

order to keep it in force." Now, that depends on a very obvious principle, because where, as in one case which was referred to, the bills were for two years, it would be utterly unreasonable that the deeds should remain in the hands of the agent during all that period. But then Mr Bell goes on to state that the lien will be kept in force where there is "either an express reservation, or at least a plain purpose of accommodating the client without weakening the security, by enabling the agent to raise money at market, and to forbear from insisting on immediate payment." Now, these words seem to me exactly to suit the case before us. I think Mr Lee took this bill in order that he might raise money, and thus forbear from pressing his client for immediate payment, and that, as Mr Bell says, is not indicative of an intention to waive the right of lien. Further, Mr Bell proceeds—" (3) In a doubtful case, or where there seems ground to imply a waiver of the lien, if the papers have been allowed to remain with the agent until the client fail, the agent will still be held to preserve his lien"—a rule which is also plainly applicable to the present case. I am here satisfied that the agent had no intention to extinguish his right of lien, and that there was no absolute extinction of the debt. On the contrary, the extinction of the debt was conditional on the bill being honoured at maturity, or otherwise the debt was to subsist as if the bill had never been granted. I am therefore of opinion that the lien is good to the extent of £55, 16s.

The only other matter relates to the account, which is admittedly unpaid, but which the Sheriffs have held not to be covered by the lien to the extent to which the charges in it were intended to benefit the agent Mr Lee himself. But if it was intended to benefit Mr Lee by giving him a security, it does not appear to me that he is not entitled to charge his client with the expense of obtaining that security, and if he is entitled so to charge his client, is not that a good charge in the account? It is not sought to charge the petitioner, but if it is a good charge against Hyman it is covered by the lien.

These are the two points on which I think the Sheriff-Substitute and the Sheriff have gone wrong, and therefore I am of opinion that their judgments must be altered.

LORD DEAS, LORD MURE, and LORD SHAND concurred.

The Court pronounced the following interlocutor:—

"Recal the interlocutor of Sheriff-Substitute dated 30th July 1879, and all the subsequent interlocutors: Find that the defender and appellant has a right of hypothec over the writs, title-deeds, and other writings mentioned in the prayer of the petition for business accounts amounting to the sum of £88, 2s. 3d.: Ordain the defender on receiving payment of that sum to deliver to the pursuers the said writs, title-deeds, and other writings, and also the bill or acceptance dated 4th August 1878, drawn by the defender upon and accepted by Robert Hyman for the sum of £55, 16s., endorsed by the defender without recourse, and decern." . . .

Counsel for Pursuer (Respondent)—Lorimer. Agents—H. & H. Tod, W.S.

Counsel for Defender (Appellant) — Rhind. Agent—J. B. W. Lee, S.S.C.

Friday, February 27.

FIRST DIVISION.

[Lord Adam, Bill Chamber.

UNION BANK OF SCOTLAND v. JAMES AND OTHERS (PIM'S TRUSTEES) AND MAC-ADAM.

*Bankrupt—Discharge—Gazette Notice—Where Bills granted in Payment of Liabilities and Dishonoured—Foreign—Partnership.*

P. and M. were the partners of the Scotch firm of S. & Co., P. being also sole partner of the Irish firm of D. Brothers. S. & Co. got into difficulties, and at a meeting of creditors it was agreed that there should be a dissolution of the firm, on the footing that the acceptances of D. Brothers should be taken in payment of the debts of S. & Co., and that the business of the latter firm should be carried on under the superintendence of a committee of its creditors. Thereafter a notice was inserted in the *Gazette*, intimating that the firm of S. & Co. had been dissolved by mutual consent, and that the business would in future be carried on by P. alone under style of S. & Co. This notice was signed by P. and M. only, and the committee of shareholders continued, in terms of the agreement, to take an active part in the management of the business. Before the bills which P. had granted became due D. Brothers also went into liquidation, P. being rendered bankrupt in Ireland as "P., shipowner and timber-merchant, trading in Ireland under the style and firm of D. Brothers, and at Maryhill, Glasgow, in Scotland, as A. S. & Co., and sole partner in both firms." *Held* (1) that the Irish bankruptcy proceedings were no bar to the sequestration of the firm of S. & Co. in Scotland; and (2) that that firm had not been discharged of its liabilities by anything that the creditors had done.

*Bankrupt—Sequestration—Notour Bankruptcy—Imprisonment—Flight from Diligence—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), sec. 7.*

Sec. 7 of the Bankruptcy (Scotland) Act 1856 provides that notour bankruptcy shall be constituted by insolvency concurring "with a duly executed charge for payment, followed, where imprisonment is competent, by imprisonment or formal and regular apprehension of the debtor, or by his flight and absconding from diligence or retreat to the sanctuary, or forcible defending of his person against diligence, or where imprisonment is incompetent or impossible, by," &c. Where an insolvent debtor was duly charged, and was in flight from the diligence of his creditors, and subsequently obtained an

order of protection, *held* (*rev.* Lord Adam, Ordinary) that notour bankruptcy was constituted.

*Questions*—(1) Whether imprisonment in the sense of the above section is competent when the debtor is under personal protection? (2) Whether it is competent when he is under protection, but can offer the messenger no evidence thereof? (3) Whether a duly executed charge upon an insolvent debtor, coupled with his flight from diligence, will constitute notour bankruptcy, although at the time imprisonment is incompetent?

Circumstances in which it was *held* that a debtor was in flight from diligence.

This was a petition presented in the Bill Chamber by the Union Bank of Scotland for sequestration of the estates of A. Simpson & Co., timber merchants, Ruchill Saw Mills, Maryhill Road, Glasgow, and of William Macadam, a partner of that company, as such partner, and as an individual. The grounds of the application were stated in the petition to be, that the petitioners were creditors of A. Simpson & Co. and of William Macadam to the extent of £316, 19s. 4d., being the amount of a promissory-note granted by A. Simpson & Co; that the company had been rendered notour bankrupt by making William Macadam notour bankrupt; and that the only other known partner of the firm of A. Simpson & Co. was James Edwin Pim, shipowner and timber merchant in Cork, and still residing there. It was opposed by Charles Henry James and others, the official and creditors' assignees of the estate of James Edwin Pim, and by Mr Macadam, and a record was made up between the parties.

Prior to 31st March 1879 the firm of A. Simpson & Co. had consisted of Mr Pim and Mr Macadam. Mr Pim resided in Cork, where he carried on business under the firm of "Deaves Brothers," of which he was the sole partner. The active management of the business of A. Simpson & Co. in Glasgow was left in the hands of Mr Macadam. Early in 1879 A. Simpson & Co. got into difficulties, which, after various negotiations with the creditors, resulted in a meeting of the principal creditors, including the petitioners, being held at Glasgow on the 31st March. Mr Pim was present; Mr Macadam was not, but was in attendance in an adjoining room. An agreement was come to at this meeting between the creditors present and Mr Pim and Mr Macadam, and the former resolved that it was for their interest that there should be a dissolution of the firm, and that Mr Macadam should retire from it. The creditors, including the petitioners, further agreed to a proposal made by Mr Pim to liquidate their debts by the acceptances of Deaves Brothers at four, eight, and twelve months, with interest at 5 per cent. on their debts, on the understanding that the business of A. Simpson & Co. was to be under the superintendence of certain gentlemen named as a committee of advice. In implement of the agreement Mr Pim granted bills to the creditors for the amount of their debts, and in particular he granted six promissory-notes to the petitioners, all of which were signed by him "A. Simpson & Co." and "Deaves Brothers." The petitioners on getting these notes did not give up the existing bills and notes which constituted their debt

against "A. Simpson & Co." Mr Pim was unable to pay two of the promissory-notes when they fell due, and desired to have further time, which the petitioners refused. Thereafter, on 12th August 1879, Mr Pim was, on his own petition, adjudicated bankrupt by the Court of Bankruptcy in Ireland, as "of the City of Cork, shipowner and timber merchant, trading in Ireland under the style and firm of Deaves Brothers, and at Maryhill, Glasgow, in Scotland, as A. Simpson & Co., and sole partner in both firms."

On the 13th August the petitioners caused Mr Macadam to be charged on a promissory-note, dated 11th December 1878, for £182, 7s. 3d., granted by James Thomson to A. Simpson & Co., and endorsed by them to the petitioners. This note was in the petitioners' hands on the 31st March 1879, and its amount was included in the composition promissory-notes granted by Mr Pim. The charge not having been implemented, the petitioners on 20th August instructed a messenger-at-arms to apprehend Mr Macadam. The messenger, of the same date, returned an execution of search to the effect that Mr Macadam could not be found, and that he was informed and believed that he had absconded to avoid the diligence of his creditors. Next day the present petition was presented. The document of debt produced with the petition was a note for £316, 19s., the amount of which was also included in the composition promissory-notes.

On the 20th August Macadam on his own application was sequestrated in the Sheriff Court of Lanarkshire, and a warrant of personal protection was granted to him the same afternoon.

The petitioners pleaded, *inter alia*—" (1) The petitioners being creditors of A. Simpson & Company, and that firm having become notour bankrupt, are entitled to have sequestration of the estates of the said firm, and of William Macadam as partner thereof, awarded, as craved in the petition. (3) The petitioners are not barred from insisting in the present proceedings by the arrangements made at the meeting on 31st March 1879, referred to in the condescendence, in respect that these arrangements did not operate novation or delegation or discharge in favour of the firm of A. Simpson & Company and its partners. (4) In any view, the arrangement made at the said meeting was of the nature of a composition-arrangement, and the composition-bills then agreed to be granted not having been paid, any discharge which could be held to be implied in the said arrangement never took effect, and the original debts remained in full force or revived."

The respondents James and others pleaded, *inter alia*—" (2) The petitioners having on 31st March 1879 agreed to take Mr Pim as their debtor in room and place of the firm of A. Simpson & Company, of which they were creditors, and having by their actings so taken Mr Pim as their debtor, the said firm of A. Simpson & Company was discharged, and is no longer indebted to the petitioners. (3) The whole estates of the former firm of A. Simpson & Company having been, in the knowledge and with consent of the petitioners, conveyed to and taken over by Mr Pim, and Mr Pim's estates being now vested in the respondents under his Irish bankruptcy, sequestration ought to be refused."

The respondent Macadam pleaded, *inter alia*—

“(1) The petitioners having by the minute of 31st March 1879 discharged the respondent Macadam, and accepted the respondent Pim and Deaves Brothers as their sole debtors, the petition should be refused, with expenses. (5) There being no notour bankruptcy of either of the respondents Pim or Macadam, as required by law, the petition should be refused.”

There was a proof, the import of which, including the documents founded on, will be found in the opinion of the Lord Ordinary and of the Lord President *infra*.

The Lord Ordinary (ADAM) pronounced this interlocutor:—“Finds that the petitioners have failed to prove that the respondent William Macadam was, at the date of the presentation of the petition for sequestration, notour bankrupt for a debt of the firm of A. Simpson & Co. within the meaning of the Bankruptcy (Scotland) Act 1856: Finds, therefore, that the said firm was not notour bankrupt at the said date: Finds, further, that sequestration of the estates of the said William Macadam as an individual had at the said date already been awarded in the Sheriff Court of Lanarkshire, and was then undischarged: Therefore refuses the petition, and decerns,” &c.

“*Note.*—[After narrating the facts as above]—Two questions were argued to the Lord Ordinary—(1st) Whether the petitioners and the other creditors present at the meeting of 31st March 1879 agreed to discharge the firm of A. Simpson & Co. and Mr Macadam of all obligations existing at that date? and (2d) Whether, if they did not agree to do so, Mr Macadam had been rendered at the date of presenting the petition notour bankrupt for a debt of the firm, so as to involve the notour bankruptcy of the firm, in terms of the 8th section of the Bankruptcy Statute.

“The Lord Ordinary does not think it necessary to express his opinion at length as regards the first of these questions, because he thinks that the respondents are in the result entitled to succeed whether the question be answered in the affirmative or negative.

“The Lord Ordinary, however, has carefully considered the proof and productions, and the authorities to which he was referred, and is of opinion that by the agreement entered into on 31st March the creditors did not agree to discharge either the firm of Simpson & Co. or Mr Macadam of the then existing obligations, and to take Mr Pim as their sole debtor. He thinks that the discharge of the firm and Mr Macadam was contingent on the composition bills being paid, and these not having been paid, that the petitioners are quite entitled to proceed upon the documents constituting the original debt.

“With reference to the question whether the proceedings taken against Macadam had the effect of constituting him and the firm of A. Simpson & Co. notour bankrupt at the date of the petition, as above stated, the Lord Ordinary thinks that the debt which Macadam was charged to pay was a company debt, and that he was a partner of the company, but the question remains whether he has been rendered notour bankrupt. That, again, depends upon the 7th section of the statute. The statute requires insolvency, concurring with a duly executed charge for payment, followed, where imprisonment is competent, by imprisonment, or formal and regular apprehension of the debtor,

or by his flight or absconding from diligence. In this case there was insolvency concurring with a duly executed charge for payment, followed, as the Lord Ordinary thinks sufficiently proved, by the flight or absconding of the debtor from diligence. But the Lord Ordinary thinks that imprisonment was not in the circumstances competent.

“The facts which raise the question are that Macadam upon the 20th August applied to the Sheriff of Lanarkshire for sequestration of his estates, and of the same date his estates were sequestrated, and he obtained a warrant of protection against arrest or imprisonment for civil debt until the meeting of creditors for the election of trustee.

“This warrant was signed by the Sheriff shortly before four o'clock on the afternoon of the 20th of August. Macadam did not obtain a certified copy thereof until next morning, the 21st of August. The search which the messenger made with the view of Macadam's apprehension was not made until after five o'clock on the 20th of August, and therefore not until after the warrant of protection had been granted.

“The 47th section of the statute provided that the warrant granting protection shall protect the debtor from arrest or imprisonment in Great Britain and Ireland and Her Majesty's other dominions for civil debt contracted previous to the date of sequestration. It appears, therefore, to the Lord Ordinary that if the messenger-at-arms had found Macadam on the afternoon of the 20th he could not competently have arrested him. No doubt Macadam, not having at that time in his possession a certified copy of the warrant of protection or other instrument or document to exhibit to the messenger in order to satisfy him that he had in fact obtained protection, was exposed to the risk of being apprehended and imprisoned, and the messenger might, and probably would, have proceeded to apprehend and imprison him. But if the messenger had done so, the Lord Ordinary thinks that Macadam, on taking the necessary proceedings for that purpose, and proving that the warrant of protection was in existence at the time of his apprehension, would have been entitled to immediate liberation, on the ground that such imprisonment was incompetent. The Lord Ordinary does not think that the competency or incompetency of imprisoning Macadam depends on his having in his possession at the time the warrant granting protection, or a certified copy thereof. The fiat, indeed, according to our practice, he could not have. The Lord Ordinary accordingly thinks that if the petitioners desired to make Macadam notour bankrupt after he had obtained the warrant of protection, the course was to have proceeded under the provisions of the statute which provide for the constitution of notour bankruptcy in those cases in which imprisonment is incompetent or impossible.”

The petitioners reclaimed.

Authorities—*Speid v. Stirton*, June 10, 1850, 12 D. 985; *M'Gavin v. Ogilvie*, February 11, 1854, 16 D. 540; *Davis v. Hepburn*, May 31, 1861, 5 Macph. 804; *Goetze & Sohn v. Aders, Freyer, & Company*, Nov. 27, 1874, 2 R. 150.

At advising—

LORD PRESIDENT—Three different objections

are made to this application for sequestration of the estates of A. Simpson & Co. and of William Macadam, a partner of that company, as a partner and as an individual. The first of these is founded upon certain bankruptcy proceedings in Ireland, which the Lord Ordinary has not considered of any importance, but which it is necessary to keep in view in order to appreciate the more important grounds of objection. It appears that Mr Pim has been rendered bankrupt in Ireland under the style of "James Edwin Pim, of the city of Cork, shipowner and timber-merchant, trading in Ireland under the style and firm of Deaves Brothers, and at Maryhill, Glasgow, in Scotland, as A. Simpson & Company, and sole partner in both firms." Now, if it is the case that the company carrying on business at Maryhill consisted of two partners, it is quite plain that the estate of that company was not included in Pim's Irish bankruptcy; and it is consequently quite plain also that this application is necessary, and that the Irish bankruptcy is no bar to the present proceedings.

But of the two other objections with which Mr Macadam opposes this petition for sequestration, the first is that the petitioners and the other creditors of the company who were present at a meeting on the 31st March 1879 signed a minute agreeing to the discharge of the firm of A. Simpson & Company and Mr Macadam of all obligations existing at that date on receiving certain bills signed by Pim. The second is, that Mr Macadam has not been made notour bankrupt, and consequently that neither has the firm of A. Simpson & Company.

[His Lordship then proceeded to examine the proof and documents produced as regards the objection founded upon the agreement of 13th March 1879, coming to the conclusion along with the Lord Ordinary that "the idea that there was a discharge of A. Simpson & Co. and of Macadam is entirely groundless".]

But while the Lord Ordinary is of this opinion in regard to the discharge, he has come to an opposite conclusion on another question, namely, as to whether the firm of A. Simpson & Company has been made notour bankrupt—that is to say, whether Mr Macadam has been made notour bankrupt? and on that question I cannot agree with his Lordship. The Union Bank charged Mr Macadam upon a bill granted by a Mr James Thomson to Simpson & Co., and endorsed by them to the bank. The charge was in these terms:—"I, Alexander Lamont, messenger-at-arms, pass, and in Her Majesty's name and authority lawfully charge you the said A. Simpson & Co. as a company, and William Macadam, timber-merchant, 2 Eastpark Terrace, Maryhill Road, Glasgow, an individual partner thereof, to make payment of the sum of £182, 7s. 3d. sterling, and the legal interest thereof since due and till paid, contained in and due by a promissory-note dated the 11th day of December 1878, granted by James Thomson, Govan, to and in favour of you the said A. Simpson & Co., and payable four months after date, which promissory-note was indorsed by you the said A. Simpson & Co. to the said the Union Bank of Scotland, at whose instance the same was duly protested for non-payment of the contents, &c.; and that to the said the Union Bank of Scotland, within six days next after the date hereof, under the pain of

poinding and imprisonment," &c. And this charge was given, first, at the place of business of the firm of A. Simpson & Co., and secondly, at the dwelling-house of Mr Macadam, the partner. It expired on the 19th of August, and the question, as I apprehend—at least it is what the petitioners represent to be the question,—is whether Mr Macadam fled from this diligence? The Lord Ordinary is of opinion that the only question is, whether at the time of a certain execution of search the partner Macadam was protected from imprisonment? because he holds that if he was protected from imprisonment there is not enough to constitute notour bankruptcy. But I put out of view altogether this execution of search, and I put to myself this question, whether upon that date Mr Macadam had fled from the diligence of his creditors?

Now, on this point there is first the evidence of James Donaldson, Mr Macadam's law agent. He says—"I believe Macadam left Glasgow because of the importunities of his creditors, and also to avoid the diligence of the Union Bank, and because of the creditors pressing him to take proceedings which I could not allow him to do. (Q.) Did he say so? (A.) He did. (Q.) Did he go to escape the creditors? (A.) To escape diligence. I explained to him he would not be in custody, but merely taken as a matter of form. He had no document showing he had protection from the Sheriff in his possession before the afternoon of the 21st." Then there is the evidence of Robert Morgan, the messenger who executed the search. He says—"I went to Macadam's house, East Park Terrace, Maryhill, where I ascertained his usual place of residence was. I did not find him there. I saw a lady, who said she was Mr Macadam's sister-in-law. I inquired at her about Macadam. She said to me he had not slept in the house the night before. I asked when he had gone away, and I think she said he had gone away the morning before. At all events, she told me distinctly he had not slept there the night previous, and had not been in the house that day up to the time of my visit. I asked where he was, but got no information. She alleged she did not know where he was." And there is a third witness, who speaks to a conversation with another messenger named Scott and Mr Macadam, which also throws some light on the matter. He says—"We had conversation with Macadam on the 16th August about a Court of Session charge I had been witness to along with Mr Lamont at the instance of the Union Bank against Macadam. Macadam said to Scott—"I understood you were at my house last week." Scott said 'Yes.' He said he understood that there was another charge—that is, the charge I had witnessed before—would expire previous to this one he had left, but he thought it would be difficult to find him when we wanted him. He made the remark that he knew he could beat him (Scott) at running, and that he would be prepared with a yacht at the side of the canal to convey him safely away, and if we entered at the front door he would go out by the back. I went to the works on Monday the 18th August to continue the inventory, but I did not see him." Now, taking the evidence of these three witnesses together, it appears to me very clear that Macadam left Glasgow on the morning of the 19th of August—the day the charge expired—and that he did so,

as his agent very candidly admits, to avoid the diligence of his creditors, and in particular of the Union Bank. And it appears to me that this constitutes notour bankruptcy within the meaning of the 7th section of the statute. The section says that notour bankruptcy shall be constituted "by insolvency concurring with a duly executed charge for payment, followed, where imprisonment is competent, by imprisonment, or formal and regular apprehension of the debtor, or by his flight and absconding from diligence," &c. Now, it is quite clear, I think, that there was insolvency here, that there was a duly executed charge for payment which was on the eve of expiry, and that there was flight or absconding from diligence on the 19th August. But the personal protection upon which the Lord Ordinary finds his judgment was not granted until the 20th, and thus the necessary requisites concurred at a time when Macadam was undoubtedly liable to imprisonment for this debt. The Lord Ordinary, however, reads the section of the statute in this way—that a duly executed charge will not go to constitute notour bankruptcy if it is given at a time when imprisonment is not competent. This reading of the statute raises some novel questions.

In the first place, the Lord Ordinary holds that imprisonment in the sense of the statute is not competent when the debtor is under personal protection. That has never been decided, and I give no opinion upon it. His Lordship holds, in the next place, that imprisonment is not competent when the debtor is under personal protection but can offer no evidence to the messenger that he is protected. On that also I offer no opinion. But he also held further that a duly executed charge with flight will not constitute notour bankruptcy, if imprisonment, in his sense of imprisonment, is not competent at the time the charge is given. And on this too I give no opinion. But the Lord Ordinary goes further, and must go further, and holds that a duly executed charge with flight from diligence will not make notour bankruptcy if after the flight the debtor obtains personal protection. Now, as regards this last proposition, I am prepared to give a very decided opinion, and to hold that a duly executed charge concurring with insolvency and a flight from diligence will constitute notour bankruptcy, although afterwards the debtor may obtain personal protection. These are the facts here; and therefore I think the Lord Ordinary's interlocutor should be recalled.

LOED DEAS, LORD MURE, and LORD SHAND concurred.

The Court recalled the interlocutor of the Lord Ordinary, and remitted to his Lordship to award sequestration of the estates of A. Simpson & Company, and of William Macadam as a partner thereof, and to proceed further in the sequestration in terms of the statute.

Counsel for Petitioners (Reclaimers)—Asher—Jameson. Agents—J. & F. Anderson, W.S.  
Counsel for James & Others—Kinnear—J. P. B. Robertson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Macadam—M'Kechnie—Dickson. Agents—J. & A. Hastie, S.S.C.

Tuesday, February 24.

SECOND DIVISION.

[Lord Adam, Ordinary.]

M'LEAN AND ANOTHER v. HENDERSON'S TRUSTEES.

*Trust—Charitable Bequest—Bequest "for the Advancement and Diffusion of the Science of Phrenology"—Whether Void from Uncertainty—Mora.*

A testator by his will gave power to his son (in a certain event which happened) to dispose by testament of £5000, to be payable at the first term after the death of the testator. In pursuance thereof the son, by his trust-disposition and settlement, directed that the whole residue of his estate (including the £5000) should be applied by his trustees, "in whatever manner they may judge best, for the advancement and diffusion of the science of phrenology and the practical application thereof in particular, giving hereby and committing to my said trustees the most full and unlimited power to manage and dispose of the said residue in whatever manner shall appear to them best suited to promote the ends in view." After a lapse of forty-seven years, during which a succession of trustees were in the possession and management of the funds in question, the son's next-of-kin brought an action to have it found that the residue belonged to them, on the grounds, *inter alia*, that the power given by the original deed had not been validly exercised by the bequest in the trust-disposition and settlement, and that the bequest was void from vagueness and uncertainty. *Held* (1) that the bequest, being made in a deed of a testamentary nature, was in accordance with the power given; and (2) that looking to the charitable nature of the object, to the fact that phrenology was a sufficiently well-defined branch of science, and to the manner in which the truster's directions were to be carried out, it could not be said to be invalid from vagueness or uncertainty.

Alexander Henderson, banker in Edinburgh, who died on 18th February 1828, left a trust-deed and settlement dated 28th December 1827, by which he disposed his whole estate, heritable and moveable, to trustees for various purposes. *Inter alia*, he provided, after various provisions in favour of his son Mr William Ramsay Henderson, as follows:—"And further, should my son die unmarried and without issue, he shall have power to dispose by testament to the extent of £5000 sterling, to be payable at the first term of Whitsunday or Martinmas after his death, with interest thereafter till payment." Mr W. R. Henderson died at the age of 30, unmarried and without issue, on 29th May 1832, thus surviving his father. Mr Alex. Henderson was also survived by his widow and two daughters, one of whom left two children (having been twice married)—Miss Ruth M'Lean and Mr J. Henderson Begg, Advocate,—who were Alex. Henderson's next-of-kin, and pursuers in this action. Mr W.