

cannot be said to have a right to the estate under the conveyance. It was merely the written indication of its transference at his death. There was no change of investiture. He merely made his personal right real, retaining the same destination in favour of himself, heirs and assignees. In fact and law, the conveyance neither was nor could be part of the investiture. It was a *mortis causa* disposition, not to take effect until death; and its operation commences on that event arriving, and no sooner. The plea, that the conveyance was conditional, proceeds on a misapprehension' of the intention, as well as words, of the deed.

March 22. 1825.

The House of Lords ordered and adjudged, ' that the appeal ' be dismissed, and the interlocutors complained of affirmed, with ' L. 100 costs.'

Appellant's Authorities.—Clark, May 31. 1821, (1. Shaw & Ballantine, No. 52.); Molle, December 13. 1811, (F. C.)

J. RICHARDSON—A. MUNDELL,—Solicitors.

GEORGE PENTLAND, Appellant.—*Sol.-Gen. Hope*—*Fullerton*. No. 9.

WALTER STIRLING GLASS, Respondent.—*Bosanquet—Keay*.

Bankrupt—Prisoner.—Circumstances under which (affirming the judgment of the Court of Session) the benefit of the *cessio bonorum* was granted to a party, on condition of introducing into the disposition *omnium bonorum* a clause revoking all deeds granted by him ' which may have had the effect of excluding his *jus mariti* over his wife's estate and effects, heritable and moveable.'

GLASS raised a process of *cessio bonorum*, and was opposed by Pentland, on the grounds, that he had become embarrassed from indulging in extravagant expenditure, totally unsuitable to his means; that, to acquire loans, he had fraudulently misrepresented the state of his funds; that, with a view to disappoint his creditors, he had contrived that property devolving to him from his father should be placed altogether beyond their reach; that, with the same view, property to which his wife had succeeded, after incurring the debts on which he was incarcerated, was vested in his wife; to the exclusion of the husband's *jus mariti*; that there had not been a fair and complete disclosure of his means and estate, so as to make the disposition *omnium bonorum*

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available; that he was in possession of a handsome house and income, and was, at all events, bound to make over to his creditors whatever remained over an allowance for proper support. Glass answered,—That the allowance at one time given him from his father had been suddenly cut off; that the placing the property devolving on him from his father beyond the reach of creditors, was the act and deed of his father, who had a right to do as he saw proper; that in the same way the *jus mariti* had been excluded, without his being in any way a party to the arrangement; that his house had been fairly bought by Mrs Glass from her own funds; that he had made an ample disclosure of his affairs, and was ready to execute a disposition *omnium bonorum*, so drawn as to enable the creditors to reach all deeds, if such there were, granted by himself, and affecting their interests; that if to a certain degree he had been imprudent, the circumstances in which, from his father's bounty, he had originally stood, would afford an excuse; and that his debt to Pentland, the only opposing creditor, was created by enormous charges for work done as a coach-maker, and accumulation of usurious interest.

The Court of Session, on the 19th of February 1822, found, that he was not entitled to the benefit of the process in hoc statu, and twice adhered on advising reclaiming petitions for Glass. Thereafter, on advising another petition, they appointed him to give in an articulate condescence of all facts and circumstances explanatory of the grounds of his action, and particularly with regard to the alleged transactions relative to the exclusion of the *jus mariti*; on advising which, with answers, replies, and duplies, they altered the interlocutor reclaimed against; found 'that the pursuer's bankruptcy was occasioned 'by misfortunes, and that he is therefore entitled to the benefit 'of the process of *cessio bonorum*; and ordain the pursuer to 'give in a disposition of his whole effects for behoof of his creditors in the usual form, and containing a full and ample revocation of all deeds, granted by the pursuer, which may have 'had the effect of excluding his *jus mariti* over his wife's estate 'and effects, heritable and moveable;' and on the 6th February 1823, on his taking the oath, decerned in terms of the libel.

Pentland appealed,—repeated his statement and arguments, —maintained that there had been no usurious dealings on his part, and that such a charge in the present action was calumnious and incompetent.

Glass founded on the allegations and facts in the Court below,

and contended, that imprisonment could not be permitted to be perpetual; and that any imprudence on his part had been severely enough punished by an incarceration of above sixteen months. March 23. 1825.

The House of Lords ordered and adjudged, ‘ that the appeal be dismissed, and the interlocutors complained of affirmed, with L.100 costs.’

LORD GIFFORD.—The question here is, whether the respondent be entitled to the privilege of the *cessio bonorum* which he has received from the Court below? He made two or three attempts formerly to obtain this privilege, in which he was unsuccessful; but now he has got it, after more than a year’s imprisonment. He maintains, that he is entitled to the judgment of the Court, he having made a full disclosure and surrender. The appellant objects; and the point now is, do your Lordships see any room for finding fault with the judgment? The first ground taken by the appellant is, that the respondent had, through mere extravagancy, contracted the debts. It is, however, admitted, that this is not a ground for perpetual imprisonment. The appellant has been imprisoned for more than a twelvemonth. Now, is there any thing so culpable as to require an imprisonment of a prolonged duration? I see no reason for thinking so. The second objection is more serious, viz. fraud—the attempting to defraud his creditors by deeds purporting to proceed from his father and other persons. I need only advert to them thus generally, as I mean to propose to your Lordships to affirm the judgments complained of; and therefore I shall not trouble your Lordships with detail. On the whole, I may say, that I do not see a satisfactory case that there was fraudulent conduct in this matter. If there be room for challenging those deeds, the appellant can, under the decree of the Court, proceed to do so. But there remains this point, whether the respondent has not been so harassed by the appeal that he ought to be remunerated for his expenses? and humbly conceiving that he ought, I shall therefore propose to your Lordships to affirm, with L.100 costs.

Appellant’s Authorities.—Thom, Feb. 11. 1809, (F. C.); Smith, Feb. 6. 1813, (F. C.); Bell’s Com. ‘Imprisonment for Debt.’

Respondent’s Authorities.—Bell’s Com. ‘Imprisonment for Debt;’ M’Dowall, March 5. 1794, (11,791.); Douglas, Jan. 15. 1794, (11,795.); Law, Dec. 12. 1795, (11,798.); M’Lean, March 1802, (not rep. House of Lords, Aug. 1803); Thom, Feb. 11. 1809, (F. C.); Murray, July 11. 1811, (F. C.); Smith, Feb. 6. 1813, (F. C.); Dalgliesh, July 4. 1801, (not rep.); Boyes, Winter Session, (not rep.); 1. Ersk. Inst. 6. 10.

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