ful." The bankruptcy took place in 1885, and the petitioner is now desirous of obtaining his final discharge, but he finds himself not in a position to offer strict compliance with section 146 of the Bankruptcy Act of 1856. Upon these statements we pronounced this interlocutor—"The Lords, in respect of the statements as to the absence of the trustee from this country, and the petitioner's inability to obtain a report from him, remit to the Accountant of Court to inquire and report on the matters set forth in the petition."

The Accountant, among other things, reported—"The trustee subsequently disappeared, communications to him from the Accountant being returned through the Post Office marked 'not found.'" We then required the Accountant to report on the matters specially arising under section 146. The report is necessarily more or less imperfect, as the trustee was the sole custodier of a certain amount of information, but so far as it goes it is favourable to the petitioner. According to a letter sent to the Accountant it appeared that it was known to someone where the trustee was, but the petitioner states, through his counsel, that inquiry has been made without success, and that letters sent to the address indicated have been returned marked "not found." In these circumstances I think that we are justified in taking the report of the Accountant in bankruptcy in place of that of the trustee, who cannot be found, and that the petition should be intimated in terms of the latter part of the prayer.

Lord Adam, Lord M'Laren, and Lord Kinnear concurred.

The Court appointed the petition to be intimated by advertisement in the *Gazette*, and by circular posted to each of the creditors.

Counsel for the Petitioner—M'Lennan. Agent—D. W. Paterson, S.S.C.

HOUSE OF LORDS.

Friday, March 17.

(Before the Lord Chancellor (Herschell), and Lords Watson, Ashbourne, Field, and Hannen).

MENZIES *v.* MENZIES AND ANOTHER.

(*Ante*, vol. xxix., p. 677.)

Reduction—Family Arrangement—Father and Son—Representations Inducing Consent—Ignorance of Legal Rights and Powers—Law-Agent's Duties and Responsibilities.

The only son and heir-apparent of a baronet and heir of entail, an officer in the army, and dependent on his father except for his pay, had for some years lived beyond his allowance, and had more than once to apply to his father to pay his debts. His father did so. The son again fell into debt, and consulted the family agent, his most pressing liability being a bill for £3000 granted to a money-lender, on which he feared he might be made bankrupt, and so ruined in his profession. The son, if he survived his father, became absolutely entitled to the fee of the estates, which were worth upwards of £300,000. After much correspondence and consultation, it was arranged that the estates should be disentailed and conveyed to trustees to hold for the father in liferent, and the son in liferent alimentary allenarly, and for the heirs of the son's body, whom failing the heir to the baronetcy in fee. As part of the arrangement the son's debts were to be paid, and an increased allowance secured to him by charges on the estates. The son about three years afterwards raised an action against the trustees and his father for reduction of the deeds by which the arrangement had been carried out, on the ground that his father and the family agent, in pursuance of a joint scheme which they had laid some years before, to deprive the pursuer of the fee of the estates, induced him to enter into the arrangement by false and fraudulent representation and fraudulent concealment, and that the pursuer had consented to the arrangement (1) under essential error, (2) under essential error induced by the father and his law-agent, and (3) under essential error fraudulently so induced.

The House—*rev.* the decision of the Second Division, and restoring the interlocutor of the Lord Ordinary (Low)—while negativing all idea of fraud, set aside the family arrangement, on the ground that the son had been induced to enter into it by representations made by the agent as to a matter of fact, viz., the possibility of raising the necessary funds in some other way, he having no legal advisers, and being ignorant of his own rights and powers.

This case is reported *ante*, vol. xxix., p. 667.

The pursuer appealed.

At delivering judgment—

Lord Chancellor—My Lords, this action was brought to obtain reduction of an agreement entered into between the pursuer and his father Sir Robert Menzies, and a trust-disposition dated 10th December 1886, granted by Sir Robert Menzies in favour of the other defenders.

At the date of the agreement and trust-disposition, Sir Robert Menzies was heir of entail in possession of the family estates, the pursuer, his heir-apparent, being entitled to the estates in fee-simple in case he survived his father. The effect of the trust-disposition which it is sought to reduce was to convey the estates in trust for Sir Robert Menzies in liferent, and after his decease for the pursuer in liferent for his alimentary use, with remainder to

the heirs-male of the pursuer's body, failing whom the estates were to be held in trust for the person entitled to the baronetcy in fee.

The negotiations which led to the instrument in question commenced in 1885. It is not necessary to detain your Lordships with a detailed reference to the prior transactions between the pursuer and his father. It will suffice to state that the pursuer had unfortunately incurred debts, which were largely due to his indulgence in gambling, and that these had been discharged through the assistance of his father. The money requisite for the discharge of these debts was for the most part raised upon the fee of the estates, Sir Robert Menzies paying the interest on the money borrowed.

The pursuer's father was (as might be expected) indignant at his son's having thus become involved in debt, and was anxious to save the family estates from the disaster which he foresaw if his son continued to involve himself still further. Communications took place between Sir Robert and his legal adviser Mr Jamieson on the subject, and Sir Robert was naturally desirous of procuring such a re-settlement of the estates as would cripple his son's power of dealing with them, and so save them from being squandered. Such a re-settlement was, however, possible only if the pursuer's consent to it could be obtained.

In the early part of 1885 the pursuer had again fallen into debt. In addition to the sum of about £700 which he owed to tradesmen, he had given a bill for £3000 to Mr Engel, a money-lender. He communicated these facts to Mr Jamieson, and it was to secure a settlement of these claims that he ultimately agreed to the arrangement now impeached.

Before pursuing the course of the negotiations which led up to the agreement and trust-disposition, it will be well to consider what was the pursuer's position at this time with regard to the estates, what power he had of meeting the liabilities he had incurred, and what was the nature and extent of the change in his position to which by this arrangement he assented.

It was agreed between the parties that the gross value of the estates was £320,000. Mr Sprague, the manager of the Scottish Equitable Life Insurance Society, and a well-known actuary, who was called for the pursuer, estimated the nett value at £245,000, and calculated the interest of the pursuer in 1886 as for a disentail at £149,900, and the amount of Sir Robert's interest at £95,100, Sir Robert being then sixty-nine and the pursuer thirty-one years of age. He stated that the pursuer, as next heir of entail, could have got an advance in 1886 of £6000 (which was treated as the sum necessary to cover the liabilities of the pursuer at that time) through an insurance company without any difficulty upon giving a postponed bond for £12,900 on the estates, payable in the event of the pursuer succeeding to them.

For some time prior to 1886 the pursuer had been in the receipt of an allowance from his father of £600 a-year. By the arrangement under consideration that allowance was increased by a sum of £300 a-year. Mr Sprague deposed that the price required by an insurance office for an annuity of £300 a-year during the remainder of his father's life in case he survived him would have been a bond for £4060 payable on the pursuer's succeeding to the estates, and that the allowance of £600 a-year which he had been receiving from his father might have been secured to him in the same way by a bond for £8120. He might thus, according to Mr Sprague's evidence, have obtained the sum necessary to enable him to discharge all his liabilities, and have secured to himself the income which he derived under the agreement in question by bonds to the amount of about £25,000, payable on his succeeding to the property.

Although the figures given by some of the other actuaries called at the trial were not precisely the same as those to which I have directed attention, the difference was not substantial, and notwithstanding the doubt suggested by some of the witnesses whether the pursuer could, through an insurance company, have obtained the money by means of post-obit bonds, I cannot myself see any reason to doubt that he could have done so.

By means of the arrangement which it is now sought to reduce, the estates were, by the consent of the pursuer and his father, charged with a sum not greatly differing from the amount which the pursuer would have had to pay on succeeding to the estates in case he had obtained from an insurance company a loan of £6000, and secured an annual income equal to that which he was to receive under the arrangement with his father. Regarded from a pecuniary point of view, the arrangement was a very disadvantageous one to the pursuer. About this there can be no question; it is not a matter in dispute. Mr Jamieson himself stated in a letter to the pursuer of 28th October 1885 that the terms which the pursuer obtained were not fair to himself, in the sense that they were not compensation for his consent to disentail, though (he added) they were the terms which his father required.

How the pursuer came to agree to terms which were thus disadvantageous is the question which has to be considered. The answer to this question can, in my opinion, be arrived at without any doubt by a perusal of the letters which passed between Mr Jamieson and the pursuer on the one hand, and Mr Jamieson and Sir Robert Menzies on the other.

I think it is perfectly clear that the pursuer was throughout most unwilling to enter into the agreement which he seeks to reduce. He submitted to it as a matter of sheer necessity, and in the belief that it was the only course open to save him from bankruptcy and ruin. Nor do I think it admits of any greater doubt that this belief was induced by the representations made to him by Mr Jamieson, and that he was throughout under the impression that

in the communications which he received from Mr Jamieson that gentleman was acting as his legal adviser.

The first communication on the subject was contained in a letter from Mr Jamieson to the pursuer of 18th June 1885, in which he said that it was necessary to communicate with him on the subject of Engel's bills, and to see what was to be done; and (he added) "Unless some arrangement is made about these bills and Mr Engel's acceptance, I see nothing for it but ruin to you, and I need hardly say that I would do anything in my power to prevent such a result." He then continues—"Sir Robert is, as you can quite realise, very much distressed and annoyed about this fresh debt, and he declines, at present at least, to do anything. The only question which occurs to me for extricating matters from their present most painful position is, that you and he should arrange to disentail the whole estates and put them in trust, on the footing of paying these debts, making such terms as I best can with Mr Engel for taking a reduced amount for this bill, and making arrangements for paying you a certain annual sum to be fixed during your father's and your joint lives, and after his death for paying you the free income of the estate during your life, the fee to go to your eldest son, if you have one, or to the baronet, whoever he may be. I write this letter to you without having Sir Robert's authority for this proposal, and merely with the object of ascertaining what your own views are upon the matter. Will you be so good as to consider the matter carefully, and inform me what you think and would propose, for something must be done speedily in regard to these debts, otherwise I can only see one result—a result which I feel so anxious to prevent."

On 28th July the pursuer telegraphed that he had arrived in London, and would like to see Mr Jamieson as soon as possible. To this Mr Jamieson replied that before incurring the expense of going there he would wish to know exactly what the pursuer would like him to do, that he had no authority from the pursuer's father to do anything, and suggesting that the pursuer should jot down what he proposed, and that if he (Mr Jamieson) were to come to London expense would be caused which he would regret to throw upon the pursuer, for his father would not consent to pay any expenses connected with his going to see him.

Mr Jamieson communicated to Sir Robert what he had written to his son, and suggested that it would be better that Sir Robert should not communicate with him on the subject, as the best chance of an arrangement lay in endeavouring to effect it without direct communication between father and son.

On 3rd August Mr Jamieson wrote to the pursuer suggesting that, looking to his own and his family's comfort, it might be possible and advisable to arrange to disentail the estates and re-settle them, adding—"I venture to throw out these suggestions from myself, and, as you will understand, without authority from or communication on the subject with your father, who does not know that I have written on the matter at all."

On 20th August the pursuer wrote Mr Jamieson objecting to the scheme of disentailing the estates and re-settling them for the purpose of raising so small a sum, and asking whether the money could not be raised on the estate in the same manner as before, he paying half the interest. He added—"Please let me know if this could be done, and if not, what other scheme you would propose."

The pursuer then offered to come to Edinburgh to see Mr Jamieson, and on 26th August had a long interview with him. The purport of this interview was communicated by Mr Jamieson to Sir Robert Menzies in a letter of 26th August, which contained the following passage—"We discussed the matter very fully. He had written to me that he proposed that the amount required should be charged on the estate. I told him that this could not be done, and yesterday I had an opportunity of telling him very plainly the reason. He was extremely averse to any re-settlement of the estate, and pointed out that he would have the power of dealing with the estate as he chose should he happen to survive you as things are. This I of course admitted, but I said that that did not alter the matter, because you might, and probably would, live for many years, and during that time he would have no income, and I did not see how he could pay the debts unless with your assistance and upon your terms. I said that what had occurred before might occur again, and that you emphatically declined to make any arrangement which would make the estates subject to his disposal; that if he desired assistance from you he would have to take it on your terms or not at all; and I asked him to come back again after he had considered the matter, which I had explained much more fully to him than I have done here." Some hours after the interview thus described the pursuer again saw Mr Jamieson, and expressed himself prepared to entertain the proposal for re-settlement of the estate provided a reasonable provision were made for him during Sir Robert's life.

It is not necessary to pursue the matter in detail any further. The negotiations continued for a considerable time, difficulties having arisen as to the amount of the annual allowance which Sir Robert was to make, but in the result an agreement was arrived at. It seems to me clear on a perusal of the correspondence, with some parts of which I have troubled your Lordships, that the pursuer was under the belief, and that, having regard to Mr Jamieson's statements, he might well be under the belief, that he had practically no course open to him, if he was to save himself from ruin, except to agree to the terms suggested. Mr Jamieson was the family lawyer; he had acted in previous transactions between the father and the

son for both parties. The pursuer had in those transactions no other legal adviser, and when in the negotiations under consideration Mr Jamieson made suggestions to him expressly stating that he was not doing so as Robert's agent or lawyer; that he had no authority to act for him, but was putting them before the pursuer in his own interest only, and in order that he might make a proposal which Mr Jamieson would convey to his father; and when we find the pursuer appealing to Mr Jamieson, as he did in his letter of 20th August 1885, to know "what scheme he would propose" for the purpose of raising the money, and not receiving from him any repudiation of the idea that he was acting for the pursuer, it seems to me most natural and reasonable that he should suppose that Mr Jamieson was acting for him. I have already pointed out that Mr Jamieson had drawn the pursuer's attention to the fact that the expense of an interview in London would fall on him, and in a letter of June 1886, whilst the negotiations were in progress, Sir Robert Menzies wrote to Mr Jamieson in these terms—"I wished Neil to employ Mr Mann, but he preferred remaining with you, and I allowed it to be so, promising that in all the transaction I was not to be considered as other than ready to give attention to any proposal that Neil had to make."

It is certain that the pursuer was left in ignorance of the extent of his legal rights; the resources at his command were not brought before him, and it was this ignorance which led to his making the agreement which he did. Even if he had ultimately acquiesced in a re-settlement of the estates it is obvious that a knowledge of his legal rights might have enabled him to hold out for better terms than he eventually obtained. Finding, then, that the pursuer contracted in ignorance of his legal rights and powers, and that he was relying, and was justified in so doing, on receiving legal advice from Mr Jamieson as to the manner in which it was possible to meet his difficulties, I proceed to inquire what was the attitude of Mr Jamieson in the matter?

Before doing so, however, I may say that I agree with the contention urged on the part of the respondents, that it is quite legitimate for the same legal adviser to act for both parties in a transaction of this description, and if honestly and to the best of his judgment advising the parties as to their rights he falls into an error and leaves either party under an erroneous impression as to what those rights are, that would not render the transaction invalid. But it is not with a case of that description that your Lordships have to deal. Mr Jamieson's attitude is made perfectly clear by his evidence. In reply to the question, "Then although you had known an easy and unobjectionable mode of his getting money otherwise you would not have considered yourself bound to tell him?" his answer was, "I never considered that." The cross-examination then proceeded as follows—"(Q) Would you have considered yourself bound to tell him?—(A) I never thought of such a thing. (Q) Suppose you had known of an easy unobjectionable mode of his getting money otherwise, would you have considered yourself bound to tell him?—(A) I would not. I was not his agent. I do not know that he would have broken away from the disentail if I had told him of another method, but I suppose he would. That was a matter between him and his father." In further cross-examination he stated that if he had been acting as the pursuer's agent, and had known that he could obtain the money required through an insurance company by means of a post-obit bond, he would probably have felt bound to tell him so; but that was a different thing, and it was not his duty. He did not apply his mind at all to the question whether there was an easier mode for him to get out of his difficulties than the one suggested. He justified his letters to the pursuer, making suggestions as to the course that he should adopt on the ground that the pursuer came to him as his father's agent, and that what he stated were the only terms his father would agree to. He repeatedly deposed that throughout the matter he was acting only as agent for Sir Robert Menzies, and as his adviser.

My Lords, I have already stated the conclusion at which I have arrived, that the pursuer believed, and had a right to believe, that Mr Jamieson was acting as his legal adviser. We now know from Mr Jamieson's own lips that he was doing nothing of the kind, that he never considered what was within the legal power of the pursuer, nor applied his mind to the consideration of any alternative scheme, but left him under the impression that no other arrangement was possible, and throughout acted solely for and on behalf of Sir Robert Menzies.

Under these circumstances it is not, I think, possible that the transaction should stand.

I may observe in passing that Mr Jamieson suggested in his evidence that the pursuer knew that it was possible to raise money through an insurance company, because he had resorted to that means of doing so on a previous occasion. This refers to a transaction with the Eagle Insurance Company, but I do not believe that the pursuer really understood the nature of that transaction, and if he did Mr Jamieson informed him that owing to the manner in which that transaction had been arranged when the Insurance Company was paid, it would be impracticable to adopt the same course on a future occasion. Nor do I think Mr Jamieson's suggestion that he believed that the pursuer was receiving independent legal advice of any importance. He had not, in fact, another legal adviser, nor do I think that Mr Jamieson had any sufficient ground for the belief that this was the case. But that appears to me immaterial when once the conclusion is arrived at that the pursuer was, in fact, without independent advice, and was led by his father's law adviser to

believe that he was acting on the pursuer's behalf.

I concur in the opinions expressed by the Lord Ordinary and Lord Rutherfurd Clark.

It is not without regret that I have arrived at the conclusion that the interlocutor must be reversed. I think it is possible—even probable—that the arrangement was really desirable to protect the pursuer against himself, but such a consideration cannot be allowed to weigh for a moment. To support the instruments which it is sought to reduce might be desirable if it were possible in the present case, but to do so would afford a most dangerous precedent, and might encourage transactions neither as honest nor as well meant as the present.

I do not think that throughout the negotiations Mr Jamieson or Sir Robert Menzies acted otherwise than with an honest desire to bring about a settlement which they believed to be for the pursuer's good. But I think Mr Jamieson committed an error of judgment, and that he was bound either to have advised the pursuer to the best of his ability as his agent, or to have informed him that he was acting, and could only act for, Sir Robert Menzies, and that if the pursuer wanted legal advice as to his own position, or suggestions of any alternative scheme, he must seek another legal adviser.

For these reasons I move your Lordships that the interlocutor appealed from be reversed, and the interlocutor of the Lord Ordinary restored.

Lord Watson—My Lords, the appellant, who is the only son of the respondent Sir Robert Menzies, has brought this action for the purpose of setting aside a family compact for re-settlement of the estates of Menzies and Rannoch, which was completed by them in December 1886. Sir Robert was heir of entail in possession of the estates. The appellant was heir of tailzie next entitled to succeed, and would have had power in the event of his succession to disentail without consents, and to acquire the estates in fee-simple.

It is unnecessary to refer in detail to the appellant's pecuniary embarrassments which led to the arrangement now challenged. He had no means except an allowance of £600 a-year from his father and his contingent interest in the entailed estates. On several occasions he incurred debts beyond his income, and borrowed money on his personal credit at 60 per cent. interest in order to pay them. These loans were down to the year 1883 re-paid by money raised with his father's concurrence on the security of the estates. On the last occasion the appellant, in order to meet an acceptance on the usual terms, for the first time resorted to his *spes successionis* as a source of credit. In the end of 1882 he obtained an advance from the Eagle Assurance Company upon a post-obit bond charging his expectancy with a sum of £5000. The claim of the Company was settled by trustees under an heritable bond charged by consent of father and son upon the fee of the estates, who, instead of a discharge, took and registered an assignation in their favour to the post-obit bond, which thus continued to appear on the face of the record as a first encumbrance upon his reversionary right. The appellant, in answer to any inquiry as to the reason for keeping alive the post-obit bond was informed by Mr Jamieson, the family agent, that if the bond were discharged he would be enabled to raise a further sum as he had done before, whereas "if the bond remains on the property, by being transferred to trustees, it would be a prior security affecting your interests in the estate, and would therefore render it more difficult, or perhaps impossible, to raise a further sum on your succession during your father's life." That intimation, which was probably meant to act as a check upon his habits of extravagance, appears to have been accepted by the appellant as an assurance that he could not in the future rely upon his expectations as a certain means of obtaining advances from an insurance company.

It was only natural that Sir Robert Menzies should in such circumstances be unwilling to continue a course of encumbering the estates and diminishing his own income for the purpose of paying debts which his son in common prudence ought not to incur; and that he should also be apprehensive that his son might lower the position of the family and ruin himself by anticipating his succession. The appellant seems to have been quite aware of his father's views, but, notwithstanding, he again got into debt in the spring of 1885 before leaving with his regiment for Egypt, and raised money on an acceptance for £3000, which was retired under the arrangement which he is now seeking to reduce.

The appellant returned to this country in the end of July 1885, and communications then began between him, his father, and Mr Jamieson, which, though occasionally interrupted, terminated in the transaction of which he now complains. During the whole period for which these negotiations lasted, the appellant was admittedly in pecuniary difficulties. His creditor was pressing for payment of the £3000 bill with interest, and latterly, seriously threatened to take proceedings against him in bankruptcy.

The substance of the arrangement as finally adjusted was, that the estates were disentailed and conveyed to trustees, by whom they are now held for the following purposes. During his lifetime Sir Robert Menzies is to continue to possess and manage, with all the powers which he previously had, save that of disentailing. Upon his death, the appellant, if then alive, will take a liferent interest in the estates, which is declared to be strictly alimentary; and will have the same powers of jointuring, and making provisions for younger children which were permitted by the deeds of entail. He is also to have the possession and management of the estates, but subject to the express condition that in

the event of his disposing of his liferent right by anticipation, or of its becoming liable to the diligence of his creditors, the trustees are to assume possession, and pay the free income to him as an alimentary allowance, with power, in their discretion to allow him to occupy rent free such part or parts of the estate as they may think proper. Upon the determination of these liferent interests the trustees are directed to convey the estates in fee-simple, subject to all debts and charges then affecting them, to the eldest heir-male of the appellant's body, whom failing to the person who may at that time be entitled to the baronetcy of Menzies. Power is reserved to Sir Robert Menzies, but only with consent of his son, during their joint lives, to alter the purposes of the trust.

The net value of the estates in 1886, after deducting debts and rent-charges, was £245,000, and the actuarial value, as for disentail, of the appellant's *spes successionis* was £149,900 of which £65,000 represented the value of his contingent right of fee. Under the trust the appellant gives up all interest in the fee, but retains his liferent expectancy subject to conditions which restrain him from alienating or borrowing upon its security, and also, after the succession opens, involve forfeiture of his right to possess the estates in the event of his incurring debt. The immediate benefits which he derived from the transaction consisted in his getting a sum of £6000, raised by a charge upon the estates, for payment of his debts, and a legal right to an annuity of £900, instead of a yearly allowance of £600, dependent upon his father's pleasure. But the evidence adduced for him shows—and no attempt was made to contradict it—that by burdening his expectancy with a capital sum of £25,000, he could without difficulty have obtained, from insurance offices of good standing and credit, an immediate advance of £6000, and an annuity of £900 during his father's life.

Although the appellant did thereby surrender rights in expectancy which were of considerable value, and also submitted to restrictions which might deprive him of his right to possess the estates after his father's death, I find it impossible to say that in the circumstances the terms of the arrangement were unreasonable or unfair. On the contrary, I think they are such as a friendly adviser, having full knowledge of these circumstances and of his legal rights and powers present and prospective, might with perfect propriety have urged the appellant to accept. I should certainly hesitate to disturb the transaction were I satisfied that in becoming a party to it the appellant either knew his own rights or had the benefit of independent advice.

The case presented by the appellant, in the argument addressed to the House, shortly stated, was this—(1) that he would not have consented to the arrangement had he not believed that it was difficult, if not impossible, for him to raise money upon his *spes successionis;* (2) that his belief was induced by representations made to him by Mr Jamieson, in communications passing between them with reference to the arrangement; and (3) that at the time he understood and believed that Mr Jamieson was acting as his agent as well as his father's, although he subsequently learned that such was not the case. That these allegations, if established, are sufficient in law to infer the appellant's right to rescind, does not appear to me to admit of serious question. Error becomes essential whenever it is shown that but for it one of the parties would have declined to contract. He cannot rescind unless his error was induced by the representations of the other contracting party, or of his agent made in the course of negotiation, and with reference to the subject-matter of the contract. If his error is proved to have been so induced, the fact that the misleading representations were made in good faith affords no defence against the remedy of rescission. That principle has been recently affirmed by the House in *Adam* v. *Newbigging*, 13 App. Cas. 308; *Stewart* v. *Kennedy*, 15 App. Cas. 108—a Scotch case; and in *Evans* v. *Newfoundland Bank*, decided this week.

Stewart v. *Stewart*, 6 Ch. & F. 911, and M'L. & Rob. 401, which was relied on in the argument for the respondents, is not an authority in point. In that case a lady was induced to enter into a compromise of litigated claims by erroneous advice as to her legal rights, honestly but ignorantly given by her law-agent, who also acted as agent for the other parties to the compromise. The Lord Chancellor (Cottenham) affirming the judgments of the Court of Session, held that these circumstances did not entitle her to rescind. His Lordship approved, and applied the doctrine laid down by Lord Stair (Inst. i., 17, 2), to the effect that transactions for the settlement of doubtful pleas cannot be dissolved unless there be "deception in the substance of the act."

I have read the whole of the evidence in this case, oral and documentary, after hearing counsel, with the result that I have been unable to find any conflict of testimony, involving the necessity of considering the credibility of witnesses. That there is some room for difference of opinion as to the inference which ought to be derived from their statements is sufficiently evidenced by the judgments in the Courts below. Two observations were suggested by its perusal which I think it right to make. In the first place, I think it is unfortunate that the record should have contained sweeping charges of conspiracy and fraud against two of the respondents, which are completely refuted by the proof. I am satisfied that neither Sir Robert Menzies nor Mr Jamieson was guilty of aught approaching to intentional deceit. And although it is a circumstance of no materiality to the case which the appellant has submitted for our decision, I am also satisfied that these gentlemen honestly believed that it would be for the eventual interest of the appellant that his powers of

anticipating his succession, and alienating the fee of the estates, should be restricted. In the second place, whilst it is impossible to refer with approval to his habit of contracting debt, or to the way in which it was incurred, I am quite unable to assent to the comments which were made by one of the learned Judges of the Second Division upon the character and truthfulness of the appellant. So far as I am able to judge, his testimony was given with perfect honesty; and it is borne out by the contemporary writings in process.

I shall not occupy your Lordship's time by examining the evidence in detail, but shall content myself with stating the conclusions of fact to which it has led me. Those passages in the oral proof and documents which have chiefly influenced my opinion are all cited or noticed by the Lord Ordinary and Lord Rutherfurd Clark, and have already been referred to by the Lord Chancellor.

If the existence of the first encumbrance of £5000 had been a practical bar to the appellant's obtaining a further advance upon the security of his *spes successionis*, it seems tolerably clear that in 1885 and 1886 the only choice left him was between bankruptcy and its consequences on the one hand, and the acceptance of such terms as his father might be willing to concede on the other. Mr Jamieson states that he was "extremely averse to a re-settlement of the estates," and desired to retain the power of dealing with the property as he chose should he happen to survive his father. The respondent's own evidence distinctly favours the view that he would have broken off the negotiations, and would have refused to disentail and re-settle, if he had been told of any other method of procuring the money which he required. I therefore credit the appellant's statement that he would not have consented to the arrangement of 1886 unless he had been under the conviction that he could not obtain money by charging his expectancy.

The learned Judges of the majority lay considerable stress upon the fact that the appellant's dealings with the Eagle Assurance Company in 1882 betray his knowledge of the way in which his expectancy could be turned to pecuniary account. So far I agree, but I am at a loss to discover any reason for his not availing himself of that knowledge and paying his debts in 1885, save that which he himself assigns. If the appellant really believed that he could raise sufficient funds to meet his debts by simply repeating the process he adopted in 1882, why did he permit himself to be driven by a creditor to the verge of bankruptcy, and then extricate himself by entering into an arrangement to which he was "extremely averse?" His conduct is intelligible if, as he says, he had been induced to believe that the first charge on his expectancy stood in the way of further borrowing upon it. There certainly is to be found, in the letters addressed to him by Mr Jamieson, sufficient warrant for that belief. I doubt not that the passages to which I refer were only intended by Mr Jamieson to indicate that, in his opinion, the scheme of re-settlement was a reasonable one, and one which the appellant might with propriety accept; but the only alternatives which they suggest are ruin or his father's terms. I should not attach much importance to expressions like these taken by themselves; but they must have had a peculiar significance for the appellant who had already been informed that the first charge of £5000 was kept up for the very purpose of preventing further borrowing.

There seems to be no doubt that from first to last the appellant had not the advice and assistance of an agent. I can hardly conceive that any law-agent employed in his behalf, in a matter of such delicacy, should have kept himself in the background, and should never have taken part in the negotiations, or in the preparation and adjustment of the deeds by which his client's interests were to be affected. But the matter does not rest there. It is clear that the appellant, and I think his father also, understood that Mr Jamieson was acting for both of them. So late as June 1886, Sir Robert, in writing to Mr Jamieson, stated that he had suggested that the appellant should employ another agent, "but he preferred remaining with you, and I allowed it to be so." That impression was not shared by Mr Jamieson, who frankly states that he acted throughout as agent for Sir Robert only, and that he would not have felt it to be consistent with his duty to the father to suggest to the son the possibility of extricating himself from his embarrassments by borrowing on his expectancy.

For these reasons I concur in the judgment which has been proposed by the Lord Chancellor. I have made no allusion to the mutual reference to three friends which was founded on by the respondents, because it appears to me that the agreement to refer is open to precisely the same objections as the arrangements which followed.

Lord Ashbourne—My Lords, I think this case may well be decided without any impeachment of the personal honour or truthfulness of the parties. Sir Robert Menzies was only desirous to settle the property in the way which he believed was best in the interests of his son, title, and estate, and with no idea of any personal advantage to himself. Mr Jamieson, although he may have acted without due caution and appreciation of the position, was thinking solely of his duty to Sir Robert Menzies and his estate. Captain Menzies, the appellant, in impeaching the deed of 1886, has, I think, done so in both his correspondence and oral evidence without any undue rancour, giving his testimony under difficult circumstances, neither unfairly nor untruthfully. I deem it only fair to the pursuer to say that I am unable to concur in the harsher view of his evidence taken by the Lord Justice-Clerk, which did not appear to have occurred to

Lord Low, who witnessed his demeanour. Having thus put aside the merely personal aspect of the case, the facts upon which your Lordships' decision must turn lie within a narrow compass. The father was anxious for a re-settlement of the property to save it from the possible consequences of his son's extravagance. The son was extremely averse to that re-settlement. The terms the father was willing to give to the son to procure his consent were moderate—with our present knowledge of the position they were inadequate. The son only consented when satisfied that the only alternative to the acceptance of his father's terms was ruin; that if he did not concur he would rapidly be made a bankrupt.

This belief on the part of the son was wholly caused by Mr Jamieson. His letter of the 26th August 1885 leaves no room for doubt on the subject, and its statements colour the entire case. Nothing occurred after that date to weaken or recal the impression thus produced in the pursuer's mind. He believed he must concur in his father's terms or he would be ruined. He believed that he would be made a bankrupt and lose his commission if he did not consent to them. This belief was caused by Mr Jamieson, and fostered by every letter and statement of that gentleman. The statement in fact was entirely unfounded. There was another alternative besides ruin and bankruptcy. Respectable insurance companies, with less burden on the estate and greater liberality to himself, could have extricated him readily from all his difficulties.

I am unable, after a careful perusal of the powerful cross-examination to which he was subjected, to arrive at a clear conclusion as to when Mr Jamieson himself was aware of the availability of appeals to insurance companies. He is in a disagreeable dilemma. If he knew of it on the 26th August 1885, or any time before the completion of the contract between father and son, I think his statements as to ruin should have been modified, and different suggestions given. If he did not know of it, then he had no business recklessly and without due inquiry to put the pursuer under the impression—the impression alone which induced him to submit—that nothing but ruin and bankruptcy stared him in the face unless he assented to the father's terms.

What was Mr Jamieson's position? He was the family agent and legal adviser of the Menzies family. He had taken part in the adjustment of several of the money difficulties of the son. He had made the statements under his own hand in the letter of the 26th August 1885. He had admittedly acted as the common agent to carry out all the details of the re-settlement. He was, therefore, a man in whose position, character, authority, and representations, the pursuer would have the most absolute reliance, as Mr Jamieson must have thoroughly well known. Mr Jamieson, however, says that in making the arrangement, the contract, the negotiations for the re-settlement, he was acting solely as agent for Sir Robert Menzies, and gave no care to the interests of the pursuer. As the son had no one else, he entered into this great contract affecting his property and his whole future without any agent or any separate legal adviser. Indeed, as pointed out in the clear and persuasive judgment of Lord Rutherfurd Clark (on which I would be satisfied to rest my own opinion), "he was in fact in a much more unfortunate position. He thought that he had an agent and he had none. He thought that Mr Jamieson was acting as his agent and attending to his interests."

How is this absence of any independent adviser sought to be explained? Mr Jamieson insists that he always stated to the pursuer he was Sir Robert's agent. Take it so. I do not believe, however, that he ever explained with anything like the fulness or the clearness suggested in his cross-examination that he was paying no attention and giving no care to the interests of the son. Knowing the relations which had always existed between the parties, the part which he had taken before, and which he took after, he was bound to be most explicit, and I think it would have been only reasonable to make sure by express suggestion or direct question that the prudence of having a separate legal adviser was fully known to and considered by the son.

But further explanations are given. It is said that the son knew everything, that his experience about money and loans and business was so great that he could take care of himself. It is absurd to suggest that the pursuer, without any independent adviser, was on equal terms with his father and Mr Jamieson together. Mr Jamieson points out that he knew he could sell his reversion, but that he (Mr Jamieson) had advised him it would be ruinous. Mr Jamieson also points out that he knew how to apply to insurance companies, as he had had a dealing with the Eagle Company. Here, as all through, comes the advice of Mr Jamieson into the life of this young man. He had advised him that the assignment of the Eagle Insurance Company's Board to trustees "would render it more difficult, if not impossible, to raise a further sum on your succession during your father's lifetime." It thus appears that the knowledge of the pursuer of the saleability of the reversion, and of the existence of insurance companies was hampered by the recollection of Mr Jamieson's own statement to him that the one was ruinous and the other either difficult or impossible, thus strengthening his belief, in August 1885, that ruin and bankruptcy were the sole alternatives to acceptance of his father's terms.

Then it is suggested against the pursuer that he left his father and Mr Jamieson under the impression that he had a separate independent adviser. I at once put aside the suggestion that either believed he had such an adviser. The whole course of dealing and tone of the correspondence negatives the idea. In the letter of 5th

October 1885 Captain Menzies writes to Mr Jamieson—"I received a letter from S. Engel yesterday, so I have referred him to you." Is that the language of a man who then had another legal adviser? In the month of June 1886 Sir Robert Menzies wrote to Mr Jamieson—"I wished Neil to employ Mr Mann, but he preferred remaining with you, and I allowed it to be so." How can either Sir Robert Menzies or Mr Jamieson be listened to if they suggest that after that letter they did or could believe that the pursuer looked to anyone else than Mr Jamieson for advice and protection? On the 9th November 1886 Mr Jamieson writes to the pursuer—"It will be necessary that you should have a separate agent to act for you in this action, and if you approve, I propose to ask Mr Mann to attend to your interests therein." If Mr Jamieson believed that the pursuer had another independent law adviser, would he not have asked his name and to be put in communication with him? Does not that letter imply that Mr Jamieson had been attending to his interests theretofore, but that it had then become technically necessary to have a separate adviser? In my opinion the pursuer placed absolute reliance in Mr Jamieson, and both he and Sir Robert Menzies must be held to have known it.

I therefore have arrived, on the evidence, at the following clear conclusions—(1) the pursuer had no independent adviser; (2) he did not know of the insurance office alternative; (3) if he had any such knowledge he never would have agreed to his father's terms; (4) he believed that there was no alternative to accepting the conditions proposed than his ruin and bankruptcy; (5) that belief was caused wholly by the representations of Mr Jamieson, whose position I have already described.

It is manifest that to support such an arrangement as is here impeached there should have been perfect openness—*uberrima fides.* Here there was neither a common agent deliberately selected by both parties to have regard to their interests, and work out the best result his experience and knowledge could suggest, nor a separate adviser for each party. The pursuer never was apprised of the true position of Mr Jamieson towards himself as disclosed in cross-examination, nor warned of the prudence of having separate advice. He was left to act on unfounded representations and a baseless belief, and how can such a re-settlement stand? The case of *Stewart* v. *Stewart*, 6 Ch. & F. R. 911, so much relied upon by the Solicitor-General for England, has in my opinion no application. The facts are entirely different from those of the case before your Lordships, and the Lord Chancellor in his judgment said—"The pursuer's case must stand upon an imputed error in law of the common agent." In the present case the main contention of Sir Robert Menzies is that Mr Jamieson is not a common agent. The words of Lord Cairns (*Reese* v. *Reese*, L.R., 4 H.L. 79) are very much in point—"I apprehend it to be the rule of law that if persons take upon themselves to make assertions as to which they are ignorant, whether they are true or untrue, they must in a civil point of view be held as responsible as if they had asserted that which they knew to be untrue." Here the unfounded assertions of Mr Jamieson played the principal part in the whole transaction. Having regard to the experience and character of Mr Jamieson, and the respect in which he was held by both father and son, it is well also to recal the language of Mr Justice Maule (*Evans* v. *Edmunds*, 13 C.B. 777)—"When a man makes a statement which he does not know to be true, he takes upon himself to warrant his own belief of the truth of that which he so asserts." The fact that Mr Jamieson had good intentions cannot save his principal from the legal consequences of his statements, for Sir G. Jessel, M.R. (*Smith* v. *Chadwick*, 20 Ch. Div. 44), has well pointed out that "a man cannot be allowed to escape merely because he has good intentions, and did not intend to defraud."

In my opinion, the judgment should be reversed, although I have arrived at the conclusion with some regret.

LORD FIELD—My Lords, I also am of opinion that this appeal should be allowed, and that the interlocutor of the Lord Ordinary should be restored.

It is, I think, agreed on all hands that the allegations of fraud and circumvention on the part of the defenders, contained in the condescendence, not only are not sustained by the evidence, but, so far as they impute any moral fraud, have not the slightest foundation in fact, and that if the pursuer is entitled to the relief which he claims, his case must be rested upon some other grounds. I am satisfied, as my noble and learned friends are, that the defenders had no desire or intention whatever of taking any unfair advantage of the appellant, and were not actuated by any other than honourable and praiseworthy motives in honestly endeavouring to save the family estates and the pursuer himself from what they regarded as the almost inevitable result of his continuing the course of imprudent conduct which he had so repeatedly manifested.

But there is a narrower ground, and one much less disagreeable, upon which the appellant's claim may be made good. This is one of a numerous class of cases in which family arrangements dealing with the future interests of heirs or other persons entitled in expectancy have come into question. In such cases it has been long settled (whether rightly or not is not now in question), on grounds of public policy, that the existence of actual moral fraud is not an essential element of the claim to relief. If it appears that a party to such an arrangement has been induced to part with very valuable future rights for a substantially inadequate pecuniary consideration, he being under great pecuniary embarrassment, not only without independent advice as to his rights and interests, but induced to do so by what was a misrepre-

sentation in fact however honestly made in intention, such an arrangement cannot stand. Necessity and weakness on the one side, and advantage in fact on the other, gained by a representation untrue in fact, and materially inducing to the bargain, render it contrary to good conscience.

The question in the present case, therefore, for your Lordships to decide is, whether any of the elements which I have indicated, sufficient to avoid the transaction, are established by the evidence. Now, it cannot be doubted but that the pursuer was at the time of the negotiations for the re-settlement in the greatest pecuniary embarrassment—nothing short of the immediate advance of a large sum of ready money could save him from bankruptcy and the loss of his commission. Neither is there room for doubt but that the re-settlement could only have been enforced against him at the instance of his father by the payment of an enormously greater sum than that actually involved in the operation. That this is so appears clearly from Mr Jamieson's letter of 28th October 1885, in which he says that the proposal for re-settlement is not one which gives compensation to the full amount or anything like it for the pursuer's consent; but he announces the father's final decision that if the pursuer comes to him, "as unfortunately," he says, "you are obliged to do, they are the terms which, although not fair to you, he requires." It is also established that the pursuer's immediate necessities could have been otherwise satisfied by the raising of a sum of money very slightly in excess of that which was obtained by the placing of the estates under trust; and it is, I think, clear beyond all doubt that if the pursuer had been made aware of those means of staving off his immediate difficulties his declared aversion to that mode of placing his estates in trust would have rendered him only too glad to have availed himself of the comparatively easy alternative. Was he then in fact aware or made aware that that course was open to him? I think not. It is true that he was, in my judgment, far from being other than an intelligent man, and it is clear that he had had experience a few years before in raising money by insurance; but the result of that operation having been to place upon the register a charge which was intended to be a bar or hindrance to his repeating the experiment, and he having been told by Mr Jamieson that such was its object and effect, I think it may well be that he had come to the conclusion that there was no way open to him of satisfying his wants, except by obtaining his father's consent to an advance on the estates in the way proposed, or through money-lenders, the alternative being bankruptcy.

Then, if he had no other experience of the case, had he any independent adviser? I am quite satisfied, for the reasons already given, that he neither had nor was supposed by the other parties to the arrangement to have any such. And this brings me to what seems to me to be the material question in the case—Was he made aware by Mr Jamieson that this alternative of raising money enough to satisfy the debts and provide for an allowance was easy, or was he misled by any material misrepresentation made by Mr Jamieson and so induced to give his reluctant consent to the re-settlement?

Now, in addition to the expressions contained in the letter to which I have already referred, it is clear from Mr Jamieson's letter of the 26th August 1885 that at the crucial interviews between him and the appellant on the previous day, when after some hours' consideration the latter gave his consent to the re-settlement, Mr Jamieson expressly stated to the latter that he did not see how the appellant could pay his debts unless with the father's assistance, and upon his terms, and he had previously pointed out to him that without some such arrangement there was nothing before him but ruin. This account of the interview is concurred in by the appellant, who says—"I was extremely averse to a re-settlement, but he said he did not see how I could pay the debts without my father's assistance, and except upon his terms." In 1886 again, when Sir Robert had declined to acquiesce in the award of the three friends, Mr Jamieson says—"I am making a final appeal to him to give way, but feel that I see nothing except your accepting Sir Robert's terms or allowing Engel to go on with the threatened bankruptcy proceedings." Indeed, Mr Jamieson, as I understand, does not dispute the use by him of this language; but he in effect says, my understanding was that Neil came to me, as his father's solicitor, for the purpose of ascertaining from me upon what terms his father would consent to the raising of the money upon the security of the estates, and all I intended to do was to convey to him his father's final decision, and I did not intend, nor did the appellant understand me as intending, to convey to him that there was absolutely no other way of raising the money except through money-lenders. But giving Mr Jamieson the benefit of this view, the question is whether this language was not reasonably such as to lead the appellant to understand it in the sense in which I think he did. I am obliged to answer that queston in the affirmative. I think that the relations between Mr Jamieson and the appellant were such that the appellant was entitled to regard, and did regard, Mr Jamieson as his friend and confidential adviser, and not merely as his father's solicitor and medium of communication, and having regard only to the views and intentions of the latter, and that when the appellant was told by a man of so high a position as a gentleman and a man of business that he saw no alternative but to consent to his father's views, he was induced by that to give his consent.

Mr Jamieson does not deny that he was aware of the suggested alternative of raising sufficient money to pay the debts and provide for the necessary allowance by raising a few thousands more than the

incumbrance actually created, but he says that he considered that his duty to the Baronet prevented his suggesting a course which would have left the estates in the control of the appellant. But assuming that such was his duty to the father (and I by no means say that it was not), Mr Jamieson did not realise that he had by his conduct and asseverations created a duty towards the appellant, either to give him the best advice under all the circumstances so as to enable him to exercise his own independent judgment, or to point out to him that he must no longer look to him but consult some independent adviser, who would be able to make him thoroughly understand his position and rights, actual or prospective, and the best course to pursue to relieve himself from his actual embarrassment. At all events he should have carefully avoided the use of any language calculated to mislead the appellant.

It is, I think, out of the question to suppose that if Neil Menzies had been told by Mr Jamieson, or by any independent adviser, that he could pay his debts and save his control over the estates by the alternative of insurance and without his father's consent, he would have consented to the re-settlement.

LORD HANNEN—My Lords, I have come with reluctance to the conclusion at which your Lordships have arrived, that this appeal should be allowed. I say with reluctance, because I fully believe that the transaction embodied in the deeds now sought to be set aside was reasonably regarded by Sir Robert Menzies and Mr Jamieson as most beneficial to the pursuer, whom they desired to protect against his own extravagance. But I think that in order to attain this good object Mr Jamieson, in his character of agent of Sir Robert Menzies, made statements which were not true, which he was not justified in making, and which misled the pursuer and induced him to consent to disadvantageous terms which he would not otherwise have accepted.

At the time of the transaction now in question, Sir Robert Menzies was heir of entail in possession of certain estates. The pursuer is his only son, and on the death of his father would have been entitled to the estates in fee-simple.

The effect of the instruments now sought to be set aside is to disentail the estates, to convey them to trustees in trust for Sir Robert Menzies in liferent, thereafter for the pursuer in liferent, then for the heirs-male of his body, whom failing the estates go in fee to the person entitled to the Baronetcy of Menzies, and an additional debt of £22,700 was to be charged upon the estates.

The gross value of the estates was £320,000; the value of the pursuer's expectancy which Sir Robert Menzies would have had to pay him upon compulsory disentailment would have been nearly £150,000. For the surrender of the valuable rights possessed by the pursuer he was to obtain the payment of debts to the extent of £6000, he was to receive £600 a-year from his father, and £300 a-year to be purchased with money borrowed upon the security of the estates.

It is clear that the pursuer was unwilling in the first instance to accept these terms. How was he induced to withdraw his opposition? The pursuer had no independent legal adviser. Mr Jamieson was the family solicitor, and the whole transaction was conducted through him. He says that his position throughout was that of professional adviser to Sir Robert Menzies alone, and that he never took upon himself the duty of advising the pursuer. If this were so, it was still the duty of Mr Jamieson not to misrepresent the facts to the pursuer, and I think, moreover, that he led him to believe that he was advising him in his interest as well as that of his father. Then, in a letter of 18th June 1885, he wrote to the pursuer that having regard to the position he occupied with reference to Sir Robert Menzies and himself, he must inform Sir Robert of a new liability of the pursuer, and he says later in the letter cited—"The only suggestion which occurs to me for extricating matters from their present most painful position is that you and he should arrange to disentail the whole estates and put them in trust," &c; and in a later letter of 3rd August 1885, after making substantially the same proposals, he adds—"I venture to throw out these suggestions from myself, and, as you will understand, without any authority from or communication on the subject with your father, who does not know I have written on the matter at all." This was scarcely an accurate statement of the facts, as he had on the 28th July 1885 written to Sir Robert—"May I, at the risk of seeming to give advice where it is not asked, venture to suggest to you that in the interest of your son and of the estates, it would be desirable on those grounds alone to make a sacrifice to secure him as far as possible against a repetition of what has occurred, and if unfortunately he should again get into debt, the estates at least would be secured during his life, at least in a sum which would be amply sufficient for his purposes, and which could not be touched by his creditors. I shall let you know if I hear anything further from your son, and I would venture to suggest to you that you should not communicate with him on this subject, as I think the best chance of an arrangement lies in endeavouring to effect it without direct communication between you and him on this subject in the meantime at least." To which Sir Robert replied on the 29th July—"I quite agree with you that any arrangement necessary for Neil's debts had better be made between you and him, at all events in the first instance, without my being so far implicated in them."

On the 20th August 1885 the pursuer wrote to Mr Jamieson that his father had expressed his willingness to entertain any scheme that Mr Jamieson and the pursuer might suggest for the payment of his debts,

and he continues—"It seems to me that the scheme you propose in your letter of 3rd August as to disentailing the estates and re-settling them is unnecessary for the raising so small a sum. Could not the money (£4000) be raised on the estate in the same manner as before, and I could agree to pay half the interest, which would be, I suppose, £200. Please let me know if this could be done, and if not, what other scheme you would propose." On the 25th August 1885 the pursuer had long meetings with Mr Jamieson at Edinburgh, of which Mr Jamieson gave an account to Sir Robert in a letter of the 26th—"We discussed the matter very fully. . . . He was extremely averse to any re-settlement of the estate, and pointed out that he would have the power of dealing with the estate as he chose should he happen to survive you as things are. This I of course admitted, but I said that did not alter the matter, because you might and probably would live for many years, and during that time he would have no income, and I did not see how he could pay the debts except with your assistance and upon your terms. . . . In making the proposal which I did make to him, I had in view your position and interest and also his. . . . When he came back after an interval of some hours, he said he was prepared to entertain the proposal of a re-settlement of the estate provided a reasonable provision was made for him during your life."

This letter, together with the *viva voce* evidence of the pursuer and Mr Jamieson, satisfied me that the pursuer gave his consent to the re-settlement of the estates believing and relying on the statement of Mr Jamieson that he did not see how he could pay his debts unless with his father's assistance and upon his terms. Having regard to Mr Jamieson's professional reputation, and his position with reference to the pursuer and his father, the pursuer was justified in treating this as a representation that no other course was practically open to him but to accept his father's terms.

As a matter of fact the evidence establishes that there was another course open to him, by which, without difficulty, by charging his expectant succession with £25,000, he might have obtained all the pecuniary benefits which the arrangement arrived at gave him while charging his succession with £22,700.

What is Mr Jamieson's excuse for making the statement he did to the pursuer? He says that he was acting solely as the agent of Sir Robert Menzies, that it was not his duty in that capacity to advise the pursuer, and that he never applied his mind to the question whether there was an easier mode for him to get out of his difficulties than the one he suggested. In this lies the solution of the case. I think that Mr Jamieson led the pursuer to believe that he had applied his mind to the question above stated, and that he saw no alternative course open to the pursuer. Mr Jamieson was not justified in making the statement he did without applying his mind to the facts, and the pursuer was justified in relying on that statement made by a professional man who had led him to believe that he was acting in his interest as well as in that of his father.

I think that the misrepresentation into which Mr Jamieson was unfortunately led by the difficulty of the position he had assumed as between the father and the son, was the underlying foundation of the whole arrangement embodied in the deeds under reduction, that it was recklessly and therefore culpably made by Sir Robert Menzies' agent, and that he (Sir Robert) cannot maintain a transaction based upon it. I am of opinion therefore that the pursuer is entitled to succeed on this appeal.

The Lords reversed the interlocutor appealed from, restored the interlocutor of the Lord Ordinary, and found the respondents liable in the costs of this appeal and in the Court below.

Counsel for the Appellant—Sol.-Gen. Asher, Q.C.—Sir Horace Davey, Q.C.—M'Clure. Agents—Lowless & Company, for Smith & Mason, S.S.C.

Counsel for the Respondents—Sol.-Gen. Sir John Rigby, Q.C. — Graham Murray, Q.C. Agents—Grahames, Currey, & Spens, for Tods, Murray, & Jamieson, W.S.

COURT OF SESSION.

Friday, February 24.

SECOND DIVISION.

[Lord Low, Ordinary.

GARDINER AND OTHERS v. MACFARLANE, M'CRINDELL, & COMPANY.

Ship—Charter-Party—Construction—Customary Manner of Loading—Hindrance Beyond the Charterer's Control.

A charter-party dated 12th March 1888 provided that a sailing vessel should proceed to Sydney, N.S.W., and there receive from the charterers a full and complete cargo of coal from such colliery as the charterers should direct, (2) that the coal should be loaded as customary, (3) that sufficient stiffening should be supplied at Sydney when required by master on due and sufficient notice, and (4) that the charterers should not be liable for the non-fulfilment of their contract on certain grounds, including "strikes, lock-outs, or accidents at the colliery directed . . . or any other hindrances of what nature soever beyond the charterers' or their agents' control." No lay days were specified. There was provision for ten days on demurrage at 4d. per registered ton per day. The charterers informed their Sydney agents of the charter-party, and on 8th May the agents wrote to a colliery, instructing them to book the vessel for a cargo of coal. They took no precautions to secure that the vessel should receive