"I recognise a great deal of force in that argument, but it appears upon the other hand (1) that the pursuer obtained certain information from the Board of Lunacy which led him to believe that the condition of M'Innes had materially improved, (2) that the pursuer, from interviews which he himself had with M'Innes, formed a strong opinion that the latter had become capable of managing his own affairs, and (3) that notwithstanding the malady from which he suffered M'Innes was in fact capable of conversing rationally and coherently.

"Such being the position of matters, I have come to be of opinion that, subject to taxation, the pursuer is entitled to payment of that branch of the account which relates to the proposed proceedings for recall of the curatory. I have not arrived at that conclusion without difficulty, but the considerations which have turned the scale in my mind are in the first place that there is no reason to suppose that the pursuer was merely running up an account, or acting otherwise than in the way which he honestly believed to be for the interest of his client, and in the second place, as I have already indicated, I regard services rendered in good faith with the view of having the curatory recalled as presenting a favourable case for allowing remuneration out of the estate.

"The next branch of this case is that which relates to the trust-disposition and settlement. I am of opinion that these charges cannot be allowed against the estate.

"It is a serious matter to make a will for a person who has been found—although not by the verdict of a jury—to be of unsound mind. And the pursuer himself seems to have been impressed with that view, because he took the opinion of Dr Clouston, who had an interview with M'Innes in regard to the capacity of the latter. Dr Clouston reported that M'Innes showed 'evident signs of brain disease," and that he (Dr Clouston) could not at present say 'that the will he proposed to make' (that is, the will already prepared by the pursuer) 'would be one whose provisions were not directly affected by his disease.'

"Now, I think that plainly the pursuer would not have been entitled to prepare a will after obtaining such an opinion from Dr Clouston, and as he took it upon himself to prepare the will before he got Dr Clouston's opinion—a step which he himself appears to have thought necessary—he is not, in my judgment, entitled to be remunerated out of the curatorial estate.

"I understand, however, that Dr Clouston was consulted not only in regard to M'Innes' capacity to make a will but also with a view to an application for recall of the curatory. I am therefore of opinion that the pursuer is entitled to recover the fee which he paid to Dr Clouston.

"There remain certain charges of comparatively small amount for advising M'Innes in regard to certain stocks and a proposed sale of house property in Glasgow.

"I think that there might very well be circumstances in which a person under curatory would be entitled to have independent legal advice, and a law-agent would be held to be justified in giving (at the expense of the estate) such advice in regard to the way in which the curator was managing his affairs, but I am not aware that such circumstances existed here. There has not been a proof in the case, as it was obviously desirable if possible to avoid the expense of a proof, but there has been a full production of the correspondence, and of course I was ready to hear any explanations which counsel desired to give, and I should also have been ready to allow inquiry in regard to any particular point which required to be cleared up. There is, however, nothing in the correspondence relating to the business matters with which I am now dealing, nor did the pursuer's counsel make any statement as to the circumstances under which the pursuer was consulted, nor does the consultation appear to have had any result. The correspondence shows that M'Innes had the greatest distrust of his curator (whom he believed to be acting dishonestly), and to have desired the pursuer's assistance to protect him against the curator. There is, however, no reason to suppose that there was any foundation whatever for M'Innes' distrust of the curator, and in the absence of special circumstances I am unable to sustain as a good charge against the estate that part of the account which relates to advice given in regard to the management of the estate.

"I shall therefore find that the account sued for forms a valid charge against, and falls to be paid out of, the estate of the said Andrew M'Innes in so far as it relates, but only in so far as it relates, to services rendered by the pursuer with the view of obtaining a recall of the curatory, and with that finding I shall remit the account to the Auditor for taxation."

Counsel for the Pursuer — Craigie. Agents — Alexander Campbell & Son, S.S.C.

Counsel for the Defenders — Hon. W. Watson. Agents—Webster, Will, & Company, S.S.C.

Tuesday, February 16.

OUTER HOUSE.

[Lord Kincairney.

THE EXCHANGE LOAN COMPANY *v.* TORRANCE.

Contract—Loan by Money-Lender—Action for Recovery—Excessive Interest—Harsh and Unconsionable Transaction—Reopening of Transaction by Court—Money-lenders Act 1900 (63 *and* 64 *Vict. cap.* 51), *sec.* 1.

Circumstances in which, in an action by a firm of money-lenders for recovery of money lent, and interest, the Court, holding that the interest charged was

excessive and the transaction harsh and unconscionable, reopened the transaction and adjudged a reasonable sum, under the Moneylenders Act 1900, section 1.

The Moneylenders Act 1900 enacts, sec. 1, (1)—"Where proceedings are taken in any court by a money-lender for the recovery of any money lent after the commencement of this Act . . . and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive . . . and that . . . the transaction is harsh and unconscionable, . . . the court may reopen the transaction and take an account between the money-lender and the person sued, and may . . . reopen any account already taken between them and relieve the person sued from payment of any sum in excess of the sum adjudged to be fairly due in respect of such principal, interest, and charges as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable. . . ."

In this action the pursuers sued the defenders for the sum of £54, 11s. sterling, with interest on £16 sterling at the rate of £5 per centum per annum from the 23rd day of October 1903 until payment.

By bill dated 20th May 1901, drawn by the pursuers upon and accepted by the defenders, and payable one day after date, the defenders bound themselves to pay to the pursuers the sum of £25 sterling for value received. By a letter of agreement of the same date granted by the defenders to the pursuers, the pursuers agreed to receive payment of the bill in weekly instalments of 25s., commencing on 28th May 1901 and continuing until the whole was paid up, but in the event of the defenders failing for two successive weeks, or for three weeks altogether, to call upon the pursuers and pay the instalments, the pursuers were to be entitled to recover from the defenders at any time thereafter the whole sum or balance due on the bill; the defenders also agreed to pay to the pursuers in the event of such failure an additional sum of 6d. for each £1 or part of £1 of the total amount of the bill, and that by way of interest and for every week's failure till such time as the pursuers proceeded to recover from them as aforesaid.

The defenders fell into arrears in their repayments.

Payments of £21, 7s. were, however, made to account of principal and interest. The present action was raised on 26th October 1903.

On 23rd November 1903 the defenders before lodging defences offered £12 with expenses.

The pursuers pleaded—"(1) The defenders being justly indebted and resting-owing to the pursuers the sum sued for in respect of the bill and letter of agreement founded on decree should be granted as concluded for. (2) The letter of agreement being valid and binding, and the transaction being reasonable in the circumstances, decree should be granted as concluded for."

The defenders pleaded—(1) The interest charged by the pursuers in respect of the sum lent being excessive, and the transaction harsh and unconscionable, the Court should reopen the transaction and find the pursuers only entitled to what is fairly due by the defenders. (2) The defenders having offered a sum in excess of what is fairly due by them should be assoilzied from the conclusions of the action, with expenses from the date thereof.

LORD KINCAIRNEY pronounced the following interlocutor—

"Finds (1) that by bill dated 20th May 1901 the defenders bound themselves to pay to the pursuers £25 for value received; (2) that on the same date the pursuers and defenders entered into an agreement for the payment of interest on said advance of £25, being the letter of agreement; (3) that there is no relevant averment on record that said advance was attended with unusual risk; (4) that the interest charged on said £25 and specified in said agreement is excessive in the sense of the Act (63 and 64 Vict. cap. 51), and that the transaction was harsh and unconscionable on the part of the pursuers in the sense of the Act, and that the provisions of said Act apply to this case; (5) that certain payments have been made by the defenders to the pursuers in repayment of said advance and interest thereon; (6) that by letter dated 23rd November 1903 the defenders tendered payment of £12 with expenses in full of the debt due to the pursuers under the said bill; and (7) that the said tender was in the circumstances reasonable: Therefore decerns the defenders conjunctly and severally to pay to the pursuers the said sum of £12 on delivery by the pursuers to the defenders of the foresaid bill: Finds the pursuers entitled to expenses to said 23rd November 1903, and finds the defenders entitled to expenses since said date," &c.

Counsel for the Pursuers—M'Lennan. Agent—Robert Broatch, L.A.

Counsel for the Defenders—Graham Stewart. Agents—Mylne & Campbell, W.S.

Tuesday, February 16.

SECOND DIVISION.

LINDSAY *v.* ROBERTSON.

Entail—Disentail—Validity of Instrument of Disentail—Entail Amendment Act 1848 (Rutherfurd Act) (11 and 12 Vict. c. 36), sec. 32, and Schedule.

By section 32 of the Entail Amendment Act 1848 it is enacted "that an instrument of disentail under this Act may be in the form or as nearly as may be in the form set forth in the schedule to this Act annexed."

An instrument of disentail was conform to the schedule annexed to the