Counsel for First Parties—Miller and Watson. Agent—John Walker, W.S.

Counsel for Second Parties—Lord Advocate and Asher. Agents—Morton, Neilson, & Smart, W.S.

Tuesday, October 22.

SECOND DIVISION.

[Lord Mackenzie, Ordinary.

SKINNER *v.* BEVERIDGE.

Assignation—Intimation—Legitim.

A father, with the intention of preventing any claim for *legitim* on the part of his children by his first marriage, assigned the lease of his farm, with cropping, stock, and household furniture, to his son by his second marriage, who, up to that time, had assisted in managing the farm. The assignation was intimated to the factors on the property, who recognised the assignee as tenant, and certain polices of insurance over the farm were transferred to his name. *Held*—in action of reduction of the assignation by a child of the first marriage—that the assignation was an effectual transfer of the father's property.

Thomas Beveridge, farmer at Craighead of Aldie, Kinross-shire, by assignation, executed on 6th March 1868, conveyed to his son, the defender, his lease of the farm, with the whole crop, stocking, household furniture, and other effects on the farm, being his whole means, estate, and effects, under burden of maintaining his father and mother and three unmarried sisters in a manner suitable to their station; also of paying certain legacies, among which were legacies of £1 each to the children of his first marriage, payable at the first term of Whitsunday or Martinmas after his death. The assignation was delivered to the defender on 23d March 1868. Thomas Beveridge, who was twice married, died on 8th June 1869, survived by four children of his first marriage, and by his second wife and nine children, the eldest of whom was defender in this action.

The assignation was verbally intimated to the factor on the property at Lammas 1868, and by letter to a new factor in April 1869, and they recognised the defender as tenant.

The present action was brought by James Skinner, who married Isabel Beveridge, a daughter of the first marriage, and concluded for reduction of the assignation, as being gratuitous, and neither absolute or irrevocable, and also executed for the purpose of disappointing the claim of *legitim* of the children of the first marriage.

The Lord Ordinary, after proof, pronounced the following interlocutor and note:—

"*Edinburgh, 2d April* 1872.—The Lord Ordinary having heard the counsel for the parties, and considered the closed record, proof, and process, assoilzies the defender from the conclusions of the summons, finds no expenses due, and decerns.

"*Note.*—The assignation sought to be reduced is an absolute and irrevocable deed. By that deed the deceased Thomas Beveridge conveyed to his son, the defender, his lease for nineteen years after Martinmas 1863 of the farm of Craighead of Aldie, which had been granted to him with right of succession to his said son, together with the whole crop, stocking, implements of husbandry, household furniture, and other effects on the farm, being his whole means, estate, and effects, under burden of the provisions therein mentioned. The deed was executed on 6th March 1868, and it is proved that it was delivered to the defender on 23d March 1868. It is also proved that the defender thereupon, and in virtue thereof, entered into possession of the farm, and of the whole subjects thereby conveyed, and thereafter held and managed the same as his own property. In particular, it is proved that the defender paid for the seeds and manures required for the farm, and the other farm expenses, sold the wool and other produce of the farm, paid the rents to the landlord falling due thereafter, and was recognised by the two successive factors of the landlord as tenant under the lease. The three policies of insurance on the farm buildings, stock, implements, and furniture, were, by docquet written on each of them, dated 19th August 1868, declared to be vested in the defender, and not in his father, and were delivered to him. The defender also engaged the farm servants; took out in his own name and paid for the licenses for the farm dogs; changed the bruist or mark of the sheep on the farm on the earliest occasion that this could be done after his entry, namely, at the clipping-time in June 1868; and, in short, carried on the farm as sole lessee thereof, and as absolute owner of the whole stock and plenishing thereon. It is proved also that although his father continued to reside in the farm-house with him, he did not interfere in the management of the farm, but recognised the defender as the sole farmer and as the head of the house, and told the neighbours that he had nothing to do with the farm, having given everything over to the defender.

"There can be no doubt that the said assignation was prepared on the instructions of Thomas Beveridge, and was executed by him, and delivered to the defender, for the express purpose of preventing any claim for *legitim* on the part of the pursuer, Mrs Skinner, and her sister and two brothers, the surviving children of Thomas Beveridge by his first marriage. But that will not vitiate the deed if it was executed *in liege poustie*, and if Thomas Beveridge was thereby divested of his property. The Lord Ordinary considers that Thomas Beveridge was completely divested by that assignation of all right of property in the lease, and farm, stock, plenishing, and furniture thereby conveyed, and that the same became the absolute and exclusive property of the defender from and after 23d March 1868. No doubt the defender was taken bound by the assignation to maintain his father and mother and three unmarried sisters in a manner suitable to their station, to receive and entertain such friends of his father and mother as might visit them, and to furnish his father and mother with a conveyance free of charge to such places as they might require. But that was merely an obligation undertaken by the son as a burden or condition imposed by the assignation, and no right in the lease or effects assigned was thereby reserved to or constituted in favour of the father. That obligation has not the force or effect of a reservation of his liferent by the father, supposing that the subjects assigned had been of such a nature as to be validly assigned under such a reservation. Now it has been decided that a reservation of a right of liferent in bank stock and bonds for borrowed money, conveyed by an *inter vivos* conveyance, will not prevent the deed from taking full effect, and excluding the claim to *legitim; Agnew*, Feb. 28, 1775, Dict. 8210. The Lord Ordinary is

aware of and has carefully considered the remarks on this case by Lord Eldin and Lord Rosslyn, in the subsequent case of *Lashley* v. *Hog*, May 14, 1800, Dict. *v.* 'Legitim,' No. 2, and 1804, 4 Pat. App. 581. But in the recent case of *Collie* v. *Pirie's Trs.*, Jan. 22, 1851, 13 D. 506, in which the grounds of judgment in the House of Lords in the case of *Lashley* v. *Hog* were considered, the reservation of a right of liferent was again held ineffectual to prevent the operation of a duly delivered and irrevocable *inter vivos* deed in excluding the *legitim*. The obligation in the assignation to maintain the father and his wife and unmarried daughters cannot therefore have such an effect. The obligation also to make payment to the wife and children of Thomas Beveridge, at the periods stated after his decease, of the sums specified in the assignation, cannot, it is thought, prevent that deed from excluding the claim to *legitim*. In the case of *Agnew*, the conveyance was burdened with payment of the granter's debts, of an annuity of £90 after his death to his youngest daughter, and of two sums to his daughter and granddaughter.

"The Lord Ordinary is of opinion that the pursuers have failed to establish any good or sufficient grounds on which the assignation in favour of the defender can be challenged as *in fraudem* of their claim to *legitim*. That deed is *inter vivos* absolute and irrevocable. It was duly delivered to the defender, and he thereupon entered upon possession of the whole subjects and effects thereby conveyed, and thereafter possessed, managed, and dealt with the same as his sole and exclusive property. His father was validly and completely divested of these subjects and effects, they ceased to be his property, and they formed no part of his moveable estate at his death, but were the sole and exclusive property of the defender. Therefore the pursuers have no right to *legitim* out of these effects, and the defender is entitled to be assoilzied from the conclusions of the summons.

"The Lord Ordinary considers that, in the peculiar circumstances of this case, the pursuers should not be found liable in expenses."

The pursuer reclaimed.

Argued for the reclaimer, that the assignation was neither absolute nor irrevocable; that it was gratuitous, and under the pretence of being an absolute *de præsenti* conveyance, was nothing else than a deed to regulate the division of the defender's means and estate at his death; and, having been thus executed in fraud of his children's right of *legitim*, and not having been intimated or published, it was reducible at their instance.

Cases cited—*Newlson* v. *Hunter*, 3 D. 675; *Milroy*, Hume, 285; *Nicolson*, 2 Jurist. 415; *Collie* v. *Pirie's Trs.*, 13 D. 506; *Craig*, Hume, 282; *Cobbett* v. *Brock*, 5 W. and S. 476; *Roberts* v. *Wallace*, 5 D. 6.

At advising—

Lord Cowan—I agree with the Lord Ordinary, on the ground that there was a complete divestiture by the assignation, so that Beveridge really had no succession from which *legitim* could have been claimed. It is clearly proved the assignation was intimated to the landlord's factors, and acted on by them.

Lord Benholme—I concur, although I do not agree with the Lord Ordinary that the possession was by virtue of the assignation, as the son was on the farm and managed it before that date. The receipt for the rent was admitted to be in name of the old tenant, but so short a time elapsed between the assignation and death of the father that the payments may have effeired to his possession.

Lord Neaves—I concur. I think there was here a concluded transfer by a regular deed *bona fide* carried out.

Lord Justice-Clerk—I concur.

The Court adhered, and found no expenses due.

Counsel for Reclaimer—J. Buntine. Agent—T. Lawson, S.S.C.

Counsel for Respondents—Lancaster and Solicitor-General (Clark). Agents—H. & A. Inglis, W.S.

REGISTRATION COURT.

[Midlothian.

Monday, October 21.

SANDILANDS *v.* HOME.

County Franchise—Valuation Roll.

Certain subjects entered by A on the Valuation Roll of 1871-72, as of the value of £12, appeared in the roll of 1872-73 as of the value of £16. The Assessor for the county stated that the true value for 1871-72 was £14. *Held* that A was not entitled to be entered on the roll of voters.

The Sheriff (A. Davidson) stated the following Special Case:—

"At a Registration Court for the county of Edinburgh, held at Edinburgh on the 10th day of October 1872, Walter Sandilands, joiner, Inveresk, claimed to be enrolled on the Register of Voters for the said county, as 'Tenant, Moffat Park Cottage, Inveresk.'

"John Home, W.S., Merchiston House, a voter on the roll, objected to the claim, that the value of the subjects on which the said Walter Sandilands claims to be enrolled have not been, during the twelve calendar months immediately preceding the 31st July 1872, of the annual value of £14, as appearing on the valuation roll of the county.

"The facts are—That the annual value of the subjects, as appearing on the valuation roll for 1872-73, is £16; that the annual value, as appearing on the valuation roll for 1871-72, is £12; and that the claimant returned the said sum of £12 as the value for the valuation roll of 1871-72. The Assessor stated that the value for 1871-72 was truly £14, and that it should have been so stated in the valuation roll of that year.

"The question of law is—Has the claimant been tenant of subjects of the annual value of £14 for twelve months previous to 31st July 1872, as appearing on the valuation roll of the county.

"The decision of the Sheriff was—That he has not, and his claim was rejected.

"Whereupon the said Walter Sandilands required the Sheriff to prepare a Special Case, which is hereby done accordingly."

Cases cited—*M'Gaw*, Dec. 19, 1868, 7 Macph. 327; *Brown*, 8 Macph. p. 8; *Alexander* v. *Thomson*, Nov. 1868., 7 Macph. 325.

Lord Benholme—I am for affirming the decision of the Sheriff. It is a safe rule not to allow the valuation roll to be impeached by the Assessor in this way.