace had colluded with Mr Lyon, and if Mr Lyon had in truth been acting not for the ladies but for Mr Grace in carrying through the will, then I should hold upon those facts that the case was as bad as if Mr Grace had himself directly and overtly carried through the affair. But it seems to me that the evidence here is conclusive to show that this lady was honestly introduced by Mr Grace to Mr Lyon, and that her interests were directly attended to by Mr Lyon and his establishment without reference to Mr Grace, and that the ladies had the fullest opportunity of communicating their wishes to the representatives of Mr Lyon. That being so, I do not think the onus is upon Mr Grace of establishing that it was the deliberate intention of the ladies. I think, on the contrary, he would only be liable to attack, and the will only be liable to attack, on the ordinary grounds of fraud, coercion, or circumvention. But it is satisfactory to know that the evidence is such as to entitle the respondent to a judgment in his favour even supposing the wider and not the narrower issue were to be involved.

Appeal *dismissed* with costs.

Counsel for Appellants—Bargrave Deane, Q.C.—Robertson Christie. Agent—Gordon M. Folkard, for Simpson & Marwick, W.S.

Counsel for the Respondents—Dean of Faculty (Asher, Q.C.)—C. K. Mackenzie—R. H. Pritchard. Agents—William Robertson & Co., for Mackenzie & Kermack, W.S.

Monday, March 12, 1900.

(Before the Lord Chancellor (Halsbury), and Lords Macnaghten, Morris, Shand, and Brampton.)

GREAT NORTH OF SCOTLAND RAILWAY COMPANY *v.* DUKE OF FIFE.

(*Ante*, Nov. 23, 1897, vol. xxxv. p. 78.)

Railway—Construction—Statutory Powers—Drainage of Adjoining Lands—Decreet-Arbitral Followed by Conveyance—Railway Clauses Consolidation (Scotland) Act 1845, *secs.* 60 *and* 65.

By the terms of a decreet-arbitral proceeding on a statutory submission between a railway company and the proprietor of lands taken for the construction of the railway, the company were taken bound to pay a certain sum as purchase-money, and to execute certain works, not including the drainage of the adjoining lands. In releasing the company from all other claims by the proprietor the decreet-arbitral excepted "the obligations upon the said company to preserve the effective drainage of the lands, in so far as the same may be interfered with by the construction of the works, and to keep up the works, fences, water-courses, and others falling upon the said company under the Railway Clauses Consolidation (Scotland) Act 1845." . . .

A disposition was thereafter granted by the proprietor conveying the

lands to the Railway Company, narrating, and bearing to be in terms of, the decreet-arbitral, and declaring as a positive obligation "that the said Railway Company shall be bound and obliged to preserve the effective drainage of the lands in so far as the same may be interfered with by the railway works, and to keep up the works, fences, and water-courses and others falling upon them under the Railway Clauses Consolidation (Scotland) Act 1845." . . .

Held (*rev.* the judgment of the First Division) that the obligations in the disposition must be construed with reference to the decreet-arbitral and the statutory obligations imposed on the company, and therefore implied only a duty to maintain the drainage works originally executed within five years from the opening of the railway, as provided by the said Act (secs. 60 and 65), and excluded any demand for new works after the lapse of that period, and any question as to the sufficiency of the works originally executed.

Observed that the decreet-arbitral, by which the rights of the parties were defined and determined, was the governing instrument, and that the disposition, the main purposes of which was to confer a feudal title, was merely ancillary to, and must be disregarded so far as inconsistent with, the decreet-arbitral.

This case is reported *ante, ut supra.*

The Railway Company appealed against the judgment of the First Division.

At delivering judgment—

LORD CHANCELLOR—In this case the pursuer raised an action with the object of compelling the Railway Company to keep up the works, fences, water-courses, which the company were under an obligation to maintain, and to keep in repair the bottoms and sides of the streams which were deepened below the natural level by the Railway Company, and keep them clear in so far as they have been affected by the railway works.

The main contention of the pursuer was based upon the language of a somewhat ungrammatically drawn instrument, which in the pursuer's view of its construction imposed upon the Railway Company the perpetual obligation not only to keep and maintain the existing water-courses and the like, but apparently to execute whatever works were necessary to drain the pursuer's lands in the neighbourhood of the railway works.

It appears to me that before dealing with the case as appearing on this record, it is desirable to point out the state of the law as applicable to such questions.

There is no doubt that in this Act under which the railway was made, as in most Acts of a similar character, obligations are placed upon the undertakers to make, keep, and maintain proper accommodation works for (among other purposes) the drainage of adjoining lands, but the obligation to keep and maintain is under the Acts limited to the keeping and maintaining of these works *tales quales*, and the Legislature has made proper provision for the sufficiency of such accommodation works by remitting that question to some tribunal whose determination shall be final, and has further provided in this, as in other Acts, that after a particular time no further works can be demanded by the adjoining proprietors. There does not appear in this case to be any question that the culverts and drains originally made are not kept in proper repair, and it is not denied on the part of the Railway Company that if they were out of repair, there is a continuing obligation to keep and maintain them in proper condition.

The limitation in this case is five years. The Acts were passed in the years 1846 and 1855, and, of course, unless some other obligation exists beyond that involved in the statute, and assuming that the accommodation works were sufficient and proper at the time they were made, which in my view cannot now be disputed, there is no ground for the pursuer's contention that the Railway Company are bound to execute new works.

Assuming as I do, on this part of the case, that the accommodation works originally executed must be held to be sufficient and proper for the purpose, it is not competent to raise again the question, which ought to have been determined within five years from the passing of the Acts. The whole purport and object of such a limitation would be defeated if it were possible to raise such questions after the limited period.

The policy of the Railway Acts is to limit the period within which railway companies may exercise certain powers, *e.g.*, the power of taking land within a limited time, and it would be very unreasonable to suppose that the Legislature had intended to cast upon them a perpetual obligation, which at the same time it deprived them of the power of fulfilling.

The learned counsel who have argued on the part of the pursuer have hardly contested that this is the state of the law if the obligations on which they insist are simply to be found within the language of the Act of Parliament, but they insist that the instrument to which I have referred involves the much wider obligation, and apparently it is contended that the obligation is to keep the drainage of the lands effective so far as their works interfere with it.

Now, it becomes necessary to consider what is the history of the claim on which reliance is placed. It is a deed of disposition executed in pursuance of a decreet-arbitral, and I cannot entertain a doubt that that decreet-arbitral which is recited in the disposition, and which the disposition itself refers to as "dealing with a matter now in debate" is quite properly referred to by the Lord Ordinary as expounding what is the extent and meaning of the language of the disposition.

This is not a question of attempting to alter or qualify a deed by matter external

of the deed itself, but it is in truth an exposition by the very deed itself of what was its bearing and intention.

Now, the decreet-arbitral, in pursuance of one direction of which this deed was executed, was a proceeding under 8 and 9 Vict. c. 19. The matter remitted in pursuance of the statute was, what sum should be paid in respect of the land which the Railway Company were taking under the powers of the Act.

Of course where portions of land adjoining the railway or intended railway were being taken, the question of what accommodation works were to be executed by the company would naturally and justly affect the amount which the company were called upon to pay, and in the decreet-arbitral now in question certain accommodation works (not, however, including drainage works) are recited as being part of the obligations undertaken by the company. Those who drew the decreet-arbitral when they were in ordinary form releasing the Railway Company from anything further than the payment of the purchase-money and the execution of the works, appear to have been struck by the generality of the language whereby the Railway Company were to be released, and by way of caution they inserted a parenthetic exception pointing out that this general release was not to operate to relieve the company from such statutory obligations as by law they were already under.

Notwithstanding the generality of the language, I cannot think that such an exception was necessary. The arbiters would have no authority to override the Act of Parliament, and as I have said, drainage was not a matter dealt with by the arbiters themselves, and indeed under the circumstances I doubt if they would have had authority to do so.

The framers of the disposition in endeavouring to give effect to the decreet-arbitral inverted the mode in which the rights of the Railway Company were to be preserved as well as the rights of the adjoining proprietors, and put into the disposition as a positive obligation what had only been preserved in the decreet-arbitral itself by way of exception. But it seems to me that this can make no difference in the operation of the deed. It is manifest that what was intended was to draw a deed in pursuance of the directions of the decreet-arbitral, and I entirely agree with the Lord Ordinary that, reading the two instruments together, it is impossible to doubt what is the meaning and intention of the deed itself.

In my view, this disposes of the case, because, though questions of fact have been entered into, if the obligation founded on them is limited in the way which I have suggested, there is no fact in proof which establishes that the Railway Company have not fulfilled their obligations, and to my mind it would be a very serious thing indeed if, many years after the railway had been constructed, it could be contended that entirely new obligations could be created so that questions which ought to have been determined at the formation of the railway should be raised many years afterwards when circumstances, and indeed the natural conditions of the soil or the flow of the river might have entirely changed.

I do not think it necessary to enter into the question of whether or not the complete diversion of a stream or a portion of a stream would carry with it, apart from any specific directions of the statute, any obligation in respect of the drainage of adjoining lands. *Prima facie*, one would suppose that a section authorising a diversion should itself provide for the conditions under which such a diversion was authorised, and if not provided for the rights and incidents of the diverted portion of the stream would carry with it the same rights and incidents as existed in the original portion of the stream diverted. But I say that in this case that question does not appear to me to arise, because in either event it either was or was not a condition of things which required the execution of drainage works. If it did, they should have been executed within the five years? if they did not, no subsequent action by anyone but the Railway Company themselves could cast upon them a new obligation.

As to the matters of fact with which the Lord Ordinary has dealt, both in respect of the nature of the action now raised, and in respect of the proper parties to be called if some action other than the present one were in debate, I am in entire agreement with his Lordship, and I have nothing to add to what he has said.

For these reasons I move your Lordships that the interlocutor appealed against be reversed, that the judgment of the Lord Ordinary be restored, and that the respondent do pay to the appellants the costs both here and below.

LORD MACNAGHTEN—More than forty years ago, in 1855, the Great North of Scotland Railway Company required to purchase and take for the purpose of their undertaking certain lands forming part of the Fife estate. The estate at the time was held under strict entail, and vested in one Thomas Robertson Chaplin, as trustee for the fourth Earl of Fife, who was then heir of entail. The usual notices were given, and the parties went to arbitration under the Lands Clauses Consolidation (Scotland) Act 1845, for the purpose of determining the sums to be paid by the company as purchase money for the lands permanently taken, and as compensation for all damages sustained or to be sustained by the said trustee, or by the estate of the said Earl, by and through the works and operations of the Railway Company.

The decreet-arbitral was dated the 5th of November 1856. The arbiters found the sums payable by way of purchase-money and compensation, and enumerated certain conditions to be observed by the parties, some in favour of the company and others in favour of the trustee, and then they proceeded as follows:—"We hereby repel all other claims made by the said Thomas

Robertson Chaplin as trustee foresaid in the said reference, and find that the foresaid sums are in full satisfaction of all claims competent to him against the said Railway Company under the said reference, excepting always the obligation upon the company to preserve the effective drainage of the land, in so far as the same may be interfered with by the construction of the works, and to keep up the works, fences, water-courses, and others falling upon the said company under the Railway Clauses Consolidation (Scotland) Act 1845, and keep in repair the bottoms and sides of the streams deepened below the natural level by the Railway Company, and also to keep the same clear in so far as affected by the railway works." The arbiters then directed that "in respect the said lands were held under the fetters of strict entail," the trustee should execute a conveyance in favour of the Railway Company on payment of the sums payable for purchase-money and compensation in accordance with the provision of the Lands Clauses Act.

The conveyance was not executed until after the death of the fourth Earl and his trustee. It bears date the 11th of August 1859. It recites the decreet-arbitral and the provision for the execution of "a valid and formal conveyance" which was to be made (as expressed in that recital) "under the conditions and declarations contained in the said decreet-arbitral and hereinafter mentioned." And then after recitals from which it appeared among things that the purchase-money and compensation had been paid "in terms of the said decreet-arbitral and Lands Clauses Act," the lands permanently taken were duly conveyed to the Railway Company under the conditions contained in the decreet-arbitral, and with the following declaration:—"Declaring that the said Railway Company shall be bound and obliged to preserve the effective drainage of the lands in so far as the same may be interfered with by the railway works, and to keep up the works, fences, water-courses, and others falling upon them under the Railway Clauses Consolidation (Scotland) Act 1845, and protect and keep in repair the bottoms and sides of the streams deepened below the natural level by the Railway Company, and also to keep the same clear in so far as affected by the railway works."

It was common ground in the argument before your Lordships that the latter part of the declaration which I have just read referring to "the bottoms and sides of streams deepened below their natural level," and the corresponding passage in the decreet-arbitral, have no application to the circumstances of the present case. It is therefore unnecessary to determine the scope and effect of the provision embodied therein. If it be anything more than the recognition of an existing statutory obligation under the Railway Clauses Act, it is at any rate not inconsistent with anything which that Act contains.

The interlocutors under appeal are founded entirely on the opening words of the declaration, to the effect that "the said Railway Company shall be bound and obliged to preserve the effective drainage of the lands so far as the same may be interfered with by the railway works." Taking those words by themselves without attending to the context, and excluding altogether from their consideration both the terms of the decreet-arbitral and the provisions of the Railway Clauses Consolidation (Scotland) Act 1845, the learned Judges of the First Division hold that the obligation upon the Railway Company is "perfectly intelligible." They construe it as unlimited in extent. "There is the obligation," they say, "written plain in the disposition"; there is no need to inquire whether the decreet-arbitral or the Railway Clauses Act contains any such obligation; the Court has nothing to do with the Act or the award. Such being the view of the Court, the finding in the interlocutor of the 23rd of November 1897 was that the railway works had interfered with the drainage of the pursuer's land, and that the defenders had failed to fulfil the obligation incumbent on them under and in terms of the disposition of the 11th of August 1859 to preserve the drainage effective. On the 21st of June 1898 the Court made a remit to a civil engineer to report what works were necessary to render the drainage effective. A report has been made recommending works outside the property of the Railway Company, the cost of which is said to be estimated by the company's engineers at £4000.

Now, the first observation which occurs to one in reference to the interlocutors under appeal is that if the Railway Company have indeed undertaken the obligation which the learned Judges of the First Division fasten upon them, they have taken upon themselves a burden from which the Railway Clauses Act expressly and in terms protects railway companies. Section 65 of that Act provides that the promoters shall not be compelled to make any further or additional accommodation works for the use of adjoining owners after the expiration of the prescribed period, or if no period be prescribed, after five years from the opening of the railway for public use. In the present case, many years after the statutory period has expired, the Court orders the appellants to make further and additional accommodation works involving a present outlay of large amount and an indefinite liability in the future, while there is nothing in the conveyance or in the decreet-arbitral or in the evidence to suggest that the Railway Company ever dreamed of waiving the benefit of section 65, or were ever asked to make so foolish a sacrifice.

Then comes the question, has the Court of Session rightly construed the obligation on the part of the Railway Company, and are they right in shutting their eyes to the Railway Clauses Act and the decreet-arbitral? I think not. The decreet-arbitral and the conveyance are both parts of one and the same transaction. The governing instrument is the decreet-arbitral. The conveyance was executed in obedience to

the directions contained in it. The conveyance was necessary for the purpose of constituting a valid feudal title to the lands taken permanently, but for no other purpose. The obligations imposed upon the company by the decreet-arbitral, or rather I should say recognised therein as being incumbent upon the company, do not derive their validity or gain any additional force from being "mentioned" in the conveyance. They were just as binding on the Railway Company before the conveyance as after it. Whatever force they have is derived solely from the railway statutes and the decreet-arbitral. The conveyance merely purports to repeat what is contained in the award. If there be any error or slip in the repetition, or if the words seem to have some different meaning when found in the conveyance, the error or slip must be corrected, or the matter put right, by referring to the decreet-arbitral.

Now, the decreet-arbitral is, I think, perfectly clear. It finds that the sums assessed as purchase-money and compensation are in full satisfaction of all claims competent to the landowner against the Railway Company, but at the same time, by way of precaution, it notices that there are certain obligations still incumbent upon the company, and that those obligations, so far at any rate as they have to be considered for the purposes of the present case, are obligations falling upon the company under the Railway Clauses Consolidation Act. The first of those obligations is the obligation to preserve the effective drainage of the pursuer's land "so far as the same may be interfered with by the construction of the works." Instead of importing an obligation of indefinite duration involving an indefinite liability, the declaration in question is, in my opinion, merely a recognition of an existing liability cast upon the company by section 60 of the Railway Clauses Act, but limited and controlled by section 65. By section 60 the company became bound to make, for the accommodation of adjoining owners, all such culverts, drains, and other passages as would be "sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be," and such works, it is to be observed, are to be made "from time to time as the works proceed." What is that but an obligation to "preserve the effective drainage of the land so far as the same may be interfered with by the construction of the works?" Perhaps it would have been better to have kept to the language of the Act. But for my part I cannot see the slightest difference in meaning and effect between the two expressions. And in each case the provision must be read in connection with the limitation of liability prescribed by the statute which the Court below has unfortunately ignored.

The next part of the declaration provides for the maintenance of the accommodation works when made; and then there is a reference to the Railway Clauses Consolidation (Scotland) Act 1845, which in the decreet-arbitral plainly applies to the obligation to preserve effective drainage as well as to the obligation to maintain the accommodation works. The parallel clause in the conveyance is somewhat elliptical, and taken by itself perhaps somewhat obscure, but it must, I think, be read by the light of the decreet-arbitral, and it must, I think, have the same meaning as the original provision from which it purports to be copied.

I am therefore of opinion that the conveyance does not impose upon the Railway Company any such obligation as that to which the First Division of the Court of Session have found them liable, and I am of opinion that the interlocutors appealed from ought to be reversed, and the action dismissed with costs both here and below.

LORD MORRIS—I am of the same opinion, and I can add nothing to the reasons which have been given by my noble and learned friend on the Woolsack, and my noble and learned friend opposite Lord Macnaghten.

LORD SHAND—I am also of opinion that the interlocutors appealed from should be reversed, and the judgment of the Lord Ordinary restored, and I concur in the opinions of my noble and learned friends the Lord Chancellor and Lord Macnaghten.

It is, in my opinion, taking much too narrow a view of the case to take the disposition of 1859, and what, indeed, I regard as a part only of a clause in that deed, as decisive of the questions between the parties. The decreet-arbitral, which is the basis of the disposition, and which is therein fully referred to, and the Railway Clauses Act, must also be looked at and be regarded as settling the rights of the parties. It was, indeed, in giving effect to the decreet-arbitral that the disposition itself was, as that deed bears, granted; and it is clear that section 65 of the Railway Clauses Act of 1845 applies, and is by the decreet-arbitral expressly made to apply to the case. The result is that the company is not bound, after the prescribed period, which elapsed many years ago, to execute the drainage works which have been demanded. The reference to the decreet-arbitral in the disposition itself in my opinion makes it clear that the whole clause as to the drainage of the lands "in so far as the same may be interfered with by the railway works," and the keeping up of the accommodation works there enumerated which the disposition itself contains, is one and the same continuous clause, and gives effect only to sections 60 and 65 of the Railway Clauses Act of 1845 with the limitation as to time which the statute prescribes in imposing the obligation of maintenance on the Railway Company. That limitation as to time is sufficient to exclude the present action, which therefore entirely fails.

LORD BRAMPTON — Having heard the judgment delivered by the Lord Chancellor, and having availed myself of the opportunity afforded me to read and carefully consider the judgment which my noble and learned friend Lord Macnaghten has just

read, I desire only to express my entire concurrence in the views they have announced. I have nothing to add, feeling that those noble and learned Lords have in far better language than I have at my command embodied the opinion I had also formed for myself.

Ordered that the judgment appealed from be reversed, and that of the Lord Ordinary be restored.

Counsel for the Appellant—Lord Advocate (Graham Murray, Q.C.)—Haldane, Q.C. —Ferguson. Agents — Dyson & Co., for Gordon, Falconer, & Fairweather, W.S.

Counsel for the Respondent — Guthrie, Q.C.—Clyde. Agents—Martin & Leslie, for J. K. & W. P. Lindsay, W.S.

Tuesday, March 13.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, Morris, Shand, Davey, and Lord James of Hereford).

FERGUSON *v.* PATERSON AND OTHERS.

(*Ante*, March 4, 1898, vol. xxxv. 674, and 25 R. 697).

Trust—Liability of Trustee—Negligence—Indemnity Clause — Trust Funds Deposited in Agent's Name.

The custody of trust funds is not property entrusted to the law-agent of the trust, and the immunity conferred upon trustees by a clause of indemnity against loss by the intromissions of their factors or agents does not extend to such a case, the clause only covering acts of factors or agents properly appointed and acting within the legitimate scope of their agency.

In July 1887, on a change of investment, certain trust funds were received by the law-agent and factor of the trust, and remained in his hands pending investment till the following December. On 21st December the trustees became aware that those funds had been placed in bank on deposit-receipt in the agent's name, and they then instructed the agent to re-deposit it in their name as trustees. Between the 21st December and the 18th June following one of the trustees called repeatedly upon the agent to see that the transfer had been made, but was on each occasion met by the excuse that the agent had sustained an accident and was too ill to attend to business. No communication was made by the trustees to the bank, and on 18th January the agent cashed the receipt and misappropriated the proceeds, Prior to this the trustees had no reason to suspect their agent's solvency or integrity. They were protected by an indemnity clause in their trust-deed declaring that they were not to be liable for the intromissions of any agent who, in transacting the business of the trust, should receive any part of the trust estate into his hands.

In an action brought by a beneficiary, *held* (*rev.* the judgment of the First Division, *diss.* Lord Morris) that the trustees were liable for the loss sustained through the agent's defalcation.

The case is reported *ante, ut supra.*

Mrs Wyman or Ferguson, as an individual pursuer and as the representative of her husband, appealed against the judgment of the First Division.

At delivering judgment—

LORD CHANCELLOR—In my view it is not necessary to go earlier in the history of this case than to note that the £3000 which has been lost through the fraud of the law-agents and factors of the respondent was paid to those law-agents and factors in the month of July 1887, but £3000 of the money handed to the agents of the trustees at that time remained uninvested at Martinmas.

The Lord Ordinary in terms says that in his opinion the trustees were quite entitled to entrust the money to the care of their law-agent and factor pending an investment being found. This is a somewhat formidable proposition, and one to which I cannot assent. How long that may be done appears according to the breadth of the proposition to be simply till an investment is found, however long that operation may take.

I am glad to see that the two learned judges of the First Division take a totally different view of a trustee's duty. Lord Adam says—"I see that evidence has been led to the effect that it is a common and recognised practice for agents and factors to deposit trust moneys in their own names for behoof of their clients. I quite recognise that such moneys as may be necessary for carrying on the current business of the trust should be so deposited or lodged in bank as to be payable on the receipt of agents or factors. But the trust money in question was not at all in that position. It was simply deposited until a permanent investment should be obtained, which apparently there was no immediate prospect of obtaining. It is the duty of the trustees to see that the money entrusted to them is so invested or deposited as not to be exposed to any unnecessary risk. That money deposited in an agent's or factor's name is not in that position the result of this case sufficiently demonstrates, and the only reason assigned for taking such receipts in the names of agents or factors, viz., the trouble of obtaining the signatures of the trustees where it is desired to uplift the money, appears to me to be perfectly trivial." And Lord Kinnear takes the same view. His Lordship says—"The chief difficulty in the case arose from the argument which was maintained to us that trustees are justified in allowing factors or agents to mix the funds of the trust with their own. I am clearly of opinion with Lord Adam that this is contrary to their duty, and that the reasons which were