

being dilapidated. But the tenant has a good answer on the merits. He is going to benefit, not to prejudice, the property, and therefore I think that the Sheriff and Sheriff-Substitute have done right, and that this appeal should be dismissed.

The other Judges concurred.

Agent for Appellants—William Mitchell, S.S.C.
Agent for Respondent—William Officer, S.S.C.

Friday, March 11.

M'CALL v. MUIR.

Reparation—Collision—Accident—Proof. Circumstances in which held that the upsetting of a hired dog-cart, whereby the pursuer had his arm broken and sustained other serious injuries, was accidental; and an action against the master of the driver of the dog-cart dismissed.

In this action Mr Robert M'Call originally sued John Muir, Innkeeper, Dalbeattie, for damages sustained by him in consequence of his having been thrown out of a conveyance hired by him from the defender on the 15th December 1866. The conveyance was alleged to have upset on the road between Dalbeattie and Auchencairn through the recklessness, negligence, and incapacity of Hugh Kerr the defender's servant, for whom the defender was responsible, whereby the pursuer had his left arm broken and dislocated, and was rendered permanently disabled from working at his trade.

Mr M'Call died in 1868, and the action was now insisted in by his brother Francis M'Call.

After a proof the Sheriff-Substitute (DUNBAR) pronounced the following interlocutor:—

"*Kirkcudbright, 3d June 1869.*—Having heard parties' procurators on the record and proofs, Finds as matter of fact that the original pursuer, the late Robert M'Call, coachbuilder, Dumfries, having some business to transact at Auchencairn on 15th December 1866, went on the morning of that day by railway to Dalbeattie, where the defender kept an inn and posting establishment, and there procured on hire a dog-cart and driver to convey him from Dalbeattie to Auchencairn, and back from Auchencairn to Dalbeattie, in time for the afternoon train of that day from Dalbeattie to Dumfries: Finds that the driver of the dog-cart on said occasion was Hugh Kerr, a person of fifty-six years of age, of forty years' experience in driving, and regarded by his master, the defender, as a cautious and steady as well as an experienced driver, and the dog-cart was drawn by a quiet steady horse, that had been in the defender's possession for some years: Finds that said pursuer accordingly proceeded to and arrived safely at Auchencairn in said conveyance driven by Kerr, and having transacted his business there, left it on his return journey to Dalbeattie about 4 P.M. in the same conveyance, under the charge of the same driver: Finds that the pursuer and Kerr the driver were quite sober on leaving Auchencairn, and proceeded on their journey at the moderate pace of seven or eight miles an hour till they reached Thornglass, where they were met by a cart heavily loaded with tiles, under the charge of a young man, Thomas Morton, farm-servant at Hazlefield: Finds that in passing each other the two vehicles came into collision, and in consequence thereof the said pursuer was thrown violently out of the

dog-cart and sustained a comminuted fracture of the left elbow joint, which required surgical care and attendance for some weeks, and occasioned permanent injury and disability for work in that arm, as well as serious pecuniary loss and damage to the pursuer in his business, both as a master and as an occasionally operative coach builder: Finds that when said collision occurred the dog-cart was on the north, the proper side of the road, and the driver of the loaded cart was at his horse's head, and leading him: Finds that the pursuer, immediately after the collision, and on the same evening, in conversation with the defender and others regarding the cause of it, represented it as accidental, and exonerated Kerr, the driver of the dog-cart, of any blame: Finds that from said 15th December 1866, when the pursuer received his injury, till 27th April 1867, a period of four months and a-half, he never made any complaint to the defender against the driver Kerr, nor intimated any claim of damages against the defender on account of said collision: Finds it not proved that said collision and the pursuer's consequent injury were occasioned by the negligence, recklessness, incapacity, carelessness, or fault of the said Hugh Kerr, the defender's servant, and the driver of the dog-cart on said occasion: Finds, in point of law, that the grounds of action insisted in by the original pursuer, the deceased Robert M'Call, and now maintained by his brother and executor dative Francis M'Call, have not been established: Therefore sustains the defences, assoilzies the defender from the conclusions of the action, finds the defender entitled to expenses, as the same shall be taxed by the auditor of this Court, to whom remits the account thereof when lodged, and decerns."

The Sheriff-Depute (HECTOR) adhered.

The pursuer appealed.

PATTISON and HALL for him.

MILLAR, Q.C. and SCOTT were not called on.

The Court unanimously dismissed the appeal.

Agent for Pursuer—James Somerville, S.S.C.

Agent for Defender—W. S. Stuart, S.S.C.

Tuesday, March 15.

SPECIAL CASE—HOPE AND OTHERS.

Revocation—Discharge—Annuity—Antenuptial Contract. In an antenuptial contract the intending husband and his father bound themselves jointly and severally to pay to the lady, in the event of her surviving her husband, an annuity of £400; and various provisions were made in return on the lady's part to a considerable amount. In consequence of an arrangement entered into after his father's death, the husband received a conveyance from his mother, as executrix of his father, of certain heritable property, in return for which he and his wife granted a discharge, as stipulated, to his mother of liability for his wife's annuity, and he conveyed certain heritable property to trustees in security of payment of the annuity. Held the husband and wife could not now revoke this discharge.

Special Case—Counsel. Observed, a special case should be signed only by the counsel in it.

By contract of marriage entered into in April 1857 between Mr William Hope and Miss Margaret Jane Cunninghame Graham, with the special

advice and consent of their respective fathers, Mr William Hope and his father bound themselves jointly and severally, and their heirs, executors and successors whomsoever, to make payment to Miss Graham, in the event of her surviving her husband, of an annuity of £400 whilst she remained unmarried. Various other provisions were made by Mr William Hope in behalf of his intended wife. Miss Graham, on her part, made a general conveyance of her whole estate, heritable and moveable, in favour of certain trustees; and her father bound himself to pay to the trustees during his lifetime the sum of £100 yearly, to be applied by them in maintaining a policy on Mr Hope's life for £5000, and that the trustees should receive £5000 at his death. This sum was stated to be his provision for his daughter, and was destined ultimately to her children. By his will he left all his personal estate and effects to his widow, and, by separate deeds, two houses in Moray Place. In December 1858 thereafter a memorandum of arrangement was entered into between Mr William Hope and his mother, as executor to his father, by which, on the narrative of some of the foregoing circumstances, it was stipulated as follows:—

"(1) After payment of all debts and claims against the executry, an annuity of £500 a year to Mrs Hope during her life shall be purchased from the English and Scottish Law Life Insurance Company. The price will be £5000.

"(2) Mrs Hope shall either be effectually discharged of all liability for the contingent annuity payable to Mrs William Hope under her marriage-contract, or sufficient funds or property for securing that annuity shall be set apart and vested in trustees for that purpose.

"(3) Mrs Hope shall retain whatever furniture, plate, wine, books, pictures, and other articles she may desire for her house in Royal Terrace, and shall also retain a sum of £200 to be placed to her credit in bank.

"(4) Mrs Hope will convey to her son the house No. 20 Moray Place, and as soon as the foregoing arrangements are carried out, will pay and make over to him for his own absolute use, but under the express burden of the payment and relief by him of all outstanding obligations or liabilities of the said deceased, the whole remaining funds and property which belonged to his deceased father; but inasmuch as the said deceased gave directions in the year 1854 to pay to his brother William the interest of £980 invested in a debenture of the Caledonian Railway Company, it has been agreed that (the said deceased's brother William having died on 3d October last) the said debenture shall be made over to trustees for behoof of his widow and her children.

"(5) Messrs Hope and Mackay are authorised by Mrs Hope and the said William Hope to get all these arrangements carried into effect as speedily as possible."

In terms of this arrangement Mrs Hope accordingly executed in May 1859 a disposition of the two houses in Moray Place in favour of her son and his heirs and assignees. On 3d June thereafter Mrs William Hope, his wife, with his consent, on the narrative of her marriage-contract provisions, her father's settlement, and this disposition by her mother, granted a discharge to her mother, as executrix of her father, of all liability for this annuity. And on the same day, on the narrative of the foregoing transactions, Mr William Hope conveyed certain heritable property to the marriage-contract

trustees of his wife for various purposes, one of which was the payment of the annuity provided to his wife, if she survived him. This conveyance, the disposition of the houses in Moray Place by Mrs Hope, and the marriage-contract, were duly registered.

In February 1870 Mr William Hope, with his wife's consent, executed a revocation of the trust-disposition granted by him on June 3d 1859. The deed of revocation was ratified by his wife; and the question arose between him and the trustees, whether such revocation could be validly executed.

PATTISON and J. GIBSON for Mr and Mrs Hope.

FRASER and MACKAY for the trustees.

The Court unanimously held that the revocation was invalid. It was purely gratuitous, but was intended to revoke the last of a series of deeds, all of which were highly onerous and closely connected. The security created by the trust-deed was just a *surrogatum* for the security created by the antenuptial contract; and if the former was destroyed, the latter would fall also. Mrs William Hope would thereby have no security for her annuity; and it was settled law that a woman could not, with her husband's consent, *stante matrimonio* discharge a security created under her antenuptial contract.

Agents for Mr and Mrs Hope—T. & R. B. Ranken, W.S.

Agents for Trustees—J. A. Campbell & Lamond, C.S.

Note.—The Court called attention to the impropriety of one counsel signing a special case for another, as a special case is a joint statement, binding both parties, and preventing the introduction of other matter.

HOUSE OF LORDS.

Tuesday, March 15.

TENNENT v. TENNENT'S TRUSTEES.

(*Ante*, v. 514.)

Agreement—Partnership—Fraud—Essential Error—Inadequacy of Consideration—Undue Influence—Trust—Proof—Reduction. G. R., a partner along with his father and brother in a mercantile firm, having incurred considerable debts, signed a deed in 1858, whereby, in respect of payment of these debts by the father, G. R. gave up his interest as a partner. The father retained power to repon G. R. If not reponed, G. R. was to receive a certain sum of money by instalments, and although he was reponed, his brother might dissolve the partnership, paying G. R. a certain other sum. G. R. sued for reduction of the deed of 1858 on the grounds of inadequacy of consideration, undue influence, and false and fraudulent misrepresentation. He also pleaded that he had been reponed; and, alternatively, that the deed of 1858 had never been acted upon. The First Division (*disc.* LORD ARDMILLAN) sustained the defences, and *repelled* the reasons of reduction. On appeal, the House of Lords *affirmed* this decision.

In this case there were two conjoined actions. The pursuer in both was Gilbert Rainy Tennent of Wellpark Brewery, Glasgow, and the defenders were the trustees of the late Hugh Tennent and