of the High Court of Justice in England, and on 8th February 1897 obtained an order from Mr Justice Stirling."

The order was in the following terms:—"The Judge being of opinion that it is expedient in the interest of the beneficiaries under the said settlement, and further that by the law of England, so far as it controls the said settlement, a sale might be made of the property at Penicuik aforesaid, part of the settled property, under the Settled Land Act 1882, but the said Act does not extend to property in Scotland: It is by consent ordered that the said Henry Sydney and Charles Murray, as such trustees aforesaid, be empowered to apply to the Court of Session at Edinburgh aforesaid for all necessary relief to enable them to give effect to this direction, and particularly to obtain power and authority to sell the said property."

The petitioners accordingly, after stating that the trust-estate would be seriously disadvantaged unless the subjects in question could be sold, craved the Court "to grant power and authority to the petitioners as trustees foresaid to sell and dispose of the said heritable subjects on such terms and in such manner as they may consider most beneficial to the trust estate . . . and for that end to enter into articles of roup, to grant dispositions . . . and to grant all other deeds requisite and necessary for rendering such sale effectual."

Argued for the petitioners—The petition should be granted. It was presented on an entirely different footing from the previous unsuccessful application.

At advising—

LORD M'LAREN—When the Court was applied to under the former petition the application was made in terms of the Trusts Act 1867, and we were all of opinion that the case was not covered by the section of that Act which empowers the Court to authorise the sale of trust-estate. But it was observed in disposing of that case that the Court had jurisdiction to authorise the sale of trust estate, and that before the date of the Trusts Act this jurisdiction was exercised, although sparingly and only in cases amounting to a legal necessity. As in this case the domicile of the trust was in England, we did not think that this was the proper Court to consider the expediency or necessity of the sale in view of the terms of the trust. The difficulty we felt has now been completely removed, because a Judge of the High Court of Justice in England having jurisdiction has considered the matter, and has issued an order pronouncing a sale as expedient in the interests of the trust. It is added that the sale might have been ordered in the exercise of the powers of the English Court under the Settled Land Act 1882 if the property had been situated in England. The question accordingly which we have now to consider is, whether we can exercise an auxiliary jurisdiction to enable the order of the English Court to be carried out. There are analogies which support the exercise of our jurisdiction in the way proposed; the nearest perhaps is the case of applications by foreign trustees or executors for confirmation in Scotland, or for authority to complete a title to estate coming to them by an imperfect conveyance. In such cases the Court never hesitates to grant trustees the necessary authority for maintaining their title to real or personal property when it is necessary to explicate a foreign trust.

It appears to me that when the authority of the Court is necessary to enable trustees to convert trust-estate into money the proceeding is of the same kind, that is to say, a purely administrative proceeding, and that the petitioner is entitled to our assistance after the Court of the domicile has decided that the sale is competent and expedient in the interest of the trust.

LORD ADAM—I also think this petition should be granted.

LORD KINNEAR—I agree. As I understand, the only purpose of the present application to this Court is to enable English trustees to give a good title to a purchaser, it being established by the order of Mr Justice Stirling that it is competent under the trust to sell heritable property, and also that it is expedient in the interest of the beneficiaries that the property should be sold. I entirely agree with what Lord M'Laren has said to the effect that it is proper that we should give our assistance in carrying out that order.

LORD PRESIDENT—I concur.

The Court granted the prayer of the petition.

Counsel for the Petitioners—A. J. Young—Macaulay Smith. Agent—Robert D. Ker, W.S.

Tuesday, March 16.

SECOND DIVISION.

(With Three Judges of the First Division.)

[Sheriff-Substitute at Glasgow.

WILKINSON *v.* THE KINNEIL CANNEL AND COKING COAL COMPANY, LIMITED.

Reparation—Volenti non fit injuria—Risk Voluntarily Incurred to Save Life.

A miner, as tutor of his pupil son, raised an action of damages against a coal company for injury received by his son while in their employment. The pursuer averred that while the boy and another man in the employment of the company were standing on a stationary truck trimming coal, the boy observed an uncontrolled waggon approaching them with great speed on the same line of rails; that he in a moment of hurry and confusion incident to his surroundings and the

extreme danger to himself and his fellow-workman, jumped from the stationary truck, and seizing a wooden pit prop about 5 or 6 feet in length, attempted to stop the approaching waggon by inserting the prop between the spokes of one of the wheels; that the waggon was stopped within three or four feet of the stationary truck, but by reason of the sudden jerk caused by the stopping, the boy was thrown down and received serious injury; and that but for the insertion of the prop the two waggons would have come into violent collision, which would have been attended with great danger to the boy and his fellow-workman. The pursuer also made a relevant averment of fault on the part of the defenders or those for whom they were responsible in allowing the waggon to run down under no control and at an improper rate of speed upon the stationary truck.

Held by Lords Young, M'Laren, Kinnear, and Moncreiff, a majority of seven Judges, that an issue should be allowed to the pursuer for the trial of the case; *diss.* Lord Justice-Clerk, and Lords Adam and Trayner, who were of opinion that the action was irrelevant, as the pursuer's averments showed that the boy having got out of danger, voluntarily performed an act outside the scope of his employment, which resulted in his injury.

James Wilkinson senior, miner, Airdrie, as tutor and administrator-in-law of his pupil son James Wilkinson junior, raised in the Sheriff Court at Glasgow an action against the Kinneil Cannel and Coking Coal Company, Glasgow, for £54, 13s. as damages under the Employers Liability Act 1880.

The pursuer made the following averments:—His son was thirteen years and four months old. On 29th January 1896 he was in the employment of the defenders at their pit near Bo'ness. A waggon loaded with rubbish was dragged by an engine up an incline on which rails were laid to the top of an accumulation of dross, and there uncoupled and emptied. Thereafter it was allowed by the driver in charge of the engine to run uncontrolled and at a high rate of speed down the incline into a lye leading to the "screes" or loading banks. "(Cond. 6) At the time the waggon was so allowed to run into the lye leading to the 'screes,' a waggon, which was stationary, was in course of being loaded with coal. On the top of the coal in this stationary waggon there was a person in the employment of the defenders named Alexander Steel, whose duty it was to build and trim the coal in the waggons intended for transit by rail. The pursuer's son, the said James Wilkinson junior, was also engaged at this waggon picking stones and dirt from the coal as it was passed over the 'screes,' and assisting in trimming the coal. To enable him to do this work he was standing upon one of the buffers at the east end of the waggon, which was the usual and customary place for persons engaged at this work to stand. The said Alexander Steel, from his position on the waggon, and the construction of a wooden shed erected immediately over the 'screes,' could not see when a waggon was run into the lye. When the waggon was allowed to run down the lye in the manner before described, the said James Wilkinson junior, was the only person engaged at the 'screes' who had an opportunity of seeing the waggon coming down, and upon suddenly observing the near approach of the waggon running with great speed and force, in a moment of hurry and confusion incident to his surroundings, and the extreme danger to himself and the said Alexander Steel, jumped from the buffer of the stationary waggon, and seizing a wooden pit prop about 5 or 6 feet in length, he 'snibbled or stopped the waggon by inserting the prop between the spokes of one of the wheels and the body of the waggon. In doing so the momentum of the waggon caused one end of the prop to twist round with a sudden jerk, and striking him on the stomach, threw him on his back, and his left arm falling on the rail, one of the waggon wheels passed over it from near the shoulder to the wrist. The waggon was stopped within three or four feet of the stationary waggon, and but for the piece of wood inserted in the wheel as aforesaid by the said James Wilkinson junior, the two waggons would have come into violent collision, and been attended with great danger to the said Alexander Steel, who was standing on the top of the coal in the stationary waggon, and also the said James Wilkinson junior." The pursuer further averred that the injuries received by his son were the direct result of the negligence or culpa of the engine-driver in allowing the waggon to run uncontrolled and at a dangerous rate of speed into the lye in question, and that the defenders were responsible for the act of the engine-driver, who was entrusted by them with a supervision over the shunting and moving of waggons from one place to another in their works.

The defenders pleaded, *inter alia*—"(1) The pursuers statements are irrelevant."

On 20th July 1896 the Sheriff-Substitute (SPENS) allowed a proof.

The pursuer appealed to the Court of Session for jury trial, and proposed an issue in common form.

When the case came up before the Second Division of the Court for adjustment of the issue, the pursuer objected to the relevancy of the action, and after hearing argument, the Court appointed the cause to be argued before themselves, with the assistance of Lords Adam, M'Laren, and Kinnear.

Argued for defenders—The injury which the pursuer's son received was not the direct consequence of any wrong-doing on the part of the defenders, but was the result of a deliberate act on the part of the boy beyond the limits of his employment. Spragging of a wheel was an act requiring deliberation, for the sprag must be taken from the side of the rails. The boy volun-

tarily took a risk which he had no duty to take. He exposed himself to danger by doing something beyond the limits of the work for which he was engaged, and therefore did so at his own risk—*Sutherland* v. *Monkland Railways Company*, July 15, 1857, 19 D. 1004. He had no duty to do what he did, and having done it at his own option the maxim *volenti non fit injuria* applied—*Mamberry* v. *Great Western Railway Company*, 1889, L.R., 14 App. Cas. 179.

Argued for pursuer—The act of the boy was done in an emergency caused by the fault of the company. This distinguishes the case from that of *Sutherland, supra*, in which no *culpa* was alleged against the railway company. The act was a natural one arising on account of the defender's fault; it was not a calm and deliberate act, but one done on the spur of the moment in the belief that it was the best mode of saving from injury his fellow-workman, himself, and the waggon. In such circumstances it was in vain to impute contributory negligence to the boy, or argue that he had acted in face of a known danger—*Woods* v. *Caledonian Railway Company*, July 9, 1886, 13 R. 1118; Bevan on Negligence, i., p. 177.

At advising on March 11th—

Lord Justice-Clerk—The case of the pursuer, as stated in the condescendence, is that while he was employed under the defenders in cleaning coal in a waggon, a waggon was, by the fault of an engine-driver, sent at a high speed down the lye on which the waggon he was working at was standing; that observing the waggon coming on, he jumped off, and seizing a wooden prop he tried to stop the waggon "by inserting it between the spokes of one of the wheels and the body of the waggon." His averment is that he did this in a moment of hurry and confusion incident to his surroundings, and the extreme danger to himself and another workman who was on the waggon. In doing this he alleges he suffered certain injuries from the prop twisting round and striking him.

These averments come to this, that the pursuer having got on to the ground clear of the approaching waggon, took means to endeavour to prevent it running on and striking the waggon from which he had got down, and succeeded in stopping the waggon. That was conduct which may have been quite natural, and indeed laudable in the view of the fact that there was a fellow-workman on the waggon which was in the way of the moving waggon. But, contrary I believe to the opinion of the majority of your Lordships, I have been unable to come to the conclusion that they constitute a relevant case. What the pursuer did was the direct cause of the accident. At the time he did it he was not himself in the way of or liable to be injured by the moving waggon. In doing what he did he must have gone upwards on the lye to meet the waggon, as his averment is, that although it was going at a great speed, what he did had the effect of stopping the waggon before it reached the stationary one. I recognise it as an established rule that a person injured by an accident is not debarred from recovering damages because he did not, when he saw the danger, take the most wise course, or even if he did, in the agitation of the moment, take an unwise course in endeavouring to escape from it. But I have been unable to come to the conclusion that, where the pursuer's case discloses that after having taken himself out of danger, he did an act which it is not averred he had any duty or obligation to do, and which he therefore did voluntarily, and in consequence of his action received injuries, he can recover damages as for an injury caused by the fault of others.

My opinion is that the pursuer, upon the averments he has made, is not entitled to have an issue allowed, but that the action should be dismissed as irrelevant. I am aware that in one or two cases views have been expressed tending in the direction of holding that a person trying to save others in case of accident although not in danger himself, may have a claim for damages if injured, but I am unable to assent to that view.

Lord Young—This at first appeared to me to be a clear case, but that opinion was of course modified when I found some of my brethren differing from the view which I had taken, and accordingly I cannot now regard it as a clear matter, although it at first appeared to me to be so.

There is here admittedly a relevant averment of fault on the part of the defenders. That is not disputed, and certainly the case would not have been sent to be argued before Seven Judges upon any question as to the relevancy of the allegation of fault on their part. That fault lies in the fact that a waggon was run upon the lye specified at dangerous speed, and in a manner to expose to danger the truck in which the pursuer was engaged along with a fellow-workman. The pursuer was only a lad, and his companion was an elderly man, and the two of them were upon the truck which was exposed to danger. I assume, upon the question of relevancy, that the pursuer may prove at the trial the passage in the condescendence to which your Lordship in the chair has referred. The question is, whether, if that is proved, there is a good claim against the persons whose fault exposed those upon the waggon to danger; or rather, whether there is any objection to the relevancy of the pursuer's claim against them for the consequences to him of their fault. I have heard no objection to the relevancy except this, that when the pursuer's son jumped off and got to the ground he was in perfect safety, and that there was, as your Lordship expressed it, no duty or obligation upon him to interpose, after he was in safety, for the protection of his companion. I cannot assent to that view. I may be taken to agree that there was no such duty or obligation upon him as could have been legally en-

forced. I think the pursuer's son would not have been liable in damages as for a breach of legal obligation if he had not done what he did. But I must say that, in my opinion, there was a duty all the same. It was according to his duty, or may have been according to his duty, to interpose to save the life or limbs of his companion. I do not speak about interposing to save property, although that might raise a question worthy of consideration, but to save life or limb I think there was such a duty as the law will take account of, and I hold that if he performed such a duty it cannot be pleaded against him that he voluntarily exposed himself to danger in turning back on the spur of the moment to save his companion, and that instead of doing so he ought to have allowed his companion to take his chance of being killed. I cannot assent to that view. I am of opinion that the case ought to go to trial, and if it is proved that there was fault on the part of the defenders in having that waggon sent along that lye at a dangerous rate of speed, and that the pursuer's son interposed, although not in pursuance of a legal duty, but only as doing what was right and reasonable in the circumstances, and thereby met with an accident, he is not precluded from claiming damages because he was in safety and put himself out of safety in order to save another.

LORD ADAM—Wilkinson, the boy injured, was in the employment of the defenders, and part of his duty was the loading and trimming of waggons with coal from the pit. On the morning of the day on which the accident happened he was engaged in the duty of trimming coal on a waggon at the foot of an incline leading from the pit-head. The fault alleged against the company is that an engine-driver allowed a waggon uncontrolled to run down the incline at a high rate of speed towards the waggon on which the boy and his fellow-workman were at work. No doubt if the waggons had come into collision the defenders would have been responsible for any damage done, because the damage would have been the natural and direct consequence of the fault alleged against the defenders' engine-driver, but it appears to me to be clear that the accident was not the natural and direct result of the waggon being allowed to run down the incline. Wilkinson, we are told, had jumped to the ground and was in perfect safety, and the accident was the direct and natural result of his endeavouring to stop or snibble the waggon. That might be a most meritorious act, but in doing it he was not discharging any duty to his master, whom it is now sought to make responsible. It was an act not within the scope of his employment, and therefore it appears to me that the master is not responsible in law for the consequence of that act of his servant. After the boy had jumped to the ground it seems to me that he was in the same position as if he had never been in the waggon at all. He voluntarily placed himself in a position of danger, and I do not see how any liability for the accident can be imposed upon the master.

LORD M'LAREN—The facts of this case are not so clearly outside controversy that we can safely deal with the case as a question of relevancy. On the contrary, it is a case which ought to be sent to a jury in order that the law may be applied to the true facts of the case. But as observations have been made upon the law applicable to the facts as stated by the pursuer, I may say that it appears to me that there is no difference in principle between the views which have been expressed by the majority and those taken by the minority of the Court. I agree with your Lordship in the chair that if a person who is exposed to imminent danger through the fault of another, and takes reasonable means to save himself, he will not lose his claim for reparation because he has not taken the best possible means, or because he may have lost time in endeavouring to save a fellow-creature, and thereby be unable to avoid being hurt. On the other hand, if a person standing, say, by the way side, and having no contract and no duty whatever in connection with either the stationary waggon or the one that is approaching, interferes to save life, I am unable to see how his act, meritorious as it might be, will give rise to any claim of compensation against the owner of the waggon. I think the present case may possibly fall within the first of the two categories I have referred to, because if the young man in endeavouring to save himself, quite laudably and properly considered whether he could not take his fellow-workman along with him, and did on the spur of the moment something which was not directly necessary for his own safety, I am not prepared to say that under all circumstances that will bar his claim to redress. A good deal must depend upon how the facts come out at the trial. Further, it is not to be overlooked that this young man had a duty to take care of his employers' waggon, and what he did in stopping the approaching waggon was calculated to avoid damage to the waggon on which he was working. If there was any duty of that kind, of course it would not be the less a duty to save his master's property because in doing so he also saved a fellow-workman from death or injury.

LORD KINNEAR—I concur with Lord Young and Lord M'Laren in thinking that this case ought to go to trial. According to the pursuer's statement, it is clear enough that his son was placed in a position of great danger by the negligence of the defenders, with the result, either immediate or remote, that the boy was very seriously injured. Now, if the mischief which happened was the direct and natural consequence of the defenders' negligence, the pursuer is entitled to recover. If the boy might have avoided the mischief by exercising ordinary care and diligence, then the injury must be held to be proximately due to his own want of care or his voluntary action, and not to the defenders' negligence.

It is said against the pursuer, on his own statement on record, that the boy is in this latter position because he, having jumped off the waggon was in perfect safety, and would have escaped altogether if he had not voluntarily incurred a new danger by attempting to stop the waggon. That does not appear to me to be quite a fair construction of the pursuer's statement, because his averment is that, if the waggon had not been stopped, it would have come into violent collision with the other, and that this violent collision would have been attended with danger not only to Steele, but to the pursuer's son himself. But however this may be, I am not prepared to hold as matter of law that if one is exposed to danger by the fault of another, he has failed to exercise reasonable care and prudence for his own safety merely because he has paid regard to the safety of another as well as to his own, and so brought himself into further peril which he might have escaped if he had thought of nobody but himself, and has therefore no claim against the wrongdoer. Nor am I prepared to say, as matter of law, that his exposing himself to further risk in order to save a life which was in peril was not the natural or probable consequence of a fault which put both lives in danger. These are questions of fact which cannot be safely decided without consideration of all the circumstances of the case.

LORD TRAYNER—The pursuer in this case claims damages from the defenders for injuries sustained by his son while in the defenders' employment. The statement of the grounds of action set forth in the condescendence is clear and explicit. The injured lad, while engaged in the work which he had been employed to do, saw a waggon approaching him and another workman uncontrolled, and at a speed which threatened injury to them both. He left his work and went towards the approaching waggon, he "snibbled" or stopped the waggon before it had reached the point where it could have done the damage which its advance threatened, and in doing so he received the injuries complained of. This is, in effect, the pursuer's statement. I assume, in dealing with the question of relevancy, that the waggon was running uncontrolled at an improper and dangerous speed, and that this is a fault for which the defenders are responsible. But assuming this, I am of opinion that no relevant case has been averred against the defenders inferring liability for what happened. The direct and immediate cause of the injuries to the pursuer's son was his own act. It was no part of his duty or employment to stop such a waggon—no one asked or ordered him to do it; and it is at least doubtful whether the defenders or anyone representing them could lawfully have ordered him to do so. The action of the pursuer's son was, in the strictest sense, voluntary, and *volenti non fit injuria*. Nor was this action necessary for the lad's own safety, or the safety of his neighbour workman. The pursuer's son saw the approaching danger sufficiently early to provide for his own safety and for the safety of the other workman, if warning had then been given. As the pursuer's son got out of the way of danger in time, so could the workman, had the pursuer's son given warning. But the pursuer's son deliberately adopted a different course, and did that, as I have said, voluntarily, which resulted in his injury.

The pursuer's son, no doubt, did what he thought best for everybody, his employers included. His proceedings were well intentioned, and the defenders might very well make him some recompense. But I am unable to affirm their liability at law for the claim now made.

LORD MONCREIFF—I agree with those of your Lordships who hold that this case should be sent to trial. Difficulties may arise on the evidence, but in my opinion the pursuer's averments are relevant. Stated shortly, they are to the effect that his son James Wilkinson junior, and a fellow-workman Alexander Steele, were suddenly exposed to extreme danger owing to the fault of the defenders or those for whom they are responsible; that the boy saw the approaching waggon, but Steele could not, owing to the position in which he was standing; and that, "in a moment of hurry and confusion incident to his surroundings, and the extreme danger to himself and the said Alexander Steele," the boy jumped from the buffer of the stationary waggon, and succeeded in stopping the approaching waggon, and preventing injury to Steele and the stationary waggon, but in doing so received the injuries complained of.

It is not disputed that if the pursuer's son had been content with trying to save himself, and been injured in doing so, he would, assuming fault on the part of the defender, have been entitled to recover damages. But it is said that he is not entitled to recover because the boy could have saved himself, and indeed, it is said, had done so, and that in attempting to save Steele he acted ultroneously.

I think it is well settled that if a man is placed in a position of danger through the fault of another, his actions in endeavouring to avoid injury to himself are not to be judged by the same standard as those of one who has time to act calmly in the knowledge of all the facts and the alternatives open to him. And if in the hurry of the moment he does not adopt the best means of securing his own safety, the wrongdoer will not thereby be freed from liability. I am of opinion that the same rule applies where two persons are exposed to a common danger, and one of them, who could, I assume, save himself, had he time to think and chose to do so, acts upon the natural and unselfish impulse of the moment, saves his companion, but is himself injured. I think it is a proper and legitimate jury question, whether the actings of a person placed in such a position, and the consequent injuries sustained by him, are not fairly attributable to the fault of the person who placed him in peril.

In the present case, if it appears that the boy acted officiously and unnecessarily, the defenders will be assoilzied. But as on the pursuers' averments I see nothing to indicate that he acted as a volunteer, I think the case must go to trial.

On 16th March the Court approved of an issue in common form for the trial of the cause.

Counsel for the Pursuer—G. Watt—A. S. D. Thomson. Agents—Hutton & Jack, Solicitors.

Counsel for the Defenders—Balfour, Q.C.—Salvesen. Agents—Gill & Pringle, W.S.

Wednesday, March 17.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

OBERS *v.* GIBB AND ANOTHER (J. G. PATON'S TRUSTEES).

Bankruptcy—Gratuitous Alienation—Spes Successionis.

The creditors of a bankrupt have the right to reduce any gratuitous alienation by him of a *spes successionis* which is, and is intended to be, to their prejudice.

Reid v. *Morison*, March 10, 1893, 20 R. 510, *distinguished.*

Bankruptcy—Foreign—Effect of Foreign Sequestration of a Scotch Debtor—Title to Sue.

The Court, in accordance with the principle of international comity, will recognise and give effect to a decree pronounced by the court of a foreign country sequestrating the estates of a debtor who, though trading in that country, has a Scotch domicile of succession.

This principle *applied* (*aff.* judgment of Lord Kyllachy) in a case where the syndic in a French sequestration of a Scotch trader's estate sued for reduction of a gratuitous discharge of his share of legitim granted by the bankrupt during the sequestration.

Writ—Delivery—Registration.

Registration in the Books of Council and Session of a discharge of legitim *held* to be equivalent to delivery, this being the intention of the grantee.

On the 29th October 1889 James Middleton Paton, a Scotchman who had for a considerable time previously carried on business as a merchant in Lille, was declared bankrupt by judgment of the Tribunal of Commerce of that town, and shortly afterwards Francis Obers, accountant, Lille, was appointed trustee "syndic definitif" on his estate.

On 25th February 1891 the bankrupt executed in favour of his father John George Paton, merchant, Dundee, a discharge of his claim for legitim in the following terms:—"I, James Middleton Paton, residing at the Wild, Broughty Ferry, second son of John George Paton, merchant, Dundee, whereas various advances of money have from time to time been made to me or for my behoof by my said father for my advancement in business, and otherwise for my benefit, and that it appears to me to be reasonable and proper that I, in respect of such advances, should execute the discharge hereinafter written; therefore I have exonered and discharged, and do hereby exoner, acquit, and *simpliciter* discharge, the said John George Paton, his heirs, executors, and successors, and all others his representatives or the intromitters with his effects, of any bairns' part of gear, legitim, portion-natural and share of executry, which I could claim through the death of my said father in the event of me surviving him, excepting as hereinafter mentioned, and of all execution competent to me for the same, and all that has followed or is competent to follow thereon; but excepting from the operation of this discharge any moneys or effects which may be bequeathed to me by my said father in any testamentary deed executed or to be executed by him. And I oblige myself and my heirs and successors to warrant this discharge at my hands. And I consent to the registration hereof for preservation."

The bankrupt's father, John George Paton died on 9th March 1891, leaving a trust-disposition and settlement, whereby he directed his trustees to divide his estate equally among his children, but provided that the trustees should retain in their hands the bankrupt's portion, and pay the whole revenue thereof to him as an alimentary provision only, not assignable by him nor attachable by his creditors.

On 18th January 1892 the syndic in James Middleton Paton's bankruptcy raised an action in the Court of Session against Easton Gibb and another, John George Paton's testamentary trustees, concluding for (1) reduction of the discharge quoted above; (2) an accounting with regard to John George Paton's estate; and (3) payment to the pursuer of such sum as should be found due to him by the defenders.

The pursuer averred—"(Cond. 5) The said discharge was granted fraudulently by the said James Middleton Paton while he was an undischarged bankrupt, and subsequent to the appointment of the pursuer as trustee on his estate. Moreover, it was conceived and executed by the said James Middleton Paton in the full knowledge and in view of the fact that his father was then on his deathbed, with the fraudulent design of rendering effectual and securing for himself the liferent alimentary provisions in his favour contained in his father's trust-disposition and settlement, and of precluding the pursuer and the said James Middleton Paton's creditors from claiming the legitim to which he would have otherwise been entitled from the said John George Paton's estate. It was further granted in favour of a conjunct and con-