not treat the firm as a separate person distinct from its members. But it is not in my opinion because of the mere impersonation of the firm that its assets cannot be arrested by the creditors of a partner, but because the partner has no separate share in the assets which is capable of being attached by that diligence. The principle is that a partner has no right to claim any particular portion of the assets as belonging exclusively to him, and neither his assignees nor his separate creditors can have any higher right against the joint property than the debtor or cedent from whom they derive their interest. The true ground therefore is that which is stated in Lord Pitfour's note, quoted by Mr Bell, when he says that the creditors of the partner can only affect his share of the balance after payment of the copartnery debts.

"The proposition maintained for the pursuer is a very startling one, because it comes to this, that the separate creditor of any partner of an English trading firm may arrest funds belonging to the firm which he may find situated in Scotland, and carry them off for the satisfaction of his separate debt. There is no authority in the law of Scotland for that proposition. I think the principle upon which we should hold that the arrestments now in question were quite ineffectual to attach debts due to a Scottish copartnery is equally applicable to the case of debts due to a copartnery in England. Mr Balfour in his argument referred to the cases in which it has been held that ships may be arrested for the debts of a part-owner. There is no analogy between these cases and the present, because the right of a part-owner in a ship is altogether different in its legal character from the interest of a partner in the assets of a trading firm, and also because the arrestment of a ship is a diligence of a totally different kind from the arrestment of a debt. The arrestment of a ship is a diligence *in rem*. The ship itself is seized and detained in port. But the objection which the defender takes to the arrestments founded upon is, that they attach nothing. The arrestment of a debt either for founding jurisdiction or for execution operates in a totally different way from the seizure of a corporeal moveable. It operates *in personam*. It interpels the arrestee from paying his debt to his proper creditor, and ultimately compels him to make it forthcoming to the arresting creditor, and thereby discharges him of his debt to his own creditor. And since that is the mode in which the diligence operates, it follows of necessity that it cannot affect debts payable to anyone except the person designed in the arrestment. An arrestment of debts due to the defender personally will not prevent the arrestee from paying his debt to the firm, of which the defender is only a single member. It will give him no answer to the demands of the firm which is his true creditor. It would not compete with an arrestment by the firm's creditors of debts due to the firm; it attaches nothing.

"It is said that by reason of the defender's mandate as manager all the proprietors of *The Times* are responsible for a wrong done by him in the conduct of the newspaper, and therefore that the pursuer has his remedy against the property of them all. And Mr Balfour in the course of that argument said—and I think quite soundly—that it was a very good test of the validity of an arrestment for founding jurisdiction to consider whether a fund which is attached by that arrestment could be taken in execution by the decree sought for in the action. Now, I cannot assume that persons who are not called as defenders are responsible for the wrong of which the pursuer complains. But supposing that they could be made responsible, I think it very clear that no decree in this action could be pronounced against anyone except the individual defenders, and that no writ of execution founded upon the decree could be carried into effect against the property of anybody else. The proposed test therefore appears to me to be quite conclusive of the question. The debts arrested are debts which are due, not to the individual defender, but to him and a number of other persons jointly, and no decree in this action could be carried into execution by ordering payment of these debts to the separate creditor of the defender. There is no other ground of jurisdiction, I think, requiring consideration, and the judgment therefore must be to sustain the first plea-in-law for the defender, and to dismiss the action."

The pursuer reclaimed, but on the case being called for hearing intimated that he did not insist in his reclaiming-note.

The reclaiming-note was accordingly refused.

Counsel for the Pursuer—Balfour—Asher—Strachan. Agent—R. Ainslie Brown, S.S.C.

Counsel for the Defenders—D.-F. Mackintosh — Lord Adv. Robertson — Murray. Agents—J. & F. Anderson, W.S.

Monday, July 29.

OUTER HOUSE.

[Lord Wellwood.

BAILLIE *v.* PAROCHIAL BOARD OF SORN.

Poor — Assessment — Minister of Quoad Sacra Parish—Assessment in respect of Manse—Act 7 and 8 Vict. cap. 44, *sec.* 8.

The Act 7 and 8 Vict. cap. 44, sec. 8, which provides for the erection of *quoad sacra* parishes, enacts—"It shall and may be lawful for the minister and elders of such parish to have and enjoy the status and all the powers, rights, and privileges of a parish minister and elders of the Church of Scotland."

Held that by virtue of this enactment the minister of a *quoad sacra* parish is not liable to be assessed for poor rates in respect of his manse.

This was a process of suspension and interdict at the instance of the Rev. James Gilmour Baillie, minister of the parish of Catrine in the county of Ayr, against the Parochial Board of the parish of Sorn and Robert Buchanan Conner, the Collector of Poor's Assessment and Inspector of Poor of the said parish, in which the complainer sought to suspend certain proceedings at the instance of the respondents for recovery of an assessment for the relief of the poor of the parish of Sorn imposed upon him as owner and occupier of his manse.

The parish of Catrine is a *quoad sacra* parish, erected under 7 and 8 Vict. cap. 44. Originally it formed part of the parish of Sorn. The endowment of the parish included a manse for the minister, the title to which was taken in the name of trustees, who held it in trust as a dwelling-house for the minister of the parish. The complainer was entered in the valuation roll as owner and occupier of the manse. He was assessed for the relief of the poor for the sum of 18s. 11½d., which he refused to pay, whereupon the proceedings complained of were taken.

The Statute 7 and 8 Vict. cap. 44, sec. 8, enacts—"It shall and may be lawful for the minister and elders of such parish to have and enjoy the status and all the powers, rights, and privileges of a parish minister and elders of the Church of Scotland."

The Lord Ordinary (WELLWOOD) on 29th July 1889 pronounced the following interlocutor:—"Finds that the complainer as minister of the parish of Catrine is not liable to pay poor rates in respect of the manse occupied by him: Therefore suspends, &c.

"*Opinion.*—The question raised in this process is, whether a minister of a *quoad sacra* parish erected under the Statute 7 and 8 Vict. cap. 44, is liable for poor rates in respect of the manse occupied by him?

"It was decided by the case of *Forbes* v. *Gibson*, 13 D. 341, and 1 Macq. 106, that parish ministers of the Established Church of Scotland are not liable to be rated for relief of the poor in respect of their manses or glebes under section 34 of the Poor Law Act 1845, although under section 49 of that statute they are liable to be assessed in respect of their stipends.

"The only question therefore is, whether a minister of a *quoad sacra* parish is entitled to the same exemption or privilege? It is pleaded in defence that he is not so entitled, because the exemption claimed is not *inter sacra*, but a civil right or privilege, and that as the parish is only erected *quoad sacra* the rights and privileges possessed by the complainer are only those which can be regarded as *inter sacra*.

"The complainer founds particularly upon the provision in section 8 of the Act 7 and 8 Vict. cap. 44, to the effect that 'it shall and may be lawful for the minister and elders of such parish to have and enjoy the status and all the powers, rights, and privileges of a parish minister and elders of the Church of Scotland.' Those are very wide words, and quite sufficient to cover the exemption claimed unless there is anything in the position of the minister of such a parish which makes it necessary to read the words in a restricted sense.

"I am of opinion that the exemption in question must be held to be among the 'rights and privileges' declared by the statute to belong to ministers of parishes erected *quoad sacra*. The words *quoad sacra* do not necessarily imply that the minister of a *quoad sacra* parish does not enjoy any of the civil powers, rights, and privileges possessed by other ministers of the Established Church of Scotland. The limitation more properly refers to the obligations and liabilities of the inhabitants of the disjoined parish to the old parish as regards payment of stipend, upkeep of manses and churches, and so forth, which continue in force notwithstanding disjunction. As Lord Medwyn says in *Grant* v. *Macintyre*, 11 D. 1387—'That this parish is one only *quoad sacra*, and is not declared to be *quoad civilia* also, does not affect the minister in his ecclesiastical character, nor in any of his proper ecclesiastical rights or duties or privileges. The exception of its not being a parish *quoad civilia* of course applies only to civil rights, and those not even affecting the minister, but the inhabitants of the original parish out of which the new parish has been taken. Thus, the new parish has no parochial school, and the heritors within it remain liable for the support of the parochial school attached to the parish. The absence of a school neither affects the status of the minister nor influences the character of the parish. Parishes existed throughout Christendom, and in this country, long before the Act 1633 and those in 1693 and 1696 were passed. The same observation applies to the heritors of the old parish who are now within the new, continuing liable for the repairs of the manse and church as before, those matters being otherwise provided for as to the new parish. So also as to provision for the poor. Both of these are burdens on the heritors, laid on with us subsequent to the Reformation, and any duties of the clergy attached to them are extrinsic to and superadded to the proper functions of the benefice.' And in *Cheyne* v. *Cook*, 1 Macph. 969, in which the question was also as to the rights of a minister of a parish erected *quoad sacra* to participate in the Ministers Widows' Fund, the Lord Justice-Clerk (Inglis) said—'This, then, is a parish *quoad sacra*, and the minister is a minister of a parish *quoad sacra*, and as such he is just in the same position as the minister of a parish *quoad omnia*, except that he has no right to the teinds. In some respects, for example, as regards the administration of the poor law, a parish *quoad sacra* differs from a parish *quoad omnia*, but so far as the minister and his benefice are concerned these differences are altogether unimportant; the single difference is that he has no claim on the teinds, and no claim on the

heritors for manse and glebe. There is, then, no doubt that the minister of Ladhope is the minister of a parish, and that he is possessed of a benefice.'

"Therefore, as regards the character of the parish as forming a benefice, and the status and rights of the minister (except in regard to the matters above mentioned), a parish erected *quoad sacra* is placed by the statute in the same position as one erected *quoad omnia*—See opinions of Lord Wood in *Grant* v. *Macintyre*, 11 D. 1379–80, and Lord Medwyn, 1387. Indeed, the statute was passed, and the declaration as to the ministers' rights inserted, in a great measure for the purpose of removing the inconveniences attendant on the previous state of the law as shown in the decisions—*Gordon* v. *The Trustees of the Ministers' Widows' Fund*, 14 S. 509; *Irvine* v. *The Trustees of the Ministers' Widows' Fund*, 16 S. 1024; *Stewarton* case, 5 D. 427, and other cases.

"If then, notwithstanding the distinctive qualifications stated, a *quoad sacra* parish is held to be a benefice, and its minister is declared to have the full status and rights and privileges of a parochial clergyman, is one of those rights or privileges to be withheld because it is said to be a matter of civil right? I think not.

"Although the exemption has civil conquences it is one peculiarly personal to the minister in his clerical character. As Lord Young says in *Hogg* v. *Parochial Board of Auchtermuchty*, 7 R. 995—'It is, I think, undoubtedly a class privilege which the pursuer enjoys only as an individual member of a class, and does not attach to the parish manse and glebe in whose hands soever they may be, but only to his ownership and occupation of them as a parish minister.' Reference may also be made to the opinions of the majority of the Judges in *Grant* v. *Macintyre*, and of Lord Chelmsford in *Hutton* v. *Harper*, 3 R. (H. of L.) 14, as showing that if the right claimed is one enjoyed by and personal to parish ministers, and is not in its nature inconsistent with the position of a minister of a *quoad sacra* parish, the fact that it is of a civil character is no answer to the claim. Indeed, right to participate in a widows' fund is as much a civil right as is exemption from poor rates, and both are personal to the minister in his capacity as minister. In this view *Grant* v. *Macintyre* and *Cheyne* v. *Cook* are authorities directly in point.

"Now, the complainer is in the eye of the law a parish minister, and he claims an exemption personal to parish ministers. I think that I should be putting too restricted an interpretation upon the words of the statute if I were to hold that they do not cover such an exemption.

"In so deciding I have kept fully in view the presumption against exemption from taxation. It is true that the result of holding as I have done is to increase the number of persons entitled to exemption, but that also occurs where a parish is disjoined and erected *quoad omnia*, and I do not understand it to be contended that the ministers of such parishes do not enjoy the exemption.

"So far as I am aware this is the first time that the question has arisen for decision in this Court. The only decision to which I have been referred is one by Sheriff-Substitute Cowan at Paisley, of which unfortunately only a very imperfect report exists, in which he decided in favour of the minister's claim for exemption."

Counsel for the Complainer—Johnston. Agent—J. B. M'Intosh, S.S.C.

Counsel for the Respondents — Low — C. K. Mackenzie. Agents—A. & A. Campbell, W.S.

HOUSE OF LORDS.

Thursday, August 8.

(Before Lords Herschell, Watson, and Fitzgerald.)

RAES *v.* MEEK AND OTHERS.

(*Ante*, July 20, 1888, 25 S.L.R. 737; 15 R. 1033.)

Trust—Bad Investment—Liability of Trustee and of Law-Agent in Trust—Title to Sue.

Trust funds which were held in terms of an antenuptial marriage-contract were lent on the security of houses in the course of erection, and were lost through the insufficiency of the security. The marriage-contract empowered the trustees to lend on heritable securities or personal securities or obligations, and contained a clause which declared that the trustees should not be answerable "for errors, omissions, or neglect of diligence, nor for the insufficiency of securities, insolvency of debtors, or depreciation in the value of purchases." An action was raised by the beneficiaries who had a contingent right to the fee of the trust-estate, against the trustees and the law-agents in the trust, "conjunctly and severally, or severally, or in such other way or manner" as should seem just, to restore the money to the trust. Defences were lodged for one of the trustees and for the law-agents.

Held (*affirming* the judgment of the First Division) that the action as against the law-agents fell to be *dismissed*, on the ground that these defenders would have been liable only if they had been employed to give advice to the appellants and neglected the duty of so doing; and further, that it did not appear from the evidence that the law-agents had been employed to advise the trustees as to the sufficiency of the security, or that the latter acted upon such advice.

Held (*reversing* the judgment of the First Division) that the trustee was liable, as it appeared from the evidence that he had failed to show the same degree of reasonable care that a man of ordinary prudence would exercise in the management of his own affairs.