where, as in this case, the provisions are allowed to be in arrear for twenty years. The fund has been allowed to remain in the hands of Peter Drew as his brother's banker, and accordingly no such privilege can be extended to them, and therefore I think that the plea of compensation must be sustained, and the defender assoilzied.

LORDS COWAN, BENHOLME, and NEAVES, concurred on both points. The fact of the accumulation of the fund year by year deprived it of its alimentary character, and rendered it attachable for the debts of its owner.

The Court found that the debt had been extinguished *compensatione*, and assoilzied.

Agents for Appellant—J. & R. Macandrew, W.S.
Agent for Respondent—Wm. Officer, S.S.C.

Saturday, November 19.

FIRST DIVISION.

WILKIE (CATHCART'S TRUSTEE) *v.* CATHCART AND COOK.

Process—Jurisdiction—Competency—Effect of an English Adjudication of Bankruptcy in Scotland.

A, whose domicile of origin was Scotch, contracted debt in England while quartered there with his regiment. He afterwards left this country, and went to reside abroad. Two years after he left this country a petition was presented to the Court of Bankruptcy in London, in consequence of which an adjudication of bankruptcy was issued against him. He appeared by counsel at the outset of the case, but did not ultimately oppose the adjudication. B was elected creditors' assignee, and recorded the certificate in the Register of Sasines for the county of Ayr, where certain lands, out of which the bankrupt drew an annuity through a trustee, were situated, so as to make the adjudication operative in this country. The trustee raised a multiplepoinding of this annuity, and both A and B claimed the whole of it. *Held* that the proceedings of a Court established by a British statute, if *ex facie* regular, cannot be opened up by this Court, but must be accepted as valid and binding until properly set aside. This Court will not inquire into the question, whether an English Court has overstepped its jurisdiction. *Held*, therefore, that it was incompetent to plead want of jurisdiction in the English Court.

This was an action of multiplepoinding and exoneration raised by Mr Wilkie, trustee for Captain Reginald Archibald Edward Cathcart, under a trust-deed granted by Sir John Cathcart, Captain Cathcart's father, and others, in 1865, by which deed an annuity of £150 was made payable to Captain Cathcart during his father's life out of certain lands in Ayrshire as therein set forth, to have it decided to whom the said annuity for the year 1869 was payable—Captain Cathcart having been declared and adjudged bankrupt in the Bankruptcy Court of London on 17th February 1869. The defender and claimant, Thomas William Cook, military outfitter, London, was the creditors' assignee in the bankruptcy, and had duly recorded the certificate in the Register of Sasines for the county of Ayr, and also in the Register of Abbreviates of Adjudications. In consequence of these steps, Cook claimed the whole fund *in medio* for behoof of Cathcart's creditors. Cathcart also claimed the whole fund, on the ground that the adjudication of bankruptcy in England against him was null, in so far as he was not subject to the jurisdiction of the English Bankruptcy Courts, his domicile of origin being Scotch, and he being the eldest son of the proprietor of entailed estates in Scotland, and that though he had resided in England for some time with his regiment, he had left that country for nearly two years before the bankruptcy proceedings took place. He also alleged that the proceedings in the bankruptcy were otherwise irregular, and demanded a proof of his whole averments.

The Lord Ordinary (GIFFORD) preferred the claim of Cook, the creditors' assignee, holding Cathcart's averments not relevant to be admitted to probation, and that the bankruptcy proceedings in England must be held as valid and effectual until set aside, and must be enforced by the Court of Session in terms of "The Bankruptcy Act 1861," which expressly declares that orders in England shall be enforced in Scotland in the same way as if the order had been pronounced in Scotland. The annuity also was not declared to be alimentary, and was therefore attachable by diligence. His Lordship further held that the plea of no jurisdiction of the English Court was not well founded, even assuming Cathcart's averments of his Scotch domicile of origin and absence from England to be true. The debts, it was not disputed, had been contracted in England, and Cathcart had left that country without providing for their payment, and had remained away. Such conduct, without doubt, constituted an "act of bankruptcy" in the sense of the English bankruptcy statutes, which are expressly extended to aliens, and if so, must certainly include Scotchmen. Cathcart had moreover appeared by counsel in the first steps of the proceedings.

Captain Cathcart reclaimed.

MILLER, Q.C., and ADAM for him.

THE SOLICITOR-GENERAL and WATSON, for Cook, were not called upon.

At advising—

LORD PRESIDENT—My Lords, I do not think there can be any reason to doubt that the Lord Ordinary is right here. The proceedings in the English Bankruptcy Court were regular if it had jurisdiction over the claimant Cathcart. The petition is dated in September 1868; it is personally served at Christiania on Cathcart, who thereafter appeared in Court by counsel to obtain delay. He got this delay, but when the case again came on he did not appear, and an adjudication of bankruptcy was accordingly issued. The creditors' assignee when appointed duly records the certificate in the Register of Sasines for the county of Ayr, and so renders the order operative in Scotland. When the creditors' assignee claims the annuity which arises from lands situated in Scotland, the only objection offered by Cathcart in this competition is, that the adjudication of bankruptcy is void owing to want of jurisdiction in the Court which issued it. He maintains also that we may examine the proceedings in England in the same way as though the adjudication had been a foreign decree in absence. This seems to me wholly untenable; the English Bankruptcy Court is created by a British statute, and its orders are to have effect in Scotland. That, no doubt, does not give it power

to try Scotch cases, but nothing could be more anomalous or indecent than for one Court in the United Kingdom to enquire whether another Court similarly constituted had overstepped its jurisdiction. Such a proceeding would end in a stoppage altogether. We are bound to assume that the Court did act within its jurisdiction. The party might have appeared and objected to the jurisdiction of the Court, and if not satisfied with its finding, it seems he had two appeals—one to the Lord Justices, and another to the House of Lords. It was therefore quite unnecessary for him to come here. I am clearly of opinion that the Lord Ordinary's interlocutor should be adhered to.

LORD DEAS—The leading plea here is, that we ought to enquire whether this party was subject to the jurisdiction of an English Court which pronounced an adjudication of bankruptcy against him. I agree with your Lordship and the Lord Ordinary that, for the reasons you have assigned, we cannot do any such thing. As regards the other points, I can see nothing in this record which would entitle us to withdraw this bankrupt from the jurisdiction of the English Court.

LORD ARDMILLAN—I agree with your Lordships. This is a very important question, and it is of very great importance that the views expressed by your Lordship in the chair in connection with it should be known.

LORD KINLOCH—The case before the Court is not in the least that of a foreign decree involving the interests of a single creditor and single debtor. The objection here is to judicial proceedings in England in issuing an adjudication of bankruptcy, or what we would call a sequestration. I cannot see that in a multiplepoinding in Scotland we are entitled, at the instance of the bankrupt, to inquire into such proceedings in such a way as virtually to to set them aside altogether. Even if the objection were competent, I do not think that there is a relevant case disclosed on record. Domicile in Scotland is by itself nothing. Cathcart lived in England, and contracted debts there; he then left the country, and has since remained on the Continent to avoid his creditors. There is nothing on the record to show that this is not legally sufficient to warrant in England an adjudication in bankruptcy.

The Lord Ordinary's interlocutor unanimously adhered to.

Agents for Reclaimer—A. & A. Campbell, W.S.

Agents for Respondent (Cook)—J. A. Campbell & Lamond, W.S.

Tuesday, November 22.

ROSS AND DICK (DICK'S TRUSTEES) *v.* HANNAH.

Process—Suspension—Accounting—Trustee—Expenses. Trustees having borrowed money on a bond in their capacity of trustees, and having been charged on said bond, *held*—in a suspension of the charge by them, on the ground that they had no trust-funds in their hands—that it was competent in that process to sustain such objections for the charger to the correctness of entries in the state of funds for the trustees (which had been lodged by order of the Court), as could instantly be verified, and appeared *ex facie* of the state. Remarked that there might be objections which could not be disposed of in such a process, in consequence of their rendering a general accounting necessary. Expenses modified, in consequence of the charger having at first indicated an intention of proceeding against the trustees as individuals.

This was a suspension by John B. Ross, writer, Girvan, and John Dick, gamekeeper, Dush Lodge, as trustees of Robert Dick, sometime innkeeper in Dailly, of a charge under letters of horning at the instance of Robert Hannah, merchant, Girvan, and proceeding upon a bond and disposition in security granted by the complainers as trustees aforesaid. The complainers were trustees under a trust-disposition, executed by the said Robert Dick in June 1850, which trust-disposition was for behoof of the truster's creditors, and which gave the trustees full power to borrow money for certain purposes therein stated. In accordance with these powers, the complainers, in January 1851, borrowed £320, granting therefor, expressly in their characters as trustees, a heritable bond and disposition in security in the usual form in favour of the lender. This bond was subsequently acquired by the present respondent by assignation from the original creditor. The complainers duly paid interest on the said bond till May 1862, from which time, in consequence of failure of trust-funds, with a slight exception, they have paid nothing. The charger being desirous of recovering the principal sum and interest due under the bond, raised letters of horning against the complainers, against the charge following on which the present suspension was raised, the complainers pleading that they had no trust-funds in their hands. The note was passed without caution, in consequence of the charger having indicated an intention of proceeding against the complainers as individuals, and as being personally liable for the said debt, on the authority of *Gordon* v. *Campbell*, 1 Bell's App., p. 428. In consequence of the complainers' plea that they had no trust-funds in their hands, the Lord Ordinary ordered them to give in a state showing the position of the trust-funds in their hands at the date of the charge, a course followed in *White* v. *Wilson*, 2d March 1843, 5 D., 763. The complainers in their state brought out a balance in their favour, but the charger having stated that there were, *ex facie* of the state, entries the incorrectness of which could be instantly proved, the Lord Ordinary allowed objections for the charger to be lodged. Upon a consideration of the note, state, and objections, the Lord Ordinary sustained the 1st, 2d, 6th, and 7th objections for the charger, and in consequence thereof found that the complainers had in their hands £120, 10s. 8d. of trust-funds available *pro tanto* in payment of the bond charged on, and to that extent repelled the reasons of suspension, and found the letters orderly proceeded. But, in consequence of the charger having indicated an intention of proceeding against the complainers as individuals, and only departing from such intention when the case came into Court, found the complainers liable in modified expenses only. The objections for the charger, which the Lord Ordinary repelled, were, he stated, of such a nature as not to be relevant for enquiry, except in a general accounting.

The complainers reclaimed.

CRICHTON, for them, argued that a suspension