accepted. The statement is that the instrument was recorded, not by the trustee, the second trustee, but by the truster himself, or, what is the same thing, by the truster's law-agent, and it is not said that Alexander Cameron, the second trustee, ever knew anything about it at all or accepted the trust.

I am therefore of opinion that there is no substantial difficulty on the one point which seems to be the essential point in the case, and that is the question of delivery between the one trustee and others.

LORD STORMONTH DARLING — I concur with your Lordship in the chair.

LORD LOW — The question in this case appears to me to be whether the deceased Donald Cameron, by recording in the Register of Sasines bonds and dispositions in security which he had taken in his own favour as trustee for his children, although the money invested was his own, operated delivery, so as to give the children right to the sums for which the bonds were granted, and to put it out of his power to revoke the trust which he had thereby created.

Generally the question whether the granter of a deed conferring a gratuitous benefit upon another has delivered it so as to put it beyond his power to alter or revoke, is one of intention. Thus he may hand over the deed to a third party, or even to the grantee, but if it appears that he did so only for safe keeping there will be no delivery.

No doubt the act of the granter may be so unequivocal that there is no room for arguing as to his intention. For example, if the gift took the form of a disposition of landed property to the grantee, and the granter recorded it in the Register of Sasines, I think that delivery would be thereby operated. But that is because registration of a disposition is equivalent to infeftment, and under the older law infeftment involved not only the giving of sasine, which was actual, although symbolical, delivery of the land itself, but delivery of the disposition which the granter was bound to produce as his title to demand sasine.

In this case I think that it must be taken as certain that Cameron did not intend that registration of the bond should operate delivery so as to put the money lent beyond his control, because he dealt both with interest and capital (to some extent) as if the sums in the bonds were his own, which he could not have done without committing breach of trust and a fraud upon his children if the bonds had been delivered.

And from Cameron's point of view registration of the bonds did not necessarily involve delivery, because it was required for an entirely different purpose, namely, to complete the security.

It is said, however, that whatever may have been Cameron's intention the registration of the bonds published to all the world that the sums of money for which they were granted belonged to his children, for whom he was trustee. That being so, it was argued, it would be inconsistent with the reliance which the public are entitled to place upon all entries in the public registers to hold that Cameron was entitled to repudiate the trust and claim the trust funds as his own.

At first sight that appeared to me to be a formidable argument, but I think that a sufficient answer is this—the Register of Sasines is a register of lands rights, and its object is to enable anyone interested in a particular property to ascertain what is the state of the title of that property and what are the burdens upon it. Therefore when each of the bonds and their dispositions in security in question was recorded, it seems to me that the fact which was thereby published, and upon which the public were entitled to rely, was, not that Cameron had as trustee for his children lent a certain sum of money to the borrower, but that the property of the latter, which he had disponed to Cameron in security of the debt, was validly burdened with the debt. No doubt an examination of the register would disclose that the bonds were granted to Cameron as trustee for his children, but that is not a matter which falls within the scope and purpose of the register, and therefore, in my judgment, it is not a matter in regard to which the public are entitled to rely upon the faith of the records.

LORD PEARSON — I agree with your Lordship in the chair.

The Court answered the first question of law in the negative and found that that answer superseded the necessity of answering the other questions.

Counsel for the First and Second Parties —G. Watt, K.C.—A. M. Anderson. Agents —Paterson & Salmon, Solicitors.

Counsel for Third Party—Clyde, K.C.—Chree — Macmillan. Agents — Graham, Johnston, & Fleming, W.S.

Tuesday, January 22.

FIRST DIVISION.

(SINGLE BILLS.)

LOCHGELLY IRON AND COAL COMPANY, LIMITED *v.* SINCLAIR.

(*Ante*, 1907, S.C. 3, 44 S.L.R. 2.)

Expenses—Decree in Name of Agent-Disburser—Compensation—Expenses of an Action for Reparation and of an Application for Order to State a Case under Workmen's Compensation Act Arising out of Same Accident—Pars Ejusdem Negotii.

In an action of damages at common law at the instance of a workman against his employers, the defenders were, on 8th July 1905, assoilzied with expenses, on the ground that the workman had already agreed to accept com-

pensation under the Workmen's Compensation Act 1897. The Sheriff-Substitute having granted on 18th May 1906 a special warrant to record a memorandum of the agreement, the employers, who maintained that the period of its duration had expired, applied for an order on the Sheriff-Substitute to state a case for appeal. The Court refused the application and found the workman entitled to expenses.

Held that the decree for the expenses awarded to the workman in the application under the Workmen's Compensation Act could not go out in name of the agent-disburser, as that would prevent the employers setting off against such expenses the expenses awarded them in the common law action.

This case is reported *ante, ut supra.*

The Lochgelly Iron and Coal Company, Limited, applied to the Court for an Order on the Sheriff-Substitute (SHENNAN) at Dunfermline to state a case under the Workmen's Compensation Act, the question sought to be brought up being whether the Sheriff had rightly, on 18th May 1906, granted special warrant for the registration of an agreement to pay compensation which the appellants said was not genuine, its duration having expired.

On October 23, 1906, the Court refused the application with expenses (*v. sup.*, p. 2). The case now appeared in the Single Bills on the Auditor's report.

Decree in name of the agent-disburser for the taxed amount of expenses was moved for.

Counsel for the Company objected to decree going out in name of the agent-disburser. He stated that they held, dated 8th July 1905, a decree for expenses against the respondent in a common law action for reparation, based upon the same accident as the compensation, in which he had been unsuccessful owing to his having already agreed to accept compensation under the Workmen's Compensation Act. If the motion now made were granted the appellants would lose their right of set-off. Decree in name of the agent-disburser was a privilege originally granted in the case of poor litigants out of favour to them. This privilege would not be allowed where, as here, the result would be to defeat the opposite party's right of set-off. Compensation was no doubt originally limited to cases where the decrees for expenses sought to be set off had been given simultaneously, but the right had been subsequently extended to awards of expenses which, though not pronounced together, nor yet in the same action, were made in cognate actions. The two actions here were cognate in their subject-matter and might have been conjoined—*Gordon* v. *Davidson*, June 13, 1865, 3 Macph. 938; *Portobello Pier Co.* v. *Clift*, March 16, 1877, 4 R. 685, 14 S.L.R. 435; *Paolo* v. *Parias*, July 3, 1897, 24 R. 1030, 34 S.L.R. 780; *Oliver* v. *Wilkie*, December 12, 1901, 4 F. 362, 39 S.L.R. 251; Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), sec. 1, sub-sec. (4).

Argued for respondent—He had been brought here as *respondent* and had been successful; having been awarded expenses, his agent was entitled to decree in his own name—Begg on Law Agents, pp. 190-192. The two actions were separate and distinct in their nature. The ground of the common law action was fault and that of the compensation the statutory obligation.

LORD PRESIDENT—The point now before us arises on the Auditor's report in a note for the Lochgelly Iron and Coal Company for an order to state a case under the Workmen's Compensation Act 1897, in which the determination of the Sheriff has been affirmed and the respondent found entitled to compensation, and consequently to the expenses in this Court. His counsel, upon the approval of the Auditor's report, moved that decree should be allowed to go out in name of the agent-disburser, and of course if there were no peculiar circumstances that motion would be granted. But counsel for the appellant resists the motion upon the ground that this procedure was not the only procedure in connection with this accident. The present respondent first denied that any agreement had been come to between the parties as to compensation, and raised an action in the Court of Session at common law for recovery of a much larger sum of damages. In that action defences were lodged in which it was pleaded that as he had agreed to take compensation under the Workmen's Compensation Act he had debarred himself from proceeding at common law. That defence was given effect to by the Lord Ordinary in the Outer House, and accordingly the present appellant was assoilzied from the conclusions of that action, and was found entitled to expenses against this respondent. Accordingly the present appellant naturally enough objects to decree in this process going out in name of the agent-disburser, because if it does so it will prevent him obtaining the expenses to which he has been found entitled.

I have come to the conclusion that the point made by the appellant in this case is a good one. The privilege of obtaining decree in the name of the agent disburser is truly based upon this, that it was by the agent's exertions that the fund in question, so to speak, has been brought into practical existence, and that it would be hard upon the agent, who had necessarily incurred expense in order to do so, if that fund were carried away in reference to old debts having to do with other transactions which existed between the parties. But when the matter is truly *pars ejusdem negotii* the other doctrine prevails. I need not go through the authorities; they were stated to us in course of the discussion. It is quite clear that where there are cross expenses in the same action no question arises, and it is a very easy amplification of that doctrine to hold that where the two sets of expenses arise out of the same matter compensation ought also to apply. It is quite true, as I think

was said by one of the learned Judges in deciding a case, that where a decree for expenses has become a sort of historic fact, then the same rule will not apply. But in the case before us, which though novel in the facts is not novel in the principle to be applied, I do not think any such expression could be fairly said to apply. The whole expense of the litigation arose out of the same accident. The present respondent was quite wrong in the proceedings he first took, and I think it would be a matter of great hardship and injustice for the present appellant if the respondent, having been wrong in his first action and right in his second, could escape all liability for expenses by the device of getting decree in name of his agent. After all the agent's claim is never more in its essence than a rider on his client's claim; and although in the circumstances I have explained decree in his name is allowed in order to remunerate him for his trouble in almost, so to speak, creating the fund in question, I do not think that would be a safe course where, as here, the whole expenses on both sides really arise out of what is one and the same transaction.

I am therefore for refusing to allow decree to go out in name of the agent-disburser. It will go out in name of the client in ordinary form.

LORD KINNEAR—I am of the same opinion.

LORD PEARSON—I concur.

LORD M'LAREN was absent.

The Court, refusing the motion that the decree should go out in name of the agent-disburser, gave decree in ordinary form.

Counsel for Appellants—Horne. Agents—W. & J. Burness, W.S.

Counsel for Respondent—A. M. Anderson. Agents—Clark & Macdonald, W.S.

HOUSE OF LORDS.

Monday, March 11.

(Before the Lord Chancellor (Loreburn), Lord Ashbourne, Lord Macnaghten, Lord James of Hereford, Lord Robertson, Lord Atkinson, and Lord Collins.)

DA PRATO AND OTHERS *v.* PARTICK MAGISTRATES.

(*Ante* February 27, 1906, 43 S.L.R. 406, and 8 F. 564.)

Police — Burgh—Bye-Law — Ultra Vires — Power to Regulate Hours of Opening and Closing Shops — Ice-Cream and Aerated Water Shops — Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *secs.* 316, 317, 318—*Burgh Police (Scotland) Act* 1903 (3 *Edw. VII, cap.* 33), *sec.* 82.

Where magistrates of a burgh were by statute authorised to make bye-laws in regard to the opening and closing of a certain class of shop, to wit, ice-cream and aerated water shops, "the hours for business not being more restricted than fifteen hours daily," *held* that a duly confirmed bye-law whereby keeping open save between 7 a.m. and 10 p.m. was prohibited was not *ultra vires* or unreasonable, and that an action brought to reduce the bye-law on averments to the effect that little or no business being in practice possible in such shops before 9 a.m., by fixing the opening hour at 7 a.m. fifteen hours "for business" were not given, was irrelevant.

The case is reported *ante ut supra.*

Da Prato and others, the pursuers and reclaimers, appealed to the House of Lords.

At the conclusion of the argument for the appellants, the respondents not being called upon:—

LORD CHANCELLOR—In this case an Act of Parliament was passed which authorised town councils in Scotland "to make bye-laws in regard to the hours of opening and closing of premises registered under the section" of the Act, "the hours for business not being more restricted than 15 hours daily." Pursuant to that power the authorities of the Burgh of Partick made a bye-law by which they prescribed that no person so registered in regard to such premises should keep open except during the hours between 7 o'clock in the morning and 10 o'clock at night on any day.

Now it is said first that this was *ultra vires.* For my part I think that this was the very thing which was intended to be within the powers bestowed upon the town council.

It is next said that it is unreasonable. All I can say is, here is a specific discretion with regard to a matter of power conferred upon this authority named in the section, and when they have exercised their discretion in good faith in regard to it it seems to me that the Court has no power to interfere.

I agree with the opinion of the Lord Justice-Clerk which has been read to us. For these reasons, in my opinion this appeal ought to be dismissed, with costs.

LORD ASHBOURNE—I entirely concur with the opinion which has been expressed by my noble and learned friend the Lord Chancellor.

The Legislature distinctly and deliberately intended to give some increased power, and to give the increased power in regard to the selection of the period and the hours during which certain houses might be open. They did that. Of course they might have acted in such a way as to expose themselves to the charge of acting *ultra vires* and unreasonably, and it might be competent for that to be inquired into if they did so, but I am not satisfied that any case has been at all substantiated to that effect in the least, and I am of opinion that it must be assumed, on the judgments and on the facts, that they were proceeding within the discretion which has been deli-