the handle himself. Now as to this, it is not, in the first place, to be denied that the pursuer when he entered the train was to a certain extent under the influence of liquor; but it is not proved that he was in such a condition as not to know perfectly well what he was doing, and it is proved that his conduct in the carriage was in no way offensive. The pursuer himself says, 'I was quite capable at the time, but might have felt the drink in my head. . . . I was not the worse of liquor at all. My head might have been a little light with drink.' His fellow passenger, Agnes M'Kechnie, says, 'He had been drinking, but seemed able to take care of himself;' and another passenger, Mrs Janet M'Lean or Clelland, says, 'He had got a glass of spirits, but nobody would have thought there was anything wrong with him, either in talking or walking.' The account which the pursuer gives of what occurred in the carriage immediately before the accident happened is corroborated by other witnesses, so that his recollection must have been pretty correct. What he swears is, that no one entered or left the compartment at Cowlairs; that after passing Bishopbriggs he rose to look out at the window and lit a match, but it went out, and immediately afterwards he lit another, and lighted his pipe with it; that he then went with the pipe in his mouth to look out at the window; that he had his elbow on the ledge of the door, and was going to look out, but that before he got out his head the door opened and he fell out; that the door had not been opened by any one before that, and that neither he nor any one inside the compartment had touched the handle of the door. Various persons who were in the same compartment confirm this. James O'Hara, moulder, says, 'No one that I saw touched the handle of the door on the right side. I must have seen if any one did so.' He then describes, as the pursuer does, how the latter went twice to the window and leant his arm on it; and adds, 'The next thing I saw was the door opening and him falling out. I was observing him all the time. I must have seen if he had leant his hands out of the space above the door.' He farther states, what seems important, 'I account for the door opening the second time and not the first, from the train having been going at full speed when it opened, and so the carriage was not smooth at the time. When pursuer first leant out it was not going so fast.' Peter Connolly says, 'As the pursuer was putting his head out of the window I saw the door fly open and him fall out. He did not put his hands outside so far as I saw. He could not have done so without my seeing him at the time. He had not time to lean heavily against the door before it flew open.' Mrs Clelland swears—'The door flew open immediately on the pursuer going to it, and from his body going against it. It seemed all right before that.' Miss Agnes M'Kechnie, one of the defenders' witnesses, says,—'The pursuer put his head on the door, but did not look out of it. The door thereupon gave way. Pursuer did not threaten to leave the carriage before he fell out.' Finally, Mary Donelly, another witness for the defenders, says,—'Pursuer when he looked out was able to stand without any support. I thought him able to take care of himself. He was quiet in the train. There was no quarrelling. . . . I did not see his hands outside the door. I think I would have observed if his hands had been outside. I did not see any one touch the door handle from leaving Glasgow till the accident.' There is not one particle of evidence contradictory of all this, which not only does not support, but goes directly to subvert, the theory that the opening of the door was an act of the pursuer's own. The simple fact, therefore remains, that through the negligence of some one for whom the defenders are responsible there was an unsecured door, through which, on its unexpectedly opening, the pursuer fell and got himself maimed for life, and there is nothing to show that he was contributory in any way to this misfortune, or that the defenders are entitled to be relieved on any other ground from the liability resulting from sending a passenger carriage in an unsafe condition along their line."

The defenders appealed to the Court of Session.

At advising—

LORD PRESIDENT—I think the Sheriff-Principal is right in the view he takes of the proof, and that the accident did occur from negligence on the part of the Railway company. The door was not locked when the accident happened, and I think it is proved that it had never been fastened, and that no one in the carriage had opened it.

The other Judges concurred.

The Court adhered.

Counsel for Pursuer — Lang and Macdonald. Agents—Hill, Reid, & Drummond, W.S.

Counsel for Defenders—Balfour and Solicitor-General (Clark). Agents—

Saturday January 25.

FIRST DIVISION.

[Sheriff of Dumfries.

DONALDSON *v.* DONALDSON'S CREDITORS.

Husband and Wife—Revocation—Cessio bonorum.

> In a petition for *cessio bonorum*, where a husband had granted a conveyance of certain subjects to his wife.—*Held* that his declining to revoke the conveyance as a condition of obtaining his *cessio* is not a sufficient reason for refusing it.

This was an appeal from the Sheriff-court of Dumfries-shire in an application by Robert Donaldson, joiner, Lockerbie, for the benefit of *Cessio Bonorum*.

A state of affairs under the statute was made by the petitioner and signed by him on 11th October 1872, in a note to which he stated that his wife was proprietrix of a house in Lockerbie presently occupied by him. This property was purchased at the price of £200 from the Lockerbie Building Society in or about the year 1867. When the purchase was effected only £50 of the purchase money was paid, a bond being then granted to the society for the remaining £150. The portion of the purchase-money actually paid was advanced by the petitioner's wife and daughter, who had saved that sum in keeping lodgers in the house, and it was intended that on this account the conveyance should be taken in name of his wife. By an oversight, however, this was not done, but it was taken to the petitioner, and the property remained in the petitioner's name down till March 1871, when, in conformity with the original ar-

rangement, he conveyed it to his wife, still subject to the bond for £150. At and prior to the date of the conveyance to his wife, the petitioner was not only solvent, but was more than able to meet his liabilities.

The petitioner was examined in the process of *cessio* on 18th October 1872, and in the course of his examination refused to sign a deed of revocation of the disposition conveying the above mentioned property to his wife. In consequence of this refusal Messrs Thomson & Co., creditors on his estate, objected to the granting of the *cessio*.

The petitioner answered that this was not an objection that fell to be considered under the statute, and further that the pursuer was not bound to sign such a deed.

On the 31st October 1872, the Sheriff-Substitute (HOPE) pronounced the following interlocutor:—"Having considered the examination of the pursuer on oath, the pursuer's state of affairs, the note of objections for the opposing creditors, and answers thereto, and whole process, and debate thereon—Refuses to grant the petitioner the benefit of the process of *cessio bonorum in hoc statu*, for the reasons stated in the subjoined note.

"*Note.*—The ground of objection to the granting of this application is one which falls to be disposed of according to the discretion of the Court. The Sheriff-Substitute has carefully considered the decisions in analogous cases, and all that was advanced for the pursuer against their applicability; and, on the whole, he thinks that the pursuer ought to revoke the conveyance to his wife before obtaining a decree in his favour. He can do so if he likes, but he will not. His motive may be a praiseworthy one as regards his wife, but the Sheriff-Substitute thinks that the creditors are entitled to some of his consideration too. The explanation of the transaction given in the state of affairs is not very satisfactory, and the circumstances are not free from suspicion, but the Sheriff-Substitute does not think it necessary to order further inquiry, as the objection is not based upon any alleged intention to defraud."

The petitioner appealed by reclaiming petition, and after answers the Sheriff (NAPIER), on 16th December 1872, pronounced the following interlocutor:—Finds, first, *in point of fact*, that it neither appears from anything in the process before the Sheriff, nor is it alleged by any of the opposing creditors as a reason for refusing this petition for the benefit of *cessio bonorum*, that the pursuer of it is *in mala fide* in any respect as regards the state of his affairs or the management of his funds: Therefore, under the whole circumstances of the case, finds, *in point of law and equity*, that the pursuer's declining to revoke the conveyance in question to his wife as a condition precedent to obtaining his *cessio*, is not a sufficient reason for refusing it: Therefore recalls the interlocutor appealed against: Finds the pursuer entitled to the benefit of the process of *cessio bonorum*; and with these findings in fact and law, remits the case back to the Sheriff-Substitute to proceed accordingly."

In pursuance of this interlocutor the Sheriff-Substitute, on 30th December 1872, granted the benefit of the process of *cessio bonorum* to the pursuer.

The creditors (objectors) appealed to the First Division of the Court of Session, and argued that although a husband may give his wife a reasonable provision, he is not entitled to dispone to her a property for her benefit—the fortunes of a wife must follow those of her husband.

Authorities relied on—I. L. R., Scotch Appeals, 109; *Rust* v. *Smith*, 3 Macpherson, 378; *Dunlop*, 3 Macpherson, 758; Ersk. Inst., 1, 6, 30.

At advising—

LORD PRESIDENT—I think the Sheriff is right. The peculiarity of the case is that there is no suggestion of fraud or improper conduct on the part of the pursuer of the *cessio*. He seems to have made a full disclosure of his affairs. The only objection is that he has conveyed a house to his wife. Now the value of the house, after deducting the debt to the Building Society, is only £50. The disposition of the house was intended as a provision for the wife, and if the pursuer was solvent at the time was the performance of a natural obligation. The objection stated by the creditor is not that the disposition was granted after bankruptcy, or in contemplation of bankruptcy, but that the pursuer refused to execute a revocation of the disposition. It is doubtful if he could revoke. If it is revocable, sequestration will operate a revocation, and if not revocable, the creditor is not entitled to call upon him to execute a deed of revocation as a condition of obtaining liberation.

The other Judges concurred, and the Court accordingly pronounced the following interlocutor:—

"Adhere to the interlocutors reclaimed against, and refuse the reclaiming note: Find the reclaimers liable in Five Guineas as the modified expenses of process incurred by the respondent in this Court, and decern for that sum; *quoad ultra*, remit to the Sheriff."

Counsel for Appellants—R. Johnstone. Agents—J. C. & A. Steuart, W.S.

Counsel for Respondents—H. Smith. Agent—John Whitehead, S.S.C.

Thursday, January 30.

FIRST DIVISION.

SPECIAL CASE—EDMONDS.

Testamentary Writing — Heritable and Moveable—Titles to Land Consolidation (Scotland) Act 1868, § 20—*Intention.*

A bequest of "property, either in money bonds, debts, business, and other effects whatsoever,"—*held* not to be effectual to convey heritage in terms of the Titles to Land Act 1868.

The late Thomas Edmund, hotel-keeper, Balfron, died on April 1, 1872, leaving a widow, the party of the first part, but no children. The party of the second part is his uncle and heir-at-law. After his death there was found in the said deceased Thomas Edmond's repositories a sheet of paper containing certain writings by him of a testamentary nature. The said writings were three in number, and were all holograph of and signed by the deceased. Each of said writings was also subscribed by two witnesses. The third of them alone bore any date, and parties admit that it was executed of the dat