fender. I have only to add, that if I could have taken a different view of the law I should have had no hesitation upon the facts as now admitted in giving decree in terms of the conclusions of the summons. Moreover, the matter of expenses being in the discretion of the Court, I shall in this case find no expenses due to or by either party."

Counsel for the Pursuer—Shaw. Agents—Curror, Cowper, & Curror, W.S.

Counsel for the Defender—Graham Stewart. Agents—Whigham & Cowan, S.S.C.

Monday, March 31.

OUTER HOUSE.

[Lord Kincairney.

WILSON (MACBEAN'S *CURATOR BONIS*), APPLICANT.

Judicial Factor—Curator Bonis to Person Incapax—Payment of Heritable Debt out of Moveable Estate—Special Powers—Power to Take Assignation to Heritable Bonds—Extinction of Debt confusione—Effect on Succession.

The estate of a person suffering from incapacity, to whom a *curator bonis* had been appointed, consisted partly of heritage which was burdened by bonds and dispositions in security granted by the ward to the extent of £14,600, and bearing interest at about 4½ per cent. The *curator bonis* having in his hands about £12,000 for which he found it difficult to get a suitable investment even at a low rate of interest, was desirous to apply that sum in extinction of the bonds, and presented a note in the Bill Chamber for authority to take assignations to the bonds in his own name as *curator bonis*, the assignations to contain a clause bearing expressly that the money had been paid for the protection of the heritage, and not with the intention of discharging the debt, and that the payment was not in any way to alter the order of succession. The Lord Ordinary being satisfied that the payment would be for the benefit of the estate, *granted* authority.

Opinion that the transaction would not extinguish the bonds or alter the order of succession if it sufficiently appeared in the assignations that it was not intended that there should be such extinction or that the character of the funds should be altered,

On 6th November 1889 John Wilson, chartered accountant, Glasgow, *curator bonis* to Hugh MacBean, sometime paint manufacturer and merchant in Glasgow, a person suffering from incapacity, presented a note to the Accountant of Court setting forth that the estate consisted partly of certain heritable properties which were burdened by bonds and dispositions in security granted by the ward to the extent of £14,600, the average rate of interest payable upon that sum being £4, 8s. 5d. per cent. At the appointment of the curator in 1883 the properties were valued at £22,053. There was no arrangement with any of the creditors for the bonds being continued for a fixed period. The note further stated—"In these circumstances it appears to the *curator bonis* that it would be for the interest of the curatorial estate that the foresaid bonds should be taken up by the funds on hand. He has at present about £6000 in bank, and on 6th January next he will have a further sum of £6000. He finds it most difficult to get a suitable investment for any of the funds even at a low rate of interest. To avoid the risk of altering the order of succession to the ward's estate, the *curator bonis* would propose to take an assignation to the said bonds, either in his own name as *curator bonis*, or, if approved of, in name of a third party as trustee, and which assignation would contain a clause bearing expressly that the money had been paid for the protection of the heritage, and not with the intention of discharging the debt, and that the payment was not in any way to alter the order of succession."

The Accountant of Court on 25th November 1889 issued the following opinion—"The curator desires power to pay off debt affecting the heritage belonging to his ward, and that out of moveable estate.

"The ward is proprietor of certain heritable property in Glasgow, burdened with debt amounting to £14,600, the average rate of interest payable for which is £4, 8s. 5d. per cent.

"The curator reports that at present he has in bank a sum of £6000 or thereabouts, and that at 1st January next he will have an additional sum of about the same amount. At present it is difficult, if not almost impossible, to obtain investments properly secured to yield the rate of interest the curator is paying upon the debt affecting the heritage. The Accountant has therefore no hesitation in expressing his opinion that it would be greatly in the interest of the estate, if it can competently be done, that powers be granted to take up the bonds affecting the heritage by applying the moveable funds at the curator's disposal towards payment.

"The Accountant, while expressing this opinion, has to point out that the bonds taken over might be extinguished *confusione*, and thus the succession of the ward's estate *quoad* heritage and moveables altered. Reference is made to the case of *Moncrieff* v. *Milne, &c.*, 18 D. 1286, where it was held that money borrowed on the security of an heritable estate under the Court for temporary convenience did not affect the succession by converting moveable debts into heritable, and that therefore the heir in heritage was entitled to relief of the burden on the heritage out of the executry funds.

"The circumstances of the present case are not, however, precisely similar to those

in the case on which that decision was pronounced. It is for consideration of the Court whether the powers now applied for should be granted, and if so, in what form the transaction should be carried out so as to preserve intact the existing or contingent rights of parties in the eventual succession to heritable and moveable estate."

On 29th November 1889 the *curator bonis* presented a note in the Bill Chamber for authority to take assignation to the bonds and dispositions in security in such form as should be approved.

The Lord Ordinary (KINCAIRNEY) on 19th December 1889 remitted "to Mr J. P. Wright, W.S., to inquire into the circumstances set forth in the petition, and whether if the prayer of the petition be granted the draft assignation when executed would sufficiently protect the rights or contingent rights of parties in the eventual succession to the ward's estates, and to report."

Mr Wright's report was as follows, viz.—"In obedience to your Lordship's interlocutor, of which a copy is prefixed, the reporter has inquired into the circumstances set forth in the petition, and now begs to report to your Lordship as follows:—

"The facts are correctly set forth in the note lodged by the applicant and the appendix thereto. The curatory estate is burdened with heritable debt under bonds granted by the ward before the curatory began to the amount of £14,600, bearing interest at an average rate of £4, 8s. 5d. per cent. The curator has in hand £12,000, consisting of accumulations of income, for which he is unable to obtain such a high rate of interest as that paid on the heritable debt. He proposes to apply the £12,000 in reduction of the latter, which would save the estate about £200 per annum in the difference of interest. The reporter concurs with the Accountant of Court and the applicant that the advantage of this to the estate during the ward's life, and so far as the ward is concerned, is clear. A difficulty arises, however, with regard to the possible effect upon the succession to the ward's estate after his death. If the £12,000 were applied in reduction of the heritable debt the ward's moveable estate would be to that extent diminished, while the heritage, having been correspondingly freed from the debt, would be thereby increased in value. Whether that would or would not affect the rights of the heirs *in mobilibus* and in heritage respectively, and the fund out of which legitim or *jus relictæ* might be claimed, seeing that the change would arise from the act of a *curator bonis* and not with the will or intention of the ward, is a question which requires to be kept in view, and the applicant desires the authority of the Court before making the change.

"It seems to be settled as a general rule that no voluntary act of a *curator bonis* can alter the order of his ward's succession—*Kennedy or Hannay* v. *Kennedy*, November 15, 1843, 6 D. 40; *Moncrieff* v. *Milne*, July 16, 1856, 18 D. 1286; *Ross* v. *Ross*, 1793, M. 5545; *Advocate-General* v. *Anstruther*, December 23, 1850, 13 D. 450.

"Some cases, however, seem to indicate that in certain circumstances moveable funds may be made heritable—see *Reid* v. *Berkley*, M. 16,312; *Sharp* v. *Crichton*, M. 1628; see also remarks in Fraser on Guardian and Ward (2nd ed.), page 265, as to possibility of applying the rule too literally.

"In considering whether this general rule will be applicable to the act proposed by the curator in the present case, it is necessary to examine his proposal and the mode of carrying it out in connection with the opinions of the Court in other cases.

"In the note the applicant suggests that on paying off the heritable debt he should take an assignation thereof either in name of himself as *curator bonis* or in name of a third party as trustee. In the prayer, however, he craves authority to take an assignation or assignations in the form of a draft produced. The form produced proceeds on the narrative that the money has been paid by the curator out of the moveable estate in his hands, and the destination is to Hugh MacBean (the ward), his executors and assignees whomsoever, subject to the following declarations, viz., (First) That this assignation shall in no wise operate as an extinction of the said debt or a discharge of said security which are to be held as subsisting in any question affecting the said Hugh MacBean or the succession to his estates, and (Second) That the foresaid payment and the assignation hereby made in conformity with the said interlocutor shall not prejudice or affect the rights of the parties who would have been entitled to the said sum on the death of the said Hugh MacBean if this assignation had not been taken. But reserving always to all parties concerned all pleas and claims affecting the right to the said sum which may hereafter arise in the event of the present assignation being at any future time validly consented to or adopted by the said Hugh MacBean.

"There are various circumstances in which the obligant in a debt on paying it is entitled to keep it up by taking an assignation—thus, an heir of entail paying a debt affecting the entailed estate can take an assignation to himself and his own heirs and assignees, and so keep up the debt in the latter as against succeeding heirs of entail, or a cautioner paying a debt can take an assignation to protect his right of relief against the principal debtor, or wherever the obligant paying has a clear interest in himself (or in his own heirs, who are regarded as one with him in law) to keep up the debt against some person who is not identical with him. Where the party paying is absolute debtor without any right of relief, and desires to keep up the debt for some purpose of his own, he can do so by taking the assignation to a third party in trust. This latter is illustrated by the case of *Mackenzie* v. *Gordon*, January 16, 1838, 16 S. 311. There a debt had been paid up with the debtor's funds, and an assignation taken to a third party as trustee, and the majority of the Court held that the interposition of a trust prevented extinction *confusione*. The Lord President (Hope) dissented on

the ground that the trust made no difference, but apparently if there had been no trust confusion would have been held to operate. The Lord President said that the case of an heir of entail who pays a debt is different, for he has an interest and a right to keep it up, and has two distinct characters in him whereby the principle of *confusio* is prevented from operating. 'But it is different where a proprietor in fee-simple pays a heritable debt affecting his estate, for which debt he alone is liable out-and-out, and takes an assignation of the debt to himself. I am at a loss to see how such debt should not suffer extinction *confusione.*'

"The reporter is not aware of any case where an obligant who was out-and-out debtor in a heritable bond took an assignation to himself and his executors and assignees for the purpose of keeping up the debt in favour of his personal representatives against his heir in heritage. In the present case the ward is out-and-out debtor in the bonds, and if an assignation is taken to him, it humbly appears to the reporter that confusion would operate and extinguish the debt *ex lege*, and that a declaration in the interest of certain classes of the debtor's representatives would not neutralise this. It might be otherwise if a trust were interposed. The applicant founds upon the case of *Fleming* v. *Imrie*, February 11, 1868, 6 Macph. 363, as showing that where there may be questions between heir and executors there is an exception to the general rule of *confusio*. The reporter is inclined to think that that case does not go further than illustrate the rule that any obligant paying a debt and having an interest to keep it up may do so, as for instance where an executor pays who has relief against the heir or *vice versa*. In the present case it cannot be said that the ward has any interest in keeping up the debt, and apart from any will or intention of his there seems no ground for preferring one class of his heirs to another. While there may be a presumption that he would prefer his own heirs to anyone else, there seems no settled presumption of preference between different classes of his own heirs. After the death of the ward the heir-at-law might decline to recognise the declarations in the assignation which were not inserted with his consent nor with the consent of his author. The question might then arise in almost the same form as in the *Annandale* case (to be referred to immediately) of the effect of the curator's act in paying. Your Lordship will judge whether it is expedient to give now the sanction of the Court, which might then be interpreted as having recognised the executors' claim of relief against the heir, contrary to the decision in that case.

"In the case of *Graham* v. *Hopetoun*, 1798, M. 5599 (the *Annandale* case) the sixth branch was somewhat similar to the present case. There a tutor paid from the executry funds £36,000 of heritable debts for which he took discharge from the creditors who had called up their debts. The question arose between the heir and executor, and the Court preferred the heir. It was observed on the bench that 'intestate succession is in general governed by the state of the property at the defunct's death. The rule indeed admits of exceptions, as in the case of an heritable bond or adjudication obtained by a tutor, but in the present case the pursuers seek to revive and redintegrate debts which do not exist in order that they may succeed to funds which have been most properly applied by the tutor to relieve the estate of the proprietor without any sinister view to his succession. There was no equity between the executors and the heir which could have this effect. In so urgent an act of administration the tutor was bound to consult the interest of the proprietor alone without attending to eventual consequences.'

"In the later case of *Moncrieff* above cited Lord Deas expressed his doubts whether this branch of the *Annandale* case had been rightly decided, and Lord Ivory remarked, 'That the Court right or wrong proceeded on the footing that there was a proper act of administration, and there no longer remained any doubt at all.' Your Lordship will judge whether or not the decision in the *Annandale* case is still authoritative and is applicable to the present case.

"It will be observed that in the *Annandale* case the mere fact that the ward's will or intention was not an element in the discharges did not prevent them having full effect as extinguishing the debt. If the extinction had been caused *confusione* by the debt being assigned to the ward instead of expressly discharged, the result, the reporter apprehends, would have been the same. The case is thus similar to the present on that point. It may be said that in the former the creditors had called up their money and might have proceeded to sell if it had not been paid, while in the present case they have not as yet done this, though the applicant mentions in the note as one of his reasons for moving that they may do so at any time. The reporter thinks there is very little force in that point, because a *curator bonis* with sufficient heritable security to offer and very large moveable funds which, so far as the creditor was concerned, would be liable for the debt, would have no difficulty at any time in finding a new lender to take up the loan. Unless, therefore, the proposed declarations in the assignation are equivalent to a trust in a third party such as there was in *Mackenzie's* case, the remarks of the Lord President in that case and in the decision in the *Annandale* case appear to be applicable to the present. It seems to the reporter somewhat anomalous to constitute a trust in the person of the ward (without any consent or knowledge on his part) for behoof of himself absolutely and his heirs according to certain rules laid down to regulate the succession.

"If, however, the applicant were to propose to take an assignation to himself (in his individual name), or a third party in trust, so as to keep the debt clear of any question of *confusio*, this would be to place part of the curatory funds under separate

administration and distinct machinery from that in which the Court has placed them.

"It would make the *curator bonis* a beneficiary in a separate trust instead of administrator directly upon the title given him by the Court. If he adopted that course at his own hand the object in view might be attained, but he and his cautioner would remain liable for the administration and distribution of the funds exactly as if these had continued under the curatory.

"The purpose of craving the sanction of the Court now to the creation of a title in the name of the ward (under certain declarations), or in name of the applicant, or a third party in trust for certain specified purposes, is apparently to free the curator and his cautioner from any questions which might be raised if it should absolutely be found that the trust purposes had in some respects changed the position or rights which successors would otherwise have held. The reporter is not aware of any precedent or authority for asking such a sanction. In view of the reluctance of the Court to interfere with the exercise of the judgment of a *curator bonis* in the execution of his office, or to sanction the constitution of a trust machinery outside the curatory, or to relieve the curator and his cautioner of the responsibility, and moreover of the desirability of not committing themselves in anticipation to the judgment they may form upon the effect of the present act when the question of its effect arises, and the parties interested are there to argue the point, the reporter has doubt whether it is competent to ask the Court to sanction the constitution of a trust.

"The reporter has suggested the following method of attaining the object in view without committing the Court to any expression of opinion as to the effect of the act upon the succession. The £12,000 is at present lying on deposit-receipt with the Bank of Scotland in name of the curator. An arrangement might be come to with the bank whereby (1) the latter should take up the heritable debt (to the extent of £12,000) on assignation in its own name, and it would thenceforward be the heritable creditor; and (2) the curator would allow the £12,000 to lie on deposit-receipt so long as the bonds were held by the bank, and the interest upon the debt and the deposit would be at the same rates. The effect of that would be that the curator would pay no interest upon the £12,000 of debt except what he received upon the deposit. That of course allows no profit to the bank, but neither is it any loss, and the reporter has no doubt that for a small commission the bank would agree to it. The only cost to the estate would be the small commission, and the object otherwise would be completely attained. The heritable debt would still affect the heritable property, and the sum in the deposit-receipt would be moveable estate. As this would not change the rights of any parties the reporter respectfully submits that the sanction of the Court might be given to it if the applicant so desires. It is probable that the sanction of the Accountant of Court would be given to this.

"Another mode would be for the Court to recal the present curatory and appoint the applicant as judicial factor on (1) the heritable estate and (2) the moveable estate of the ward by separate decrees. The two positions would not then mingle.

"The reporter has not in the meantime adjusted the terms of the declarations in the form of assignations proposed by the applicant, nor the purposes which should be expressed in any trust-deed, until your Lordship has considered the matter and given directions on these points.

"The ward has a wife and six children surviving. It has been ascertained that he had no antenuptial marriage-contract but has executed a *mortis causa* settlement dealing with his succession. The nature and provisions of this document can however not at present be ascertained. Questions may thus arise upon his death as to legitim and *jus relictæ*, and between the heir in heritage and the heirs *in mobilibus*. Some of these parties might be affected by the change of the £12,000 from its present form (or from any new investment which the curator may place it) to a heritable security taken on assignation in name of the ward, either with or without *confusio* resulting."

The Lord Ordinary on 3rd March 1890 issued the following interlocutor—"Having heard counsel and resumed consideration of the note with the report of Mr J. P. Wright, W.S., Allows the copy of the note with the minute endorsed thereon to be received: Authorises the *curator bonis* to take an assignation or assignations to the several bonds and dispositions in security mentioned in the note, and remits of new to Mr Wright to adjust the necessary deeds, and to report.

"*Opinion.*—The *curator bonis* of Hugh MacBean has brought under the notice of the Accountant of Court the fact that while the heritable estate under his charge or part of it is burdened with heritable debt to the amount of £14,600 bearing interest at an average rate of £4, 8s. 5d., he has also under his charge funds in bank for which he is unable to find an advantageous investment. I understand that these funds amount now to £12,000, which he proposes to pay to the heritable creditors, and he proposes to take an assignation to the bonds in order to avoid so far as possible any effect on Mr MacBean's succession.

"The interest now payable on the debts amounts to about £645, and if £12,000 of the debt were paid the interest payable would be reduced by £535, while the interest which the estate would lose would, in the present position of the funds, be the bank interest on the £12,000 deposited, or such rate of interest as could be obtained on a safe investment of the £12,000.

"The Accountant of Court expresses the opinion that what is proposed would greatly benefit the estate, but points out that if the bonds were taken over it might be held that they were extinguished *confusione*, and that the succession of the ward's estate might be affected.

"This opinion of the Accountant of Court has been submitted to the Court, and

the *curator bonis* has prayed for powers to take an assignation or assignations to the bonds.

"The note has been intimated to the ward's wife and children, but no objection has been lodged, and since the case was debated a copy of the note has been lodged by the *curator bonis*, having endorsed thereon a minute of consent which bears to be signed by the wife of the ward and by three of his children. It is right to observe that one of the children on whom the petition was served has not signed the minute, and that there are other members of the family, one of whom is said to be of weak intellect, and the rest to be minors.

"I made a remit to Mr J. P. Wright, W.S., who has returned an elaborate and valuable report in which he refers to the authorities on the subject, and indicates considerable doubt whether, seeing that by the procedure proposed the ward would become both creditor and debtor in the bonds they would not be extinguished *confusione*. He is quite at one with the *curator bonis* and the Accountant of Court as to the advantage which will result to the estate from the proceedings proposed, and says that it will effect a saving of £200 per annum. I think I am entitled to take it as sufficiently instructed that the step proposed will benefit the estate considerably.

"After carefully considering the argument in favour of the course proposed by the *curator bonis* and Mr Wright's report and the authorities referred to, I have, while sensible of the delicacy of the question, come to the conclusion that the prayer of the petition may be granted.

"It seems to me that the primary duty of the *curator bonis* is to protect the estate and to manage it to advantage. If in doing so he can safeguard the eventual interests of those who may come either at law or by testamentary deed to have right to the heritables or moveables after the ward's death so much the better. But I doubt whether he should abstain from any act of administration which would greatly benefit the estate on account of the mere fear that he may possibly affect the interests of the possible successors.

"If then it should be for the manifest benefit of an estate under charge of a curator to invest the funds on heritable security, to change an investment, or to pay debts, I am not prepared to say that it is not in the power of the curator to perform that act of administration whatever the consequences of the order of succession may be.

"But it is certainly a principle of very general application that no act of a curator can alter the order of succession, and I doubt very much whether, if the curator simply paid the debts and took discharges from the creditors, he would by doing so enlarge the heritable estate or diminish the personal estate.

"No doubt in the case of *Graham* v. *Hopetoun*, 1798, M. 5599, the point was decided, and it was held that a payment of an heritable debt by a curator extinguished the debt. But in that case the circumstances differed to some extent from those in the present case, for apparently payment of the debt would in that case, if not paid by the curator, have been enforced by the creditor. Still if that decision had stood unchallenged it would have interposed a considerable difficulty. But in the case of *Moncrieff* v. *Milne*, 15 D. 1286, the soundness of that judgment was challenged by Lord Deas, who pointed out that it was inconsistent with other findings in the same case and with principle. In the Inner House the judgment of Lord Deas was assented to generally, and I think that case throws much doubt on the case of *Graham*.

"In the case of *Moncrieff* personal debts had been paid with money borrowed on security of the heritable estate, and it was held in a question of succession that the personal estate was not enlarged nor the heritable estate diminished. I think the reasoning of Lord Deas would have been the same had the money employed in paying the personal debt been the price of part of the heritable estate which had been sold, although it is true that the Lord President reserved his opinion on that point. But in the case of *Moncrieff* it was held that a payment of personal debt by means of the heritable estate did not affect the order of succession, and I think it must follow that a payment of heritable debts by the personal estate would not do so either.

"Nevertheless the finding in the case of *Graham* justifies the doubts of the *curator bonis* in endeavouring if he can while securing the benefit of payment to avoid the risk of altering the order of succession.

"So far as I can see, the *curator bonis* might without the authority of the Court have paid the debts, and I doubt extremely whether he could be empowered by the Court to do so. I do not recollect of any case in which a factor has been authorised to pay debts.

"Here, however, the curator does not ask authority to pay the debts. He asks authority to take an assignation of the bonds. That no doubt is an immense step, and because it is unusual it may justify an application to the Court. It was said in argument that what was proposed involved an act of borrowing by the curator. But I confess I am unable to see that it does. By the assignation the curator will become the creditor, and will not thereby become the debtor. He is in truth debtor already, and it is not proposed to affect his position as debtor. He is not at present creditor on the bonds. It is proposed to make him creditor. I doubt therefore whether the authority of the Court is needed to enable the curator to take an assignation of the bonds, and I doubt whether if granted it will affect the assignations in any way. But as there is doubt about this matter I do not myself see why that doubt should not be diminished by the interposition of the Court if satisfied as to the propriety of the step proposed.

"But it is said that the result of an assignation of the bonds will effect their immediate extinction by confusion. Now, the law on this point does not seem very

clearly settled. But on the best consideration I can give to the authorities I think it will not be so. It is by no means an absolute or universal rule that the acquisition of a bond by a debtor results in the extinction of the debt and credit by confusion. According to Professor Bell that happens only when the creditor has no interest to keep up the debt—Bell's Prin. p. 580. In like manner Erskine points out cases in which extinction of the debt does not result from the bare fact that the same person is debtor and creditor, and he says that that may be so even although the deed assigning the debt should contain a discharge, "seeing that part of the deed which assigns it is a sufficient indication of the heir's intention that it should continue to subsist in his person"—iii. 4, 27. Hence it would appear that in Erskine's opinion the intention of the debtor taking an assignation of a bond is an important factor in the question whether the result is extinction by confusion or not.

"The case of *Mackenzie* v. *Gordon*, Jan. 16, 1838, 16 S. 311, is somewhat complicated, but it was certainly decided in it that where a trustee for a debtor in a heritable bond acquired the bond as such trustee the debt was not extinguished, but that the bond could be effectually assigned by the trustee to a new lender.

"In *Fleming* v. *Moore*, February 11, 1868, 6 Macph. 363, it was certainly held that where the owner of a property acquired a bond over it the debt was not extinguished, because in the circumstances which there occurred it was the manifest intention and interest of the party to keep up the debt, and it would have caused great injustice in that case to hold otherwise.

"I am therefore disposed to think that an assignation to the bonds may be taken in such terms as shall not operate extinction of the bonds if it sufficiently appear that it is not intended that there should be such extinction or that the character of the funds should be altered, but that the object of the transaction and assignation was solely to obtain an increase of the revenue of the estate.

"Considering therefore that the order of succession will not be altered, and that the bonds will not be extinguished, I conclude that the prayer of the *curator bonis* may be granted.

"I observe that the reporter has not revised the assignation to be taken, and I propose therefore to remit to him of new to do so.

"The suggestions of the reporter as to the other modes of effecting the purpose of the *curator bonis* with less risk of affecting the order of succession are deserving of much attention. The curator himself, however, did not press for them, and they have not been intimated to those who are interested in the succession. I think they involve so much of departure from the usual administration of a factorial account under the supervision of the Accountant of Court that it is probably more advisable to follow the course preferred by the curator, even although its effect on the course of succession be not altogether free from question."

The following is the form of assignation adjusted by Mr Wright, and approved of by the Court:—"I, A B (name and designation), considering that Hugh MacBean, merchant in Glasgow, granted in my favour (or otherwise as the case may be) the bond and disposition in security hereinafter mentioned, and that by interim act and decree of the Lords of Council and Session dated the 16th day of November and extracted the 12th day of December both in the year 1882, John Wilson, Chartered Accountant in Glasgow, was appointed *curator bonis* to the said Hugh MacBean; and further considering that upon the day of the said Lords of Council and Session, on a petition by the said John Wilson, pronounced an interlocutor as follows (here copy); and further, considering that the said John Wilson has, in terms of the authority contained in said interlocutor, arranged with me to take an assignation of the said bond and disposition in security for the purpose of protecting the property and estate of the said Hugh MacBean, and not with the intention of extinguishing the said security, and has requested me to grant these presents in manner hereinafter appearing, which it is just and proper that I should do: Therefore I, the said A B, in consideration of the sum of £ (insert sum) now paid to me by the said John Wilson, as *curator bonis* foresaid, out of the moveable estate of the said Hugh MacBean, under the management of the said John Wilson, as *curator bonis* foresaid, do hereby assign and dispone to and in favour of the said Hugh M'Bean, his executors and assignees whomsoever, subject to the declarations hereinafter contained, a bond and disposition in security dated , and recorded as aftermentioned, for the sum of £ granted by the said Hugh MacBean in my favour (or otherwise as the case may be), with interest from the day of (insert date), and also All and Whole (describe lands), all as specified and described in the said bond and disposition in security recorded in (here specify the register of sasines in which the bond is registered) on the day of : But subject always to the declarations after mentioned, viz.—(First) That the assignation shall in no wise operate as an extinction of the said debt or a discharge of said security, which are to be held as subsisting in any question affecting the said Hugh MacBean or the succession to his estates; and (second) that the foresaid payment and the assignation hereby made in conformity with the said interlocutor shall not prejudice or affect the rights of the parties who would have been entitled to the said sum on the death of the said Hugh MacBean if this assignation had not been taken: But reserving always to all parties concerned all pleas and claims affecting the right to the said sum which may hereafter arise in the event of the present assignation being at any future time validly consented to or adopted by the said Hugh MacBean: And I consent to registration hereof for preservation.—In witness whereof," &c.

Counsel for the Applicant — M'Nair. Agents—J. & J. Ross, W.S.