and who have appeared to disclaim the action, are entitled to have their names deleted from the instance of the petition, on the ground that they never authorised the present proceedings. I do not thereby mean to indicate that there may not be cases where the names of persons may be used as pursuers in a proceeding of which they do not approve. There may be cases where certain persons may be required to lend their names, in an action which they would not themselves be prepared to institute, provided they are secured against all personal liability on account of such proceedings. But I do not know of any case where the legal proceedings can be taken by one person in the name of another who has never been consulted on the subject, or informed that his name was to be used. That, I think, is the case here.

In the question raised, as between the remaining pursuers and the defender, I agree with the Sheriff. Whether the letter founded on imposes any obligation on the defender or not, is a question on which I give no opinion. If the letter imposes no obligation, the action is unfounded. If the letter does impose an obligation, then it is an obligation in favour of the person to whom it is addressed, and he is not a pursuer. Nor are the actual pursuers suing as in his right. In any view, therefore, of the letter, the present action cannot be maintained.

LORD MONCREIFF—I am for affirming the Sheriff's interlocutor. The promise on which the pursuers rely as obligatory on the defenders occurs in a private letter, dealing chiefly with other matters, written by the defender to the Reverend John Elder.

The promise, assuming it to be obligatory, bears to be a promise given to Mr Elder and not to the Committee or members of the Committee, and the connection in which it occurs makes it all the more necessary that there should be a specific statement relevant to infer that the obligation was undertaken to, and was intended by the defender to be enforceable by, the Committee of Management as a debt. I do not find any such statement in the record as it stands; and therefore, though the ground is narrow, I am not prepared to differ from the Sheriff.

I prefer to express no opinion as to whether such a promise is legally enforceable by the law of Scotland. The defender declined to state a plea that it is not.

With regard to the three first pursuers and appellants, I am of opinion that they are entitled to get their names deleted. If the record had disclosed a proper case of debt due to the Committee of Management, I think that the remaining pursuers, being a quorum majority of the Committee, would have been entitled to sue.

The Court pronounced the following interlocutor:—

"Recal the interlocutors of the Sheriff-Substitute and the Sheriff of Lanark dated 16th June and 4th August 1897: Sustains the minute of disclamation for James Gray-Buchanan, Francis Robertson Reid, and Michael Rowand Gray-Buchanan: Allow their names to be deleted from the process, and direct the Clerk of Court to delete such names accordingly: Find said three parties entitled to their expenses against the remaining pursuers, and remit same to the Auditor to tax and to report: Further, assoilzie the defender from the conclusions of the action, and decern: Find him entitled to expenses in this and the Inferior Court, and remit the same to the Auditor to tax and to report."

Counsel for the Three Disclaiming Pursuers—Kincaid Mackenzie. Agents—J. & J. Ross, W.S.

Counsel for the Remaining Pursuers—Balfour, Q.C.—Lyon Mackenzie. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defender—Sol.-Gen. Dickson, Q.C.—Guy. Agents—Graham, Johnstone, & Fleming, W.S.

Wednesday, December 15.

SECOND DIVISION.

CITY PROPERTY INVESTMENT TRUST CORPORATION, LIMITED *v.* THORBURN.

Company—Capital—Fixed or Circulating Capital—Preference Shareholder—Payment of Loss Caused by Depreciation of Investments out of Revenue.

A company was formed in 1890 with a capital divided into preferred and deferred shares. The preferred shares were entitled to a minimum dividend of 5 per cent. per annum, and were non-cumulative. Their holders were not entitled to participate in reserve funds or surplus assets. The objects of the company were to take, use, and develope heritable property, and also, *inter alia*, to invest the funds of the company in the purchase of bonds, shares, stocks, &c., and to sell, exchange, or otherwise dispose of any securities, investments, &c., of the company, and to vary the securities, investments, &c., from time to time.

From 1891 the company were in the habit of buying stocks and shares and selling them at favourable opportunities, and in ascertaining losses the company charged against revenue any losses which arose on such sales, and similarly credited revenue with any profits derived from such sales.

In 1895 the directors reported that certain securities had depreciated to the extent of £6000, and that this loss was likely to prove permanent, and they proposed to make good the loss by

restricting the dividend on the preference shares for the next two years to 3 per cent., and this proposition was approved of by the company. One of the preference shareholders objected on the ground that the loss should have been debited to capital and not to revenue.

A special case was raised to try the question, and for the purposes of the case it was agreed that the sum of £6000 had been lost.

Held that the investments on which the loss was sustained were part of the circulating capital of the company, and that the company were entitled to debit the loss to revenue.

The City Property Investment Trust Corporation was registered as a company under the Companies Acts on 9th January 1890, the registered office being at 163 West George Street, Glasgow.

As defined by clause 3 of the memorandum of association the objects of the company were, *inter alia*, (*a*) to (*f*) inclusive to take over and develope heritable property; "(*g*) To advance or lend the monies of the company to persons purchasing or leasing the property of the company, or property in which it is interested, or to give guarantees or indemnities for monies lent or otherwise given by others to such persons. (*h*) To invest the funds of the company, or funds over which it has control or an interest in the purchase of, or otherwise to acquire and hold any bonds, shares, stocks, obligations, debentures, debenture stock, scrip, or other acknowledgments of governments, states, dominions, provinces, municipalities, public trusts, or ruling or public authorities, or the bonds, debentures, debenture stocks, scrip, obligations, shares, either paid up or not paid up, stocks or securities of companies and undertakings incorporated or established by Act of Parliament, royal charter, or under the Joint-Stock Companies Acts in the United Kingdom, or under the law of any colony, or by state authority, or under the law of any foreign country or state, or on the security or mortgage of heritable or real estate wherever situated. (*i*) To make advances on the security of any bonds, shares, or real or personal property of any kind. (*j*) To acquire securities or investments, either paid up or not fully paid up, by original subscription or tender, either alone or in conjunction with others, or in any other manner, and to make payment thereon as and when necessary; and also to acquire any such securities or investments in excess of the monies for the time proposed to be invested by the company, and to sell or otherwise dispose of any excess thereof, and to subscribe for the same either conditionally or otherwise. (*k*) To sell, exchange, or otherwise dispose of any securities, investments, or property of the company; and to vary the said securities and investments or property from time to time."

As defined by clause 5 of the memorandum of association the capital of the company was £230,000 divided into 20,000 preferred shares of £10 each, and 30,000 deferred or founders' shares of £1 each. The holders of preferred shares were declared to be entitled to a preferable dividend of 5 per cent. per annum out of the profits of each year, and to preferable repayment of their capital in the event of a liquidation. Subject to these rights the profits and assets of the company were declared to belong to the holders of deferred or founders' shares. It was further provided that the preferred shares when fully paid up should be converted by the directors into stock, and that the directors might with the sanction of the shareholders convert any paid-up shares into stock.

Under the articles of association, article 113, the business of the company, which in article 2 was defined as "the carrying out of the purposes and objects mentioned in the memorandum of association or any part thereof, and the entering into and performance of all contracts, agreements, acts, operations, and other matters incident thereto or connected therewith," was to be managed by the board of directors, "and without limiting or controlling any general or other power or authority hereby given to them expressly or by implication, or which is or may be vested in them by virtue of their office, the board shall have the specific powers after mentioned—(*i*) They may invest either temporarily or permanently, such monies of the company as they may from time to time be of opinion should be invested otherwise than in the purchase of or in the loans upon heritable property or real estate, and they may from time to time vary or realise such securities: Provided always that no sum exceeding 5 per cent. of the subscribed capital, and the capital which can be raised by the exercise of the borrowing powers of the company shall be so invested in any one undertaking." Article 116 provided—"The board may, with the sanction of a general meeting, and subject to the provisions of these presents, declare dividends. No greater dividend shall be declared than shall be recommended by the board."

On the formation of the company there were issued of the authorised capital 12,988 preferred shares of £10 each, afterwards converted into £129,880 preferred stock and 24,771 deferred or founders' shares of £1 each fully paid, amounting together to £154,651. The remaining shares of the capital were never issued, and by special resolution passed 3rd, and confirmed 24th October 1895, were cancelled.

The company commenced business, and immediately after its incorporation purchased two large properties in Glasgow, the one known as the Central Chambers at £126,435, 5s., and the other at £11,500. Upon these properties the company borrowed £77,500, and upon their improvement they laid out as capital expenditure £34,711, 15s. 9d., so that these properties stood in the books of the company at 31st January 1896 at £172,647, 0s. 9d.

In the year 1891 the company, finding it was unable to make advantageous purchase of properties, proposed to the shareholders that the company should exercise its

general powers of investment, and upon the 26th day of March 1891 the following resolution was passed by the company:—"That the company approve of the directors investing such part of the funds of the company as they think proper in the investments specified in objects (*g*) to (*j*), both inclusive, of the memorandum of association, but this shall not be held as in any way limiting the directors as to investing in any other form of security authorised by the memorandum of association."

Acting on this resolution there was invested as at 31st January 1892 in general investments £71,039, 9s. 5d., that sum being the actual *cumulo* cost to the company of making such investments. During the year which ended on that date six different general investments were purchased on various dates at a total cost of £26,003, 8s. 3d., and sold all within six months of the date of purchase at £27,347, 16s. 3d. In ascertaining profits the company charged against revenue any losses which arose on sales of any of the investments, and similarly credited revenue with any profits derived from such sales. The profit of £1351, 2s. 6d. was credited to revenue as profit, and included in the company's revenue account and divided as dividend amongst the shareholders.

At 31st January 1893 the company's general investments stood at £82,724, 5s. 6d., treated in the way just stated. During the year ending on that date eight different general investments which had been bought at a total cost of £28,074, 15s. 3d. were sold, each within a few months after purchase, at £28,974, 15s. 3d. The profit of £896, 17s. was credited to revenue as profit, and included in the company's revenue account. Among the general investments was a debenture for £2250 in a company which during this year defaulted and went into liquidation. The board were of opinion that a loss of 50 per cent. would arise upon this debenture, and wrote off that amount, being £1117, 10s., from the profits of the year. This was approved of by the shareholders at the annual meeting. A dividend of 4 per cent. was paid to the preference shareholders on 9th March 1893 for the year to 31st January 1893.

At 31st January 1894 the general investments stood at £79,162, 8s. 4d., treated as before stated. During the year ending at that date two general investments which had been bought at a total cost of £8467, 1s. 11d. were sold, each within a few months after purchase, at £8396, 9s. 10d. The loss of £71, 4s. 1d. was debited to revenue, and was included in the company's loss and profit account. The directors reported that the market price of the quoted investments showed a depreciation in value compared with the prices at which they stood in the company's books. A dividend of 4 per cent. was paid to the preference shareholders on 7th March 1894 for the year to 31st January 1894.

The depreciation of general securities continued during the year ending 31st January 1895, and certain losses arose which in the judgment of the directors were likely to prove permanent. These losses were estimated at £6000, made up as follows:—

Amount.	Name of Investment.				Estimated Loss.		
400	Industrial and General Trust, Limited, Preference Shares of £10 each, now £1600 Unified Stock . . .				£1616	12	8
125	Trustees, Executors and Securities Insurance Company, Limited, £10 shares, £7 paid .				766	9	1
20	Numa Syndicate Shares of £1, 15s., paid .	£15	3	0			
	Loan through the Syndicate to the South Gila Canal Company .	1000	0	0			
					1015	3	0
$10,050	Alessandro Irrigation District 6 per cent. Bonds				1583	18	8
£2,700	Veuve Mennier at ses Fils, Limited, 6 per cent. Debentures .				1017	16	7
					£6000	0	0

The directors in their report stated that if this depreciation was met out of revenue it would probably restrict the dividend on the preferred stock to 2 or 3 per cent., but in their opinion it would be more in the shareholders' interest to meet the depreciation by a reduction of capital.

Special resolutions were passed by the company for a reduction of capital, but the Court on January 17, 1896, refused to confirm the resolution, as reported *ante*, xxxiii. 309, and 23 R. 400.

Thereafter the directors in their report for the year ending 31st January 1896 stated that the balance at the credit of revenue at that date was . . . £8937 5 10

and recommended that it should be applied as follows:—

"(*a*) In meeting the above-referred to capital loss of . . .	£6000	0	0		
Under deduction of the said amount at credit of capital reserve at 31st January 1895	1059	5	5		
	£4940	14	7		
(*b*) In payment of a dividend on the preferred stock for the year ending 31st January 1895 at the rate of 3 per cent., less tax .	3766	10	4		
				8707	4 11
Leaving				£230	0 11

to be carried forward. The said report and accounts were submitted to the shareholders and approved of, and the dividend

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Leaving				£230	0 11

to be carried forward. The said report and accounts were submitted to the shareholders and approved of, and the dividend

of 3 per cent. to the preference shareholders was duly paid."

Michael Grieve Thorburn, who was a holder of both classes of shares, objected to the sum of £4940, 14s. 7d. being debited to revenue account, and a special case to settle the point was submitted to the Court by (1) the company and (2) Mr Thorburn.

The question of law was, "Was the company entitled to debit the said sum of £4940, 14s. 7d. to revenue?"

Article 19 of the special case was in the following terms:—"(19) For the purposes of this case it is agreed that the said sum of £6000 has been lost, and that said loss had occurred at the time of the special resolution above referred to."

Argued for the first party—Under their memorandum of association the company had the power to traffic in stocks and shares, and this they were in the practice of doing after 1891. The case was thus distinguishable from *Verner* v. *General and Commercial Investments Trust* [1894], 2 Ch. Div. 239, in which the company did not look to the sale of the investments which they bought as the source of their profit. In that case the investments were permanent assets of the company, and therefore fixed capital. But in the present case the company trafficked in stocks and shares. These the company bought, not for the purpose of retaining them and dividing the income derived from them among the shareholders as dividend, but for re-sale and division of the profit if such resulted. Such investments were fluctuating and circulating capital described by Lindley, L.J., in *Verner, supra* (1894), 2 Ch. 266. Gains made by a company by realising investments at larger prices were treated as "income" in the sense of the Income Tax Acts—*Scottish Union and National Insurance Company* v. *Inland Revenue*, February 8, 1889, 16 R. 461; *Scottish Investment Trust Company, Limited* v. *Inland Revenue*, December 12, 1893, 21 R. 262. In the same way, losses made by realising investments should be treated as losses to revenue. That there had been a permanent loss was admitted by the second party in article 19 of the special case, and it was impossible to set against an admitted loss a possibility of some future appreciation of capital assets. *Separatim*—Under the articles of association it was the duty of the directors to fix the dividend. This was only an expression of the customary rule that it was in the discretion of the directors, who were the best judges of what kind of business the company was carrying on, to decide as to what was the amount of the profits which should be divided as dividend. The company had approved of the course adopted by the directors, and if the Court saw that the directors and the company were acting fairly and reasonably, they would not interfere with discretion exercised by the directors—*Lee's Neuchatel Ashphalte Company* (1889), L.R., 41 Ch. Div. 1—opinions of Cotton, L.J., 18, and Lindley, L.J., 21 and 25; *Bishop* v. *Smyrna and Cassaba Railway Company* (1895), 2 Ch. 596.

Argued for second party—No doubt it was admitted that certain investments had depreciated, but these investments had never been realised, and were held as part of the capital yielding income. Investments which had not been sold, and which earned dividends which were credited to revenue, were, while so held, fixed capital, and not circulating capital. Besides, other stocks held by the company might have appreciated, and thus the loss would be wiped out. Under the articles of association the preference shareholders had no right to any part of the reserve fund. By receiving a small dividend they were simply being asked to help to accumulate assets for the benefit of others. The investments in question stood in the same position as the whole of the capital in the case of *Verner, supra*. That case had decided that it was legal for a company, even if the assets had depreciated, to pay dividends to the full extent of its profits for the year, and the shareholders were entitled to demand that the whole income should be divided amongst them—opinion of Stirling, J. [1894], 2 Ch. 258 and 259; see also *Wilmer* v. *M'Namara & Company, Limited* [1895], 2 Ch. 245. There was nothing illegal or improper in the company devoting the money earned during the year in the payment of a dividend, and where, as here, the preference shareholders have no interest in reserve, they are entitled to demand that their dividend should be paid. Where a company reduces its capital, it must not do so in such a way that the incidence of the burdens will be different from what it would have been if the company had gone into liquidation—*Bannatyne* v. *Direct Spanish Telegraph Company*, 1886, L.R., 34 Ch. Div. 287, opinion of Cotton, L.J., 299 and 300; *in re Floating Dock Company of St Thomas, Limited* [1895], 1 Ch. 691, opinion of Chitty, J., 698; *in re London and New York Investment Incorporation* [1895], 2 Ch. 860, opinion of Stirling, J., 867 and 868. Further, even although the capital in question was held to be circulating, the loss here referred to was not of the kind that falls to be replaced out of revenue. It was only circulating capital consumed or spent in earning the revenue that required to be replaced—not capital, as here, absolutely lost—Lindley, L.J., in *Verner, supra* [1894], 2 Ch. Div. 266. In that respect there was no difference between fixed and circulating capital, if absolutely lost.

LORD TRAYNER—The first party to this case is a company registered under the Companies Acts, and the second party is a shareholder in the company. The question relates to the mode in which the first party proposes to deal with a loss which the company has sustained in the course of its transactions. It is unnecessary to go into detail either as to the purposes for which the company was incorporated, or as to its powers of management, as these matters are given at length in the case. It is enough to say that among the purposes of

the company, as set forth in the memorandum of association, was that (art. j) of acquiring securities or investments, among which might be included (art. l) "bonds, shares, stocks, obligations, debentures," &c., of other companies or persons, as also (art. k) to sell, exchange, or otherwise dispose of any securities, investments, or property of the company, and to vary the said securities and investments or property from time to time. It appears from the case and the joint statement for the parties since lodged that the company's business was carried on in this manner — the directors purchased from time to time certain stocks or other securities which they sold when the market was favourable for doing so, and the profits made on such sales (that is, the excess in price received over the price originally paid) was treated as income and divided among the shareholders. Any loss arising from such sales was in like manner debited to income. In the year ending 31st January 1895, the company held certain securities (enumerated on page 6 of the joint statement) which had depreciated in value to the extent of £6000—not depreciated merely for the time being, but depreciated in the sense that they could not and would not at any time bring a price within £6000 of the price that had been paid for them, involving thus a necessary loss thereon of £6000. It is accordingly matter of admission in the case, that in the year I have referred to the company had sustained a loss—an actual loss—to the extent of £6000 on these securities. The directors, according to their practice, proposed to charge this loss as a debit against revenue on the year's accounts, less a reserve fund in their hands of £1059, 5s. 5d., leaving the loss to be stated at £4940, 14s. 7d.

The second party objects to this being done, and he has an undoubted interest in objecting. But he does not, as I understand him, base his objection on the ground that the directors were not entitled to debit revenue in this or any other year with a loss arising on stocks which the company had realised. His objection is that the loss in question was a loss on fixed capital, and should therefore be charged against capital and not against revenue. If the second party was right in his facts, I should think his argument and contention sound. It would not be permissible to make up an estimated or actual loss by depreciation on fixed capital by charging it against or replacing it from the year's revenue. The shareholders are entitled to have their dividend out of the revenue for the year without that revenue being so reduced. But the argument fails if the fact fails, as I think it does. In the first place, it is to be kept in mind that the loss in question is not an estimated, but by admission an actual loss. Now, in what respect is it said that the stocks, &c., on which the loss occurred are fixed capital more than any other stock which the company held? I have heard no reason assigned beyond this, that it had been held by the company for a longer period than most, or all it may be, of their other stocks. If it was longer held than other stocks, that proves nothing more than this, that an advantageous opportunity for realising had not occurred so soon in this case as in the case of other investments. But mere length of time in holding will not make fixed capital out of what otherwise would be floating or circulating capital. If the stocks in question had been held to meet some particular claim, or had been set aside by the company for some particular purpose, as, for example, as a permanent rent or income-producing subject, which involved the idea that the directors were not to part with or realise them, then they might be regarded as fixed capital. But if they were in the hands of the directors for realisation when opportunity occurred—for such realisation as would be advantageous to the company, without any restriction as to the time or price at which they might be sold—then they were like any other stocks held for realisation, the profit on which would go to enhance the revenue, or the loss, to reduce it. It appears to me this was the character of the investments on which the loss in question was sustained; they were part of the circulating capital of the company, and the loss actually sustained thereon in the year mentioned was a proper debit against the revenue for that year. I would therefore answer the question put to us in the affirmative.

LORD YOUNG concurred.

LORD MONCREIFF—The question of law put to us in this special case is—"Was the company entitled to debit the said sum of £4940, 14s. 7d. to revenue?"

The sum in question was part of a sum of £6000 which, according to the admission of parties in article 19 of the case, has been lost—that is, permanently lost.

The question depends upon whether the investments upon which the loss has occurred are to be regarded as permanent investments or circulating capital. If the former, the loss sustained on them need not be replaced before paying dividends; if the latter, the loss must be made good out of revenue before dividends are paid.

I am of opinion that the question should be answered in the affirmative, but I have not arrived at this conclusion without considerable difficulty. The objects of the company as disclosed in the memorandum of association, particularly articles (*g*) to (*k*), both inclusive, do not necessarily suggest that the company are to carry on the business of trafficking in bonds, shares, stocks, and other securities. They are consistent with such securities being purchased and held as investments, and I do not see much difference between them and the objects as defined in the memorandum of association of the General and Commercial Investment Trust in the case of *Verner* v. *The General and Commercial Investment Trust* [1894], L.R., 2 Ch. 239.

At the same time those objects are not inconsistent with the company trafficking in securities, and I have been chiefly influ-

enced by the consideration that it is established that in point of fact they did so trafficking, and that it has been the practice of the company to credit to revenue profit made upon the sale of securities during those years in which a profit overhead was made upon the sales. Take, for instance, the sales of general investments for the year ending 1st January 1892. We find that during that year six different sets of shares were realised. On an average none of them had when they were sold been held for above six months. The total price realised on re-sale amounted to £27,347, 16s. 3d., about a third of the total capital of the company. There was a profit overhead of £1351, 2s. 6d. The profit so realised was credited to revenue and divided as dividend among the shareholders.

The same thing occurred in regard to the sales effected during the financial year ending 31st January 1893. Nine different investments were realised at a total price of £28,974, 15s. 3d., at a profit overhead of £896, 17s., which was credited to revenue as profit.

All these securities also had been held for short periods.

The sales effected during the financial years ending 31st January 1894 and 1895 were limited in number, presumably because there had been a great fall in the value of such securities. There was a loss on the sales during the year ending 31st January 1894 which was debited to revenue.

The statements to which I have just referred indicate, I think, that during these years the company were trafficking in stocks and shares and other securities, and as it cannot be said that the memorandum and articles of association do not empower them to do so, I think it must be held that the capital which they used for that purpose was circulating and not fixed.

Some difficulty, however, arises from the fact that the securities on which the loss actually occurred were acquired in 1891 and are still held by the company. The loss has not occurred through their being sold at a loss, and they have been held sufficiently long to give colour to the contention that they are held as investments. I think, however, looking to the admission in article 19 of the case, that we must look upon the loss sustained on them as being as fixed and certain as if the securities had been sold at a loss, or the companies in which the shares were held had reduced their nominal value. As regards the length of time during which the securities were held, the explanation probably is, that during these years they could not have been sold except at serious loss.

The circumstances of the case of *Verner* v. *The General and Investment Trust* differed from those of the present case in this material respect, that in that case no trafficking with the assets took place. I find this noted in the opinion of Mr Justice Stirling, p. 256, and Lord Justice Kay, p. 269. The company seem to have purchased the securities as investments, and made the profit which they divided as revenue, not out of the sale of the securities but out of the interest at a high rate which they received on the investments.

The present case I regard as special; a slight difference of circumstances might lead to a different result. But on the whole I think that the proposed treatment of the loss by the company which has been submitted to and approved of by the shareholders is within the powers of the company.

The LORD JUSTICE-CLERK was absent.

The Court answered the question in the affirmative, found and declared accordingly, and decerned.

Counsel for the First Parties—Sol.-Gen. Dickson, Q.C.—Kincaid Mackenzie. Agents—J. & J. Ross, W.S.

Counsel for the Second Party—Lorimer—Clyde. Agents—Menzies, Black, & Menzies, W.S.

Wednesday, December 15.

FIRST DIVISION.

[Lord Stormonth-Darling, Ordinary.

BROWN AND OTHERS (M'CONNELL'S TRUSTEES), PETITIONERS.

Trust—Trustee—Power to Resign—Trusts (Scotland) Acts 1861 *and* 1867 (24 *and* 25 *Vict. c.* 84; 30 *and* 31 *Vict. c.* 97)—*Judicial Factor—Discretionary Power.*

A truster directed his trustees, *inter alia*, to hold the residue of his estate for his children in liferent and their issue in fee, declaring that the grandchildren's shares should not vest till they respectively attained majority, and that such vesting should take place subject to the liferent of their parent. He further conferred on the trustees full power to advance to the fiars a portion not exceeding one-half of their respective shares.

The trustees having presented a petition for authority to resign and for the appointment of a judicial factor on the trust-estate, on the ground that certain other trust purposes were unworkable, the *curator ad litem* to the minor grandchildren called the attention of the Court to the power to make advances, and raised the question whether the Court would confer the same power upon a judicial factor.

The Court *granted* the petition, holding that the trustees had an absolute right to resign under the Trust Acts 1861 and 1867, and that that right could not be defeated by the possibility of the administration of the estate being more limited in the hands of a judicial factor than under the trust-deed.

Alexander Kirkwood Brown and others, testamentary trustees of the late Robert M'Connell, bleacher, Glasgow, presented a petition for authority to resign the office of