

implied by law in the absence of bargain, or when the law denies them, as in the case of corporations; so much so that any conveyancer or man of business finding it in a feu-contract would *prima facie* conclude that casualties were intended to be excluded, or that the parties meant that none should be payable. This ought no doubt to have been expressed in words, and the omission (assuming the intention) was very careless. But if in the absence of express words the Court may, as I think it may, be judicially convinced that the parties so intended, I am disposed to hold that effect may be given to the intention. Now, I am satisfied that these parties so intended. In the first place, the provision is such as is well known, and indeed familiar, as a substitute or equivalent for casualties, and is quite unknown, and I believe unprecedented, when the casualties are intended to subsist. In the second place, the conduct of the first parties may, I think, be regarded as *contemporanea exposita* of their understanding of the bargain. For their claim, if good, arose in September 1874.

I am therefore of opinion that the question ought to be answered in the negative.

LORD RUTHERFURD CLARK—I am of opinion that the question put to us should be answered in the affirmative, and upon a very simple ground.

Composition is by statute due on the entry of every singular successor, and must be paid, unless it be shown that it has been discharged by the superior. I cannot infer any discharge of this statutory claim from the mere circumstance that by the feu-charter a duplicand of the feu-duty is payable at the expiration of every twenty-fifth year. The *onus* is upon the second party to show that composition is not due, and in my opinion he has not discharged that *onus*.

For a similar reason I hold that the entry of feirs also remains untaxed.

LORD JUSTICE-CLERK—I cannot say that this question is unattended with difficulty, but on the whole matter I arrive at the result reached by Lord Young, and I think that the duplication of the feu-duty was in full of all casualties payable *ex lege*.

LORD CRAIGHILL was absent.

The Court answered the question in the negative.

Counsel for First Parties—Hon. H. J. Moncreiff—Hay. Agents—Rbind, Lindsay, & Wallace, W.S.

Counsel for Second Parties—J. P. B. Robertson—Begg. Agents—Morton, Neilson, & Smart, W.S., and Henderson & Clark, W.S.

Wednesday, November 21.

## FIRST DIVISION.

[Lord Adam, Ordinary.

MENZIES AND OTHERS (MURRAY'S TRUSTEES) v. FRASER AND OTHERS.

Writ—Subscription before Witnesses—Statute 1681, c. 5.

Circumstances under which objections to a bond and assignation in security, that the granters had neither signed in the presence of one of the testamentary witnesses, nor acknowledged their signatures to him, *re-pelled*.

Onerous Deed—Latent and Technical Objection—Personal Exception.

The grantor of an onerous deed, tested, *ex facie* valid, and delivered to the grantee, cannot thereafter challenge it on a latent and technical ground.

By antenuptial contract of marriage dated 23d January 1845, and recorded in the Books of Council and Session 18th May 1853, entered into between Admiral Jack Henry Murray and Catharine Menzies or Murray, Admiral Murray conveyed to himself and his intended wife, in conjunct fee and liferent, for her liferent use allenary, and to the children of the marriage in fee (under the reservation therein specified), all his property *acquisita et acquirenda*. On the other hand, Mrs Murray conveyed her whole estates then belonging to her, or which should belong to her at the time of her death, to Fletcher Norton Menzies and others, as trustees, for the following purposes, *inter alia*, viz.—(1st) For payment of the annual rent or revenue arising therefrom to her said intended husband and herself, and the survivor of them, under the conditions therein specified; (2d) for payment of the fee of the whole of the said trust-funds and effects generally and particularly thereby conveyed to the child or children of the intended marriage. It was declared by the contract that the trustees should be bound, on Mrs Murray's application to them, without her husband's consent, to take up and apply the whole or part of the trust-funds in order to their being laid out in the purchase of lands. In the year 1857 the trustees, on the requisition of Mrs Murray, and in terms of the contract of marriage, applied the whole funds in their possession and falling under the trust, then amounting to £8953 or thereby, in the purchase of the house and lands of Croftinloan, burdened with a debt of £2000. The title was taken in name of the trustees.

The children of the marriage were Mrs Emily Niel Murray or Baird, who became wife of Arthur Edward Baird, Miss Frances Balfour Murray, and Jack George Murray.

By bond and assignation in security dated 9th February 1876, and intimated to the marriage-contract trustees on 17th February 1876, Admiral Murray granted him to have then and formerly borrowed and received from his son-in-law Arthur Edward Baird the sum of £7386, conform to schedule of advances thereto annexed, and signed by him as relative thereto, which sum he bound himself and his heirs, *exe-*

cutors, and representatives whomsoever, to repay to the said Arthur Edward Baird, his executors and assignees whomsoever; and on the narrative that the said sum of £7386 was advanced, conform to schedule, for the use and benefit not only of himself the said Admiral Murray, but also of his said wife and the children of the marriage, and had been expended for the joint maintenance of them and himself, Admiral and Mrs Murray and their children assigned to the said Arthur Edward Baird, in security of the said personal obligation, all their rights in the trust-funds and estate held, or which might thereafter be held, by the trustees acting under the marriage-contract. All Admiral Murray's children were then past majority.

In the month of February 1877 Mr Baird burned this bond and assignation, and on 4th May thereafter executed a deed, bearing to be a discharge thereof without consideration. His estates were sequestrated on 10th September 1878, and Mr Evan Fraser, banker, Pitlochry, was appointed trustee in the sequestration.

Admiral Murray was sequestrated on 22d November 1879.

Mr Fraser as Baird's trustee then raised an action for the proving of the tenor of the said bond and assignation in security, in which decree was obtained on 21st October 1880, and also an action of reduction of the discharge, in which decree was pronounced on 22d October 1880.

This was an action of multiplepounding raised in name of Fletcher Norton Menzies and others, the trustees under the marriage-contract, to determine who were the parties in right of the trust-funds. The real raisers were the British Empire Mutual Life Assurance Company, who had in 1878 lent £4000 to Admiral and Mrs Murray and their children on the security of an assignation to the interest in the marriage-contract, in ignorance of the bond and assignation of 1876, the discharge of which was subsequently reduced, and the tenor of which was proved by Baird's trustee as just stated.

In this multiplepounding a claim for £7386 was lodged by Mr Fraser, as trustee on Mr Baird's sequestrated estates, founded on the said bond and assignation in security.

Mrs Murray and Miss Frances B. Murray lodged a claim (Admiral Murray having died), in which they averred—"The pretended bond for £7386, founded on by Evan Fraser, trustee on the sequestrated estate of Arthur Edward Baird, is not binding on the claimants, and is ineffectual to burden or affect their respective rights and interests under the said antenuptial contract of marriage. The said bond or document was not duly or validly executed, and in particular the subscribing witnesses did not see the parties sign or hear them acknowledge their subscriptions." The claimants also averred that they had no independent advice in the execution of that bond; and that they were ignorant of its true nature and import, and were misled as to it by misrepresentations by Admiral Murray and by Mr Baird.

Their second plea-in-law was—" (2) The claim cannot be affected by the alleged bond in favour of Arthur Edward Baird, in respect that it was not duly tested in terms of the statutes."

On 5th July 1882 the Lord Ordinary (ADAM) allowed the claimants Mrs Catharine Menzies or Murray and Miss Frances Murray a proof of their averments that the bond and assignation in security, dated 9th February 1876, was not duly and

validly executed, and to the other claimants a proof of their answer thereto: *Quoad ultra* he repelled the second plea.

"*Opinion.*—I think that the claim for Mrs and Miss Murray ought first to be disposed of. If it be well founded, Mr Baird's trustee will have no further interest in the process, and the main question at issue will be at an end.

"They claim to have the bond for £7386, of which Mr Baird's trustee is now in right, and to which they are parties, reduced upon the ground that it was signed by them in ignorance of its import and effect, and without independent advice, that they were under essential error as to its import and effect, induced by certain false and fraudulent representations set forth in the record, and that it was obtained from them by undue influence and abuse of confidence on the part of Admiral Murray, who was the husband of the one claimant and the father of the other.

"The false representations alleged to have been made by Admiral Murray, and which it is said he induced them to believe, were to the effect that the document which they signed was merely an acknowledgment for money advanced to him by Mr Baird. It is not very obvious why they should have been asked to sign a document of that nature, but it is sufficiently clear that if they had chosen to read the deed which they did sign they would not have had any difficulty in understanding its import and effect.

"Assuming that the wife and daughter did sign it in respect of their implicit confidence in the husband and father, it appears to me to be contrary to principle that innocent third parties should suffer in consequence. I was referred to no case in which a deed had been set aside in such circumstances. The case of *Gray v. Binny*, December 5, 1879, 7 R. 322, was referred to, but it does not appear to me to have any analogy to the present case.

"The claimants also maintain that the bond and assignation was not duly executed, because the subscribing witnesses did not see the parties sign or hear them acknowledge their subscription. That appears to me to be a relevant averment, and I propose to allow them a proof thereof."

Proof was led under this interlocutor, and also under an interlocutor allowing additional proof subsequently pronounced in the Inner House after a reclaiming-note had been presented against the judgment of the Lord Ordinary. It appeared from the proof that the bond had been prepared by Mr Darling, W.S., Mr Baird's agent, and sent by him to Mr T. G. Murray, W.S., Admiral Murray's agent, who sent it to Admiral Murray to be signed at Croftinloan, sending at the same time full instructions as to the manner in which it ought to be signed. The claimant Mrs Murray deponed that she signed the deed in presence of one of the instrumentary witnesses, Mr Fergusson, bank agent; that he was the only person in the room; and that she never acknowledged her signature to Smith, Mr Baird's valet at Croftinloan, who was the other instrumentary witness. Miss Murray deponed that when she signed the deed Mr Fergusson was present, but not Smith, and that she never acknowledged her subscription to him. Mrs Baird and Jack George Murray gave similar evidence. Mr Baird also deponed that Smith was not present when the deed was signed. He had tried to raise money

on the bond before burning it, but had failed. He deponed that he burned it because he thought it valueless. Mr Fergusson (whose evidence is fully quoted in the opinion of the Lord President, *infra*) deponed that he was accustomed to witnessing deeds; that he remembered the ladies signing the deed, and Smith signing it, but could not say from recollection if Smith had been present all the time; that he and Smith signed together immediately after parties had all signed; that the ladies left the room immediately after signing; that if Smith had not been present at the time the deed was signed by each of the parties he would not have filled up the directions for the testing clause in the manner in which he did. The evidence of the other instrumentary witness Smith is fully quoted and commented upon in the opinion of the Lord President. He deponed that he did not see any of the parties sign or hear them acknowledge their subscription, but that he was merely called in (none of the ladies being present), and told to sign as a witness, and that he did so, and left the room.

The Lord Ordinary on 8th November 1882 pronounced this interlocutor:—"The Lord Ordinary having heard counsel for the parties, and considered the proof, Finds that the bond and assignation in security dated 9th February 1876, granted by the late Admiral Murray and others, and referred to in the condescendence for the claimant Evan Fraser, was not signed by the claimants Mrs Murray and Miss Murray in presence of the testamentary witness Frederick James Smith, and that they did not acknowledge their signatures to him: Therefore finds that the said bond and assignation in security was not duly and validly executed by them; and grants leave to the claimant Evan Fraser to reclaim.

"*Opinion.*—The question in this case is, whether a bond and assignation in security dated 9th February 1876, granted by the late Admiral Murray, and by his widow, the claimant Mrs Murray, their daughters Mrs Baird and the claimant Miss Murray, and their son Jack George Murray, in favour of Arthur Edward Baird, was duly and validly executed as required by law? The objection stated to the due execution of the deed is, that it was not signed by the parties, and particularly by the claimants Mrs and Miss Murray, in presence of one of the attesting witnesses, Frederick James Smith, and that they never acknowledged their signatures to him.

"All the parties to the deed except Admiral Murray, who is dead, have been examined as witnesses, and if their evidence is to be believed there can be no doubt that the fact is so. There are some slight discrepancies in their evidence, as might be expected, but they are all clear on the essential point that they did not sign in presence of each other or of Smith, and that they never acknowledged their signatures to him. Smith, who appears to have no interest in this matter, is quite certain that none of the ladies were present when he signed as a witness; that he saw none of the parties sign; and that none of them acknowledged their subscriptions to him.

"Against this there is to be set, not so much the evidence of the other instrumentary witness Fergusson, as he has clearly no distinct recollection of what took place, as the fact that he was there for the purpose of witnessing the deed, and apparently of seeing that it was properly exe-

cuted; that he knew what was requisite in that matter; and that it is not probable that he would fail to see that the deed was properly executed. I thought when the proof was led, and I think still, that the witnesses were speaking the truth to the best of their recollection and ability. That being so, I can come to no other conclusion than that the deed in question was not duly and validly executed."

Mr Fraser reclaimed, and argued—The respondents had failed to discharge the *onus* that was on them. Further, they were barred *personali exceptione* from challenging upon a technical and latent ground this onerous deed which had been delivered to the grantee—*Hogg and Others v. Campbell and Others*, March 12, 1864, 2 Macph. 848; *Clelland v. Clelland*, December 15, 1838, 1 D. 254; *Cumming v. Skeoch's Trustees*, May 31, 1879, 6 R. 963; *Earl of Fife v. Duff and Others*, December 22, 1825, 4 S. 335—*aff.* May 22, 1826, 2 W. & S. 166; *Tait on Evidence*, 92; *Smith v. The Bank of Scotland*, January 25, 1821, F.C.—*aff.* June 4, 1824, 2 Shaw's App. 265; *M'Dougall's Ears v. Wigton*, November 13, 1830, 9 S. 12; *Henry v. M'Evcan*, May 25, 1832, 10 S. 572; *Hamilton v. Wright*, January 22, 1836, 14 S. 323—*aff.* February 12, 1838, 3 S. & M'L. 127; *Gardner v. Lucas, &c.*, February 8, 1878, 5 R. 638; *Beattie v. Lambie*, M. 17,021; *Irvine v. Maxwell*, M. 12,283; *Sinclair v. Sinclair*, M. 5654; *Telfer v. Hamilton*, M. 5657; *Frank v. Frank and Others*, M. 16,824; *Ersk. iii.* 2, 19, iii. 3, 47; *Stair, More's Notes*, 67; *Bell on Testing of Deeds*, 272.

Argued for the respondents Mrs Murray and Miss Frances B. Murray—Although the *onus* of proof was upon the claimants, that had been discharged. In order to found a plea of personal bar, it is not enough to show that there was onerosity and delivery; there must be homologation or adoption—*Act 1681*, c. 5; 2 *Bell's Lect.* 55; *Morrison v. Maclean's Trustees*, February 27, 1862, 24 D. 625.

At advising—

LORD PRESIDENT—The title of Mr Evan Fraser, the claimant, to appear in this multiplepounding and to make a claim upon the fund *in medio* is a bond and assignation in security dated 9th February 1876, granted by the late Admiral Murray and his wife and children, and the competing claimants are Mrs Murray, the widow of Admiral Murray, and one of her daughters, and they object to the bond and assignation in security as an effectual deed upon four different grounds. The first of these is stated in the second article of their condescendence to this effect—"The said bond or document was not duly or validly executed, and in particular the subscribing witnesses did not see the parties sign, or hear them acknowledge their subscriptions." The other grounds of objection are summed up in the second plea-in-law thus—"It was signed by the claimants in ignorance of its import and effect, and without independent advice, and it was obtained from them by undue influence and abuse of confidence on the part of Admiral Murray."

Now, upon the 5th of July 1882 the Lord Ordinary heard parties upon this second plea, and he disposed of the plea in this way—"The Lord Ordinary having heard counsel and considered the record and whole process, Allows the claimants Mrs Catharine Menzies or Murray and Miss

Frances Murray a proof of their averments that the bond and assignation in security dated 9th February 1876 was not duly and validly executed, and to the other claimants a proof of their answer thereto: *Quoad ultra*, repels the second plea-in-law stated for the said Mrs and Miss Murray: Grants diligence," and so forth. The question between the parties therefore is thus narrowed in so far as the validity of the deed in question is concerned to the simple question, Whether it was signed in presence of the witnesses, or whether the granters acknowledged their subscriptions to these witnesses?

Now, one need hardly say that in a case of this kind a party taking this objection must lead very clear and convincing evidence to prove the negative, and undoubtedly imposes upon himself a very heavy *onus*.

The first question in this case is, Whether that *onus* has been well discharged by Mrs and Miss Murray as claimants in this multiplepinding? When the case was first argued before us under this reclaiming-note we thought the evidence not at all satisfactory or complete, and we allowed further proof to be led, and certainly we have now a much more satisfactory and complete body of evidence upon both sides. As to the question of fact, it will be observed that while the averments of the respondents are that neither of the instrumentary witnesses saw the makers of the deed sign or heard them acknowledge their subscriptions, the Lord Ordinary has only found that the deed is invalid by reason of the respondents not having signed in presence of one of the instrumentary witnesses of the name of Smith, or acknowledged their subscriptions to him. The deed was of the nature of a bond for advances already made to Admiral Murray by the creditor in the bond, who was also his son-in-law, and under whose sequestration the claimer is now acting as trustee. There was appended to the deed a statement in detail of the various advances that had been made from time to time by Mr Baird to his father-in-law, and the bond contained an obligation for repayment of these advances. In addition there was also contained in it an assignation, which was the reason why more parties were introduced into it than the Admiral, who was the debtor in these advances—an assignation to the interests on the trust-funds held under the marriage-contract of Admiral and Mrs Murray. Mrs Murray had an interest in these trust-funds as life-rentrix, and her daughters had an interest as fiars, and by that deed they assigned their interests of life-rent and fee respectively to Mr Baird in security and for more sure payment of the advance of £7000 odds which he had made to their father. Now, a deed of this kind of course fell to be prepared in the ordinary way by the creditor's agent, and revised by the agent of the debtor, and accordingly we find a correspondence between Mr Darling, who was agent for Mr Baird at that time, and Mr Thomas Graham Murray, who was agent for Admiral Murray and his family. That correspondence is of importance in this question as showing very clearly that the execution of this deed was gone about with all the requisite precautions, and with all the exactness which could be expected from men of business like the two gentlemen who were employed in this case. We find a letter from Mr Darling to Mr Murray dated 4th February 1876, in which he sends the bond

and assignation "in order that you may get the same signed by them"—that is, signed by the Admiral and his wife and daughters. Mr Darling at the same time intimates to Mr Baird that he has done so, and in addressing Mr Baird he says—"After the deed is returned to me executed I shall have to get it intimated to the trustees"—that is, to the trustees under the marriage-contract who held the fund assigned—"after which I shall, as requested, render my account." Mr Thomas Graham Murray having received the deed, sent it to the Admiral, and his letter apparently is addressed to Croftinloan, although the address is unfortunately not given in this print. He says to him, "Mr Darling has now got the necessary cheque"—that is, a cheque for the sum of money which was to be advanced for an assignation of a different security—"and he now wishes to make one settlement of the whole affair. Mr Darling has therefore sent me the enclosed bond for the signature of yourself and the other members of your family. The sum for which the bond is granted is £7386, the particulars of which are given in a schedule appended to the bond. You will no doubt see that this is correct, and Mr Darling states that the details which he got from Mr Baird tally with the sum which you mentioned to him. I presume you have explained to those who are to sign the bond that the effect of it is to make the sum an ultimate charge against the whole trust-funds, thus lessening their ultimate shares. You will find particulars for subscription put up with the bond, and it will be more convenient if you all signed together, so that two witnesses are sufficient for the whole. I shall be glad if you can return the bond to me soon, so that we may get this matter out of hand." Now, the particulars to which Mr Murray there refers—I mean the particulars for subscription—are contained in a printed form, which we all know is constantly in use among conveyancers directing parties who are to subscribe deeds how the thing must be done, and how the witnesses as well as the parties are to subscribe, which sets out with the statement that—"The party or parties to the deed must sign every page in their usual manner at the pencil marks X, in presence of two witnesses above fourteen years of age. If there be any marginal notes, the party or parties must sign these also, placing their Christian names on one side of the note, and their surnames on the other. The witnesses will sign the last page only, also in their usual manner, at the pencil marks O O on the left hand side, each adding after his signature the word 'witness.' Two witnesses are sufficient to attest the subscription of any number of parties, provided these parties sign the deed at the same time and place; but if they sign at different times or places, two witnesses are requisite to each separate subscription, and where the same witnesses attest the subscriptions of parties signing the deed at different times or places they must repeat their signatures." There are a number of other particulars which it is useless to go into, and there is a schedule at the end of this statement which requires the person to whom a deed is sent for subscription to enter the names of the persons subscribing in one column, the place of signing in another column, the date of signing in a third, and the full names and designations of the witnesses in the fourth column.

So that nothing could be more distinct and precise than the directions which were given in this case—as they are given in all cases in which practised conveyancers are employed—as to the manner in which the deed was to be executed and attested.

Now, what actually took place in the proceedings preliminary to the signing of this deed was, that the Admiral having received the deed and the letter, and this paper of instructions as to subscribing, sent for Mr Fergusson, bank agent at Pitlochry, who had been in the habit of doing business with him, to come and act as one of the instrumentary witnesses. The Admiral himself, as Mr Fergusson tells us, was a man of business, quite accustomed to the execution of deeds, and accustomed to act in business matters generally. He was an intelligent person, and accustomed to business, and he acted very prudently, one would say, in sending for Mr Fergusson, for although that gentleman was not a law-agent, he was a man who, in consequence of his business occupation as a banker, was called upon frequently to see to the execution of deeds and to act as an instrumentary witness, and it was very desirable therefore, when so many signatures to this deed were required, that the Admiral should have somebody to assist him in getting the thing properly carried through. Mr Fergusson accordingly came over to Croftinloan House for the very purpose and charged with the duty of seeing this deed properly executed, and it is a very remarkable fact that Mr Fergusson is very decidedly of opinion that this deed was duly executed. I say he is of opinion, which conveys perhaps more accurately than any other the impression that a man could be expected to have at this time about the execution of a deed. His memory, like that of most instrumentary witnesses I should say, is not able to recal all the details of what passed at the execution of a deed at such a distance of time, but he says he feels satisfied that that deed was duly executed by the parties in presence of both instrumentary witnesses, he himself being one of them, because he feels certain he would not have allowed it to be done in any other way. He was there to see it properly done, and considered it his duty, having been summoned by the Admiral for that purpose, to see that the deed was properly executed. I entertain no doubt that the parties all subscribed in presence of the witnesses, or at all events acknowledged their signatures. The Admiral is dead. He was the party chiefly concerned in seeing this deed properly executed and tested, and we lose the benefit of his evidence. There is nothing to suppose that there was any dishonest intention on the part of the Admiral in carrying through this affair. We must assume that he intended to give his son-in-law and creditor a good bond and a good security, so far as that security was available, and we are deprived of the benefit of his testimony, which one cannot help presuming would be very much the same as Mr Fergusson's, for this reason, that according to the evidence of all the parties who have been examined, the Admiral and Mr Fergusson were the only two people that never left the room while this deed was being executed. They therefore had the same opportunities of observation, and if we believe Mr Fergusson, which I confess I am very much disposed to do, particularly from the cautious business-like way he gives his

evidence, I think there arises a fair presumption that if the Admiral had been alive to give his evidence it would have been to the same effect as Mr Fergusson's.

Now, there is another witness examined who swears that the deed was not executed by all the parties in presence of the other instrumentary witness (Smith), and that is Mr Baird. I confess I attach very little importance to his evidence. He stands in a very peculiar and suspected position altogether in regard to this deed. He was the creditor under this bond, and twelve months after he had got this bond with all these subscriptions upon it he thought fit to burn it, and he did that when he was undoubtedly under pecuniary embarrassments. He was told by someone that that was not the way in which a deed could be got rid of, because its tenor might be proved, and accordingly three months after the burning he executed a discharge of this deed without consideration, the discharge bearing nothing but certain good reasons moving him thereto. But that discharge was subsequently reduced in an action at the instance of the present claimer, Mr Fraser, upon the ground that it was a fraud upon Baird's creditors under the Statute of 1621. Now, considering the history of Mr Baird's connection with this deed I am not prepared to attach any importance to his evidence in this case.

But then we come to the evidence of the other instrumentary witness (Smith), and he is pretty positive about the fact that none of the parties acknowledged their signatures to him, and that he did not see any of them sign. He was cross-examined with the view of testing the accuracy of his memory, and among other things he was asked whether he signed more than one deed that day. He said he had not—that he had only signed one deed. But another deed was produced bearing the same date, and on it being laid before him he acknowledged that his subscription to that deed was his genuine subscription. That is not a very good sign of the accuracy of his memory. But still further, having been asked whether he signed his name to any other paper that day, he said he had not. And then it turns out that he had signed his name in the paper of directions, in the column which requires the full names and designations of the witnesses. So that his recollection is that he signed his name only once that day, whereas he signed it three times to three different papers. Now, I do not think that is a very accurate memory. I do not mean to say that a man may not forget that he signed three times, and fancied he had only signed once; but then a person who does forget that is not to be set up as having a memory that is to be relied upon, and to be relied upon with reference to a question of this kind, as to what it was that happened in that house, and in that room, where the Admiral and Fergusson were, at each hour of time of that day in February 1876. There were a number of people staying in the house on that day, and they would be coming and going. We know that in point of fact they were coming and going about the room where the Admiral and Fergusson were, and that the son Captain Jack George Murray was engaged in the stables, and the ladies were dressing for dinner, and that he was going to assist the Admiral in the course of the execution of that deed. And Smith would

have us to believe that he is quite certain that at the time he signed that deed nobody was in the room but the Admiral and Mr Fergusson—nay, but further, that he is certain that at no time or place did any one of these parties acknowledge to him their subscriptions. Now, I am not able to take that as absolute truth from the witness who has exhibited such a fault of memory as I have already referred to. He is asked whether he might not have been thinking about the other deed which he subscribed that day, and he says it might be. But then afterwards, when he is again examined about it, and he is asked the question, “Then all that you can say is that you do not recollect whether you saw them subscribe this other deed?” he puts the answer stronger, for he says, “They did not subscribe any deed in my presence, and I did not hear them acknowledge their signatures to a deed.” If we were dealing simply with the evidence of two instrumental witnesses in a case of this description without any other evidence at all, I need only say that this could not be listened to for one moment. But I have dwelt so long upon that part of the evidence of Smith, because we have in this case what is undoubtedly very peculiar, and what I do not think has occurred before, viz., the examination of no less than four persons who all signed that deed, and who all acknowledge now that their subscriptions are genuine, and who all at the same time swear that they did not subscribe in presence of the witnesses or acknowledge their subscriptions to them. These are Mrs Murray, her two daughters, and her son. I do not speak of Baird, because I have dismissed him as a witness from the case. But these four persons, three ladies and a young gentlemen, who seems to have been pretty young then—I do not know what his age was—are all quite clear, and they are all granters of the deed. Now, looking to the kind of evidence that is necessary to cut down a deed upon the grounds here alleged, I must say that I am driven to the conclusion that this body of proof is not satisfactory. The deed is returned in regular form to the agent, and is acted upon by having it intimated to the trustees, and there is an end of the business.

Now, it is a very remarkable thing that from that time down to the institution of the present suit apparently nothing was ever heard of this objection. When Mr Baird burned the deed I suppose he was not aware that the deed was invalid, and that there was no use for it when he granted the discharge of it. I suppose he, at all events, was in the belief that the deed was valid, and required to be discharged, and that the parties who took the discharge, viz., the granters of the deed, must also have been under the same impression. And now, at this distance of time, when the memories of the instrumental witnesses and the memories of the parties themselves are apt to be very slippery, this objection is for the first time brought forward. The objection does not at all recommend itself to my mind to get the better of this formally tested instrument, and therefore I think the case of Mrs Murray and her daughter is not proved.

But I go a step further. I do not think that these ladies, being the granters of this deed along with their father and the other members of the family, can be entitled here to challenge this deed upon such a ground. It must be observed

that the objection is entirely latent, and it is also an objection of an entirely technical character—of a technical character I say, because it is not disputed that the subscriptions of the granters to this deed are all genuine, and were made for the purpose of binding themselves as obligants under this deed. The objection we are dealing with therefore is a technical latent objection. There is nothing upon the face of the deed that can suggest in any way the possibility of its being anything else than a well-tested deed. Now, it appears to me that when such a deed is granted, and is delivered to the grantee for an onerous cause, whether that onerous cause be a present payment of money or the granting of a security deed—if, I say, in these circumstances, a deed of that very onerous nature is delivered—I doubt exceedingly whether the parties granting such a deed, and sending it out to the world accredited as their deed, are afterwards entitled to avail themselves of such an objection as the present. One would require to look to what would be the necessary consequence of sustaining an objection of this kind. Everything here, as I have shown already, was begun and carried through in the most business-like manner. There were two agents employed—one for the granters, and the other for the grantee. They prepared and revised it respectively, and the agent for the granters sent it to the granters to be subscribed by them, with the most minute and particular instructions as to the way in which the deed was to be subscribed by the parties, and attested by the witnesses. The deed is sent by the granters to their own agent in answer to what he had requested them to do, and certainly with the assurance to him that his instructions had been fully complied with, and he passes the deed along to the agent of the grantee upon the same assurance, and giving it the same credit as a deed which under his instructions and superintendence has been well executed. The consequence of that is, that the deed remains in the hands of the grantee as a well authenticated and attested instrument, or it may have got into the hands of a third party. Mr Baird tried to raise money upon an assignment to it. He did not succeed, but might have succeeded, and of course if this objection is well-founded it will be a good objection against any third party who acquires the deed from the original grantee. Now, what is the consequence of all this? I think it is that a tested deed, *ex facie* perfectly good and valid, cannot be safely received as such unless the grantee or grantees in that deed have either by themselves or by their agent seen the deed executed in presence of witnesses. There is no other security against its being challenged on the very ground here stated, and that is a consequence that I cannot think is at all admissible. I think it would be not only inconvenient, but I think it would be adverse to all principles of fair dealing in actings of this kind. In short, where a man has given forth a deed of this kind as his proper act, which he admits to be subscribed with his own genuine subscription, he is not entitled to say—“There is an informality—a technical and undiscoverable technicality—in the deed, known only to myself, of which I am entitled to avail myself when I am called upon to pay or fulfil the obligations contained in the deed.”

The result in my opinion is, that the inter-

locutor of the Lord Ordinary must be recalled, and not only upon the ground that the objection is not sufficiently instructed by the evidence, but that the further ground of challenge cannot be maintained, and that the claimants Mrs Murray and Miss Murray's second plea must be repelled.

LORD MURE—I am of the same opinion, and upon both the grounds that your Lordship has now explained.

This bond was deliberately executed by Admiral Murray and his family with the view of carrying out certain family arrangements. It was sent to the Admiral for execution by his agent in Edinburgh, after its terms had been very carefully adjusted between this agent and the agent for Admiral Murray's son-in-law Mr Baird, in whose favour it was granted. It was executed, and apparently duly and legally tested, on the 9th of February 1876, and returned by Admiral Murray to his own agent as a validly executed deed, and by him delivered to Mr Baird's agent as a duly executed bond. The circumstances under which that was done have been very fully explained by your Lordship, and I do not mean to go over them again. Now, in such circumstances it appears to me that in law there are very strong presumptions in favour of the validity of such a deed. The presumption is that the preparation and execution of the deed was legally and perfectly gone about by Admiral Murray by the directions and instructions of his agent, and the minute explanations contained in the printed form, which your Lordship read, attached to the deed. Another presumption is that Admiral Murray saw about all these directions, and saw them regularly and properly followed as instructed by his own agent, and that he sent that deed back to his own agent as a duly and validly executed deed in terms of the instructions he received. It was delivered to Mr Darling, who acted for Mr Baird, and ultimately it came into the possession of Mr Baird, and was dealt with by all the men of business engaged as a validly executed and delivered deed. But since Mr Baird's sequestration it has been challenged as not duly executed in respect the testamentary witnesses did not see the parties sign it. And the question is, whether that objection—that it was not duly executed—is proved? Now, the *onus* is emphatically upon the challengers in such a case as this, in order to cut down a deed on a technical ground of that sort, and the evidence in support of that *onus* must be, as Lord Gifford says in speaking on the same subject in the House of Lords in the case of *Smith v. The Bank of Scotland*, absolutely overpowering in order to entitle a party to get the benefit of a technical objection of that sort. Now, the evidence in this case is to my mind far from being overpowering. On the contrary, it appears to me that the evidence of Mr Fergusson, the banker at Pitlochry who was brought to Admiral Murray's house for the purpose of seeing that the execution of the deed was properly gone about, is quite distinct as to that. In his first examination as to the second deed granted upon that day, and on his re-examination, he explains that matter, and gives the following statement—“I have been accustomed to see deeds signed. I was not educated to the legal profession, but I know the way in which deeds are attested. I have a distinct recollection of seeing all the different members

of the family sign the bond in question. They were all in the room at the same time to the best of my recollection, and signed it in my presence. So far as my recollection goes, Smith was present at the time.” (He is the other instrumentary witness who says he had not been there.) “If he had not been there I do not think I would have filled up the directions in the way I did. I knew that their signatures were not properly attested if the instrumentary witnesses were not present or did not hear the principals acknowledge their signatures. When I filled up these directions I knew that to make the deed valid the witness must have seen the parties sign or have heard them acknowledge their subscriptions.” Then he is asked about the second deed, and gives his explanation, and it confirms my opinion that that deed was duly executed, not only so far as he was concerned, but that Smith, the other instrumentary witness, was present and signed it as a witness. Then the particulars of signing having been filled into the printed form, Admiral Murray sent the deed back to Edinburgh, and I agree with your Lordship in thinking that if he had not been in the opinion and belief that the deed was duly and validly executed the Admiral would not have done so. Now, I confess that on such evidence as this I think Smith's testimony is worthless. His memory is altogether wrong. He cannot recollect the fact, as your Lordship has pointed out, that he signed two documents that night in addition to that particular deed, and that he did not know if the evidence he gave on the first occasion applied to the first or second deed. But such evidence as that cannot be listened to in my opinion to cut down a document of this description. The reasons he gives for the ladies not being present appears to me to be the most absurd that I ever heard of. He says in answer to the question “Whose signatures were you witnessing?”—That I am not very clear about. (Q) Have you any recollection of seeing anybody put their name to a deed except Mr Ferguson?—(A) I should not like to swear, but it is possible it was signed in my presence. I am sure that the ladies were not in the room when I signed, because I had previously signed several papers for Mr Baird and the ladies were never in the room.” There is the reason he gives, “because I had previously signed several papers for Mr Baird and the ladies were never in the room.” Mr Baird's evidence does not assist us to any extent. He was examined as a witness on the former occasion, and from his evidence it does not appear that he was in the room at the time when his sisters and mother-in-law signed the deed. Now, it appears to me that upon this evidence the claimants Mrs and Miss Murray have failed to prove their allegation, and if their case had rested there there could have been no question raised as to the validity of the deed. Mr Fergusson is quite clear on the subject. He says Smith was present, and I am of opinion that Smith is not to be relied on for one moment, and therefore I come to the conclusion that the claimants have not proved their case.

Now, in other cases which have been before the Court we have had the instrumentary witnesses brought forward by someone else than the granter to prove the impossibility of the granter having signed in their presence, or acknowledged his subscription to them. But in the present

case we have a peculiarity, for it is the first case of the kind that has arisen, so far as my recollection goes, where the question has been raised by the granters themselves where they have been admissible as witnesses, and where they—the parties who say and admit that they signed the deed—come forward and say that the deed was not signed in presence of the witnesses. But I cannot look upon evidence of that kind, which is not without a share of suspicion, and which a few years ago would have been inadmissible to any extent with any favour. I do not think such evidence should be received having regard to the position and interest of these parties, and that it cannot be relied on to contradict Mr Fergusson as to the broad facts of the case. I am therefore of opinion upon the evidence, taken altogether, that the parties challenging the deed have failed to prove their case. I do not think the evidence is of that distinct and accurate character which is necessary to carry conviction to one's mind. There must be at least evidence of a reasonably reliable character to enable the granters of a deed *ex facie* duly and validly executed to cut down that deed on an objection known only to themselves.

The other part of the case is of a more difficult description. It is a case where parties have not alleged forgery, but not only do not allege forgery, but admit that they did sign that deed, and the question is, whether in that state of circumstances they are not precluded, after the lapse of a number of years, from coming forward and challenging that deed, or whether they are not barred from raising that question? I think there is authority for holding that in a case with parties so situated, who do not allege forgery, they are not entitled to come forward and challenge the deed. There is no doubt that that was the view of this Court, for the rubric of the case of *Smith v. The Bank of Scotland*, January 25, 1821, F.C., bears—"The genuineness of the grantor's subscription to a deed being admitted, found not a relevant ground of reduction that the testamentary witnesses did not see the subscription adhibited or hear it acknowledged." Now, certainly it is true that the report does not warrant that statement in the rubric, but it is pretty clear from the opinion of Lord Glenlee in the case of *Lord Fife*, 4 S. 340, in commenting on *Smith's* case, when he says in the passage there which was read to us, and says very distinctly, that that was the ground of judgment in *Smith's* case; and when *Smith's* case went to the House of Lords, Lord Gifford, who was Master of the Rolls at that time, went very fully into the matter, and although he did not absolutely make it the ground of his judgment, he indicated plainly that that was his view. He was not satisfied that the evidence in that case was sufficient in a question of such momentous importance dealing with the validity of deeds, and indicated his opinion that it was clear that a party not averring forgery, but admitting his signature, would not be entitled to challenge a deed executed by him on such a technical ground. I think that the parties here are under the rule laid down in these cases, and that apart from the question of evidence, are barred from pleading that the deed is defective in its execution, and therefore that they are entitled to have it set aside.

LORD SHAND—I agree in the opinions which

have been delivered by your Lordship in the chair and by Lord Mure.

I know of no averment which may be admitted to proof upon any question of civil right requiring more complete and, to use the expression which has been used by Lord Mure, overpowering evidence than the averment in regard to a deed in all respects *ex facie* regular and duly tested, that the subscribing witnesses did not see the parties sign or hear their subscriptions acknowledged. Of course the circumstances may be such that the *onus*, which is of the widest description in such cases, may be readily discharged, as, for example, that there was an impossibility that the witnesses could have seen the signature or heard it acknowledged from their having been in a different part of the country, and clear proof of this would of course overcome the fact of their subscriptions. But unless such circumstances can be shown to have existed at the time, the Court should receive evidence to contradict the fact solemnly attested by signatures with the utmost jealousy and suspicion, and unless the evidence be such as to leave no possible doubt, the signatures attesting the presence of the witnesses at the execution of the deed should have effect. Even if the two instrumentary witnesses themselves should come forward to destroy the effect of their written attestation, and say that they did not see the signature adhibited or hear it acknowledged, that may not in all cases be enough. Indeed, in one well-known instance it was held to be insufficient by the jury who tried the case, and there may be cases in which it will be necessary to show from corroborative circumstances and independent testimony, or at least beyond all suspicion, that the witnesses were not in a position to see the deed executed. In the present case there certainly is nothing of that kind. Here all the parties confessedly were in the house in which this deed was signed, and at the time that it was signed—indeed, they were all in the same room in which it was signed, at all events within a few minutes of each other. A man of business—a banker—had been sent for to see to the due execution of the deed. Admiral Murray, himself a Justice of the Peace, and well acquainted with business, was there in charge of the execution of the deed. The parties had before them full directions for the signing of it. It was explained that the deed must be signed in presence of the witnesses. It was signed by all the parties in the usual form, and afterwards was delivered as a concluded deed duly tested. It was to some extent acted upon, and it was not until about three years after the execution of the deed that this technical objection was for the first time mooted, when it became the interests of the grantee, and granters also, to have it destroyed.

In these circumstances I am of opinion that the *onus* is as heavy upon the persons seeking to impugn the deed upon the ground which has been so fully stated as it can possibly be in any case. Apart from the evidence of the parties interested in having this deed set aside, it is perfectly clear that there is no proof that can be for a moment regarded as conclusive to that effect. Mr Fergusson, in the passage which has been read by my brother Lord Mure, has said everything that could be expected of a witness at such a distance of time, speaking of the facts



occurring at the signature of a deed witnessed by him. He says he believed all the parties were present, and that he believes Smith, the other instrumentary witness, was present, and I do not think any stronger testimony could be expected from a witness in such circumstances. Smith, who was the valet of Baird, undoubtedly says that he did not see any of the parties sign or hear them acknowledge their signatures. But against Smith it has been observed by your Lordship already that it is quite impossible to place any reliance upon his memory, because he has forgotten other incidents of considerable importance that occurred on that day—I mean the signing of the other deed to which he was a witness, by one of the same parties, and his signature adhibited thereto, which he also admits, although he had forgotten all about it.

The question that remains is, whether, it being quite clear that the deed must stand, so far as the evidence of the instrumentary witnesses is concerned, the family evidence is to outweigh the signatures to the deed and the evidence otherwise? That evidence, it may be observed, is no doubt to a certain extent consistent, but there are observations to be made upon it that it is not entirely so. For example, I find that Mr Baird says in one passage of his evidence—"I did not see my wife sign. I do not remember whether her signature was on the paper when I signed; I think so, but I am not certain;" and then he says—"I signed my name, and I don't think I saw anybody else sign." If we turn to Miss Murray's evidence we find that she says—"I signed it in the library. I was up in the nursery, and my sister Mrs Baird came and told me to go down to the library. I went down. I found my father, Mr Baird, and Mr David Fergusson there." So that Mr Baird was present when she was there and signed her name. And again Mrs Baird says—"I signed the deed in the library. When I went into the library I think the parties there were my father, Mr Baird, and Mr Fergusson." So that in that particular—and it may be there are others if one were critically going over the proof—the parties are not entirely consistent in their evidence. But if it were so, it appears to me that looking to the evidence otherwise, it is impossible to accept the testimony of those interested in this deed upon a point of testing of this kind, contradicting the signatures of the witnesses themselves, and to allow it to have such weight as to cut down the deed as proposed. And accordingly I agree with your Lordship in thinking that the claimants Mrs Murray and Miss Murray have failed to prove the negative proposition which they endeavour to prove, viz., that this deed was not duly executed, or, in other words, have failed to prove the affirmative that the witness Smith was not present when the signatures were adhibited, or at least heard them acknowledged.

I am further of opinion with your Lordships, however, that the parties who delivered this deed as a duly executed deed are not entitled to set it aside upon any such ground as has been here maintained. This is not the case of a testamentary writing to which different principles may apply. It is a case in which the plea of personal bar, I think, arises. In the first place, it is admitted that the deed was signed by the parties. In the second place, it is a deed granted

for onerous causes, and was delivered as a deed which had been duly executed and tested. And, in the third place, the facts as to the execution of the deed in the presence of witnesses, or who heard the signatures acknowledged, were within the knowledge of the granters alone. The grantee had not the means of knowing these facts, and was obliged to rely upon the representations made. In other words, as your Lordship has more shortly put it, the objection is one of a latent character. It appears to me that in a case where the deed is delivered, signed by the granters, for onerous causes, the granters are personally barred from setting up a latent objection to the mere attestation. I think that when the parties deliver a deed as duly executed, with the testing clause fully filled up, in terms of their own instructions to that effect, the parties who so act must be held to have waived any latent objection of that kind.

Now, further, in the present case, it appears to me that the deed was to some material extent acted on. It was intimated to the marriage-contract trustees. It was retained for months as a good security, and if it had not been regarded as such a good security, the grantee in it, Mr Baird, could have demanded payment of his past advances, or might have demanded that a deed that was not open to such an objection should be given to him. And further, it appears to me that upon the faith of that being a duly executed deed, Mr Baird agreed to make a further advance of £2000 for the purpose of taking up another security that had been previously granted over the estate of Croftinloan, and that I think is made clear by a letter written at the time, in which Mr Baird, on 25th November 1875, writing to his agent Mr Darling, says—"I do not want Mr Murray" (Mr T. G. Murray) "to get the £2000 unless Captain Murray signs the necessary papers, &c., to make what he already owes me secure, and that my debt shall have a prior claim to any other." Having got the paper which he regarded as sufficient to make the money which the Admiral owed him secure, he made the further advance of £2000, and took over the security for it then existing. And in addition to that we find, that although the attempts were not successful, Mr Baird did make attempts to raise money on the deed both in this country and in England. And upon all that, if it were followed out, it rather appears to me that if it were necessary for the decision of this case, it might be held that there was *rei interventus* on the delivery of this deed. But I do not put my decision on this point only, for I agree with your Lordships' views on the general import of the evidence, and also in the opinion which I think has the highest sanction of learned Judges in previous cases—in the cases referred to by Lord Mure—that where a party has delivered an onerous deed executed by him, which is in all respects *ex facie* regularly tested, as a deed which has been duly executed, he shall not be allowed upon latent objections such as are here pleaded to set that deed aside; therefore upon all the grounds stated by your Lordship I think that there has been in the first place a failure to prove that the deed was not duly executed, and, in the second place, that the parties here are personally barred from maintaining the objection now stated, even if it were well founded.

I am therefore of opinion that the interlocutor

of the Lord Ordinary should be recalled, that the claim of Mrs Murray and Miss Murray should be repelled, and that the case should be remitted to the Lord Ordinary with findings to that effect.

LORD DEAS was absent.

The Court pronounced this interlocutor :—

“The Lords having heard counsel on the reclaiming-note for Evan Fraser (Baird’s trustee) against Lord Adam’s interlocutor of 8th March 1882, Recal the interlocutor: Repeal the second plea-in-law stated for the claimants Mrs Catharine Murray and Miss Frances B. Murray in so far as not already disposed of by the Lord Ordinary’s interlocutor of date 5th July 1882: Remit to the Lord Ordinary to proceed further in the cause: Find the claimant entitled to the expenses hitherto incurred in the cause, excepting the expenses incurred between 5th July 1882 and 8th March 1883; and remit to the Auditor to tax the amount of the expenses now found due, and report to the Lord Ordinary, and empower his Lordship to decern for said expenses when taxed, and decern.”

Counsel for Evan Fraser (Reclaimer)—Baxter—Dickson. Agent—Alexander Wardrop, L. A.

Counsel for Mrs Murray and Miss Frances B. Murray (Respondents)—Lord Advocate (Balfour, Q. C.)—Pearson. Agents—Hope, Mann, & Kirk, W. S.

Wednesday, November 21.

## FIRST DIVISION.

ABEL v. WATT.

(See *Stewart v. M’Bey*, ante, vol. xx. p. 580.)

*Bankruptcy—Sequestration—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), sec. 103—Discharge of Trustee—Acquisition of Property by Bankrupt prior to his Discharge, but subsequent to that of Trustee—Acquiescence of Creditors.*

The estates of a bankrupt were sequestrated in 1863 and yielded no dividend. In 1870 the trustee was discharged. The bankrupt thereafter, without interference on the part of the creditors, carried on trade as a farmer, horse-dealer, and carter for many years. In 1883, after decree of *cessio* had been obtained against him at the instance of a creditor, one of the creditors in the old sequestration presented a petition for the appointment of a new trustee, on the narrative that the bankrupt had acquired heritable property, and also that he was possessed of some farming implements and furniture. Held that the creditors in the old sequestration were barred by acquiescence from insisting in their right to this estate, to the exclusion of subsequent creditors.

*Process—Remit to Lord Ordinary on the Bills—Vacation—Jurisdiction.*

In a petition for the appointment of a new trustee in a sequestration—held that it is unnecessary to remit to the Lord Ordinary on the

Bills to appoint a meeting of creditors, unless it should be necessary to do so for the purpose of allowing the petition to proceed in vacation.

Section 103 of the Bankruptcy (Scotland) Act 1856 provides—“If any estate, wherever situated, shall after the date of the sequestration, and before the bankrupt has obtained his discharge, be acquired by him, or descend or revert or come to him, the same shall *ipso jure* fall under the sequestration, and the full right and interest accruing thereon to the bankrupt shall be held as transferred to and vested in the trustee as at the date of the acquisition thereof or succession for the purposes of this Act; and the trustee shall, on coming to the knowledge of the fact, present a petition setting forth the circumstances to the Lord Ordinary, who shall appoint intimation to be made in the *Gazette*, and require all concerned to appear within a certain time for their interest, and after the expiration of such time, and no cause being shown to the contrary, the Lord Ordinary shall declare all right and interest in such estate which belongs to the bankrupt to be vested in the trustee as at the date of the acquisition thereof or succession thereto,” &c.

This petition was presented by John Abel, cattle-dealer, Strawberry Bank, Aberdeen, a creditor on the sequestrated estates of Alexander M’Bey, late farmer, Foveran, residing at Newburgh, Aberdeen, for the appointment of a new trustee in the sequestration.

The petition set forth that the estates of M’Bey, the bankrupt, were sequestrated by the Lord Ordinary officiating on the Bills on 6th July 1863, in terms of the Bankruptcy (Scotland) Act 1856, and that on 17th July 1863 David Kinnear, accountant in Edinburgh, was elected trustee thereon; that the petitioner was at the time of that sequestration a creditor of M’Bey to the extent of £99, 19s.; that the realised funds being insufficient to pay any dividend, the trustee was discharged in 1870; that the bankrupt had not been discharged; that the petitioner had recently become aware of the fact that the bankrupt in the beginning of 1882 feued a piece of ground at Newburgh, near Aberdeen, and built a house thereon, which was valued at £800, and on which the bankrupt obtained a loan of £500; that the lenders got an absolute title to the property direct from the superior with M’Bey’s consent, dated 9th and 13th March 1882, and granted a back-letter to him, dated 15th and 27th March 1882, stating that they held the property in security for the loan of £500 and interest. Besides this reversion of £300, the petitioner stated that he had become aware that the bankrupt had household furniture and farming implements to the value of about £35.

Answers were lodged to this petition by John Stewart Watt, solicitor, Aberdeen, trustee for the creditors of Alexander M’Bey in a process of *cessio*, in which decree ordaining him to execute a disposition *omnium bonorum* for behoof of creditors was pronounced on 9th July 1883. It was stated in these answers that since the discharge of the trustee in the sequestration the bankrupt had not only, without interference on the part of the creditors, but with their full knowledge and acquiescence, embarked within the county of Aberdeen, in the immediate neighbourhood of Foveran, in trade as a farmer,