I quite agree with Lord Young that where the work requires skill for its performance the workman is entitled to protection. Here, however, the work was of the plainest description, and the workman was to blame in not using his own eyesight.

Lord Rutherfurd Clark concurred.

The Court sustained the plea that the action was not relevant, and dismissed the action.

Counsel for Pursuer—Wilson. Agents—Macpherson & Mackay, W.S.

Counsel for Defenders—Sym. Agents—Cuthbert & Marchbank, S.S.C.

Tuesday, January 25.

OUTER HOUSE.

[Lord Trayner.

REID *v.* REID AND OTHERS.

Jurisdiction—Curator bonis—*Appointment in Respect of Moveable Property in Scotland.*

A man who was in business in England, and the bulk of whose estate was heritable, and situated in England, came to Scotland for a temporary purpose, and while in Scotland became insane and was committed to an asylum. In a petition by his wife to have a *curator bonis* appointed to him, the Lord Ordinary appointed a *curator bonis*, but made the appointment only *ad interim*, in order that proceedings might be taken, if deemed advisable, to have his estates put under management in England.

Mrs Caroline Jane Rodhouse or Reid, 22 Nile Grove, Edinburgh, presented this petition for the appointment of a *curator bonis* to her husband George Reid. She averred—"The said George Reid, who was sometime a land-agent, and resided at Einhallow, Addiscombe, Croydon, London, has for some time past had his only residence and domicile in Edinburgh, and latterly resided at No. 5 West Maitland Street there. He was on the 31st day of December last 1886 committed to the Royal Asylum, Morningside, Edinburgh, under warrant granted by the Sheriff of the Lothians and Peebles, and he still remains there."

She further averred that in consequence of mental derangement Mr Reid was incapable of managing or of giving directions for the management of his affairs, and produced medical certificates to that effect. The amount of the said George Reid's estate was not definitely known to the petitioner, but she averred that he possessed personal estate of considerable value in addition to landed property in England, and that his whole estate amounted to several thousands of pounds. There were five children of the marriage, the eldest of whom was fourteen years of age, and in these circumstances the petitioner craved the appointment of a *curator bonis* to her husband.

Answers were lodged for Mr Reid, and also for Charles Frederic Cameron, London, his attorney, Mrs Eleanor Reid or Richardson, his sister, and for Miss Lena Reid and Miss Mary Reid, his daughters.

The respondents admitted that Mr Reid was a native of Scotland, but averred that for many years he had been in business in London; that almost the whole of his estate consisted of real property and building ground acquired by him at various times in the immediate neighbourhood of London; that shortly after coming to Edinburgh, which he did in order to see his children who were at school there, about seven months before the petition was presented, Mr Reid executed a power of attorney in favour of the respondent Charles Frederic Cameron, solicitor, of Gresham House, City, London, for the management of his property in England in the districts above referred to; that Mr Reid's real estate consisted of sixteen freehold houses with rents varying from £25 to £65 a-year, and of six leasehold houses, one of which was leased at £145 a-year, and the rest worth about £25 to £30 a-year, together with sundry pieces of building land in Woolwich and elsewhere in the neighbourhood of London; that his personal property consisted of a few shares in English and foreign companies of purely nominal value, and of cash in bank; that the freehold and leasehold property was heavily mortgaged, and it was of such a nature that though there was a considerable surplus rent available for the maintenance of Mr Reid and his family, great care and attention was required to keep the subjects fully let and in good repair, and as the selling value did not in any way correspond with the rental, any hostile action by the mortgagees by way of foreclosure would lead to results most disastrous to the estate. Further, that Mr Reid had in England certain disputed claims both by and against him, involving from £1200 to £1500, which would require much skill and care for their settlement; and that he had no property whatever in Scotland other than money either in cash or in uncashed bank drafts left in care of a friend. "In these circumstances application is in course of being made in England for the appointment of a Committee in Lunacy of Mr Reid's estate, and the appointment of a *curator bonis* in Scotland even if competent would greatly embarrass its proper management, and would be inexpedient and inconvenient."

The following authorities were quoted for the petitioner—*Dalrymple* v. *Ranken*, January 25, 1836, 14 S. 1011; *E. of Buchan* v. *Harvey*, December 21, 1839, 2 D. 275; *Murray* v. *Baillie*, February 24, 1849, 11 D. 710; *Bonar*, November 12, 1851, 14 D. 10; *Hay and Others*, July 16, 1861, 23 D. 1291; *Sawyer* v. *Sloan*, December 17, 1875, 3 R. 271. Inquiry was competent in petition for curator although opposed by lunatic—*Bryce* v. *Graham*, January 25, 1858, 6 S. 425; *Macfarlane*, November 12, 1847, 10 D. 38; *Irving* v. *Swan*, November 7, 1868, 7 Macph. 86; *Yule*, November 29, 1861, 19 S.L.R. 140. In regard to English lunacy proceedings—Elmer on Lunacy Practice, pp. 5, 11, 17, 20; Lunacy Regulation Acts of 1853 and 1862, 16 and 17 Vict. c. 70, sec. 45, and 25 and 26 Vict. c. 86. A Scotch appointment of *curator bonis* can be recorded in England and have the effect of an inquisition there—*in re Talbot*, 1882, 20 Chan. Div. 272, *per* Jessel, M.R.; *in re Bruere*, 17 Chan. Div. 775.

The Lord Ordinary appointed a *curator bonis ad interim.*

"*Opinion.*—If Mr Reid had heritable estate in

Scotland or had his domicile there I would have no difficulty in making the appointment craved. But he has no heritable property in Scotland, and whether his domicile is in England or Scotland will depend upon circumstances requiring investigation. Mr Reid has, however, some moveable estate in Scotland, and is confessedly unfit to manage his own affairs. His incapacity, if it did not commence in Scotland, at least developed itself there to such an extent as to require him to be placed in confinement. His affairs require in the interests of all concerned to be attended to, and he has no guardian or anyone with an unquestioned title to do so. In these circumstances it appears to me that the Court, within whose jurisdiction the necessity has arisen for the appointment of such a guardian, should make such an appointment, and I will accordingly do so. But the statement in the answers certainly indicates that the appointment might best be made where the bulk of the ward's estate is situated. I therefore make the present appointment in the first instance only *ad interim*, so that the respondents may not be embarrassed by the appointment I make in any proceedings they may be advised to take in England."

Counsel for Petitioner—D.-F. Mackintosh, Q.C.—M'Lennan. Agents—Liddle & Lawson, S.S.C.

Counsel for Respondents — H. Johnston. Agents—Davidson & Syme, W.S.

Wednesday, January 26.

FIRST DIVISION.

KNOX AND ANOTHER *v.* KNOX'S TRUSTEES.

Husband and Wife—Antenuptial Marriage-Contract—Testamentary Deed—Vesting.

By antenuptial marriage-contract the intending spouses mutually conveyed "to and in favour of each other, and the longest liver of them two in liferent, for their respective liferent use allenarly, and to their child or children to be procreated of the said intended marriage . . . whom failing to the heirs or assignees whomsoever of the said two spouses equally, at the decease of the longest liver of them in fee," the whole estate, heritable and moveable, "belonging" or "which shall belong to them respectively at the time of the dissolution of the marriage by the decease of either" of them. The husband died leaving a settlement, by which he conferred on his wife a liferent of his whole estate, and directed that on her death his estate should be realised and divided equally among his children who should then be alive. Some years after his death, there being then only one child alive, the widow desired to renounce her liferent, and that the child should receive the capital of the estate. *Held* that the marriage-contract was the ruling deed, and the effect of it was that the fee of the husband's estate vested in the children, at latest, at the dissolution of the marriage, and that the widow could renounce her liferent, and the child, in whom the estate had vested, receive payment of the capital from the trustees.

By antenuptial contract dated 4th December 1855 Andrew Knox and Betsy Meall, intending spouses, did "mutually give, grant, assign, and dispone to and in favour of each other, and the longest liver of them two in liferent, for their respective liferent use allenarly, and to the child or children to be procreated of the said intended marriage (in such proportions, and under such conditions, limitations, and restrictions as may afterwards be determined and fixed by a writing executed by the said spouses during their joint lives, with consent of one another, or by the survivor of them, and failing such writing, then to the child or children, and the survivors and survivor of them, and the lawful issue of such of them as may predecease leaving issue, such issue being entitled to the share that would have fallen and belonged to their respective parents severally had they been alive, equally among them, share and share alike), whom failing to the heirs or assignees whomsoever of the said two spouses, equally, at the decease of the longest liver of them, in fee, all and sundry the heritable and moveable estate, of whatever nature or denomination the same may be, now belonging to them respectively, or which may be acquired and shall belong to them respectively at the time of the dissolution of the marriage by the decease of either of the said Andrew Knox and Betsy Meall."

Mr Knox also bound himself to insure his life for £500 in favour of trustees for his intended wife's behoof. Mrs Knox accepted these provisions in full satisfaction of her legal rights. It was further agreed that these provisions should be without prejudice to Mr Knox "augmenting" the provision in favour of his intended wife "in every way and to every extent" he might think proper.

By trust-disposition and settlement dated 15th April 1871 Mr Knox conveyed to trustees his whole means, heritable and moveable. By the second purpose thereof Mr Knox directed payment to Mrs Knox of the free yearly revenue of the trust-estate, and allowed her the liferent use of his furniture, at the same time binding her to educate and maintain the children of the marriage. By the sixth purpose he directed his trustees on the death of his wife "to realise my whole trust-estate, and to pay, divide, and distribute the same equally among my children who shall then be alive, and the lawful issue of such as may have predeceased leaving issue" . . . "which provisions before conceived in favour of my said wife are hereby declared to be, and shall be accepted of by her, in full satisfaction and in lieu of her provisions under the contract of marriage entered into between us, excepting the proceeds of a policy of assurance by the Standard Life Assurance Company for five hundred pounds on my life, which I effected for her behoof, in terms of an obligation in said contract, and which policy is taken to certain parties in trust for her; which provisions before conceived in favour of my said children shall be accepted of by them, and the same are hereby declared to be, in full of all legitim, portion natural, bairns' part of gear, executry or others whatsoever, which they or any of them can ask or demand through my decease."