Wednesday, June 11.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

WILLIAMSON *v.* BOOTHBY AND OTHERS.

Husband and Wife—Marriage-Contract—Trust-Deed Adopted as Part of Marriage-Contract.

A woman by deed of trust disponed her whole estate to trustees for these purposes, *inter alia*—(2) In payment of such portion of the capital to the pursuer as the trustees might think proper; (3) to pay the pursuer half-yearly the free proceeds of her means and estate for her liferent alimentary use allenarly; and (4) the trustees were to hold the whole residue and remainder of her means and estate for such person or persons or for such purposes as she might appoint by any writing under her hand to take effect after her death, and failing such appointment, then for her nearest heirs whatsoever. By this deed the trustees were empowered to sell the whole of her means and estate, or any part thereof, to borrow on the security of the trust-estate, to invest in various classes of securities, and to appoint one or more of their own number to act as factors or law agents on the usual terms as to remuneration. Further, by this deed, on the narrative that she placed entire confidence in the integrity and experience of the defenders, the pursuer bound and obliged and interdicted herself to the defenders that she should not sell, gift, impignorate, or dispone her lands and heritages, or any part thereof, or any part of her means and estate, or the income of same, and that she would do no act or deed, directly or indirectly, whereby her lands or other property might be adjudged or herself denuded thereof except with the special advice or consent of the defenders; declaring that all deeds, &c. executed by her without their consent should be void, and that the trustees as her interdictors should be bound to disregard the same. Subsequently, on the eve of her marriage she entered into a minute of agreement with her future husband which narrated this trust-deed and bond of interdiction and acknowledged its continued existence as a condition of the marriage, and by which the parties ratified and approved of the deed and bond which was signed as relative thereto.

In an action raised after the marriage of the wife, *held* that as she and her husband had adopted the trust-deed and bond of restriction as part of their marriage-contract, the pursuer was not entitled to have the same reduced or declared revocable.

Upon 31st May 1886 Miss Laura Pattison executed a trust-deed by which she assigned and disponed to Major R. T. Boothby and others as trustees the whole estate and effects, real and personal, of every kind and description then belonging or which might thereafter belong to her in trust for the following purposes:—(1) In payment of the expenses of the trust; (2) In payment of such portion of the capital to the pursuer as the trustees might think proper; (3) to pay the pursuer half-yearly the free proceeds of her means and estate for her liferent alimentary use allenarly; and (4) the trustees were to hold the whole residue and remainder of her means and estate for such person or persons or for such purposes as she might appoint by any writing under her hand to take effect after her death, and failing such appointment, then for her nearest heirs whatsoever. By this deed the trustees were empowered to sell the whole of her means and estate, or any part thereof, to borrow on the security of the trust-estate to invest in various classes of security including the shares of any limited liability company, and to appoint one or more of their own number to act as factors or law-agents on the usual terms as to remuneration. Further, by this deed, on the narrative that she placed entire confidence in the integrity and experience of the defenders, the pursuer bound and obliged and interdicted herself to the dfenders that she should not sell, gift, impignorate, or dispone her lands and heritages, or any part thereof, or any part of her means and estate, or the income of same, and that she would do no act or deed, directly or indirectly, whereby her lands or other property might be adjudged or herself denuded thereof except with the special advice or consent of the defenders; declaring that all deeds, &c. executed by her without their consent should be void, and that the trustees as her interdictors should be bound to disregard the same.

Upon 12th July 1886, on the eve of her marriage with Mr Francis Williamson, Miss Pattison entered into a minute of agreement with him which narrated the trust-deed and proceeded—"And whereas the first and second parties are about to marry, and it is one of the conditions of the marriage that the said settlement and bond of interdiction should continue in force during the subsistence of the marriage: Therefore, in contemplation of said marriage, the parties hereto do hereby ratify and approve of the said trust-disposition and bond of interdiction which is signed as relative hereto, and which has been read over and explained to the parties hereto in the whole clauses, tenor, and contents thereof: Further, the said Francis Williamson hereby renounces the *jus mariti* and right of administration which by the said marriage he will acquire in and to the estate and effects of the said Laura Pattison conveyed by the said trust-disposition and bond of interdiction, and all claims thereto, except what she may of her own free will leave and bequeath to him, or with consent of her trustees make over to him."

Upon 26th November 1889 Mrs Williamson brought an action against the trustees for reduction of the said trust-disposition with bond of interdiction, or otherwise for declarator that the deed was revocable, and for an accounting.

The pursuer averred that one of the defenders, Godfrey Pattison, had on a previous occasion unsuccessfully attempted to obtain her signature to a similar deed. She further stated—"(Cond. 7) The said deed was executed by the pursuer under essential error as to its import and effect. She had no agent to advise her in regard to same, and its effect was never explained to her. If she had been told that she was not entitled to revoke same, as the defenders now allege, she would never have signed it. The defender Godfrey Pattison knew that she had, after full consideration, declined to sign the similar deed which he had prepared for her signature, and that he could not have induced her to sign it if she had had its import and effect explained to her. He accordingly concealed from her the import and effect of the deed in question, and thereby obtained her signature to same."

The defenders founded upon the minute of agreement.

The pursuer pleaded—"(1) The pursuer having executed the said deed under essential error as to its import and effects, she is entitled to decree of reduction as craved. (2) On a sound construction of the said deed it is revocable by the pursuer at will, and she is therefore entitled to decree of declarator as craved. (3) In any event, the defenders are bound to exhibit their accounts, and to pay over to the pursuer, or to hold for her behoof, the true balance thereof, in terms of the conclusions for accounting."

The defenders pleaded—"(1) The pursuer's statements are irrelevant. (3) The pursuers are barred from maintaining their pleas in this action by the deeds mentioned in the defenders' fourth statement, and by the pursuer's marriage."

Upon 13th March 1890 the Lord Ordinary pronounced this judgment—"Finds that the pursuer's averments are irrelevant to support the conclusions of the summons other than the conclusion for accounting: Therefore dismisses the action *quoad* said conclusions, and decerns.

"*Opinion.*—This is an action at the instance of a married lady residing in Glasgow against the trustees acting under a trust-deed executed by her previous to her marriage, concluding for reduction of that trust-deed, or otherwise for declarator that the deed is revocable, and for an accounting. The question is, whether the pursuer has stated any relevant case in support of either conclusion. The pursuer's case for reduction of the deed is founded on averments of what she describes as essential error. And the essential error, as set forth in condescendence 7, appears to consist in this—that she did not understand the import and effect of the deed, and in particular did not understand that it was irrevocable. I do not find it necessary to consider how far, if the deed in question had stood alone, these averments of error would have been relevant. So far as I see at present, the alleged error was no error, for if the deed had stood alone it would not, so far as I can judge, have been irrevocable. But the conclusive consideration here is that the pursuer adopted and ratified the deed in question in a subsequent minute of agreement executed by her and her husband on the eve of her marriage, and that she does not seek to reduce that agreement, or to suggest that she was under any error in executing it.

"The real question therefore is, whether the trust-deed, ratified and adopted as it was by the pursuer and her husband at time of her marriage is now revocable at their instance. I think that enough appears on record to decide this question in the negative.

"Had the trust-deed been itself executed on the occasion of the pursuer's marriage, and been executed by both spouses as expressing their antenuptial agreement as to the pursuer's funds, I do not suppose it could be doubted that the case would have fallen within the principle of the case of *Torry Anderson*, and those other cases of which *Menzies* v. *Murray* (2 R. 507) is the best example. They created a trust for the express purpose of tying up the wife's funds, and securing her in an alimentary liferent, and that is, I think, the very case to which the principle of the cases I have referred to most clearly applies. The case of *Ramsay* (10 M. 120), and the more recent case of *Laidlaw* (9 R. 1104, and 11 R. 481) do not seem to me to touch that principle. In each of these cases the trust was held to have been a mere trust for administration, and although contained in a marriage-contract, to have had no reference to any proper matrimonial purpose—that is to say, any purpose connected with the protection of the wife against herself or against her husband.

"But if the deed, if executed as a marriage-contract, would have had this effect, I do not see that it makes any difference that the lady having executed it some time before the marriage, both spouses, by antenuptial minute of agreement, adopt it as part of their marriage-contract. It seems to me that this is exactly the same thing as if they had executed it on the occasion of their marriage, and then executed it for the first time.

"On the whole, therefore, I am not able to see that the pursuer has stated any relevant case either for reducing or revoking the deed, and I shall therefore dismiss the action, except as regards the conclusion for accounting, as to which there is no real question between the parties."

The pursuer reclaimed, and argued—The real question was whether the minute of agreement signed by the pursuer and her husband was revocable or not, although the deed which it was nominally sought to restrict was the trust-deed. There was no doubt that if the pursuer had not married, and the minute of agreement had not been

signed, she could have recalled the trust-disposition. The minute of agreement was signed by both the spouses; it was merely an administrative and not a protective deed, and therefore revocable, so that it was open to reduce the trust-deed. The words of the deed here were not the same as those in *Anderson* v. *Buchanan*, June 2, 1837, 15 S. 1073, but rather fell under the rule of the following cases—*Menzies* v. *Murray*, March 5, 1875, 2 R. 507; *Newlands* v. *Miller*, July 14, 1882, 9 R. 1105; *Laidlaws* v. *Miller*, February 1, 1884, 11 R. 481; *Mackenzie* v. *Mackenzie's Trustees*, July 10, 1878, 5 R. 1027; *Ramsay* v. *Ramsay's Trustees*, November 24, 1871, 10 Macph. 120.

Counsel for respondents were not called on.

At advising—

LORD JUSTICE-CLERK—This lady—now Mrs Williamson—some time before her marriage came to the conclusion, acting no doubt upon good advice, that it was necessary to entrust the management of her affairs to persons of greater mental power and experience than herself, and upon 31st May 1886 she executed a trust-disposition, containing a bond of interdiction, by which she appointed certain trustees—the defenders in the present action—to manage her property for the purposes stated therein. There is no doubt that if matters had remained in the same condition she could have recalled this trust-disposition, but when the time came that she was to be married it was thought necessary that the same protection should be extended to her property after her marriage as had existed before that event. She and her husband agreed to that view, and they entered into a minute of agreement by which they ratified and approved of the trust-disposition and bond of interdiction, so that she was placed in this position, that she had her funds protected for her own use.

Now, there is no doubt that if these two people before their marriage had entered into a marriage-contract carrying out in terms the result which has been reached by this trust-disposition and the minute of agreement, that marriage-contract would have been an irrevocable deed. Does it then make any difference that this trust-disposition, with bond of interdiction, has been adopted by the parties as if it was a marriage-contract? It was a simple and easy way of disposing by legal arrangements before her marriage of the funds which the lady had previously disposed of, and in the way which her husband had agreed to accept as a condition of his marriage. I think that these two deeds are just a marriage-contract; that they dispose of the property concerned in a reasonable and unobjectionable manner; and that the trust-disposition is irrevocable. This lady is not entitled to destroy the protection which she herself has created. This fund is reserved "for her liferent alimentary use allenarly." That is a proper antenuptial arrangement. I see no legal ground for disturbing it.

LORD YOUNG, LORD RUTHERFURD CLARK, and LORD LEE concurred.

The Court adhered.

Counsel for the Reclaimer—Salvesen—Shennan. Agents—Sturrock & Graham, W.S.

Counsel for the Respondent—Jameson—Dickson. Agents—J. & J. Ross, W.S.

Wednesday, June 11.

FIRST DIVISION.

[Lord Trayner, Ordinary.

WHYTE *v.* FORBES.

Bankruptcy—Radical Right of Bankrupt—Title to Sue—Revival of Sequestration.

A bankrupt who had been discharged without composition, and whose estate had paid 7⅛d. in the pound, brought an action after the trustee in his sequestration had been discharged, for the purpose of reducing the sale of certain heritable property effected by his trustee, on the ground that it had not been carried out in a legal manner. After the action was brought, the sequestration was revived and the trustee reappointed.

Held (1) that the bankrupt had neither title nor interest to insist in the action for his own behoof, as even if the property were resold there would be no chance of a reversion to himself after payment of his creditors; (2) that he had neither title nor interest to insist in the action for behoof of his creditors.

Process—Action of Reduction—Action to Reduce Sale quoad Part of Subjects Sold.

Held that an action to reduce a sale *quoad* part of the subjects sold is incompetent.

Bankruptcy—Sale of Sequestrated Estate—Purchase by Company whose Managing Partner was Commissioner on the Sequestrated Estate.

Opinion (*per* Lord Trayner) that the purchase by a company of heritable estate sold under a sequestration is not illegal by reason of the managing partner of the company being a commissioner on the bankrupt estate.

In 1872 George Whyte purchased from the North of Scotland Banking Company the "fifth lot of the lands of Invernettie," 28 acres in extent, at the price of £2250. This price was not paid, but was made in the conveyance to Mr Whyte a real burden on the lands. In 1874 Mr Whyte feued 9½ acres of said subjects to a distillery company, who borrowed on the security thereof, and buildings thereon, the sum of £12,800 from the Northern Heritable Securities Investment Company. The Distillery Company went into liquidation in 1879, and the 9½ acres were conveyed by the liquidator to Mr Whyte in 1880, burdened by the bond to the Investment Company, amounting at that