we have three such acceptances in the account-current, one on 4th July, another on 3d July 1882, for £25 and £23 respectively, and the third on 3d April of the following year for £37, 10s. Now, the system between the parties so far as these last transactions were concerned, was intended to be this, that the bankrupts having given their acceptances when these matured, it was certainly contemplated that they should be met by cash payments. But instead of that we find that in the account these bills are entered on either side, not as having been met, but by being under the entry "bill withdrawn." We have three entries at three different periods "bill withdrawn," showing that the bankrupts were not able to meet their bills, and immediately after the withdrawal of the bills instead of paying money they endorsed bills having a currency, and gave these over towards security in the first place, and towards payment of the bills due on the account. Now, that is the system which this account discloses, and the nature of the transaction, and I must say anything more out of the ordinary course of business I can scarcely well conceive. It was ingeniously put in argument that the case might be that of a large wholesale manufacturer or merchant dealing with another, who had purchased from him considerable quantities of goods for the purpose of re-sale, and that an arrangement was made that on his re-selling the goods the wholesale manufacturer should be willing to take all the bills of the purchaser from the middleman (if I may so call him), and place them to the credit of the current account, and keep that account going year after year upon a regular system by which he agreed to give goods constantly, and on the other hand to take the bills in that shape, and put them to the credit of the account. If the case had been one of that kind, in which business was so managed as to make the wholesale dealer as it were the banker in all his transactions, I can quite well see they might have been represented as a series of banking transactions of the parties, so arranged, and that the case might be brought within the exception of transactions of the nature commented on by Bell in the passage to which your Lordship has alluded. It would be an unusual arrangement that a wholesale merchant should become a banker—that he was to apply the bills recovered when discounted, or to apply them when current without discounting them—and it is not a case likely to be met with in mercantile transactions. But all I can say is, that this case totally differs from a case of that kind. This is just a case in which a trader having failed to pay cash or meet his acceptances, was driven to the third resource of giving over bills at a period of currency such as were endorsed here, and that such securities are especially securities struck at by the statute. It appears to me, therefore, that this is a case in which the endorsation must be set aside on the trustee's action, and that the transaction cannot be defended as having taken place in the ordinary course of business.

Lord Adam—I am clearly of opinion that the endorsations in question here were not granted in the ordinary course of business. I have no doubt it is common enough that where a trader, as in this case, has neither money nor credit with his banker, bills due to him by his customers are assigned direct to his creditors. That is the case here, but I do not consider that in any sense the ordinary course of business, and I concur with your Lordships.

Lord Mure, who was absent at the argument, delivered no opinion.

The Court adhered.

Counsel for Pursuer—Moncreiff—G. Wardlaw Burnet. Agents—Murray, Beith, & Murray, W.S.

Counsel for Defenders — Gloag — Baxter. Agent—William Gunn, S.S.C.

Friday, June 26.

SECOND DIVISION.

SPECIAL CASE—GILCHRIST AND OTHERS.

Succession—Settlement—Conveyance of Heritage—Words Importing a Bequest of Heritage—General Word followed by Enumeration—"Property."

A holograph will in these terms—"I hereby dispone, leave, and allocate all the property, goods, money, gear, stock, shares, boats, scrip, &c., which I may be possessed of at the time of my death,"—*held* habile to carry heritage.

Observations (*per* Lord Young) on *Brown and Others* v. *Bower and Others*, January 26, 1770, M. 5440.

William Oag, a fishcurer at Wick, died possessed of moveable property and heritable estate, consisting of certain houses at Wick. He left the following holograph last will, dated 22d March 1856:—"I, William Oag, fishcurer in Wick, being of sound mind and in full possession of my reason, do hereby dispone, leave, and allocate all the property, goods, money, gear, stock, shares, boats, scrip, &c., which I may be possessed of at the time of my death, whenever that may happen, to be divided into three equal shares at any time after my death as shall seem most convenient, to my trustees hereafter to be named, one of which three equal shares shall be given to my sister Alexandrina Oag, and one share of the same to be given to my sister Margaret Oag, and the remaining third share to be used by my said trustees as they shall consider would be most in accordance with my wishes in life; and to execute these premises I appoint as my trustees my said sisters Alexandrina Oag and Margaret Oag."

The two sisters made up a title to and divided the personal estate. A question arose whether the will was good to carry heritage. The present Special Case was adjusted to have this question decided, a decision upon it having been found necessary in consequence of the condition of the family, which it is unnecessary here to detail. Margaret Oag having become insane, her interest was represented by her *curator bonis*, James Gilchrist, agent for the Commercial Bank at Wick, the first party to this case. The second and third parties were those members of the family who contended that the will was ineffectual to carry heritage. The Court were asked to

determine whether it did or did not carry heritage.

This Special Casewas presented to the Court by James Gilchrist, as Margaret Oag's *curator bonis*, of the first part, and by Mrs Margaret Oag or Corner and James Crawford, eldest son of Mrs Janet Oag or Crawford, a daughter of Alexander Oag, of the second part, as the two heirs-portioners of the testator's brother Alexander.

The only question of law here requiring to be noticed, on which the Court were asked to express an opinion, was the question whether William Oag's will was effectual to carry heritage.

Argued for the first party—The will was a perfectly operative deed to convey heritage. There were such dispositive words as clearly expressed the intention of the testator. The word "dispone" followed by general words was amply sufficient. Feudal clauses were not requisite—*Glover and Others* v. *Brough*, Fac. Dec., Dec. 7, 1810. The question then fell to be answered affirmatively.

Argued for second and third parties—There was here a derogation from the general bequest of "property" by the particular enumeration of "goods, money, gear, &c.," which followed it. The will, then, was inoperative to carry heritage. In the case of *Edmond* v. *Edmond*, Jan. 30, 1873, it was held, in conformity with the principle now contended for, that a bequest of "the whole of property either in money, bonds, debts, business, and other effects whatever," could not be construed as including the lease of an inn. In the case of *Brown and Others* v. *Bower and Others*, Jan. 26, 1770, M. 5440, it was held that the words "means and effects, heritable and moveable," were insufficient to convey a proper heritable subject. In *Cockburn* v. *Cockburn*, Nov. 18, 1803, Hume's Decisions, p. 131, a clause conveying "the whole horses, nolt, sheep, stocking on farm, household furniture, labouring utensils, lands, heritable or moveable, and whole other effects, heritable or moveable," was found not to apply to the tack of a tenant's farm. If there was any doubt as to what a testator intended, it was not competent for the Court to spell out his intention—Lord President's opinion in *M'Leod's Trustee* v. *M'Luckie, &c.*, June 28, 1883, 10 R. 1059. In the case of *Farquharson* v. *Farquharson, &c.*, July 19, 1883, 10 R. 1253, the word "property" did not occur.

At advising—

Lord Justice-Clerk—No doubt there have been some cases that turned upon more narrow constructions of words in testamentary settlements in regard to the question whether heritage was or was not intended to be conveyed. I think it is not a technical question in this case at all; it is simply a question whether or not the testator intended to convey his heritable property. He says in his settlement—"I dispone all my property," and then he goes on to enumerate of what his property consists. The words in the settlement are—"I, William Oag, fish-curer in Wick, being of sound mind, and in full possession of my reason, do hereby dispone, leave, and allocate all the property, goods, money, gear, stock, shares, boats, scrip, &c., which I may be possessed of at the time of my death, whenever that may happen," and so on. Now, I cannot bring myself to think that he meant anything else than that it was his desire to settle all his affairs—to make that a general settlement of the whole property that he possessed, whether heritable or moveable. He was possessed of some houses, and in the common parlance among people of that rank property signifies heritage. They talk about property in a burgh, meaning houses in a burgh, and this gentleman seems to have thought that such goods as fishing gear and so on would not be properly denominated by that name. On the whole matter I do not think it is necessary to go into the facts of the case; but I am of opinion that it is not a narrow case of its category, and that the intention of the testator is sufficiently indicated by the words he uses. I think he meant to dispose of his whole heritable and moveable property.

Lord Young—I am of the same opinion. The case would have been too clear for stating if the words used had been "all the property which I may be possessed of at the time of my death." The word "property" is quite different from "means and effects," which was the expression under construction in one of the later cases. And as for the case of *Brown*, I am not quite satisfied that the decision in that case would be repeated if the same facts occurred at the present time, unless indeed it were in deference to that authority. The same expression was under construction there; but it is quite clear that if the disposition there had contained the word "property" instead of the words "means and effects" the Court could not possibly have decided the case as they did, for "means and effects" were followed by "heritable and moveable;" and if the word "property" here had been followed by "heritable and moveable" it would have been the clearest case in the world—"I dispose of my property, heritable and moveable." There must, therefore, have been a clear distinction in the minds of the Judges between "property" and "means and effects." And I repeat that if it had been simply a disposition of "my property of which I may be possessed at the time of my death," I do not think it would have been a stateable case that heritage was not included.

Well, then, if all that be so, the argument is reduced to this, that the generality of the expression is limited by particular words which follow—"goods, money, gear, stock," and so on. We have a doctrine which is quite intelligible, and is often used, leading to just and reasonable conclusions, that the enumeration of particulars may modify the extent of the meaning of the general expression which precedes. But that, again, is upon the principle that the enumeration satisfies the Court, judging of the deeds, of what the party alone was thinking—that he meant his description to apply in a limited sense—that the enumeration is such as to show the Court construing the document that he did mean to limit it. I do not think the enumeration here indicates that; therefore that principle which alone can be relied upon, if I am right in my previous observations, would not apply. The words here employed satisfy my mind that by property he here meant heritage; and that he adds "goods, money, gear, stock," &c., not as an enumeration of property, but of what was not comprehended

in the word property which he thus used. If a fishcurer at Wick speaks of his property at Wick, he does not mean his money or fish, although technically he is the proprietor of money and fish; but what he means is his houses there. I think that is what is meant by the expression, "I dispone all the property of which I die possessed, and all the goods, gear," and so on. Now, it is impossible, I think, to lay down any other rule with respect to the effect of an enumeration of particulars in limiting the comprehensiveness of the meaning of a preceding general word otherwise than I have attempted to do. It would be in other language, but it is to that effect, that it will or will not limit the meaning according as the enumeration is such and so introduced as to satisfy the Court or not that it was so intended. Here I am satisfied that it was not so intended; and that the word "property" must have all the meaning which would attach to it, if "goods, money," and so on had not followed. Therefore it comes back to the original proposition, that a disposition by a proprietor of all the property of which he may die possessed will comprehend his heritage.

Lord Craighill—I am of the same opinion. The question comes to be one of intention, for if a testator did intend that the word "property" as used by him should carry heritage, there is no doubt that his intention ought to be given effect to, always provided that that intention is clear from the expressions used in the deed intended to regulate his affairs. Now, reading this clause together, it appears to me to be clear that the word "property" must be held to comprehend not merely moveables but also heritage. I further think that the word "dispone" which is used in the beginning of the clause very clearly shows what was the view of the testator himself. Taken altogether the clause must be read as having the effect it would have had supposing he had disponed all his property, and left and allocated his means and effects for the purposes specified in the deed. If that had been the form of the clause I do not think there would have been a stateable case. It further appears to me that if there is any doubt about the matter, the reasonable course to follow is to hold that whatever property may be reasonably held to be comprehended must be covered by the word. Words of enumeration which follow have not the same effect, it appears to me, that they have when you begin by special enumeration, and finish up with a general word. Allowing that words which do follow may have a derogatory effect, still, looking to the deed as a whole, and to the words which have been commented upon in particular, it seems to me that they were not introduced by the testator for the purpose of limiting the word "property" to the moveables which he left.

Lord Rutherfurd Clark concurred.

The Court answered the question of law in the affirmative.

Counsel for First Party—Nevay—M'Lennan. Agent—William Gunn, S.S.C.

Counsel for Second and Third Parties—Lang—Crole. Agents—Duncan Smith & Maclaren, S.S.C.

Tuesday, June 30.

FIRST DIVISION.

[Lord Fraser, Ordinary.

TEULON *v.* SEATON AND OTHERS.

Process—Caution—Effect of Failure to Find Caution—Title to Sue.

A married woman, who was one of the beneficiaries under a trust-deed, raised an action against an intromitter with the trust-funds, and also against the trustees acting under the deed of settlement, seeking to have the intromitter decerned to exhibit a full account of his intromissions with the trust-estate, and to pay to her or to the trustees such sum as should be ascertained to be the balance of his intromissions. The Court, in respect of the pursuer's husband not being a consenter to the action, and that the trustees did not propose to prosecute the claim, *appointed* the pursuer to find caution, and on her failure to do so, *assoilzied* the defenders from the conclusions of the action.

Counsel for Pursuer—Guthrie—W. Campbell. Agents—J. & J. Galletly, S.S.C.

Counsel for Defender (Seaton)—Graham Murray—Maconochie. Agents—Maconochie & Hare, W.S.

Counsel for Defenders (Mrs Seaton's Trustees)—Goudy. Agents—Adam & Sang, S.S.C.

Tuesday, June 30.

FIRST DIVISION.

[Lord Trayner, Ordinary.

LORD LOVAT *v.* FRASER AND ANOTHER.

Entail—Provisions to Wives and Children—Free Rent.

Terms of a deed of entail which were *held* to imply, in giving a power to provide for younger children in bonds over the estate for a sum equal to three years' "free rent," that the "free rent" should be calculated without any deduction in respect of the provision for the widow secured over the estate under the same deed.

Archibald Thomas Frederick Fraser, Esq., of Abertarff, died on 2d March 1884, and was succeeded by Lord Lovat as his nearest lawful heir of tailzie and provision in the lands of Abertarff and others. The entail under which the lands were held had been executed in 1851 in obedience to judgments of the Court of Session and House of Lords finding that the heir in possession was bound to execute an entail of the lands so as to give effect to a deed of entail in 1808 and a nomination of heirs following upon that deed in 1812.

The powers reserved to the institute and heirs of entail by the said disposition and deed of entail and settlement of 15th August 1808, and by the said disposition and deed of entail of 8th February 1851, were identical. In the latter