

Company for this entire sum, and that to the bank's action Cross & Company would have had no answer as to any part of it, and having thus arrested a debt which, as I have said, the bank could have recovered from Cross as being the price of their property, whatever liabilities there might have been on their part to pay charges in respect of it to other people, it seems to me that the respondents' case must fail. Of course I express no opinion whether they can recover this sum from the bank. If it has not been paid to Page, or satisfied in any way, it is perfectly possible that they may be able to do so. That is a question with which your Lordships have not now to deal. It seems to me that, even assuming that this sum of money was due in respect of this cargo to Page & Company, it does not support the arrest which the respondents have made, the validity of which arrest is the only question now in issue before your Lordships.

For these reasons I move that the interlocutors of the Sheriff and of the Court of Session appealed from be reversed, and the cause be remitted to the Court of Session to rank and prefer the appellants to the whole fund *in medio*, and to find the respondents liable to the appellants in their expenses of process in both Courts below. The appellants, of course, will have their costs of this appeal.

LORD WATSON—My Lords, this appears to me to be a remarkably plain case. Concurring as I do in what has been said by the Lord Chancellor, I shall only make these very general observations. When a moveable fund situated in Scotland admittedly belongs to one or other of two domiciled Englishmen, the question to which of them it belongs is *prima facie* one of English law and ought to be so treated by the courts of Scotland. In this case the respective rights of Page & Company and the appellant bank depend on transactions which took place between them in England. I see no reason to doubt that had there been any conflict between the laws of Scotland and England upon the questions arising in this case it would have been proper for your Lordships to consider and apply the law of England. But, according to my apprehension, there is no difference whatever between the laws of the two countries applicable to the decision of this case.

Upon the point of law which was mainly discussed in the Courts below, and which is disposed of by the last finding in the interlocutor appealed from, I have no hesitation in differing from the majority of the Second Division and concurring in the clear and satisfactory judgment of Lord Young. The argument submitted for the respondents upon that point is in my opinion not borne out by the *dicta* of institutional writers to which they referred, and the case of *Tod & Son v. Merchant Banking Company*, 10 Court Sess. Cas. 4th Series, R. 1009, upon which they also relied, if it has any bearing upon this case, is an authority the other way.

I was somewhat impressed at the time by the argument of Sir Richard Webster in regard to the respondents' alternative claim for £164, 19s. 2d. But, assuming that the appellants may be liable to satisfy the claim, that circumstance can give the respondents no nexus upon the fund *in medio*, and they could not obtain any preference by an arrestment directed against Page & Company. In these circumstances I think the respondents must enforce their demand in a new action, and that this suit ought not to be prolonged by a remit to have it tried as a riding claim.

LORD MACNAGHTEN—My Lords, I concur.

Their Lordships ordered and adjudged that the interlocutors appealed from be reversed, and remitted the case back to the Second Division of the Court of Session in Scotland, with directions to rank and prefer the appellants, the North Western Bank Limited, to the whole fund *in medio*.

Counsel for the Appellants—Finlay, Q.C. — L. Sanderson—H. Aitken. Agents'—Wynne, Holme, & Wynne, for Webster, Will, & Ritchie, S.S.C.

Counsel for the Respondents—Sir R. Webster, Q.C.—D. C. Leck. Agents—Lowless & Company, for Campbell Fail, S.S.C.

COURT OF SESSION.

Friday, February 1.

FIRST DIVISION.

[Lord Wellwood, Ordinary.]

MACKIRDY'S TRUSTEES v. WEBSTER'S TRUSTEES.

Right in Security—Personal Obligation in Bond and Disposition in Security—Debtor's Right to Re-Assignment of Subjects on Payment—Restriction of Security by Bondholder—Discharge of Debtor.

The debtor in a bond and disposition in security sold the security-subjects under burden of the bond. The purchaser obtained the consent of the bondholders to part of the security-subjects being feued, and the real security being restricted to the feu-duties payable in respect thereof. The consent of the original debtor was not asked.

In an action by the bondholders against the original debtor, for payment of the principal sum and arrears of interest due under the bond, *held* (aff. judgment of Lord Wellwood) that as a condition of receiving payment the bondholder was bound to assign the bond in its entirety, and that, as he had disabled himself from reconveying the security subjects intact by consenting to the restriction of the burden, the debtor was freed from his obligation.

North British Property Investment Company v. Wilson & M'Bean, November 7, 1893, *ante*, vol. xxxi., p. 58, and 21 R. 90, *followed*.

In 1876 the trustees under the trust-disposition and settlement of the deceased Andrew Webster of Rutherford borrowed a sum of £3500 from William Law, Edinburgh, for which they granted a bond and disposition in security dated the 27th and 29th, and recorded the 29th December 1876, binding themselves and their successors in office as trustees conjunctly and severally to repay the principal sum and interest. In security of the personal obligation they disposed to and in favour of William Law part of the lands of Rutherford, which had been conveyed to them by the said trust-disposition and settlement. In November 1877 the trustees sold the whole of the lands of Rutherford to Mrs Philip subject to the condition that "the bonds and disposition in security for the said sum . . . of £3500 . . . shall, in terms of the 47th section of the Conveyancing (Scotland) Act 1874, transmit against the said Mrs Annie M'Laren or Philip and her foresaids, and be burdens on their title to the said lands . . . to the entire relief of us as trustees aforesaid." . . . On the death of William Law his trustees made up a title to the bond and disposition in security, and in May 1881 they assigned it to the trustees of James Mackirdy.

In August 1888 Mrs Philip being desirous of feuing part of the lands conveyed in the bond and disposition in security, obtained the consent of Mackirdy's trustees to her feuing the whole or part of the lands upon certain conditions. By the deed of consent a minimum rate of feu-duty was fixed, and it was further provided—*"(Fifth) That the feu-duties, or ground-annuals, or tack-duties constituted, or hereafter constituted, shall only be redeemable, and the deeds necessary for redemption shall be expedite with consent of us or our foresaids, and the redemption money shall be applied in payment pro tanto of the sums due to us under the said bond and disposition in security at the time: Declaring that whenever and so often as any portion of said lands shall be feued or disposed or let on long lease as aforesaid, the real security created by the said bond and disposition in security shall eo ipso be restricted to the feu-duties, or ground-annuals, and tack-duties and casualties and other rights and property and estate which shall remain in the person of the said Annie M'Laren or Philip and her aforesaids as superiors or landlords of the lands and others so feued, or as in right of the ground-annuals payable from the lands disposed, subject thereto, with the interest and consequents effeiring to the said feu-duties, or ground-annuals, or tack-duties and others, the said security being reserved entire in all other respects."* No intimation of this agreement was made to Webster's trustees.

Following on the deed of consent, Mrs Philip granted two feu-charters in 1888 and 1894 respectively, the land feued amounting

in all to more than four acres. In terms of the deed of consent the security over the land feued was restricted to Mrs Philip's right of superiority. Mrs Philip having failed to repay the principal sum, and being at the term of Martinmas 1893 in arrear with interest to the extent of £271, Mackirdy's trustees called upon Mr Webster's trustees to make payment of the principal sum and arrears of interest, and on 29th May 1894 raised an action against them for payment of these sums.

The pursuers pleaded, *inter alia*—“(2) In respect of the personal obligation contained in the said bond and disposition in security, which has never been extinguished, the pursuers are entitled to decree.” . . .

The defenders averred that by giving their consent to Mrs Philip to feu the subjects under the conditions above mentioned, the pursuers had restricted the real burden, and that the defenders were accordingly relieved of their personal obligation.

They pleaded, *inter alia*—“(5) In respect the pursuers are not in a position to assign to the defenders the said bond together with the subjects disposed by Mr Webster's trustees in real security of the payment thereof in exchange for payment of the sum contained in the bond, the defenders should be assoilzied.”

On 30th October 1894, the Lord Ordinary (WELLWOOD) sustained the 5th plea for the defenders, and assoilzied them from the conclusions of the summonses.

Opinion.—The defenders are the surviving, acting, and accepting trustees, and the representative as trustee and executor of a deceased trustee of the late Andrew Webster of Rutherford. In 1876 Mr Webster's trustees borrowed the sum of £3500 from Mr William Law. For this they as trustees granted a personal obligation; and in security of the personal obligation disposed to the lender part of the lands of Rutherford. The bond and disposition in security is dated 27th and 29th, and recorded in the register of sasines 29th December 1876. The pursuers are now in right of the said bond and disposition in security.

“In November 1877 Webster's trustees sold the whole of the lands and estate of Rutherford to Mrs Philip, by disposition dated the 8th, 10th, and 13th December 1877. Mrs Philip took over the estate subject to certain bonds affecting it; and in particular under burden of the said bond for £3500. The deed contains the following declaration—‘Declaring hereby that the foresaid two bonds and dispositions in security, for the said sums of £6625 sterling and £3500 sterling respectively shall, in terms of the 47th section of the Conveyancing (Scotland) Act, 1874, transmit against the said Mrs Annie M'Laren or Philip and her foresaids, and be burdens on their title to the said lands and others hereinafter disposed to the entire relief of us as trustees foresaid, and our foresaids; which sums of £5875 sterling, £6625 sterling, and £3500 sterling, make together the sum of £16,000 sterling, which

was the agreed-on price of the said lands and others after disposed.' The disposition in favour of Mrs Philip was revised by Mr Law's agents.

"No demand was made on Webster's trustees, between 1877 and 1892, in respect of the bond for £3500; but the pursuers now claim payment from the defenders personally of the whole debt with arrears of interest.

"In view of the case of *The University of Glasgow v. Yuill's Trustees*, February 10, 1882, 9 R. 643, it is not maintained that Webster's trustees were freed from liability to the bondholders by the stipulation as to transmission of the personal obligation in the disposition to Mrs Philip. But it may be observed in passing that that disposition was granted shortly after the passing of the Conveyancing Act 1874, five years before the decision of the case of the *University of Glasgow v. Yuill's Trustees*, and therefore Webster's trustees may well have thought, especially as the deed was revised on behalf of the bondholders, that they were entirely freed from the personal obligation.

"Again, in view of the decision of the Court in the case of *Millar's Trustees*, 20 R. 675, it is not disputed that, if it is held that any liability attaches to them as trustees, Webster's trustees are personally liable, because they have paid away the whole of the trust-funds.

"Therefore the only defence which I have to consider at present is that set forth in the fifth plea-in-law for the defenders, viz., that the pursuers are not entitled to enforce payment because they are not in a position to assign to the defenders in exchange for payment the said bond with the subjects disposed in security. The defenders rely on the recent decision in the case of *The North Albion Property Investment Company v. Wilson and McBean*, 21 R. 90. The actings of the pursuers, on which the defenders found, are set forth in the fifth statement of facts for the defenders Andrew Webster's trustees. From that statement it appears that in 1888 Mrs Philip was desirous of feuing or letting on long lease parts of the subjects over which the security extended, and for that purpose applied to the pursuers to consent to restrict the bond and disposition in security so as to free the lands feued or let except to the extent of the feu-duties or other return paid for them. To this the pursuers consented on certain conditions by deed of consent, which is partially quoted in the fifth statement of facts, and which is dated 8th and 13th, and recorded in the General Register of Sasines for the county of Peebles, 25th August 1888. It was thereby agreed that Mrs Philip should be empowered, on certain conditions, to feu out or dispose, subject to a ground-annual, or to let on long lease for building purposes the whole of the lands disposed in security. [His Lordship then narrated the conditions contained in the deed of consent as above quoted].

"Following on this deed of consent Mrs Philip has granted two feu charters of parts of the ground in question. It will be seen

from the terms of the deed of consent that as regards these feus the pursuers have restricted the real security over the *dominium utile* created by the bond to the feu-duties payable in respect thereof, and so long as these feu-duties continue to be paid the land feued cannot be sold under the bond. The defenders maintain that the pursuers by giving their consent, which has been acted upon, have, without their consent, restricted the bond and freed certain portions of the subjects disposed, or at least that they have so altered the character of the security as to make them unable to assign to the defenders in its entirety the bond and disposition in security granted by them to Mr Law.

"I do not intend to repeat in any detail the process of reasoning by which the decision in the case of *The North Albion Property Investment Company* was arrived at. It is enough to say that it simply applies to a heritable security the doctrine of pledge, namely, that if the pledger pays the debt he is entitled to receive back the pledge intact. In that case the original debtors having sold the lands under burden of the bond, the bondholders at the request of the proprietor of the subjects for the time released from the security without consideration part of the heritable subjects over which the security extended. Thereafter they sued the original debtor on the personal obligation in the bond. The defence was that the bondholders, as a condition of receiving payment, were bound to assign the bond in its entirety, and that as they were unable to do so they were not entitled to demand payment. The bondholders pleaded that the original debtors having parted with the security-subjects had no further concern with any arrangements as to the bond between the bondholders and the disponent, that they were not entitled to an assignation to the bond, but merely to a discharge of the debt, and that if they had wished to free themselves effectually from the personal obligation they should have obtained a discharge from the bondholders before parting with the lands.

"But the bondholders also pleaded (plea 5) that they were at least entitled to recover payment of the sum sued for under deduction of a sum equivalent to the value of the part of the subjects released. It is important to note this defence, because although it was not, I believe, supported in argument, the fact that it was repelled without inquiry shows that the judgment did not turn upon whether the original debtors had or had not been prejudiced by the actings of the bondholders. That defence was held to be irrelevant and immaterial. Though it was not argued, it was not overlooked, as appears from the following passage in Lord McLaren's opinion:—"My opinion is that by releasing a part of the subject, however small, the creditor is disabled from suing the original debtor on his personal obligation. The creditor's obligation to restore the subject, upon the borrowed money and interest being repaid, is an obligation arising out of the contract of pledge, whereby the lands are disposed in security, herit-

ably and redeemably. This obligation to restore is one and indivisible, and it is the counterpart of the debtor's obligation to repay, which is also indivisible. As the debtor while he retains the property has not the right in making a partial payment to demand a restriction of the security—I mean release of a part of the heritable subjects—so neither has the heritable creditor the right to grant a partial release to a purchaser, nor indeed to operate upon the subject of security in any way except by a sale in terms of the power. I can find no principle for converting the legal obligation of the heritable creditor to account for the proceeds of a sale into an equitable obligation to account on the principle of a valuation. If the principle of estimation of value were admitted in a case where only a part of the subject was released, it must also be applicable to the case of a release of the entire subject, and thus the right of the debtor to a retrocession would be converted without his consent into a right of a different nature, and one which it may safely be assumed he never would have agreed to accept when he granted the heritable security.' The result of the decision is this—Where lands over which a heritable security has been granted have been conveyed to a purchaser under burden of the bond, the heritable creditor may exact payment in full from the original debtor under his personal obligation, or from the purchaser if the obligation has transmitted against him. Or he may sell under his bond and apply the price in payment of the debt, and if it is inadequate, he can claim the balance under the personal obligation from either obligant. On the other hand, he can do no more than recover payment in full from all sources. He cannot make profit or make presents of the security. He is a trustee, he must account, if the original debtor is called on to pay, the creditor must assign to him the bond in its entirety. And therefore if he desires to preserve recourse against the original debtor he must do nothing to restrict, impair, or alter the security. The debtor is not bound to accept an assignation to a restricted security even if the creditor offers to give credit for the full value of the part of the lands disencumbered with his consent.

"The only question is, whether this case can be distinguished? I think not. The security is not intact. Webster's trustees granted a security over the *dominium utile* of the whole of the lands conveyed in the disposition. The pursuers now offer to assign as to the lands feued with their consent merely the superiority rights of the said lots. That is a different right from that conveyed in security; it is a superiority right. Moreover, the original security has been restricted, because it is no longer possible to sell the lands as a whole. The obligations of the feuars are restricted to payment of their feu-duties.

"The pursuers plead that feuing the ground being merely an act of ordinary good management on the part of the proprietor, and the return from it being thereby increased, their consent did not really

constitute a restriction of the security. If the feuing were all, the pursuers' consent was not required. The proprietor could have feued without their consent, but then the ground feued would have remained subject to the bond. The fact that their consent was required, shows that in consenting and accepting *quoad* these feus a superiority right in substitution for their general security over the *dominium utile*, they gave up a part of or restricted their full legal rights as bondholders. In any view they altered the character of the security.

"Again, the pursuers say that the defenders are not prejudiced; that, indeed, the feu-duties are the more valuable estate. That may or may not be. The feu-duties may be a full return for the lots feued, but who can tell what will be the effect of the transaction on the selling value of the rest of the security-subjects? Besides, the ground covered by the original security cannot now be sold as a whole,

"It is sufficient, however, to say that this defence is irrelevant. The original debtors' right on payment of the debt to an assignation to the bond is indivisible as is their obligation to pay. They are not bound to accept a restricted security; they are not bound to go into an accounting as to the comparative values of the original security and that now offered to be assigned. Otherwise, in the case of *The North Albion Investment Company*, the pursuers would have obtained decree for the balance of the debt on allowing credit for the value of the part of the lands disencumbered with their consent, and assigning the restricted bond to the debtors.

"As in my opinion this case cannot be distinguished, the defenders must be assolizied."

The pursuers reclaimed, and argued—The question was whether, when a debtor feued with the concurrence of a bondholder, the latter was really releasing the land from the security, in the same sense as when he discharged it. The security was in no way impaired by feus being granted, but on the contrary its value was enhanced. The security-subjects were really still the same, and were merely subjected to a subordinate right which did not affect the pursuers' burden or title. There was a qualification of, and not a release from the burden. The transaction was one falling within the proper and ordinary administration of the state, just like the granting of a nineteen years' lease. This case therefore was distinguishable from that of *The North Albion Property Investment Company v. Wilson & M'Bean*, November 7, 1893, 21 R. 90, quoted by the Lord Ordinary. The element of prejudice should be essential in the consideration as to whether the subjects had been altered, and the defenders could not maintain that their right to be recouped out of the land had been in any way prejudiced. If the doctrine of pledge were applied in its entirety to land, the result would be anomalous; e.g., if the minerals on the security-subjects were worked it might be said that they could not be re-assigned in *eodem statu*, but that

was clearly an act of ordinary administration. The case here was identical with that of *University of Glasgow v. Yuill's Trustees*, February 10, 1882, 2 R. 643.

Argued for the defenders—They were freed from their obligation, because the pursuers could not give them an assignation of the whole subjects originally disposed to them. The doctrine of "release" was merely one illustration of the general rule that the security-holder must give back the actual subjects pledged, and not merely the equivalent. The subject in this case was the "full property of the ground," but the pursuers had parted with the *dominium utile* of part of it, and could only offer the superiority. It was trite law that these were not the same. The case of *The North Albion Property Company* did not depend upon any question of the value of the subjects, but on the general principles of security rights. The test as to whether or no this was merely an act of ordinary administration was the fact that the bondholder's consent had been required to the conditions of the feu. No consent was required to granting a feu, but it was required for disburdening the feus granted, and therefore such an act was not one of ordinary administration.

At advising—

LORD KINNEAR—I agree with the opinion of the Lord Ordinary for the reasons which he has stated. I think the case is indistinguishable from that of *The North Albion Investment Company v. Wilson & M'Bean*, 21 R. 90.

The defenders borrowed a sum of money on part of the lands of Rutherford, and gave a bond and disposition over the lands in security of their personal obligation. The creditor could not call upon them to pay under this personal obligation without reconveying the subjects disposed in security. That would not have required a formal disposition of the lands, nor an assignation of the bond, if the defenders had retained the property under burden of the bond. But the position of the parties was altered by their selling the subjects under certain conditions, which made the purchaser responsible for the fulfilment of the personal obligation; but the lender was no party to that arrangement, and did nothing to relieve the defenders of their own obligation to repay the money which they had borrowed. But then, if this personal obligation is enforced, the creditor, on the other hand, is still bound on payment to reconvey the subjects which he holds on security of the debt. The appropriate method of reconveyance is an assignation of the bond. But it must be an assignation which will give back to his debtors a right in the lands as full and extensive as they gave to him. Now, it appears that after the lands had been sold the purchaser made a very reasonable arrangement with the creditor, by which he was allowed to feu all or part of the lands for building purposes. There was nothing to prevent him from feuing without the consent of the bondholder, but if he did so the *dominium utile*

would still be subject to the burden of the bond, and it was therefore necessary for him to obtain the bondholder's consent to a restriction of the security so as to relieve the property of the feuars. The bondholder agreed to restrict the security to the feuduties and casualties. The consequence of this arrangement is that he cannot now assign the bond to the effect of giving to his debtors a redeemable right in the lands. He can give them nothing more than a security over the superiority. It has been said that the arrangement in question was merely an act of ordinary administration of the property. Nothing done by the owner of the land in the course of the ordinary administration, whether it increased or diminished the value of the subjects, would affect the rights or interest of the creditor in the bond, and the defenders would have no right to complain of any diminution of value arising from such acts. But to discharge the security over a part of the property is not an act of ordinary administration, and this is what the defenders complain of. The question therefore seems to be, as it was put by the defenders' counsel, whether the debtor, when called upon to make payment, is bound to be content with a reconveyance of part of the subjects only, on the ground that the part is now as valuable as the whole was before the split. I am of opinion that he is entitled to have restored to him the same estate that he disposed in security of his debt. The question whether a superiority is the same thing as the *plenum dominium* seems to me not to admit of argument. The debtor is not bound to inquire into the question of value. The inconvenience of any such inquiry is obvious, for the question whether the feuing of one part of the lands enhances or diminishes the value of the rest must depend on a variety of circumstances. But the material point is that it is not the contract that the borrower shall be content with an equivalent. I am of opinion that the lender has disabled himself from performing the counterpart of the obligation he seeks to enforce; and that the judgment of the Lord Ordinary is right.

LORD M'LAREN—I am of the same opinion. I am unable to distinguish the present case from that of *The North Albion Investment Company*, a case which was decided on principles of wide application.

Where a creditor has two securities he may not release one to the prejudice of the other. We are familiar with cases where this principle is applied to *correi debendi*, and it is not only applicable to the case of cautioners, but also where the parties are bound in the character of principals. In the present case one of the securities for the repayment of the loan is the personal obligation of the debtor, the other security is real; it is the real burden affecting the lands under the disposition in security. In the case of the *North Albion Investment Company* we held that the release of a small part of the security-subjects in pre-

judge of the right of relief competent to the personal debtor put an end to his obligation. Now, there are different ways in which the subject of the security may be diminished; *e.g.*, by discharging the burden over a part of it, or by severing it into *pro indiviso* shares and releasing one of them, or by splitting the *plenum dominium* into a superiority and a subordinate right. A reasonable creditor might consent to discharge the *dominium utile* from the burden, and a reasonable personal obligant might also consent if applied to, because the enhanced value of the land feued would render less likely the enforcing of his obligation. But in this case the debtor's consent was not asked, and he is now called on to pay a debt which is secured over subjects in which he has no interest. He is therefore quite entitled to put forward the defence that the creditor is not in a position to assign to him the security-subjects entire and undiminished. It makes no difference in principle that no part of the *corpus* of the security estate has been severed, because the creditor has consented to the release of certain subaltern rights which constitute a part of the security. I need hardly point out how material such a release may be in the case of feus for building purposes. In the present case, if the feus had not been released, the houses would of course be subject to the heritable security, and in all probability it would not have been necessary to enforce the defender's personal obligation.

LORD ADAM—I am of the same opinion. The case is one in which a heritable security was granted over the *dominium utile* of certain lands. When the debt is discharged the creditor is bound to reconvey the subject of the security to the debtor, but he only proposes to reconvey the *dominium directum* of the lands. That is not the same but a different subject. I do not think that any question whether the debtor would be prejudiced thereby arises for our consideration. I agree with your Lordships.

The LORD PRESIDENT concurred.

The Court adhered.

Counsel for the Pursuers—H. Johnston—Macphail. Agents—Mill, Bonar, & Hunter, W.S.

Counsel for the Defenders (Webster's Surviving Trustees)—Graham Murray, Q.C.—Clyde. Agents—Welsh & Forbes, S.S.C.

Counsel for the Defender, Robert Adam, Executor of a Deceased Trustee—Wallace. Agents—Bruce & Kerr, W.S.

Tuesday, January 29.

SECOND DIVISION.

[Sheriff of Lanarkshire.

GORDON'S TRUSTEES v. M'GREGOR AND OTHERS.

Bankruptcy—Cessio—Assignment—Debtors (Scotland) Act 1880 (43 and 44 Vict. cap. 34), sec. 9.

Section 9 of the Debtors (Scotland) Act provides that any creditor of a debtor who is notour bankrupt may apply for decree of *cessio* against him, and that, until the debtor shall execute a disposition *omnium bonorum*, any decree decerning him to do so shall operate as an assignment of his moveables in favour of the trustee mentioned in the decree of *cessio*.

Held that a decree of *cessio* granted at the instance of a creditor, although not extracted or followed by a disposition *omnium bonorum* by the debtor, is effectual as an assignment of the debtor's moveable estate in favour of the trustee in the *cessio* without intimation.

Mrs Gordon Galbraith or Gray died on April 13th 1892, leaving a testament dated April 7th 1891, by which she bequeathed all her estate to her husband Alexander M'Gregor Gray, whom she nominated as her sole executor, and confirmation duly followed.

At her death she was entitled to a sum of £365, 2s. under the settlement of her father the late Peter Gordon, Glasgow.

A process of *cessio* was raised against Gray, and *cessio* was awarded upon 13th May 1893, and the debtor decerned to execute a disposition *omnium bonorum* in favour of Alexander Cumming Rutherford, as his trustee. No disposition *omnium bonorum* was granted, and no further proceedings took place under the *cessio*. The decree was not extracted until 8th January 1894.

In December 1893 Gray married Miss Agnes Jardine Buchanan. In contemplation of this marriage the intending spouses executed an antenuptial marriage-contract dated November 15th 1893. By this contract Gray disposed to his intended spouse, whom failing the child or children of the marriage "all right and interest belonging to him in the estate of the said deceased Peter Gordon under and in virtue of his trust-disposition and settlement," &c. On the other part Miss Buchanan accepted the above-mentioned provisions and the others conceived in her favour in full satisfaction of all terce of land, legal share of moveables, and every other thing that she *jure relicta* or otherwise could claim from the said Alexander M'Gregor Gray, or his heirs, executors, or representatives, if she should survive him. The contract was intimated to two of the trustees on 29th December 1893, and to the remaining trustee on January 9th 1894.

In January 1894 a process of sequestration