is closed is exactly similar to the powers of the parties to alter by way of adjustment. This, however, is clear—no new ground of action can be substituted from that upon which the pursuer came into Court. Here the complainer sought to have the respondent restrained from encroaching on the north gable of subjects in Loanhead belonging to him. His prayer is specific and clear. The note is complete in itself, and does not contain any reference to the statement of facts. Upon that note the Lord Ordinary on the Bills granted interdict. He saw no ambiguity, and none was suggested. But when the case came to be further considered, and a record was made up, it was discovered in revising the pleadings that a wrong reference had been given to the title-deeds in the statement of facts. I think it was just the same as if, instead of setting forth titles at length, the date of the sasine had been given, and that date had by some mistake been that of the sasine of a wrong house. On such a mistake being discovered, reference may be given to the sasine of the house actually in question. There was a mistake in quoting from the wrong title-deed, but without anybody being in doubt as to the subject to which the interdict sought applied. It was quite proper to make that correction on revisal, and I am of opinion that the record as now closed is that on which the real question between the parties should be tried, and that we should remit the case to the Lord Ordinary.

LORD KINNEAR — I am of the same opinion. Clearly the argument founded upon the 29th section of the Court of Session Act has no application to this question, because the complainer is not in the position of a party appealing to the Court to allow an amendment. He made a correction which he thought necessary while the papers were in his own hands, and subject to his own control, but of course he could only make such a correction upon fixed rules and conditions. I agree that if the complainer had taken advantage of his revision to introduce into the interdict matter not already there, his amendment should have been disallowed, although not exactly under section 29 referred to.

The question here is, whether he did anything more than correct an error which he had found he had made in the statement of facts appended to the note praying for interdict? If so, the point for the respondent ought to be that the introduction of new matter showed that the interdict originally asked could not be granted.

The Lord Ordinary says — "This description of the subjects referred to is general and imperfect, and might have been open to the objection that it was too general to admit of an interdict. But the subjects are distinctly defined in the statement appended to the note, where the full description of them in the complainer's title-deeds is quoted at length. The prayer of the note must therefore be read as a prayer for interdict against interference with the subject so particularly described." Now, I refer to that because I am unable to agree with the Lord Ordinary in so reading the note praying for interdict. Such a note must be construed with reference to its own terms, and not with reference to the accompanying statement of facts. Therefore we must read the interdict as it stands, and if too general, as the Lord Ordinary suggests, that will be fatal, and cannot be amended. But I think it is quite specific. If the respondent had been in a position to say—"I did not know to what house in Clerk Street having a gable the interdict was meant to apply," it would have been different. But, on the contrary, he points out in his second answer that although three houses are referred to, there is only one gable to which the interdict could apply, and that he knew it was that gable that was meant. I am clear that there was no ambiguity upon which the respondent can found, and that the parties must proceed upon the record as now closed.

The Court sustained the reclaiming-note, repelled the fifth plea-in-law for the respondent, and remitted to the Lord Ordinary to proceed.

Counsel for the Complainer and Reclaimer—Guthrie—Craigie. Agent—Charles Kerr Harris, Solicitor.

Counsel for the Respondent — Rhind — Baxter. Agent—J. B. W. Lee, S.S.C.

Saturday, July 16.

OUTER HOUSE.

[Lord Low.

STIVEN *v.* MASTERTON.

Settled Account — Curator Bonis — Discharge—Judicial Factors (Scotland) Act 1889.

The doctrine of "settled account" does not apply to a ward in settling accounts with his *curator bonis* on attaining majority.

Opinion (by the Accountant of Court approved by the Lord Ordinary on the Bills) that a factor *loco tutoris* who continued after the pupil had attained minority to act for him and to lodge accounts, without being discharged as factor *loco tutoris*, became *curator bonis* through the operation of the Judicial Factors (Scotland) Act 1889.

William Stiven, accountant, Dundee, the petitioner in this case, whose ward David Masterton attained majority on 15th November 1891, obtained from him on 7th January 1891 a formal extra-judicial discharge of his intromissions, and thereupon presented this petition for his judicial discharge and exoneration,

and for delivery of his bond of caution. The ward lodged answers, in which he admitted that the discharge had been prepared and adjusted by his own and the petitioner's law-agents, having annexed an analysis of the petitioner's intromissions, and bringing out a balance due to the respondent of £2229, 5s. 11d., subject to the expense of closing the factory and obtaining judicial discharge. He had accordingly made arrangements for the immediate investment of the greater part of the sum receivable; but upon the day appointed for a settlement the petitioner produced an account of £39. 5s. (referred to in the Accountant's report quoted below), which he proposed to deduct from the funds in his hands. The respondent objected to this as an overcharge, but as the petitioner declined to abate it and threatened to retain the funds of the curatory unless he agreed to the deduction, he had in the circumstances no alternative but to allow it under protest, and to sign the discharge. He now craved that the item of £39, 5s. should be remitted to the Accountant of Court for his opinion and report thereon, and that judicial exoneration should not meantime be granted.

The Lord Ordinary on the Bills (Low) remitted the petitioner's accounts to the Accountant, and requested him to report specially with reference to the item particularly objected to.

The material portions of the Accountant's report were:—"On October 27, 1874, Mr Stiven was appointed factor *loco tutoris* to David Masterton, and discharged the duties of his office until November 16, 1884, when the ward attained minority. He lodged his accounts for 1885 and 1886 in usual form, and on returning the Accountant's report on the former account, remarked that 'he had agreed to restrict his fee to £3, 3s.' In the audit of his account for 1886 it was pointed out to him that his title to intromit had ceased. When called upon to lodge an account for 1887 the factor wrote that he had no intromissions as factor *loco tutoris* after 30th December 1886.

"On February 26, 1889, accounts for 1887 and 1888 were lodged, and to explain the delay the factor stated that he understood his 'office had come to an end, and that his intromissions were no longer in that capacity, but simply as agent for David Masterton.'

"Regular accounts were thereafter lodged, and in the audit of that for 1890 it was pointed out that the factor had now become *curator bonis* under the Judicial Factors (Scotland) Act 1889.

"Prior to the passing of the above Act it had been customary for factors *loco tutoris* in small estates, so as to save expense, to continue acting and lodging accounts with consent until the ward reached majority and was able to give a discharge.

"In his petition for discharge the factor admits having so done.

"The interlocutor remitting to the Accountant requires him to report specially with reference to the sum of £39, 5s. referred to in the answers, No. 18 of process, lodged for the ward.

"There is produced in process a discharged note of trouble had by Mr Stiven in connection with the winding up of the curatory. This note consists of—

1. Fee for general trouble, meeting with the ward's agent, giving information, commission on £2000 (restricted to)	£10 10 0
2. Two copies of all the accounts lodged in the curatory by Mr Stiven, &c.	28 15 0
	£39 5 0

"The Accountant is humbly of opinion that the petitioner is to be held as having remained of consent under the Accountant's supervision, and, not having been discharged as factor *loco tutoris*, to have actually become *curator bonis* in 1890 through the operation of the Judical Factors Act 1889, and begs to report.

"With reference to the first item the Accountant has to report that it appears to him to be excessive. The curator may have had a certain amount of trouble in meeting with the ward's agent and giving information, but the whole time occupied should not have exceeded one day, as the curatory acounts have been of the most simple character. No commission is exigible on the realisation of the capital preparatory to paying it over to the ward. At the commencement of the factory the factor got 1 per cent. for realising and investing the funds, and he is not entitled to any further sum, because by Act of Parliament he was subsequently called *curator bonis* instead of factor *loco tutoris*. Taking everything into consideration, the Accountant is of opinion that a fee of £7, 7s. would fully cover any extra trouble involved in the final accounting.

"With reference to two copies of accounts charged for, these were not necessary. The principal accounts and reports are open to inspection in the Accountant's office. The Accountant is not aware that such a charge has ever been made in the experience of the office, and it would not be passed by him as an item of discharge in the curator's accounts, neither would it be allowed by the Auditor of Court as a charge in a law agent's business account. . . .

"The Accountant has also to report that the other sums retained to meet expenses are largely in excess of the amounts usually retained, as the expenses of judicial discharge in such cases as the present seldom exceed, inclusive of the Accountant's fees, £25. These are, however, specially declared to be subject to taxation.

"Subject to the decision of the Court in regard to the note of trouble charged by the curator and already paid, the Accountant is of opinion that, upon the curator paying to the ward the balance retained by him, under deduction of the expenses of judicial discharge as the same may be taxed and allowed in Court, and producing in process a receipt therefor, he may be judicially discharged, and that warrant may be

granted for delivery of his bond of caution as craved."

After hearing counsel for the parties the Lord Ordinary (Low) on 16th July 1892 approved of the Accountant's report—"Disallows the charge of £39, 5s., except to the extent of £7, 7s.: Finds that the petitioner is entitled to deduct from the balance of the estate retained by him the said sum of £7, 7s., and also the expenses of the present application for discharge, as the same may be taxed, with the exception of the expenses which have been incurred in regard to and in consequence of the said charge of £39, 5s.: Reserves all questions of expenses incurred in regard to and in consequence of the said charge: Finds that upon the petitioner paying to the respondent David Masterton the balance of the estate retained by him, under deduction of the said sum of £7, 7s., and the said expenses of the present application, and producing in process a receipt therefor, he will be entitled to be judicially discharged, and to obtain delivery of his bond of caution, &c.

"*Note.*—The respondent David Masterton admittedly granted a discharge to the petitioner, in which he accepted, as in full of the estate for which the petitioner was liable to account, a sum brought out after deduction of the £39, 5s. now in dispute. I lay aside altogether the explanation which the respondent gives as to the circumstances under which that discharge was granted, because the explanation is denied, and I could not assume it to be accurate without proof, but I do not think that the accuracy of the explanation is of much importance, because the fact that the respondent granted a discharge does not appear to me to be conclusive in favour of the petitioner. In the first place, I do not think that a discharge granted to his *curator bonis* by a person who has just attained majority, precludes him from subsequently objecting to what he considers to be an overcharged business account, and asking that the account should be taxed. I think that the principle which has been frequently recognised in the case of agent and client, as to the right of the client to demand taxation of business charges, notwithstanding a settlement of accounts, applies to the case of a *curator bonis* and his ward. In the second place, the petitioner comes to the Court asking a judicial discharge, and it appears to me to be the duty of the Court to see that the charges for services performed by the petitioner as *curator bonis* are adjusted and taxed according to the ordinary rules. In these circumstances I see no reason to differ from the emphatic opinion of the Accountant of Court, and I shall therefore approve of the report and give decree in terms thereof."

The petitioner reclaimed. Before hearing the matter was compromised.

Counsel for the Petitioner—James Reid. Agent—Charles T. Cox, W.S.

Counsel for the Respondent—G. W. Burnet. Agents—T. F. Weir & Robertson, S.S.C.

Thursday, October 20.

SECOND DIVISION.

[Lord Low, Ordinary.

DOUGALL *v.* THE NATIONAL BANK OF SCOTLAND (LIMITED).

Bank — Agent and Client — Company — Shares—Failure to Carry Out Client's Instructions—Damages.

A bank were the registered owners of ordinary stock of a railway company, which they held in trust for eight of their customers. The bank communicated to these customers an invitation from the railway company to apply for certain new stock. Only three of the customers—L, K, and G—instructed applications to be made for them. The bank received £33,000 of new stock, representing a certain percentage on the total amount of ordinary stock held by them, which they divided into amounts corresponding to the respective holdings of their customers.

An amount of £3750 fell to a customer—D—who instructed the bank to sell his allotment. Meantime, L, K, and G intimated a claim for the whole £33,000 to the bank, who raised a multiplepoinding, in which D was ultimately ranked and preferred to the £3750.

D sued the bank for damages, on the ground that the defenders, his agents *ad hoc*, had failed to carry out his instructions to sell for him on allotment, and thus had caused him loss.

Held that in view of the competing claims to the £33,000, the defenders were justified in continuing to hold it until the questions of right were determined.

The following narrative is taken from the opinion of the Lord Ordinary (Low)—"The facts of this case are not in dispute, and appear sufficiently from the correspondence, to which both parties referred.

"The National Bank were the registered owners of £219,840 ordinary stock of the North British Railway Company, which they held in trust for eight of their customers. Among others, Messrs Lawrie & Ker were interested in the stock to the amount of £127,000, Mr Grierson to the amount of £44,340, and Mr Andrew Dougall, the pursuer, to the amount of £25,000.

"On the 22nd November 1890 the railway company issued a circular to the shareholders, and among others to the bank, intimating that the directors were prepared to receive application at the price of £100 per cent. for the balance unissued of 4 per cent. convertible stock 1890, which had been previously allotted at the price of £120 per cent. It was stated that the allotments would bear a relative proportion to the total amount of the entire subscriptions, except in the case of existing holders of the