Another objection to the decree-arbitral is stated by the pursuers. They say that it falls to be reduced because the arbiter refused to allow them a proof of their statements which was necessary before any judgment could fairly or reasonably be reached. Here, again, I think the pursuers are right. I need scarcely say that where an arbiter is chosen on account of his skill to determine a disputed question, which that skill enables him to determine, he may competently refuse to hear any proof on the subject. He may also refuse to hear evidence in regard to any matter on which he can satisfy himself by personal inspection. But where the question to be determined depends wholly or partially on the ascertainment of disputed facts, then the arbiter cannot refuse to hear evidence. Now, here there was disputed fact which the arbiter's skill alone could not enable him to decide upon. The pursuers' claim for extra cost was not admitted. It should therefore have been made the subject of probation, as otherwise the arbiter could not be instructed on the subject or enabled to pronounce a decision.

In this case, however, we have the peculiarity that the arbiter allowed a proof, but refused to allow the pursuers to have recourse to professional assistance in leading it. The pursuers intimated that they were not competent to examine and cross-examine witnesses, and refused to go on with a proof on the condition prescribed by the arbiter. The arbiter therefore pronounced his judgment without any proof being adduced. The conditions prescribed by the arbiter were, in my opinion, conditions which he had no power to prescribe, and they were in the circumstances equivalent to a refusal to allow a proof. He refers as an explanation of what he did, to an agreement by the parties that professional assistance should not be resorted to by either. Well, in the first place, I find no evidence of any agreement that in no circumstances and at no stage of the submission should the parties employ professional assistance. But in the second place, if such an agreement had been made, I think that either party was entitled to resile from it whenever it appeared to them necessary to have such assistance, due notice of the change of mind or intention being given, so that the opponent was not put to any disadvantage.

LORD MONCREIFF was absent.

The Court recalled the Lord Ordinary's interlocutor, and decerned in terms of the conclusions of the action.

Counsel for the Pursuers and Reclaimers—Salvesen, Q.C.—Guy. Agents—Alexander Morison & Co., W.S.

Counsel for the Defenders and Respondents—Lees—Craigie. Agents—Campbell & Smith, S.S.C.

Friday, July 20.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

STEWART *v.* SHANNESSY.

Agent and Principal—Liability of Agent to Third Party—Engagement of Traveller by Sales Manager—Letter of Appointment Signed by Agent in his Own Name without Qualification—Master and Servant—Sales Manager — Traveller — Contract — Written Contract—Parole Evidence.

Where a person signs a contract in his own name without qualification he is *prima facie* to be deemed to be a person contracting personally, and in order to prevent this liability from attaching, it must be apparent from other parts of the document that he did not intend to bind himself as principal.

S. was appointed "exclusive sales manager" for two trading companies over a certain district. By his agreement with one of them it was provided that the company were to pay all the expenses incident to their head office, including "clerks and servants' wages, travelling and other expenses," and he was to be at liberty to act as sales manager to the other company, and "to employ the clerks, servants, and travellers thereof." By his agreement with the other company it was provided that the company were to pay S. a fixed rate for every traveller who might be engaged upon their business, but the number of travellers who were to be so paid was not to exceed three without the written consent of the company.

S. engaged J, as a traveller, by a letter in the following terms:—"I beg to confirm arrangement made with you this day, and appoint you as representative for" the two companies, "on following terms:— 45s. per week salary payable monthly and 1¼ per cent. commission on all orders." . . . The letter was written upon paper belonging to one of the companies, with their name upon it. It was signed by S. in his own name without qualification of any kind, and did not bear to be granted by him in his capacity of sales manager to the companies.

In an action at the instance of J. against S. for payment of the amount due to him by way of commission, the defender maintained that in engaging the pursuer he had acted as agent for the companies, that the pursuer was aware of this, and that his only claim for commission lay against them.

Held that as the letter of engagement had been signed by the defender in his own name without any qualification, and there was nothing in the letter, as construed with reference to the surrounding circumstances, to indicate that he was not acting as principal, he was liable to pay the commission.

This was an action at the instance of James Duncan Stewart against John Joseph Shannessy, cycle agent, Newcastle-on-Tyne, concluding that the defender should be ordained "to exhibit and produce before our said Lords a full and particular account of the commissions due by the defender to the pursuer under letter of engagement by the defender to the pursuer dated 29th January 1897 upon or in connection with the sale of cycles and tyres and rubber goods in Scotland by the 'New' Buckingham & Adams Cycle Company, Limited, cycle manufacturers, Birmingham, and the Non-Collapsible Tyre Company, Limited, Birmingham, the successors of the Midland India-Rubber Company, Limited, in the course of their trade or business from the said 29th January 1897 to 18th May 1898, whereby the true balance due by the defender to the pursuer may appear and be ascertained by our said Lords; and the defender ought and should be decerned and ordained by decree foresaid to make payment to the pursuer of the sum of £454, 1s. sterling, or of such other sum as shall appear and be ascertained by our said Lords to be due by the defender as the amount of the said commissions." There was also a conclusion for payment of £7, 14s. 6d., which the pursuer claimed as due in respect of his dismissal without proper notice.

The letter of engagement referred to in the summons was in the following terms:—"Mr J. D. Stewart, Glasgow.—Dear Sir,—I beg to confirm arrangement made with you this day, and appoint you as representative for New Buckingham and Adams Cycle Coy., Ld., and the Midland Rubber Works, Ld., on following terms:—45/- per week salary, payable monthly, and 1¼ per cent. commission on all orders for cycles sold by us or you in Scotland, from date of January 23rd 1897, and 2½% as commission on all orders for tyres and rubber goods. Travelling expenses to be 15s. per day when travelling outside Glasgow, and if samples are carried further allowance to be made to coversame.—Yours truly, J. J. SHANNESSY." This letter was written on paper headed with the name of the New Buckingham Cycle Company, and dated from their office in Newcastle.

The relation of Mr Shannessy to the New Buckingham & Adams Cycle Company, Limited was defined in an agreement entered into between him and them and dated 15th March 1897, which contained the following conditions:—"1. Shannessy shall during the term of five years from the first day of January One thousand eight hundred and ninety-seven be the exclusive sales manager of the company for the district following—that is to say, the whole of Scotland and Ireland, and that part of England which is situated to the northward of a line drawn from Grimsby to Leeds and from Leeds to Lancaster, including these towns except Leeds, which shall not be deemed to be included in the said district. Shannessy shall not sell the company's goods at less than the minimum prices, which from time to time shall be arranged as hereinafter provided." The company were to pay all the expenses relative to the head office at Newcastle, including "clerks and servants' wages, travelling and other expenses," and Shannessy was to receive a salary of £5 per week and 5 per cent. commission on cash received for sales. It was further provided—"(4) Shannessy shall be at liberty during the said engagement to act as sales' manager in the said district for the Non-Collapsible Tyre Company, Limited, its successors and assigns, upon terms which have the consent of the Company (*i.e.* The New Buckingham Company) been arranged and are contained in an agreement bearing date the day of One thousand eight hundred and ninety-seven, and for that purpose Shannessy shall be at liberty to use the district office or offices or warehouse of the company and to employ the travellers, clerks, and servants thereof." . . .

By an agreement entered into between Shannessy and the New Buckingham & Adams Cycle Company, Limited and the Non-Collapsible Tyre Company, who were the successors of the Midland India Rubber Company, it was provided that Mr Shannessy was to be "the exclusive sales manager" of the Tyre Company for the same district, and was to receive a salary of £4 per week and 2½ per cent commission on cash received for goods sold within the district. It was further provided that the company "shall also pay to Shannessy for every traveller or travellers that may be engaged in travelling upon the business of the Tyre Company as aforesaid at the rate of three pounds per week as travelling expenses, to be paid every four weeks. The said salary of four pounds per week shall be deemed to include the travelling expenses of Shannessy. The number of travellers so to be paid or remunerated shall not (excluding Shannessy) exceed three in number without the consent in writing of the Tyre Company."

The pursuer in the present action averred that he entered upon his duties in terms of his engagement and continued to discharge them till 18th May 1898, and that seven days before that date he received intimation from the defender that his engagement was to terminate in one week. He averred that no payments had been made to him by way of commission, and that he had been dismissed without proper notice, and maintained that he was entitled to an accounting for commissions and payment of the sum found due to him, and to payment of a further sum in respect of his dismissal without proper notice.

The defender averred—"Explained and averred that, at the time of his engagement by the defender, the pursuer was well aware that the defender was acting as the representative of the said New Buckingham and Adams and the Non-Collapsible Tyre Companies, and that it was in this capacity that he engaged the pursuer as the servant of the companies whom the defender represented. All letters written by the pursuer to the defender were written upon the New Buckingham and

Adams Company's note-paper, with the company's heading, supplied to him for the purpose . . . During the time the pursuer was engaged as traveller he sent reports of the work he had done each week, and these reports were made out upon forms with the Non-Collapsible Tyre Company's heading, and taken from an official report book supplied to him for the purpose. These reports are herewith produced and referred to. Any dealings which the pursuer has had with the defender were dealings with him as a representative only."

He further averred that the pursuer had been dismissed in consequence of his persistent disregard of the defender's instructions.

The defender pleaded, *inter alia*—"(1) The action is irrelevant, *et separatim*, incompetent. (5) The defender having acted as an agent for the said principals, and the pursuer being well aware of this, he has no claim as alleged against the defender, and the defender is entitled to absolvitor with expenses."

The Lord Ordinary (STORMONTH DARLING) on 8th March 1899 repelled the defender's first plea, and appointed the defender to lodge the account called for, and granted leave to reclaim. The defender reclaimed, and the Court on 16th May 1899 adhered to the Lord Ordinary's interlocutor so far as it repelled the defender's first plea as a plea to the competency, and *quoad ultra* recalled the interlocutor and remitted to the Lord Ordinary to allow the parties a proof before answer.

The purport of the evidence led at the proof is fully set forth in the opinion of the Lord Ordinary *infra*. It is only necessary to add that the defender admitted that while his agreements with the two companies were not dated till after the letter of 29th January 1897, by which he engaged the pursuer, the agreements were in operation before that date, and he was acting upon them.

The Lord Ordinary, on 17th November 1899, pronounced the following interlocutor:—"Finds that the defender is liable to account to the pursuer for the commission due to him under the letter of engagement libelled: Appoints the defender to lodge the account called for within fourteen days from this date: Finds the pursuer entitled to expenses since 2nd June 1899," &c.

Opinion.—"This case has been in Court for more than a year without the parties having touched the merits of the real question between them. The time has been entirely occupied in discussing the preliminary question whether the defender or the two companies which he represents were the proper parties to account to the pursuer. This I think is to be regretted, both because something is undoubtedly due to the pursuer, and also because it now appears that the companies are willing to undertake liability. That being so, I am at a loss to understand why the present action should not have been utilised for the purpose of determining the amount. But litigants do not always take the shortest route to their goal, and the action of the parties compels me to decide a question which is of no importance to anybody, except as affecting the expenses hitherto incurred in this case.

"That question is, whether the letter of 29th January 1897 had the effect of establishing privity of contract between the pursuer and the two companies. And I observe at the outset that privity of contract must either have been established with both companies, or the defender himself must remain liable. It would be impossible to hold that it had been established with one company and not with the other.

"Now the letter of appointment, which is written on paper headed with the name of the New Buckingham Cycle Company, and dated from their office at Newcastle, undoubtedly appoints the pursuer as representative of the two companies for the purpose of selling their goods in Scotland; but it is signed by the defender in his own name, without qualification of any kind, and it does not bear to be granted by him in the character which he undoubtedly possessed of sales manager of both companies. Accordingly, the letter is not by itself conclusive either way. It prescribes the duties which the pursuer is to perform and the remuneration which he is to receive; but, so far as its terms go, he might have been intended to do his work and to get his pay, either as servant of the defender or of the companies. It was therefore necessary to have evidence as to the actings of parties; and the proof has disclosed the following facts:—

"The relation of the defender to the New Buckingham Company is defined by an agreement of 15th March 1897, whereby he was to be for five years 'exclusive sales manager' for the company in a district embracing Scotland, Ireland, and the north of England, and was to receive a salary of £5 a week, and 5 per cent. commission on all cash received by the company, in respect of sales of their goods within the district, the prices of such goods being annually to be fixed by the company and the defender mutually. The company were to pay all the expenses incident to the head office at Newcastle, including 'clerks and servants' wages, travelling and other expenses,' and the defender was to be at liberty to act as sales manager in the district for the Non-Collapsible Tyre Company, and for that purpose to use the district office of the Cycle Company, and 'to employ the clerks, servants, and travellers thereof.' His relation to the Tyre Company is also defined by a written agreement, the material parts of which are that he was to act as their 'exclusive sales manager' for the same district, and was to receive a salary of £4 per week, and 2½ per cent. commission on all cash received for goods of theirs sold in the district. The arrangement with regard to travellers was much more precise than in the other agreement. The Tyre Company were to pay to the defender for every traveller who might be engaged upon their business at the rate of £3 per week as

travelling expenses, and £1 a-week in addition, but the number of travellers so to be paid or remunerated was not to exceed three in number without the written consent of the company.

"In pursuance of these agreements the defender from time to time rendered accounts to the two companies. As regards the Tyre Company, he charged them, precisely in terms of the agreement, with sums of £1 a-week of salary, and £3 a-week of travelling expenses for each of three travellers (including the pursuer). As regards the Cycle Company, he charged them with £1, 10s. a-week of salary for the pursuer, and varying sums of travelling expenses as these were incurred. The sums which he charged against the two companies in respect of salary for the pursuer were thus £2, 10s. a-week, and as the pursuer's stipulated salary was only £2, 5s. a-week, there was an apparent profit to the defender of 5s. a-week. He explains that this profit was apparent and not real, because the money was spent on other travellers, but none the less does it hold good that the amount paid by the Tyre Company to the defender in respect of the pursuer's salary was not the same as that which the defender paid to the pursuer. No sums were ever charged against either company in respect of the pursuer's commission on sales, because no commission has yet been paid to the pursuer; and it appears that both companies remained throughout in entire ignorance of the terms of the agreement between the pursuer and the defender. From first to last the pursuer dealt exclusively with the defender, to whom he made his reports, from whom he received his orders, and by whom his salary and travelling expenses were paid. He is not shown ever to have been brought into direct relation with either of the companies, except at a cycle show where some instructions were given to him by the manager about the exhibits. He is not shown to have made any inquiry, or to have received any information, as to the relations existing between the companies and the defender. It now appears, as I have said, that both companies hold themselves liable for his commission. But it seems to me that the present question depends, not on their willingness to meet his claims, but on whether they would have been bound to do so if he had sued them, or in other words, whether he was bound to assume that they were his true debtors. I think not.

"In one sense it is quite true that the defender had authority to employ travellers within his district, as many as he chose. It does not follow that he had authority to make a contract of agency between these travellers and the two companies. In the case of the Tyre Company certainly, I think they would have been entitled to say to the defender, if they had chosen to do so, 'We are bound to pay you £1 a-week of salary, and £3 a-week of expenses for each of three travellers, but that is the limit of our liability; we are not bound to pay to any traveller 2½ per cent. of commission, and especially we are not bound to pay any sum of commission on orders in Scotland not procured by himself.' The mere fact that the Tyre Company do not choose to take up that position seems to me to be of no moment at all.

"That, I think, would have been the position of parties if the pursuer had known all about the contract between the defender and the two companies. But I do not think that he was bound to inquire into that matter. He was entitled to assume that the defender had (as in fact he had) a personal interest in pushing the sales of the companies' goods, and in employing sub-agents for that purpose. The terms of his appointment were consistent with that view, and he received no information to an opposite effect. *Prima facie*, the person liable to pay his remuneration was the person who had promised it, and I do not think that he was bound to run the risk of calling the companies as defenders, and of being met with the defence that they had not contracted with him.

"I shall therefore find that the defender is liable to account to the pursuer for the commission due to him under the letter of engagement libelled, and I shall appoint the defender to lodge the account called for."

The defender reclaimed, and argued—On the contract, and the circumstances attending it, the proper defenders were the companies, who were the true principals in the contract. There were two classes of cases, the first where the relation of the parties could be ascertained from the contract itself, and the second where it was ascertained from the surrounding circumstances. It was clear from the terms of the contract that the pursuer was to be a servant of the companies, and that the defender was only acting as their agent, the true principals being disclosed. This view of the contract was borne out by subsequent events. The pursuer all along corresponded with the defender as the district manager representing the companies, and not as if he were employed by him personally. The pursuer had full power under his agreements with the companies to engage travellers who were to be their servants.

Argued for the respondent—The defender had always acted as a principal in the contract. The pursuer had never been paid by anyone but the defender, and his reports had always been made to him, and he was dismissed by him. The pursuer had never applied to the companies for an accounting, and the contract throughout had been treated as one between him and the defender. The defence now stated was never suggested until it was put forward as a technical plea by the defender after the case was in Court. The contract itself was clearly one between the pursuer and defender alone. There was no qualification in it of the defender's responsibility, but an unqualified signature by him which, in the absence of anything in the contract pointing the other way, made him clearly liable as principal—*Paice* v. *Walker*, 1870, L.R. 5 Ex. 173; *Thomson* v. *Davenport*,

2 Smith's Leading Cases (10th ed.) 368. The terms of the contract, and especially the condition as to payment of weekly salary, which was not apportioned between the companies, confirmed this view.

Taking the agreements between the defender and the companies, it did not appear that he had power to make contracts between them and the travellers. So even if the pursuer must be held as knowing the relations which existed between them and the defender, there was nothing to show that he considered the companies as his employers. Moreover, if an agent contracted in such a form as to make himself personally responsible, whether or no his principal was known, he would not be free from liability—*Cartwright* v. *Hately*, 1791, 1 Ves. Jun. 292; *Higgins* v. *Senior*, 1841, 8 M. & W., 834, at 845; *New Zealand and Australian Land Co.* v. *Watson*, 1881, 7 Q.B.D. 374; Evans on Principal and Agent, p. 294.

At advising—

LORD KINNEAR—I think the Lord Ordinary's judgment is right, and I have very little to add. The pursuer was engaged by the defender to act as traveller for the sale of goods belonging to two companies—the New Buckingham and Adams' Cycle Company, and the Midland Rubber Works, Limited, afterwards the Non-Collapsible Tyre Company — and the question is, whether the defender is liable personally to make good the terms of the engagement, or whether that liability attaches only to the companies. The question depends upon the meaning and effect of a written contract which is embodied in the letter of 29th January 1897, and when the construction of that letter has been determined I do not see that the result can be affected one way or the other by any extrinsic evidence. But then I agree with the Lord Ordinary that the document should be construed with reference to the surrounding circumstances at the time the letter was written, and particularly with reference to the position and powers of the writer as agent of the two companies whom he alleges to have been the principals for whom the contract was made. Now, the agreements of service between him and them are dated subsequently to the letter in question. But we have the defender's own evidence that at the time he wrote the letter he was acting under the arrangements embodied in these agreements, and he does not allege that he had any other or higher authority from either company than can be found in these documents. His position then at the time he engaged the pursuer was that he was exclusive sales manager for both companies in Scotland and Ireland and within a defined district in the North of England, and was to receive from each a salary and also a commission on all cash received by the company in respect of the company's goods sold within his district. In short, the whole business of the companies, in so far as regarded the sale of their goods within a certain district, was handed over to him. The Lord Ordinary has examined in some detail the provisions of the agreements with reference to the power of the defender to engage travellers, and I do not think it necessary to say more than that his Lordship's summary appears to me to be correct. I see no reason to doubt that in carrying out his business as sales' manager he might appoint sub-agents or travellers without any breach of his agreements with the two companies, but I cannot find in either of the agreements that he had any authority to make contracts of agency on behalf of either company, or to make a direct contract between them as principals and the travellers or sub-agents whom he might appoint as principals on the other part.

That being the position of the writer of the letter, the question is, what is the meaning of the letter he wrote. He writes to the defender—[*His Lordship read the letter*] — and as the Lord Ordinary points out he signs the letter in his own name without qualification of any kind. The letter does not purport to make an engagement by the defender in the character of sales' manager to the companies and as binding them. It is an engagement by the defender in his own name. Now, the general rule as to the construction of such documents is laid down with precision by Mr Smith in a note upon the case of *Thomson* v. *Davenport*, Smith's Leading Cases, ii. 368 (10th edition), at page 388, that "where a person signs a contract in his own name without qualification he is *prima facie* to be deemed to be a person contracting personally, and in order to prevent this liability from attaching it must be apparent from other parts of the document that he did not intend to bind himself as principal." That is stated as the law of England, but there is nothing technical in it, it is a statement of the reasonable and just inference to be deduced from documents expressed in ordinary language, and passing in the ordinary course of business, and I have no hesitation in accepting it as a correct statement of the law of Scotland also. Now, here I cannot find in any part of the document any indication that the defender did not intend to bind himself. The only word which is said to suggest that he made the contract for the companies and not for himself is the word "representative," which is supposed to imply some power or character conferred by the companies themselves. But that is a word which is very often used in mercantile correspondence with considerable laxity and without exact reference to its strict and accurate meaning. It appears to me as employed in this letter to have no more definite meaning than salesman or "traveller." If that be so, then the question remains exactly where it was. At all events, it is much too slender a basis to support an argument that the letter purports to create a contract, not with the person who writes it, but with the two companies. On the other hand there is in the substance of the engagement a condition which seems to me to necessitate the

application of the general rule, and to exclude the exception, and that is the condition as to remuneration. The payment of commission, being on the sale of all goods, is distributed between the two companies, but the weekly salary is a lump sum for the whole services rendered. There is nothing to infer the joint liability of both companies for the entire salary, or the separate liability of either to pay for the services rendered to the other, and there is no means of apportioning the liability between the two so as to make each liable for its own share. It is quite clear that the pursuer can look to nobody but the defender for payment of the salary, which the defender undertakes shall be paid. I think therefore that the substance of the agreement is in accordance with the general rule of law. The Lord Ordinary has examined in some detail the actings of parties which followed on the engagement. I think his Lordship's view as to their conduct is correct, but I do not think it necessary to consider it minutely, because I do not attach so much importance to this part of the case. The one sentence in his Lordship's judgment with which I am not prepared to concur is that in which he says that "the letter is not by itself conclusive either way." I think, on the contrary, that it is conclusive, and that it puts an end to the whole question. I agree with the Lord Ordinary in attaching no importance to the evidence of directors of the companies who were called to prove that the defender was the companies' servant. It does not appear that the question was ever brought before the board in any definite or practical form, and the evidence amounts to nothing more than the *ex post facto* opinion of individual directors who were not parties to the contract. Even therefore if it were admissible it would have no weight, but I have doubts as to the admissibility of a large part of the evidence to control the written contract.

It was stated at the bar—and I observe that the Lord Ordinary also notices a statement to that effect—that the companies are willing to pay the pursuer. If they are willing and able to do so, there can be no objection to their putting an end to the controversy in that way, but that point is not before us in such a form as to affect our judgment.

The LORD PRESIDENT and LORD ADAM concurred.

LORD M'LAREN was absent.

The Court adhered.

Counsel for the Pursuer—W. Campbell, Q.C. — Hunter. Agents — Carmichael & Miller, W.S.

Counsel for the Defender—Salvesen, Q.C. —Findlay. Agent—W. Marshall Henderson, S.S.C.

Friday, July 20.

FIRST DIVISION.

[Lord Pearson, Ordinary.

HENDERSON *v.* HENDERSON'S TRUSTEES.

Trust—Administration—Liability of Trustees—Investment of Trust Funds—Investment in Trading Enterprise—Reasonable Prudence—Power to Invest in "Stocks"—Investment in Fully Paid-up Shares.

A marriage-contract empowered the trustees acting under it to lay out the trust funds on, *inter alia*, "Government funds, debentures, or purchases of stocks." The trustees in 1881 invested a certain sum out of the trust-estate in the purchase of fully paid-up shares in the British and Canadian Lumbering and Timber Company, Limited, a company which had been formed in 1880 for the purpose of working timber lands in Canada and the United States, and which had its registered office and board of directors in Scotland. The company went into liquidation in 1883. An action was raised by the beneficiaries against the trustees for repayment of the sum thus invested, on the ground (1) that it was not within their powers to apply the trust funds in the purchase of shares in a limited liability company, and (2) that even if it was, the purchase of these particular shares was not a reasonably prudent exercise of the power. It appeared that the collapse of the company was due to the want of sufficient working capital, and to mismanagement by the managers in Canada; that the trustees had made full inquiries into the integrity and fidelity of the managers; and that they had special grounds for believing in the security of the investment owing to the special information possessed by one of them who was a promoter and manager of the company. *Held*, without deciding the first question, (*rev.* the judgment of Lord Pearson) that the investment was necessarily a speculative one, that it was not a reasonably prudent exercise of the trustees' powers, and that accordingly they were liable to replace the funds.

Held (*per* Lord Pearson) that a power to invest in stocks includes a power to invest in fully paid-up shares.

Trust—Breach of Trust—Consent of Beneficiary—Liability of Beneficiary to Recoup Trustees—Trusts (Scotland) Amendment Act 1891 (54 *and* 55 *Vict. c.* 44), *sec.* 6.

Section 6 of the Trusts Act 1891 enacts that "where a trustee shall have committed a breach of trust at the instigation or request, or with the consent in writing of a beneficiary, the Court may, if it shall think fit, . . . make such order as to the Court shall seem just for applying all or any part of the interest