first party, along with his brothers and sisters, was the next of kin and heir *in mobilibus* of the said children; or (2) that the said Rev. Mr Grant survived his children, and was their next of kin and heir *in mobilibus*, and that the first party, along with his father, brother, and sisters, represented the said Mr Grant; and was it necessary, in order to entitle the first party to payment of said provision and share of residue, that one or other of these alternatives should be substantively affirmed by the Court?

"3. If the said provision and share of residue did not vest in Mrs Grant's lifetime, was the first party entitled to have it judicially declared that the said children survived their mother, and thus acquired a vested interest in said succession?

"4. Whether the first party was entitled to the amount of the provision under the 12th purpose, and of the share of residue under the 14th purpose, bequeathed to Mrs Grant and her children, in so far as not already paid, or to any part thereof, with the interest due thereon."

SOLICITOR-GENERAL and KEIR, for William Grant, argued that the provision under the 12th purpose had vested in the children immediately on their birth, and that it now fell to be paid to their client as the executor of these children; but, if it should be held that there was a presumption that the father had survived the children, then the said provision fell to be paid to him as executor of the father. With regard to the share of the residue under the 14th purpose, they maintained that it was clearly the intention of the testator that it should go to the mother in liferent, and her children in fee, precisely in the same manner as the provision under the 12th purpose; for, although the restrictive word "only" was not used in this clause, the interest of the mother was declared to be "alimentary," and "not affectable by her debts or deeds." The share of the residue would therefore also fall to be paid to William Grant.

WATSON and M'LAREN, for the trustees, contended that, although under the 12th and 14th purposes the fee was provided to grandchildren, it did not vest in them until they severally attained majority; for it was expressly declared that no legacy should be paid until the majority of the party entitled thereto; the trustees were, in the case of such as were in minority, to apply the interest towards their maintenance; and the share of any son or daughter (which as they argued, meant "son or daughter of the daughter") predeceasing without leaving issue before the term of payment should revert to the estate. If there was any presumption that Mrs Grant had survived her children, then the fee had vested in her, and would go to her heirs *ab intestato*.

The Court held unanimously that the provisions, under the 12th and 14th purposes of the deed, vested in the children immediately on their birth, and that the omission of the restrictive word "only" in the 14th purpose was not to be held as importing that the mother was truly fiar of the share of the residue. They accordingly answered the first question in the affirmative, and held it unnecessary to answer the others, but continued the case in order that the parties might have time to consider their position.

Agents for William Grant—Andrew & Wilson, W.S.

Agent for Alexander Murray's Trustees—Alexander Morison, S.S.C.

Saturday, June 15.

JOHN GRANT (MACPHERSON'S TRUSTEE) *v.* ROBERTSON & OTHERS (MACPHERSON'S MARRIAGE-CONTRACT TRUSTEES.)

Marriage-Contract—Bankruptcy—Succession—Liferent and Fee.

Clause in an antenuptial contract of marriage—by which the fee of a sum of money coming from the husband was ostensibly given to him, with a right of joint administration in the spouses, a declaration that "at his death such part thereof as shall remain shall form part of his estate hereinafter assigned and conveyed," and followed by a conveyance of the fee of the husband's estate, failing children, to the wife—*Held* to convey the fee of the sum of money to the husband.

The question here was the construction of a clause in the marriage-contract, dated 21st July 1864, between Donald Macpherson and Mrs Mary Fraser or Macpherson, affecting a sum of £1000. The estates of the said Donald Macpherson were sequestrated on 20th September 1870, and John Grant was confirmed trustee upon the estate. He raised a summons against the trustees under the said marriage-contract, concluding that it should be found and declared that the sum of £1000 held by the said trustees, being the balance remaining of the sum of £1200 mentioned in said contract of marriage, was at the date of the sequestration of the estates of the said Donald Macpherson the property of the said Donald Macpherson, and fell under the said sequestration, and now belongs to the estate of the said Donald Macpherson, and that the defenders should be decerned and ordained to make payment of said sum to the pursuer, with interest, or otherwise that certain bonds should be adjudged in implement to the pursuer.

By the marriage-contract, Donald Macpherson bound and obliged himself to make payment to his marriage-contract trustees of the sums of £1000 and £1200. With regard to the former sum, the contract provided, "*Fifth*, that the said sum of £1000 shall, as soon as convenient, be lent out or invested by them on good and sufficient security, either heritable or moveable, or be otherwise invested as the said trustees may think safe and proper for the purposes of the trust, the investment to be made in their names as trustees, for the purposes of the trust hereby created; *sixth*, that the interest, dividends, or yearly profits of the said sum of £1000, after deducting all necessary charges, shall be paid by the said trustees to the said Mary Fraser personally, for her own absolute behoof, exclusive of the *jus mariti* of the said Donald Macpherson, her intended husband; and in the event of her predeceasing the said Donald Macpherson, the said interest shall be paid to him during all the days of his life after her decease; *seventh*, upon the death of the survivor of the said Donald Macpherson and Mary Fraser, the said principal sum of £1000 shall be paid to the child or children of the said intended marriage, in such proportions as shall be appointed by their father and mother; and failing such joint apportionment, then to the children, if more than one, equally, share and share alike; the payment to be made at the first term of Whitsunday or Martinmas after the child or children shall have attained majority or have been married; declaring, that in case of the death of any child or

children, leaving issue, the share which would have been payable to the parent of such issue shall be paid to the issue of such child predeceasing; and providing and declaring farther, that in the event of the said intended marriage being dissolved without there being a child of the marriage, or issue of any child then surviving, the said trustees shall, upon the death of the said Donald Macpherson, pay said sum of £1000 to the said Mary Fraser, for her own absolute behoof, in the event of her being the survivor; and in the event of her having predeceased the said Donald Macpherson, then the said sum shall be paid to such person or persons as the said Mary Fraser shall have appointed by deed of settlement or otherwise, and failing such appointment by her, then to her nearest of kin."

With regard to the sum of £1200, it was provided "*eighth*, with regard to the said sum of £1200, it being the intention of the parties hereto that the same, or a portion thereof, should be applied in stocking a farm, if a suitable farm should be procured by the said Donald Macpherson, the said trustees are hereby directed to hold or apply the same, and the interest and profits thereof, for behoof of the said Donald Macpherson and Mary Fraser, in such manner as they, the said Donald Macpherson and Mary Fraser, shall instruct; declaring that in the event of the said Mary Fraser predeceasing the said Donald Macpherson while the said sum of £1200, or any part thereof, is in the hands or invested in name of the trustees, the same shall be at the absolute disposal of the said Donald Macpherson; and at his death, such part thereof as shall remain shall form part of his estate hereinafter assigned and conveyed; and further, the said Donald Macpherson gives, grants, assigns, dispones, and makes over to and in favour of the said Mary Fraser, in case she shall survive him, in liferent, for her liferent use allenarly, in the event of a child or children of the marriage, and to such child or children in fee, in such proportions as shall be appointed by their father and mother, and failing such joint apportionment, then to the children, if more than one, equally, share and share alike, the payment or conveyance of the share effeiring to them to be made or granted at the first term of Whitsunday or Martinmas after the child or children shall have attained majority, with right to the issue of a child or children predeceasing, as before mentioned in article seventh, and failing a child or children of the marriage, then to the said Mary Fraser, and her heirs, executors, and successors whomsoever, in absolute fee, all lands and heritages, and real estate, of every description, and also the whole moveable and personal means and estate, of whatever kind and denomination, and wherever situated, that shall belong to him at the time of his death, with the rights, titles, vouchers, and instructions thereof; and he binds and obliges himself and his heirs and successors to grant all deeds that may be requisite and necessary for rendering the foregoing disposition and assignation effectual; and he hereby nominates and appoints the said Mary Fraser his executrix, and sole intromitter with his moveable means and estate for the purposes aforesaid; and further, the said Donald Macpherson hereby expressly renounces his *jus mariti*, right of administration, courtesy of Scotland, or any other title whatever which he might otherwise have to the heritable or moveable estate now belonging to the said Mary Fraser, or which shall pertain and belong to her, or to which she may succeed during the subsistence of the marriage; which provisions before made in favour of the said Mary Fraser, she hereby accepts of in full satisfaction of terce of lands, legal share of moveables, and every other thing that she, *jure relictæ*, or otherwise, could or can ask or claim of the said Donald Macpherson, or his heirs, executors, or representatives, by and through his death, in case she shall survive him."

In implement of the obligations incumbent on him under the said contract, the said Donald Macpherson shortly thereafter deposited in bank, in name of the defenders, the trustees before mentioned, the two sums of £1000 and £1200 mentioned in the said contract. Thereafter, the said sum of £1200 was employed in a speculation in sheep stock, entered into by the said Donald Macpherson in conjunction with the said Donald Fraser, one of the said trustees; and by the said speculation, which was unsuccessful, the said sum of £1200 was reduced to £1000. This last sum was, at the date of the sequestration, the balance of the said sum of £1200 remaining in the hands of the said trustees.

Thereafter, on 28th January, and 1st February 1868, a minute of agreement was entered into between Donald Macpherson, his wife, and said trustees, by which "the said parties, considering that by the said contract of marriage the said Donald Macpherson obliged himself, *inter alia*, to pay over to the trustees therein and above named a sum of £1200 sterling, and that it is therein provided, with regard to the said sum, that it being the intention of the parties to the said contract that the same, or a portion thereof, should be applied in stocking a farm, if a suitable farm should be procured by the said Donald Macpherson, the said trustees were thereby obliged to hold or apply the same, and the interests and profits thereof, for behoof of the said Donald Macpherson and Mary Fraser, now Macpherson, in such manner as they, the said Donald Macpherson and Mary Fraser, now Macpherson, should instruct, all as the said contract in itself more fully bears: And now seeing that the parties hereto have agreed that, in the meantime, it is not advisable to invest the said sum or any part thereof in stocking a farm, and that it is desirable that the same be forthwith invested on heritable or other security, so as to produce an income for the said Donald Macpherson and Mary Fraser or Macpherson, therefore the said parties hereto agree that the said sum of £1200 sterling, or such part thereof as is now in their hands, or may again come into their hands, shall forthwith be invested, from time to time, as investment may be procured, on good heritable or other security, to the satisfaction of, and in name of the said first parties, and that for a period of not less than three years, and that the interest thereof shall, while the money is so invested, be payable to the said Donald Macpherson; declaring, as it is hereby specially provided and declared, that, in so far as not hereby altered or affected, the provisions of the said contract of marriage shall remain in full force and effect."

In conformity with said agreement, the said sums of £1000 and the said balance of £1000 remaining of the said sum of £1200, were invested in heritable security.

There has been no issue of said marriage, and Donald Macpherson and his wife live separate.

The Lord Ordinary (MURE), on 10th February 1872, pronounced the following interlocutor and note:—"The Lord Ordinary having heard par-

ties' procurators, and considered the closed record and productions, Finds that, under the provisions of the antenuptial contract of marriage founded upon, the £1000 claimed by the pursuer under the present action did not belong to the bankrupt, and was not carried to the pursuer as trustee upon the sequestrated estate; but finds that the interest of the said sum, which, under the minute of agreement of 1st of February 1868, is appointed to be paid over to the bankrupt, fell under the sequestration. Therefore sustains the 1st plea in law for the defenders, and assoilzies them from the conclusions of the action in so far as these apply to the fee or capital of the £1000 in question, and decerns: Finds the pursuer liable in expenses, of which appoints an account to be given in, and remits the same when lodged to the auditor to tax and report.

"*Note.*—The object of the present action is to have it found and declared that a sum of money which was made over to the defenders, and is now held by them as trustees under the provisions of an antenuptial contract of marriage entered into between the bankrupt and the defender Mrs Mary Fraser or Macpherson in the year 1864, belonged to the bankrupt, and passed to the pursuer on the bankrupt's sequestration. The question raised is not free from difficulty, because the clause, upon the construction of which it mainly depends, is framed in rather unusual terms. But as the question is raised under an antenuptial marriage-contract, the Lord Ordinary has not been able to come to the conclusion that there are any sufficient grounds for holding that the money was the property of the bankrupt, whether regard is had to the general scope and object of the contract, or to the special provision which regulates the disposal of the fund.

"The general object of the marriage-contract evidently was to place a portion of the property belonging to the husband beyond his control, and so to secure, in every event, a provision for his wife and for the children of the marriage; and the plan adopted to effect this object was the constitution of a trust, by which a fund, consisting of two sums of £1000 and £1200, was separated from the rest of the husband's property and vested in trustees, to be held by them during the marriage, and disposed of in terms of the directions contained in the marriage-contract.

"(1) The first of these sums is, by the fifth, sixth, and seventh purposes of the trust, directed to be invested in name of the trustees, and the interest paid over to the wife, for her own absolute behoof, exclusive of the *jus mariti* of her husband. In the event, again, of her predecease, the interest is to go to the husband during his life; but on the death of the survivor, the principal sum is to be made over to the children of the marriage; and should there be no children alive at the dissolution of the marriage, to the wife, for her absolute use, or, in the event of her predecease, to such person or persons as she may appoint, and failing such appointment, to her next of kin. By these provisions this sum appears to the Lord Ordinary to have been effectually secured for the benefit of Mrs Macpherson and her family; and with reference to it, no question has, as he understands, been raised between the parties.

"(2) But the £1200, of which the sum sued for in the present action forms a part, is somewhat differently dealt with under the eighth purpose of the trust; and although this sum may not, in every event, have been placed beyond the reach of the bankrupt and his creditors, it appears to the Lord Ordinary that, in the event which has happened, it has been effectually so placed; for, by the eighth purpose of the marriage-contract trust, power is given to the trustees either to apply this fund in stocking a farm, or to hold and apply it for behoof of Mr and Mrs Macpherson, in such manner as they may direct. The fund has, however, not been applied in purchasing stocking for a farm, so that the eighth purpose of the trust has, to that extent, been departed from. Because, by a minute of agreement entered into between the trustees and Mr and Mrs Macpherson in 1868, at a period when it is not alleged that the husband was insolvent, and which proceeds upon the narrative that it is not advisable to lay out the money, or any part thereof, in stocking a farm, the other alternative was adopted; and it was resolved that this money should be invested in name of the trustees, on good security, and the interest paid over to the bankrupt, while it was at the same time specially declared, that except in so far as they were thereby affected, the provisions of the marriage-contract were to remain in full force. The fund has, accordingly, been so invested, and is still held by the trustees; while the interest, as the Lord Ordinary understands, has, up to the date of the bankruptcy, been applied in terms of the agreement.

"Now, with reference to money so set apart, and held by the trustees, the marriage-contract declares that it shall be at the absolute disposal of the husband in the event only of his being predeceased by his wife; and the object of this appears to be to secure a further provision for the wife, upon the husband's death, out of any part of the fund which may at that time be held by the trustees. For the contract goes on in effect to provide that, upon the husband's death, any sum so held in trust is to go to the widow for her liferent use, and to the children in fee. To hold therefore, in the circumstances which have occurred, that the fund in question was the property of the bankrupt at the date of the sequestration, would, as the Lord Ordinary conceives, tend to defeat the provisions of the marriage-contract in the above respects, and is a construction which he does not consider that he would be warranted in adopting. The claim is of a nature which, had there been no sequestration, the husband could not, in the opinion of the Lord Ordinary, have enforced against the defenders; and as a trustee in bankruptcy is understood to take the estate *tantum et tale* only as it stood in the person of the bankrupt, the pursuer has not, it is thought, any better claim to the absolute property of the fund, which is what he substantially seeks to have declared and carried out under the conclusions of the present action.

"(3.) But, while the Lord Ordinary has, on these grounds, sustained the defence applicable to the capital of the sum sued for, it appears to him that the trustee has a good claim to the interest payable to the bankrupt under the terms of the agreement, for which decree is also sought in this action; and he has, accordingly, pronounced a finding to that effect. He has not, however, given any decree for the amount, because he understood, from what passed at the bar, that the parties would be able to adjust this part of the claim on a finding relative to their respective rights."

Against this interlocutor the trustee for the creditors reclaimed.

SOLICITOR-GENERAL and MACKINTOSH for him.

BURNET and MILLAR, Q.C., for marriage-contract trustees.

Authorities cited—*Wright* v. *Hanley*, 9 D. 1151; *Kerr* v. *Justice*, 5 Macph. p. 4.

For the reclaimer it was argued that the sound construction of the marriage-contract was that the £1200 was the absolute property of the husband, subject to a burden that the wife took it as succession, as part of his general estate, and that the clause giving a joint administration of the fund did not exclude the husband's creditors.

To-day the Court advised the case, and reversed the interlocutor of the Lord Ordinary so far as it dealt with the capital sum of £1000.

LORD JUSTICE-CLERK—This case raises a question of some novelty, on which I have come to a conclusion adverse to that of the Lord Ordinary. I think this sum belonged to the husband, and that the trustee for his creditors is entitled to it. It belonged to the husband prior to the marriage. By the 8th clause of the marriage-contract neither a fee nor liferent was conferred upon the wife, and therefore it remained in the husband. The purpose of the arrangement was manifestly for the benefit of the husband, and if it had been employed in stocking a farm, creditors would not have been excluded. The question comes to be, what effect has the clause of joint administration. I think such a joint right of administration as we have here, where the fee remains with the husband, and where there is no exclusion of the *jus mariti*, does not take the capital out of the power of creditors. Had the fund come originally from the wife, or the fee on dissolution of the marriage gone to survivor or heirs of survivors, it might have been different. As it is, I am for reversing the Lord Ordinary's interlocutor, so far as regards the capital.

LORD COWAN—This contract of marriage is an antenuptial deed, and as such is an onerous deed, and to be dealt with as such in every question affecting the rights or obligations under it of the spouses and children. It is, however, peculiar in this respect, that its main object is to provide, for behoof of the spouses and their issue, of two sums, £1000 and £1200, to be paid by the husband to trustees for the special purposes declared in the deed. There is no conveyance of the wife's property to the trustees. On the contrary, the deed contains an express renunciation by the husband of "his *jus mariti*, right of administration, courtesy of Scotland, or any other title whatever which he might otherwise have to the heritable or moveable estate now belonging to the said Mary Fraser (his intended wife), or which shall pertain and belong to her, or to which she may succeed during the subsistence of the marriage." Her property is left entirely with herself, and subject to her sole control. The two sums provided by the husband were the subject of distinct provisions, and are differently destined. The 5th, 6th and 7th purposes relate to the sum of £1000, and the 8th purpose to the other sum of £1200.

As regards the £1000, the trustees are to lend or invest the amount on good and sufficient security, in their names as trustees, for the purposes of the trust. These are, *first*, that the interest of the sum shall be paid to the wife for her own behoof, exclusive of the *jus mariti*, and in the event of her predecease to be paid to her husband during all the days of his life; and *second*, upon the death of the survivor of the spouses, the principal sum shall be paid to the children of the marriage in such shares as may be appointed by their parents, or failing thereof, to the children equally, share and share alike; and *third*, that in the event of the dissolution of the marriage without children, the principal sum, upon the death of the husband, shall be paid to the surviving wife for her own absolute behoof, and in the event of her predeceasing her husband, then, at his death, the said sum to be paid as the wife shall appoint by deed of settlement, or failing thereof to her nearest of kin. The effect of these several provisions, as regards this first sum of £1000, is not disputed to be, that, with the exception of the contingent liferent provided to the husband in the event of his wife's predecease, he is divested of all right and interest in this sum; and accordingly the present action does not relate to it to any effect.

As regards the second sum of £1200, the directions to the trustees are entirely different (1) on the narrative of its being the intention of the parties that the sum, or a portion of it, should be applied in stocking a farm should the husband take one (which, however, he did not do), they are to hold or apply the amount and the interest or annual proceeds thereof for behoof of the spouses in such manner as they might instruct; (2) in the event of the wife predeceasing while the sum or any part thereof is in the hands of the trustees, it is declared that "the same shall be at the absolute disposal" of the husband; (3) it is declared that "at his death such part thereof as shall remain shall form part of his estate hereinafter assigned and conveyed,"—a provision which I apprehend has in contemplation the event of his death survived by his wife; and accordingly, the husband disponed and makes over in favour of his wife, in the event of her survivance, in liferent for her liferent use allenarly, and to their child or children in fee, in such shares as should be appointed by the parents, or failing this to them equally share and share alike; and failing children of the marriage, then to the wife and her heirs, executors, and successors whomsoever, in absolute fee, all lands and heritages of every description, and the whole moveable and personal estate "that shall belong to him at the time of his death," and she is appointed his sole executrix and intromitter with the same.

The question that arises under these provisions is, whether the husband has so divested himself of all right and interest in this sum of £1200 as to prevent it being attached for payment of his debts, or whether the wife is vested with any right to or interest in the said sum, either as regards principal or annual proceeds, which she can vindicate against a claim by her husband's creditors. The estate of the husband was sequestrated in November 1870, and the pursuer, as trustee on his estate, brings this action to have it declared that the sum of £1000, as the balance of the £1200, was, at the date of the sequestration, the property of the husband, and as such, forming part of the sequestrated estate.

As regards the annual proceeds of the sum, it has to be kept in view that the spouses in January or February 1868 entered into an agreement that the principal sum should be invested in good heritable or other security, and that the interest thereof should be payable to the husband; and, acting under this agreement, the sum was invested by the trustees. It is contended by the pursuer tha

this agreement being admittedly valid, the interest must be paid over to the bankrupt's trustee, and the Lord Ordinary has so found. I see no ground for impugning this finding. What effect any revocation by the wife might have had upon the interest of parties, were such revocation competent to her, it is not necessary to inquire, no such revocation having been executed.

Then, with reference to the principal sum, the several provisions of the eighth purpose of the trust must be carefully noticed. During the subsistence of the marriage this sum is placed under the joint administration of the husband and wife, to the effect that the trustees were to apply the sum as they should direct, but this provision certainly can have no effect by itself, either to divest the husband of right to the sum or to confer any right thereto on the wife. Then, by the second part of this purpose of the deed the absolute fee to the principal sum is appointed to belong to the husband in the event of his wife's predecease, so that, even if the wife had any right secured to her, this contingent interest would be within the sequestration, and some means might be required to secure to the creditors, in one way or other, their ultimate right to the sum. Thus the inquiry resolves into the character and extent of the right and interest conferred by the third or remaining part of the deed upon the wife. For unless it can be held that some irrevocable present or contingent interest in the principal sum has been indefeasibly given to her, the creditors of the husband will be entitled to attach the fee as truly his property at the date of the sequestration. But as regards this part of the case I have been unable to arrive at any other result than that the character of the right given to the wife, or intended to be conferred by the contract, is merely a right of succession to the whole estate, heritable and moveable, (including the £1000 remaining of the £1200) which should belong to the husband at the time of his death.

The express provision of the deed, in the event of the husband's predecease, is that the sum in question, or such part thereof as shall remain, "shall form part of his (the husband's) estate, hereinafter assigned and conveyed," *i.e.*, of his estate, the succession to which is regulated by the subsequent part of the deed. There is no special provision in reference to this specific sum, while there is an assignation, to take effect at his death, to and in favour of his wife, in case of her survivance, in liferent, and to the children in fee, and failing children to her, her heirs, and executors, in absolute fee, of his whole estate of every description, real and personal. It is in the character of the husband's disponee and executrix to his general estate existing at his death that any right or interest is given to the wife. There is absolutely no right or interest conferred on the wife, excepting one of succession. But such a right can be of no avail in a question with onerous creditors. It cannot be held to divest the husband of any part of his property. The whole estate remains vested in him until his death, and there is no principle or authority for holding that in that state of matters the rights of creditors have been excluded. It may be that because of the onerosity of the deed in which this settlement of his estate *mortis causa* occurs, the husband could not at his own will and pleasure disappoint his wife and children by executing a new settlement of his affairs, to take effect at his death, in favour of another. But whether it is revocable or not, the exclusive character of this provision is that of succession, a kind of provision which has no effect on the husband's right during his lifetime, and powerless to exclude his property from the diligence of his creditors.

LORD BENHOLME—The words of the settlement in the contract are "at his death such part thereof as shall remain shall form part of his estate, hereinafter assigned and conveyed." I think these words ascertain that the wife takes truly as successor to her husband, in consequence of the testament which follows.

This view is strengthened by the fact that the fund comes from the husband. I think there is no such protected interest in the wife as to enable her to claim the succession, but not to be liable for her husband's debts.

LORD NEAVES—This is an unsuccessful attempt to make the wife a fiar. Had the fund been invested in a farm, as originally intended, the stock would have been liable for the husband's debts. The husband cannot be left in the ostensible fee of the subjects without being liable for debts. I think the wife here just took her chance of getting more than her £1200 if her husband should die a rich man.

Agent for Reclaimer—Charles S. Taylor, S.S.C.
Agents for Defenders—Adam & Sang, W.S.

Tuesday, June 18.

FIRST DIVISION.

CAMERON *v.* MORTIMER.

(Ante, p. 285.*)*

Process—Jury Trial—Bill of Exceptions—Agent and Client—Implied Authority.

On the trial of an issue, whether the defender wrongfully apprehended the pursuer after having agreed to delay diligence, the pursuer put in evidence an admission by the defender on record, that "A. M. is a solicitor, and acted as the agent of the defender in raising and enforcing the diligence." The pursuer excepted (1) to a direction by the presiding Judge that they were the sole judges upon the evidence as to whether A. M. had express authority to grant delay, but that, in law, he had no implied authority to delay enforcing diligence in the circumstances so stated; and (2) to his refusal to direct that the question as to whether A. M. had implied authority to grant the delay, was one on the evidence for the jury. Exceptions *disallowed.*

A new trial having been granted, the case was tried before Lord Neaves at Inverness, on the 1st, 2d, and 3d May 1872, on the following issue:—

"Whether, on or about the 29th July 1871, the defender, John Mortimer, wrongfully apprehended and detained the pursuer, or caused him to be apprehended and detained, after having agreed to delay diligence till Monday, 31st July 1871, to the loss, injury, and damage of the pursuer?"

In addition to other evidence led by him, the pursuer put in evidence articles 2, 3, 4, and 5 of the condescendence, with relative answers for the defender. Article 2 was as follows:—"The defender, John Mortimer, resides at Applegrove, Forres, and is a traveller for Messrs Usher & Com-