these grounds I move your Lordships to affirm the judgment of the Court below, and to dismiss this appeal, with costs.

LORD CRANWORTH.—My Lords, I have nothing to add to what has fallen from the LORD CHANCELLOR, who has exhausted the subject. The fallacy of the appellant's argument consists in his dividing the gift of the residue into two parts. There is really no such division. The residue is one entire residue, which in the original trust deed is given substantially subject to the large charge of the whole of the rents, and in the subsequent codicil that large charge is diminished to a small one, but the residue remains the same. That is the whole *corpus* of principal and interest, subject only to the reduction of those charges. The word "residue" always includes, (as was pointed out by my noble and learned friend, and as is laid down in the case he cited,) everything that is not charged upon the estate. It is so far of a flexible meaning or interpretation, that as the amount of charges differs, the amount included in the residue will be different; but it always means that which has not previously been given, and, where there is no previous charge, it must mean the whole estate. I quite concur with my noble and learned friend in thinking, that this is a most unnecessary appeal, and that it should be dismissed with costs.

LORD CHELMSFORD.—My Lords, I quite agree with the motion of the LORD CHANCELLOR.

Interlocutor affirmed with costs.

Appellant's Agents, D. Crawford, S.S.C.; J. R. Chidley, London.—*Respondents' Agents*, Maclachlan, Ivory, and Rodger, W.S.; Maitland and Graham, Westminster.

MAY 8, 1865.

Mrs. JESSIE MACLEAN or MORRISON and Others, *Appellants*, *v.* ALLAN MACLEAN and Others (Colonel Maclean's Trustees), *Respondents.*

Trust—Resignation of Trustees during Action—Continuation of Action—Judge's Notes of Trial—*M. by trust disposition, conveyed his whole estate to eight trustees, declaring, that any one desirous of withdrawing should have power to do so at pleasure, by intimating his relinquishment to his co-trustees. After M.'s death his next of kin raised an action against the eight trustees to reduce his settlement on the ground of insanity, and after a verdict for the pursuers, six of the trustees, by letter to the agent of the trust, intimated their withdrawal.*

HELD, *That the two continuing trustees had sufficient title to carry on the action, and apply for and obtain a new trial.*

HELD FURTHER, *That it was no objection to the rule being made absolute for a new trial, that the agent of the trustees revised and filled up some blanks in the Judge's notes of the trial before they were produced in Court.*[1]

In 1859 an action was raised by Mrs. Jessie Maclean or Morrison of Bunessan, in the island of Mull, widow of James Morrison, sometime merchant there, and others, against Dr. Charles Maclean, Inspector General of Her Majesty's Medical Department, Dublin, Major General Allan Maclean, and others, the accepting trustees of the deceased Lieutenant Colonel Alexander Maclean of Millport, in the island of the Greater Cumbrae, seeking to reduce certain pretended trust deeds of settlement purporting to have been executed by the late Alexander Maclean. The condescendence set forth, that Alexander Maclean died in 1859, at the age of eighty or thereby. Some years previous to his death, he went to reside in the Greater Cumbrae. He was unmarried, but for some years before his death cohabited with a young woman of small degree, called Jessie Macdonald, who afterwards married Hugh Crawford, one of the defenders, and who continued to live after her said marriage, as she previously had done, with Alexander Maclean, ostensibly as his housekeeper, at Millport. That during some years previous to his death, Alexander Maclean was insane and subject to fits, and upon his death the pursuers wished to have a *post mortem* examination, with a view to detect a disease of the brain; but the defenders, his pretended trustees, resisted. During his latter years, Alexander Maclean lived secluded from his friends, against whom he had conceived an irrational hatred, which was fostered by the said Jessie Macdonald. Alexander Maclean left a trust deed or settlement and codicils. The trust deed

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[1] See previous reports 24 D. 625: 1 Macph. 304: 33 Sc. Jur. 480: 34 Sc. Jur. 311: 35 Sc. Jur. 205. S. C. 3 Macph. H. L. 42; 37 Sc. Jur. 467.

professed to convey to certain persons, as trustees, a sum of £20,000, then invested in the three per cents. The second codicil purported to direct the trustees to pay to Jessie Maclean an annuity of £50, and, after her death, to pay each of her two daughters an annuity of £25 each. All his estate was conveyed to the trustees for this and other purposes. The pursuers set out, that these deeds and writs were vitiated and erased, and otherwise invalid, and that, at the time of their execution, Alexander Maclean was insane, and they were obtained while he was in a weak and facile state of mind by the fraud and circumvention of Jessie Macdonald, and that the pretended witnesses did not subscribe the deed; and various other grounds of invalidity were set forth. At his death Mrs. Jessie Maclean or Morrison and others, his sisters, were his next of kin, while John Ralph Abercromby Maclean was his heir at law.

The trustees in their defences alleged, that the testator was of sound disposing mind, and that the instruments were his deliberate acts. The pursuers thereafter raised a second action, including several other writs of the testator not before mentioned.

The record having been closed, thirteen issues were afterwards adjusted as to whether the trust deed was the deed of Alexander Maclean, whether it was obtained by fraud and circumvention, etc. The trial took place before the Lord Justice Clerk Inglis, in August 1861, when the jury found unanimously for the pursuers on all the issues. Soon after the result of the trial it appeared, that six out of the eight trustees who had accepted the trust resigned their office, and refused to join the other two in an application which was about to be made for a new trial. The two trustees who applied for the new trial were General Allan Maclean and Alexander Maclean of Pennycross. The agent of the trustees gave notice of the application for a new trial in the name of the above two gentlemen, describing them as the "sole acting trustees and executors of the deceased Alexander Maclean." As the notice was thus given by two only out of the eight original defenders, the pursuers resolved to take no notice of the application, and gave notice, that they would move to apply the verdict. When the two motions came before the Court, it was contended by the pursuers, that the alleged resignations of the six defenders were irregular and inept, and, that it was incompetent for the two trustees, without the concurrence of the others, to insist in a motion for a new trial. But the Second Division held, that the trust deed gave power to the six to resign by letter, and granted a rule *nisi*, refusing, at the same time, the motion of the pursuers to apply the verdict. Afterwards the Court made the rule for a new trial absolute; and the Court on motion deleted the names of the six trustees from the issues, and sent the issues thus amended to trial. At the new trial the jury returned a verdict for the two trustees, defenders, who were assoilzied from the conclusions of the action. Thereafter the pursuers again in turn moved for a new trial, which was refused.

The trust deed of the testator contained this power:—"Should any one of my trustees who may accept of my trust afterwards desire to withdraw from the trust, he shall have power to do so at pleasure by intimating by letter to his co-trustees his relinquishment of the office of trustee, and my trustees are empowered thereupon to discharge him of the office accordingly, and my trustees are hereby empowered from time to time to nominate and appoint any person or persons of the name of Maclean or Maclaine to be a trustee or trustees along with them, or in place of any trustee or trustees who shall die, or desire to be discharged, or refuse, decline, or become incapable to act in this trust; and when and so often as any new trustee or trustees shall be so nominated and appointed, all the trust estates and effects, heritable and movable, real and personal, shall forthwith be disponed and assigned in such form as that the same shall be vested in such new trustee or trustees, in case of there being no continuing trustee, and for the purposes of this trust and no otherwise."

The letters which the trustees wrote were addressed to the agent, Mr. Martin, W.S., simply announcing, that they resigned. The Second Division, consisting of Lord Justice Clerk Inglis, Lords Cowan and Benholme, held, that after the six trustees had resigned, in terms of the powers given to them by the trust deed, the two who remained were as fully entitled to carry on the defence as the whole body of trustees were, and the Court thought the letter sufficiently answered the description of resignations.

The pursuers now appealed against the interlocutors refusing a new trial.

The appellants in their *printed case* contended, that the interlocutors appealed against should be reversed, for the following reasons:—1. Because the Court of Session ought to have applied the verdict against the eight defenders in the issues, on the motion of the appellants of 29th November 1861, and which verdict was acquiesced in or not objected to by six of their number. 2. Because the proceedings of the two respondents, General Allan Thomas Maclean and Alexander Maclean of Pennycross, in applying for a new trial, were irregular and incompetent, and contrary to the terms of the Statute 55 Geo. III. c. 42, § 17, and the Act of Sederunt, 16th February 1841, §§ 36 and 37. 3. Because the documents produced as "letters of resignation," being neither holograph nor tested, were improbative and invalid in law, and did not prove their dates or contents. There was, therefore, no evidence before the Court of any resignation of the trust, or desire to withdraw from it by any of the eight defenders as trustees. 4. Because the six trustees, who are alleged to have resigned, did not, in compliance with the provisions of the trust

deed, intimate their relinquishment of the office of trustees to their co-trustees, and were not by them discharged of this office. The eight trustees, therefore, against whom the verdict in the first trial was obtained, continued to fill the office of trustee, and the verdict subsisting against them ought to have been applied by the Court. 5. Because the trustees who had accepted office had no power to withdraw from the trust otherwise than by intimating their relinquishment of the office to their co-trustees, and obtaining from these co-trustees a discharge of the office; and as no such intimation was made, and no such discharge obtained by the six trustees whose names were delete from the issues, or any of them, they continued to be trustees, and the verdict against them remained in force. 6. Because, even assuming, that the six trustees had effectually intimated their relinquishment, it was the duty of the co-trustees, at the respective dates of such intimation, to fill up the successive vacancies by the appointment of new trustees in terms of Colonel Maclean's deed of settlement, and no trustees having been so assumed, the whole proceedings adopted by the two trustees were incompetent, irregular, and ineffectual. 7. Because the verdict which the appellants obtained was a verdict against Colonel Maclean's estate, represented by the eight executors, with whom the issues were tried. These executors, as his legal personal representatives, were proper parties to the action and issues; and the subsequent proceedings, at the instance of two only of their number, could not affect the issue joined between the appellants and these legal personal representatives, or the verdict which the appellants obtained against them.

Rolt Q.C., and *Anderson* Q.C., for the appellants.—The number of the trustees was indivisible, and when some resigned, the rest could no longer carry on the suit—Ersk. § 2940; Bell's Pr. § 2226. The Act of Sederunt contemplates, that the same parties who were in the first trial should apply for the second. But there was no proper resignation, for the letters are not probative instruments, and were not intimated to the co-trustees, and followed by a proper discharge. The Court, therefore, could not look at the letters. There is another objection to the proceedings, for the notes of the learned Judge produced to the Court were not those taken at the trial. It appeared, that the defenders' agent had filled up blanks, and otherwise altered the notes of the Judge, so that the Statute 53 Geo. III. c. 42, § 17, was not strictly complied with. The proceedings, therefore, were void.

The *Lord Advocate* (Moncreiff), *Sir H. Cairns* Q.C., and *Ward*, for the respondents, were not called upon.

LORD CHANCELLOR WESTBURY.—My Lords, the present appeals are presented to your Lordships from interlocutors pronounced in certain actions of reduction brought by the appellants, who are the next of kin to a gentleman of the name of Maclean, Lieutenant Colonel Maclean. The object of the action was to reduce and to set aside certain trust deeds of settlement of Colonel Maclean, by which real and personal estate was devised and bequeathed—a considerable part of it for charitable purposes. By that will the Colonel appointed ten trustees, whom he also named his executors, and the trustees procured themselves to be confirmed executors of the will. Previously to the institution of these suits two of those gentlemen had either died or retired from the trust, and accordingly the suit was directed against the then eight surviving trustees and executors. Colonel Maclean had provided by his will, that if any trustee was desirous of resigning, he might intimate his intention to do so to the other trustees, and that thereupon he might retire from the trust.

The nature of the questions raised in the action of reduction of course required, that the issue should be directed to be tried by a jury. And accordingly several issues were directed by the Court and came on for trial in the month of August 1861, when a verdict was found in favour of the appellants against the validity of the will. It appears, that thereupon six of the eight trustees were desirous of retiring from any further defence in the suit, but that the two other trustees, who are represented as having been on intimate terms and personally well acquainted with the deceased testator, determined to continue their defence to the action.

The consequence was, that on the 9th November 1861 the two trustees, who determined to continue the defence, gave a notice of motion, in which, describing themselves as being now the sole acting trustees and executors of the deceased Alexander Maclean, they stated, that they should move the Court for a rule to shew cause, why the verdict, which had been given in the cause, should not be set aside and a new trial granted, and, that in the mean time all further proceedings should be stayed. This motion came on to be heard before the Inner House on the 12th November 1861, when the Lords of the Second Division (the present appellants not thinking it proper to oppose) pronounced an interlocutory order appointing the counsel for the defenders to be heard "on the motion for a rule to shew cause why the verdict in this case should not be set aside and a new trial granted, and appointing the Judge's notes and all necessary documents to be printed: In the mean time sist all further proceedings in this cause."

It appears, that subsequently to this proceeding on 29th November 1861, the present appellants gave a notice, addressed to the original eight defenders, of a motion, "that the Second Division would be moved to recall the sist contained in the interlocutor of the 12th November, and to discharge the order contained in the interlocutor, and to apply the verdict in this case, and to reduce, decern, and declare, in terms of the conclusions of the summons."

The second interlocutor appealed from was made on the 4th December 1861, and states, that "the Lords having heard counsel on the motion of the pursuers to apply the verdict, and reduce, decern, and declare in terms of the conclusions of the summons, in respect, that letters of resignation by six of the eight trustees, defenders, in terms of the power to that effect contained in the trust deed, have been produced, and that the remaining two defenders, Major General Allan Maclean and Alexander Maclean, Esq. of Pennycross, now the sole acting trustees and executors, have given notice of a motion for a rule to shew cause why the verdict should not be set aside and a new trial granted." Upon that the Lords of the Second Division refused the motion of the pursuers to apply the verdict.

The rule to shew cause why a new trial should not be granted came on to be heard and determined in the month of February 1862, when their Lordships were pleased to determine, that the verdict was against the weight of the evidence, and that a new trial ought to be granted.

A new trial was accordingly had, upon which a verdict was returned for the defenders on all the issues. That was followed by a motion for a rule to shew cause why that second verdict should not be set aside, upon which the Court pronounced the following interlocutor: "The Lords apply the verdict: Sustain the defences, and assoilzie the defenders from the conclusions of the conjoined actions of reduction and declarator and reduction, and find the defenders entitled to expenses."

The present appeal is brought principally on this ground. It is contended by the appellants, that it was not competent to the two defenders, who determined to continue their defence in the suit, to go on with that defence after their six co-trustees, or rather co-defenders, had retired from the suit; and we have been pressed with a great number of ingenious arguments to shew, that it was not competent to the two defenders who determined to continue their defence in the suit, to go on with that defence after their six co-trustees, or rather co-defenders, had retired from the suit, and we have been pressed with a great number of ingenious arguments to shew, that it was not competent to the defenders to give the notice of motion, which was given on the 9th November 1861, or to take the further proceedings which they took in the cause, which I have already stated to your Lordships.

I think your Lordships will agree with me, that it is utterly impossible, that any kind of weight should be attributed to those arguments. It is perfectly clear, that it was competent to the six gentlemen, the co-defenders, who desired to withdraw from further defence in the cause, to do so; but their doing so would not prejudice the right of the other two defenders to persevere in their original defence. And if the contrary conclusion were for a moment entertained, it must of necessity follow, that there would be an absolute denial of justice. For, allowing the case of a suit, in which there are several co-defenders of the same blood, joined together upon one and the same ground, if several of them decline to persevere in the defence, it would obviously be impossible for the remaining defenders to maintain their defence, even though the fact might be, as the fact is here proved to be, that the two defenders took a much more just and correct view of their position and of their rights, and of what justice required, than the six did who retired from the defence.

We have been told, that it was impossible, when six of the defenders withdrew, that the two who were left could be in a position to represent the estate. But I think, that you will agree with me, that that is a consequence that cannot for a moment be maintained; but that the two who remained were clearly entitled to the benefit of the original defence, and although their co-trustees or the gentlemen who were authorized to stand in that capacity declined any longer to continue as defenders, it is impossible, that one defender by his withdrawal can prejudice the right of another defender in a case that has been already brought before the Court. There is no relation between the parties which would disentitle the continuing defender to maintain his defence, by reason of the circumstance of another person who has been associated with them in that defence declining any longer to continue in the office of executor or trustee, and therefore declining any longer to be a party to the proceeding. Upon the six retiring defenders in this cause refusing to take any further steps, the two remaining defenders are permitted to take those steps which the interests of their office and the rights of the parties entitled under the will require. If this were not permitted to be so, the result would be, that the interests of the persons beneficially entitled under the will would be entirely sacrificed by reason of the six trustees withdrawing and the refusal of the Court (as it is contended that the Court was bound to refuse) to permit the two defenders to continue the defence of the action.

Your Lordships' attention has been directed to the Act of Sederunt. But that I think has no bearing on the case, because the language of the Act of Sederunt is expressed merely in general words applying to the persons who were entitled to continue the defence, or to continue the prosecution of a cause.

So far, therefore, upon the merits of the case. With regard to the form, the Court of Session —the Lords of the Second Division—were unanimous in holding, that it was perfectly competent to the two defenders to give the notice of motion. And indeed it would be very much against law and justice, if proceedings were permitted to go on as they have gone on here for a year and

a half after that notice of motion had been given, and if then, upon a technical objection such as this, the whole of the decisions which have been arrived at on the merits of the case from the very beginning could be subverted, and the parties placed back again in a position which it would be exceedingly difficult to define or to determine if you were to hold, as the appellants contend, that all the subsequent interlocutors after that of the 9th November 1861 are void and of no effect by reason of the incompetency of the two defenders to maintain their defence to the action.

There has been another point argued as a reason for your interference, which is quite of the same character and quality with the other objections which have been presented. It has been argued before you, that the Statute requires, that the Judge's notes of the evidence, taken at the trial, should be laid before the Court of Session precisely and exactly as they were taken down by the Judge. That argument has been carried to such an extent, that it has been in truth contended, that if an accidental error were found in the Judge's notes, that error could not be corrected. That argument is one that scarcely deserves any serious refutation. But, independently of its trivial and unsubstantial nature, your Lordships will observe, that if there were anything of substance in it, it is an objection which might have been brought originally before the Court of Session itself. And it cannot be brought here as a new matter upon which there has been no deliverance in the Court below. When the discovery was made, there was no application to the Court below. If it is said, that it was a matter upon which it was not competent to make an application to the Court below, that of course excludes it from being a subject matter of appeal here. For nothing can be made the subject matter of appeal here, that has not been the subject of a decision in the Court below, and upon which alone the appellate jurisdiction is founded.

I think, that the whole of this proceeding is much to be regretted. It is of a very unsubstantial character, and has been attended with great expense. It would, I think, be a great violation of justice if this appeal were allowed, and I hope, that your Lordships will agree with me in the conclusion, that the interlocutors appealed against ought to be affirmed, and the appeal dismissed with costs.

LORD CRANWORTH.—My Lords, I entirely concur in the view which the LORD CHANCELLOR has taken of this case, and particularly in his last observation, that it is a matter of very great regret, that appeals of this sort should be brought here at enormous expense to the suitors on the other side of the Tweed. It appears, that in these proceedings before they came here, more than £2000 of expenses had been incurred. That is perhaps a misfortune which is unavoidable where the question is the discussion of the sanity or insanity of a testator; and although one may deplore it, one cannot attribute blame to any one, that that great expense was incurred. But that great expense having been incurred, why it should suit the parties to proceed further to bring this case before your Lordships, upon these most frivolous and technical grounds, I am at a loss to discover. The only substantial part of the appeal (if you can call any part of it substantial) is this, that the appellants having to litigate with the respondents as to the question, whether a certain testator was or was not sound in mind when he made his will, they were opposed upon that occasion by the defenders, when they ought to have been opposed by six others besides the two. Now, of course, practically if there was any ground of preference, it was better for them, that they should only have the opposition of two, but of course it could make no real difference. But what is the technical ground upon which they proceeded? It is merely this, that whereas there were eight persons who were originally called in to litigate the question, whether a certain instrument was or was not valid, (the appellants contending, that it was invalid,) and because six of them after the first verdict chose to withdraw, leaving the defence to be conducted afterwards by the two others, that therefore these two remaining defenders had no longer any right to appear in the suit. But what ground of complaint does that afford? I must dispute the necessity, according to my view of the case, of shewing even, that those gentlemen had retired from the trust. The trust has nothing to do with the question, so far as the appellants were concerned, because they alleged, that there was no trust. But surely it cannot be said, that under the laws of Scotland regulating these proceedings, there is any law so monstrously unjust, as to say, that if a number of persons be joined in defending an action, and any one of those persons chooses afterwards to say, I am satisfied with the verdict, these others are all to be bound by that, and to have no means of calling it in question. It appears to me, that that is a proposition which when once stated carries on the face of it its own refutation.

It has been said, that the Act of Sederunt states, that the application must be made by "the party complaining of the verdict." Now I certainly read that as meaning a party complaining of the verdict. And although there may be others affected by the verdict who do not complain, surely there can be no rule of law in Scotland so entirely different from the law of this country, as to hold, that if the other appellants or defendants do not choose to complain, you are therefore bound to concur in their acquiescence. I can never believe that to be the law of Scotland. Therefore, even supposing it not to have been made out, that there has been such a strict resignation of the office of trustee as was required, (I do not mean to say, that it is not completely made out,) but assuming that it were so, still I should come to the same conclusion, that there is no foundation for the present appeal.

With regard to the other matter as to the Judge's notes, to suppose, that a mere directory Statute like this, according to which a Judge has to furnish the notes which he has taken of a trial, has not been complied with, because something that was left inaccurate in taking it down, has been corrected before it was handed to the Court, is really to attribute to the Legislature their intention of requiring something which in many cases would be totally impossible. In my opinion there is not the least foundation for that view of the case, and I concur with the LORD CHANCELLOR in thinking, that this appeal ought to be dismissed with costs.

LORD KINGSDOWN.—My Lords, I am quite of the same opinion.

Interlocutors affirmed with costs.

Appellants' Agent, J. H. Ward, Westminster.—*Respondents' Agents*, John Martin, W.S.; Willoughby, Cox, and Lord, London.

JUNE 2, 1865.

Mrs. JEAN BREAKENRIDGE or DUNLOP, *Appellant*, *v.* The Rev. JAMES BOYD, D.D., and SAMUEL GREENLEES (Greenlees' Trustees and Executors), *Respondents.*

Deed—Writ—Attestation—Signature of Wife as Consenter—*Donatio inter virum et uxorem*—Revocation—*During marriage, Mr. G., by deed of* 1835, *substituted a conventional for the legal provision of Mrs. G. Her name was not mentioned in the body of the deed as a party, but the testing clause narrated, that, in token of her consent, she also signed the deed before the same witnesses. In a subsequent deed of* 1851, *Mr. G. altered the disposition to meet the case of some of his children predeceasing him, but in other respects confirming the deed of* 1835, *and not substantially altering the wife's provision. Mrs. G. was no party to the latter deed, but survived Mr. G. four years, and accepted the provisions under both deeds.*

HELD (affirming judgment), *That* (1) *the signature of Mrs. G. as a consenter effectually bound her;* (2) *that the deed of* 1851 *did not relieve Mrs. G. from the effect of the deed of* 1835; (3) *after Mrs. G.'s death, the next of kin had no power to revoke Mrs. G.'s consent, even if otherwise revocable by Mrs. G.*[1]

This was an appeal from a judgment of the First Division of the Court of Session. The appellant, Mrs. Jean Breakenridge or Dunlop, was the sister of Mrs. Greenlees of Campbeltown, widow of Matthew Greenlees, of the same place, and she, in 1861, raised an action before the Sheriff of Argyleshire against the Rev. James Boyd, D.D., of Campbeltown, and others, the trustees of the late Mrs. Greenlees. The pursuer claimed production of the accounts of the goods in communion between Mr. and Mrs. Greenless at the time of the dissolution of the marriage by the death of Mr. Greenlees in 1853, and claimed payment to her, as next of kin of Mrs. Greenlees, of one third of the said goods as her share.

Mr. Greenlees had in 1835 executed a *mortis causâ* disposition and settlement to regulate the disposal of his whole estate. By that deed he conveyed and disponed to his four children and other children to be born all his lands and goods, and appointed them his executors, subject to the payment of his debts; and he gave also to his wife, Janet Breakenridge or Greenlees, a yearly annuity of £40 during her life. He also discharged the children by his wife's first marriage of all claim for board and lodging. The deed also contained this clause:—"And I do hereby declare, that the provisions hereby given to my said wife shall be accepted of by her in full satisfaction to her of all terce of lands, third or half of movables, and every other claim competent to her by and through my decease in any manner of way, or that her nearest of kin could ask or demand of me through her decease in case I shall happen to survive her."

The testing clause of that deed was as follows:—"In witness whereof, these presents, written, etc., are subscribed by me, the said Matthew Greenlees, and by the said Janet Breakenridge or Greenlees in token of her consent to and approval of the foregoing settlement, before these witnesses," etc.

The deed was then signed "Matthew Greenless, Janet Breakenridge." The wife was not mentioned in the body of the deed as a party to it.

Before 1851, all the children of Mr. Greenlees by his first marriage had died, except Hugh

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[1] See previous report 2 Macph. 1; 36 Sc. Jur. 5. S. C. 3 Macph. H. L. 47; 37 Sc. Jur. 470.