of opinion that the ground of action in the case arose in Scotland. It is a letter of guarantee by the manager of an exhibition established in Scotland with a view to its existence and being carried on for a considerable period against any loss consequent upon it. The obligant, the defender in the action, was appointed manager with an agreed-on remuneration, and he granted this obligation. The Exhibition did not result in profit but in loss, and accordingly the guarantors — there were many beside the present defender — were called upon under their obligations of guarantee to make it good. This action is therefore to enforce a ground of action arising in Scotland, and I think the Scottish Court had jurisdiction against the obligant in the obligation provided he was well cited to appear before the Scottish Court.

Now, it appears on the face of the record that after the Exhibition was closed and resulted unsatisfactorily as I have expressed, that he (the defender) proceeded to depart, and in such a way as to induce—I do not say whether they ought to have been induced or not—those having claims upon him, including the present pursuers, to seize hold of him as in the act of flight. We are told that there are objections to their proceedings in seizing him and apprehending him as in the act of flight or meditating flight, but of course I do not enter upon that matter at all but only refer to the fact that he was seized upon the allegation that he was meditating flight from the country. Of course the object of such apprehension is only that he may answer for his liabilities in the Courts of the country from which he is meditating flight. And when he is so seized, regularly or irregularly, he enters into a covenant with his adversary who seized him, and says, "Let me go and I will find caution to answer in a Scottish Court to any action which may be brought against me, and a summons in which may be served in the Sheriff-Clerk's office, which I fix upon as my domicile of citation." Upon that condition he is let go, and this action, the summons of which is served at the domicile of citation then agreed upon, is the condition of his being left at liberty to depart.

Now, joining these two things together, I think the defender was here well cited in the action raised upon a Scottish ground of action, that is, a ground of action arising in Scotland, and that he must answer accordingly, and I do not think his liability to answer in a Scottish Court depends at all upon the result of any proceedings by him to recover damages in respect of any irregularity in his apprehension. If he had been apprehended here, however irregularly, and so as to render the party liable in damages, and if a summons in an action upon a Scottish ground of action arising in Scotland had been then put into his hands, I do not think he would have been permitted just to throw it away and say, "You ought not to have stopped me in the street so as to put that into my hands." I think he is in the position of having the summons in an action upon a ground arising in Scotland put into his hands, and that his liability to answer for it will not depend upon whether he was regularly or irregularly stopped in the streets and ordered to take it. And so in respect of the jurisdiction of the Court in such an action I do not think he can object to it upon the ground that he may be possibly successful in showing that there were irregularities in connection with his apprehension upon which he granted the bond.

I think that is sufficient for the judgment, and I would rather myself abstain from expressing any definite opinion upon the ground upon which the Lord Ordinary has proceeded, although it is not to be understood that I dissent from it or express any opinion adverse to it. It is this, that the only jurisdiction here is that which is acquired by forty days' residence in the country, and that a jurisdiction acquired over any person resident for forty days in a country endures for forty days after he has left it. There are certain authorities *dicta* upon that question, I do not say all on one side, but I should rather abstain from putting my judgment in this case upon it in respect there exists another ground which to my mind is satisfactory. I would refuse the reclaiming-note and adhere to the interlocutor of the Lord Ordinary, but so far as my opinion goes upon the ground I have expressed, and without entering upon or expressing any opinion for or against the ground upon which the Lord Ordinary has proceeded.

LORD TRAYNER and LORD LOW concurred.

The Court dismissed the reclaiming-note and affirmed the Lord Ordinary's interlocutor.

Counsel for the Reclaimer—Strachan—Hay. Agent—William Officer, S.S.C.

Counsel for the Respondents—Murray—A. S. D. Thomson. Agents—Davidson & Syme, W.S.

Wednesday, May 27.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

TROTTER *v.* TORRANCE.

Landlord and Tenant—Lease of Farm—Reserved Power to Resume Specified Ground — Exercise of Reserved Power although Ground Partially Built upon.

In a lease of a farm the landlord reserved power to resume and take off an outlying part of the lands adjoining the municipal boundary of a city on giving twelve months' notice and allowing for the ground so taken a deduction from the rent at the rate of £6 per acre, besides the value of the unexhausted manure. The lease excluded sub-tenants. The landlord, and the tenant with the landlord's consent,

erected byres on the ground, to which the reserved power applied, and the tenant established a dairy thereon, which he sub-let along with a portion of the arable part of the farm, and from which he derived considerable profit. After a lapse of twenty years the landlord intimated his intention to resume part of the land to which the reserved power was applicable, including that part upon which the dairy buildings stood. The tenant maintained that the power of resumption was limited to the ground used for agricultural purposes.

Held that the clause of resumption applied to the whole extent of ground described therein, and the landlord was within his right in resuming the portion of the land he specified although it was partly covered by buildings.

By lease dated 6th May and 6th June 1867 Richard Trotter of Mortonhall let to Archibald Peter Torrance and his heirs, "but expressly excluding assignees and sub-tenants, legal or voluntary, . . . all and whole the farm and land of Greenbank, with the houses thereupon and pertinents thereof, together with two cothouses and smithy at Braidburn: . . . . . Reserving full power to the said Richard Trotter and his successors at any term of Martinmas during this lease to resume and take off such parts of the lands hereby let on the east side of the road leading from Edinburgh to Linton as they shall think proper on giving to the said Archibald Peter Torrance and his foresaids twelve months' previous notice of their intention to do so, and allowing them for the ground so taken off a deduction from the rent at the rate of £6 per acre, besides the value of the unexhausted manure on such land as the same shall be fixed by arbitration, as after mentioned." The farm-steading and much the greater part of the farm lay on the west side of the road to Linton. A comparatively small portion, extending to nearly 30 acres, lay on the east side, and consisted chiefly of a narrow strip between two public roads. The two "cothouses and smithy at Braidburn" were on this portion of the farm which the landlord took power to resume. There was another clause in the lease empowering the landlord to resume 4 acres of land from any part of the farm for planting or any other purpose, allowing an abatement from the rent of £4, 10s. per acre. The lease further provided—"And with regard to the buildings on the said farm, the said Richard Trotter agrees to expend a sum not exceeding £350 for the purpose of erecting three new cattle sheds, turnip house, implement house, smith's shop, and byre, together with certain improvements and repairs on the dwelling-house and other buildings." The rent was to be £491, and the term of entry was for the houses and grass land Martinmas 1867, and for corn crop 1868.

There was no dairy on the farm when the lease was executed, and it contained no allusion to a dairy. From a letter dated 26th February 1867 it appeared that about that date, and therefore before the commencement of his lease, the tenant, with the landlord's sanction, converted the smithy at Braidburn into a byre. About the same time, or shortly afterwards, the landlord built a second byre alongside of the cothouses. Further, in or about 1871 the tenant erected a third byre alongside of the second byre, with the sanction of the landlord, and on the understanding that he should have liberty to remove it at the close of the lease, or that the landlord should then take it off his hands at a valuation. The dairy buildings at Braidburn consisted of these three byres and the two cothouses. The tenant considered that he derived a great advantage in the working of his farm from the close proximity of these two dairies. They were sub-let, and ever since they were established the dairymen bought the defender's turnips and fodder, and sold him the manure made on the dairies. He besides received a rent of £25 per annum.

Mr Trotter died in the year 1874 and was succeeded by his son Colonel Henry Trotter. In April 1884, after some negotiation, Torrance wrote asking for a new lease, and offering a rise of £30 a-year in his rent. Upon 3rd July 1884 Mr Mackenzie, the landlord's factor, wrote to Torrance in these terms—"On behalf of Colonel Trotter I beg to accept of your offer of £30 sterling of increase of yearly rent for the farm of Greenbank, as presently possessed by you, and that for nineteen years from Martinmas 1884." There were various details to be adjusted and no new lease was executed, but Torrance continued to act as tenant as he had done before.

In 1889 Colonel Trotter entered into an arrangement with the trustees of the late John Gordon of Cluny for the sale to them of part of the farm on the east side of the road from Edinburgh to Linton. This part consisted of two small fields, the first of them containing 1 acre and 689 thousandth parts of an acre, and the other containing 3 acres and 818 thousandth parts of an acre. On the larger field the Braidburn dairy was situated.

On 6th November 1889 the landlord formally intimated his intention to resume these fields at Martinmas 1890. The defender maintained that the power of resumption did not extend to the buildings, and, after ineffectual attempts at a settlement, the landlord with the consent of Gordon's trustees brought this action of removing, not from the whole farm, but only from the two fields and the whole buildings and erections thereon at the term of Martinmas 1890.

The pursuer pleaded—"(1) The leading pursuer having given due notice of his intention to resume the whole subjects in question, he is entitled to decree as concluded for. (2) The leading pursuer being entitled, under the terms of the contract between him and the defender, to resume the two fields referred to, is entitled also and at same time to resume the buildings which are situated on part of one of these fields."

The defender pleaded—"(3) In respect that under the terms of the lease under which the defender holds the farm, the buildings which the pursuer now seeks to resume are specifically mentioned as a separate part of the subjects let to him, the pursuers are not entitled to decree in terms of the conclusions of the summons. (4) In respect that the landlord's right under the lease to resume is limited to the resumption of lands only, the pursuers are not entitled to decree in terms of the conclusions of the summons so far as they conclude for removal from the buildings in question. (5) In respect that the buildings which the pursuer now seeks to resume are necessary for the proper cultivation and management of the farm, the pursuers are not entitled to decree in terms of the conclusions of the summons."

Upon 27th November 1890 the Lord Ordinary (KINCAIRNEY) allowed a proof which established the facts above stated. The result of the proof so far as material is stated in the Lord Ordinary's note.

Upon 4th February 1891 the Lord Ordinary pronounced this interlocutor:—"Finds that the pursuer is entitled to resume the fields mentioned in the conclusions of the summons, including those portions thereof on which the buildings known as Braidburn Dairy are built, and that on the terms and conditions specified in the clause of resumption referred to in the second article of the condescendence, and contained in the lease between the late Richard Trotter and the defender dated 6th May and 6th June 1866: Therefore repels the pleas-in-law for the defender, and decerns in terms of the conclusions of the summons, reserving to the defender his right to compensation in terms of the said clause, and also all claims competent to him for payment of the value of the byre erected by him at Braidburn Dairy: Finds the pursuer entitled to expenses," &c.

"*Opinion.*— . . . I take it to be clear that the pursuer cannot succeed in this action except in virtue of a power of resumption which he is *in titulo* to plead. But there is no existing clause of resumption except that in the old lease of 1866, and therefore this action must be rested on a concession of the defender's right to possess the farm, either by tacit relocation under the conditions of the lease of 1866, or by virtue of a new agreement constituted by the correspondence and the defender's consequent possession. The defender maintains that he is possessing under a new lease for nineteen years, binding on both parties. But in either view the present question must depend in the first instance on the true construction and effect of the clause of resumption in the former lease.

"Now it appears to me that if one seeks to construe the clause of resumption by itself, it will bear either of the meanings put on it by the parties. The pursuer maintains that the word land may include buildings, and certainly may include land covered with buildings, and that it must be read as including such land, because it is not excepted. The defender maintains that the word land, especially when used in connection with the word ground, primarily means land only, and excludes buildings; and that it is reasonable to expect that buildings would have been specially mentioned if it had been intended to include them. It is difficult to choose, as a bare question of construction, between these two perfectly legitimate constructions. It is therefore important to consider the subject to which the clause relates, and the object of the clause. And, in the first place, it is to be observed that the power to resume is unusually great in a lease. It is a power to resume nearly 30 acres out of a total under 150 acres; and it is a power to resume the whole of a distinct section of the farm, separated from the rest of it by a public road. Having in view the proximity of the farm to Edinburgh, the extent, compactness, and situation of the land to be resumed, I find it impossible to doubt that one of the objects which the landlord had in view was the feuing of this portion of the farm. Perhaps that was not the only thing which he had in view. But it must have been one object. He could not have contemplated resumption of the land under conditions which would negative feuing. No other reason for the reservation of this unusually extensive power to resume has been suggested. It has not been suggested that the landlord had any wish to add this section of the farm to any other farm. Now, certainly, if this section of the farm were to be given off in feus, the very first thing to be done would be to clear away the cothouses. I have been unable to imagine any purpose to which the landlord could put this section of his farm after resuming it, consistently with leaving the tenants in possession of the cothouses. Hence it appears to me that he must have understood that the power to resume the land included power to take the land on which the cothouses stood. And for similar reasons it appears to me that the tenant must have understood the clause of resumption in the same sense. He could not but have recognised that the landlord could not resume this considerable portion of the farm to any useful purpose, if he should leave it encumbered with the cothouses in the tenant's possession. These considerations lead to the conclusion that the clause of resumption ought to be read as including the buildings, in accordance with the pursuer's contention. I speak only of the intention and meaning of the parties when they executed the lease, and not of the pursuer's purpose in now resuming a part of the resumable land. That has not been disclosed, and is not of importance.

"The defender disputed this conclusion on various grounds, some of which seem of considerable weight. He contended that the clause could not apply to the cothouses and smithy because they were let as a separate and distinct subject; and, on the assumption that they were, he referred to the case of the *Caledonian Railway Company* v. *Smith and Nimmo*, 5th June 1877, 14 S.L.R. 510. That case seems to me to be quite special and inapplicable. I am unable

to hold that the cothouses and smithy are treated in the lease as subjects separate from the rest of the farm. I think they are included in it, and are expressed as forming part of it, especially seeing that they were a part of the subjects of which the defender had been in possession under the previous lease.

"A considerable part of the evidence was led to show that the dairy was very useful to the defender, and that he would be very inadequately compensated for the loss of it by a payment of £6 per acre. He deponed that he would require another horse and man to cart his turnips, fodder, and manure to and from Edinburgh, and he put the extra cost which he would incur at £90 per annum. His evidence was corroborated by witnesses of experience and practical skill. On the other hand, the pursuer adduced witnesses of, so far as I know, equal experience and skill, who deponed that, having in view the proximity of Greenbank to Edinburgh, the proximity of the dairies was of no advantage at all. It is always difficult to weigh the evidence of skilled witnesses, whose opinions are of course diametrically opposed—they would not otherwise have been examined—but I think the defender has succeeded in showing that the proximity of the dairy at Braidburn is a considerable advantage to him over and above the rent which he draws from the dairyman. The defender's witnesses give the reasons for that opinion, and I need not repeat them. They seem to me to exaggerate the defender's loss; but I think they make out that there would be loss. But that by no means solves this question. For although the proximity of the dairies may be an advantage to the defender, that seems to be little or nothing to the purpose, unless it be an advantage which he contracted for by the lease, which I apprehend it plainly is not. It was an advantageous use of the farm to which the landlord did not object, but which he is not bound to regard when he finds it conflict with his rights.

"Further, it was maintained that the houses were necessary for the due working of the farm in the ordinary course. I think it impossible to maintain this, looking to the extent to which the farm buildings at the steading are at present sublet, and to what I think is the fact, that these cothouses were never really used by the defender at all in the management of his farm. It is not proved that these cothouses would have been of any use in the ordinary occupation of the farm had no dairies been established, a circumstance which may account for the fact that no special mention is made of them in the clause of resumption.

"It occurred to me in the course of the argument that a point might be made for the defender on the clause by which the landlord agreed to expend £350 on certain buildings, and in particular on a byre. If it could have been shown that the landlord contracted to build this byre at Braidburn, as the defender says he did build it, there would be a difficulty in holding that he meant to reserve power to remove it at his pleasure. I do not, however, think it proved that the landlord did so contract, and in any case I do not think this difficulty would outweigh the reasons which induce me to hold that the parties intended that the clause of resumption should include the buildings.

"It was argued that the circumstance that the landlord built the one byre at Braidburn and sanctioned the defender's construction of the other showed that it was not intended that the buildings at Braidburn should be subject to the landlord's power of resumption, and also imposed a personal bar on the landlord using his power in order to remove these buildings. I think, however, that these acts of the landlord show little more than that he was willing that the tenant should make the most beneficial use of the whole of his farm so long as he possessed it, and they cannot he held to import on the part of the landlord either an admission that his power of resumption did not extend to buildings, or an obligation not to exercise it. Whether the landlord is bound to pay for the byre at Braidburn put up by the tenant is a question which does not seem to arise in the present action. The defender has worked his farm so long in conjunction with this dairy that I do not wonder at his reluctance to give it up, and if I could have found any sound ground on which his defence could be maintained I should readily have given effect to it. The case seems a somewhat hard one in this sense, that the compensation contracted for will I think leave him a loser. At the same time, if the view which I have taken be correct he will only lose an advantage for which he never bargained."

The defender reclaimed, and argued—The defender was holding his farm under a nineteen years' lease made anew in 1884; that was the only condition upon which the clause of resumption could be held to apply. Now, this new contract of 1884 entitled the tenant to hold that these byres which had been erected for and by him were properly upon the ground and he must be taken to be the possessor of them. The clause of resumption in the old lease referred only to agricultural ground. All that was meant to be taken at the time the lease was made was the bare ground itself, and that was shown by the mention made of payment for the unexhausted manures, which could not apply to ground which had been built over—*Caledonian Railway Company* v. *Smith & Nimmo*, June 5, 1877, 14 S.L.R. 510. No doubt there was a prohibition in the lease against sub-tenants, but the landlord or his author had known of the use that the tenant was making of his land, and he was not now entitled to prevent him making a proper use of his farm by sub-letting the dairy. The actings of the parties, the erection by the landlord of a byre, the permission to turn the smithy into a byre, the permission to the tenant to erect a new byre which he was to be allowed to take away or be paid for at a valuation, and the making of a new contract

with these facts known to the landlord or his factor, all pointed to the construction of the clause sought for by the tenant that the resumption clause was not meant to apply to ground covered with buildings. It did not matter what the buildings were, and the reason of that was obvious, because where any building was placed upon a farm, it was put there with a special and definite purpose of making a particular profit from it.

The respondent argued—The clause of resumption was quite general in its terms and entitled the proprietor to resume any part of the thirty acres of the farm of Greenbank, which lay on the east side of the Linton road. The ground was still ground although it was covered with buildings. It was admitted that the case must be taken on the footing that the tenant had a good lease incorporating the resumptive clause for nineteen years from 1884. At the time the original lease was made there were scarcely any buildings on this Braidburn part of the farm—two cothouses and a smithy, which could not have interfered with the operation of the clause. By toleration the landlord allowed his tenant to make a certain use of the lands and to build certain erections upon it, from which the tenant derived profit for a long time, but that was entirely *ex gratia* and could not affect the result of the contract. In the case of *The Caledonian Railway Company* v. *Smith & Nimmo* was easily distinguishable from this. There the landlord tried to take the whole buildings and stop a large manufactory, but here the farm, the subject of the contract, was left to the tenant; all that was taken was a portion of ground from which he might have derived profit, but a profit that was not in his mind when he made the bargain, whereas it was quite plain that the landlord was now exercising his right in the very way for which he had reserved the power to take the land, viz., to let it out for feuing purposes—Hunter on Landlord and Tenant, ii. 116; *Stewart* v. *Lead*, March 25, 1825, 1 W. & S. 68.

At advising—

LORD YOUNG—In this case I cannot say that my views have not to a certain extent been fluctuating. I cannot say that the case is free from difficulty, and I have given my best consideration to it and to the arguments on both sides with the view to avoid doing anything really hard to the tenant. He has been a tenant on this estate for some time and appears to have conducted himself to his landlord's satisfaction. I think it only fair to say here that as far as we can judge from anything that has come before us the landlord appears to have shown consideration and even generosity to his tenant.

As the case has been presented to us, it is one regarding the meaning and operation in the actual circumstances that have occurred of a clause contained in an agricultural lease. The clause is one by which the landlord reserved to him all power to resume and take off such parts of the lands let by the lease on the east side of the road leading from Edinburgh to Linton as he should think proper on giving the tenant twelve months' previous notice of his intention to do so, and allowing the tenant a deduction from the rent at the rate of £6 for every acre so taken, besides the value of the unexhausted manure. That clause is contained in a lease which was the last one executed, but which expired in 1886. The parties however are agreed that this lease has been renewed since by arrangements which appear in the correspondence between them, so that the defender is still to continue tenant on terms which have not yet been finally adjusted, but which are substantially the same as in the former lease. Now, this clause which applies to the contract now in force between the parties relates to an outlying field at the very end of the farm, and adjoining the municipal bounds of Edinburgh, and it is plain on the face of the thing, and from the correspondence, that the purpose of inserting this clause of resumption in the lease was that the landlord had in view the possibility and probability of that portion of land being feued. The whole extent of the ground is thirty acres, and what the landlord reserved to himself is the power to take off such portion of that land as he may think necessary. In 1866, when the first lease was made, there were some dairy buildings upon this ground, but I make the observation that these buildings were not of a character that would prevent the landlord from taking this clause as applicable to the whole ground. The buildings seem to have been of a temporary character, and of no great value. It appears that when the defender first entered upon the occupation of the farm, a certain sum of money was expended upon dairy buildings on this part of the farm. The sum was not exactly stated to us, but it appears to have been about £150. It farther appears that the tenant used these dairy buildings for sub-letting a portion of his farm to a dairyman along with them, and got a rent of £25. Well, matters went on in this way, the tenant having his subtenant with possession of these buildings till 1889, and then the landlord desired to exercise his power of resumption, and the tenant objects to the exercise of that power so far as regards the portion of the field upon which the dairy buildings are erected. I indicated my own view in the course of the debate that I thought that this or any similar clause in a lease was subject to construction, and that in construing it we should pay regard to considerations of equity and good feeling between the parties. I can figure cases where the resumption of lands, and giving only an abatement of rent in return might not be held applicable, looking to what must have been meant by the parties when the contract was entered into, and having regard to these considerations. I illustrated my view by taking the case of there being a clause in the lease by which the landlord was entitled to resume ten acres from any part of the farm; I should have great difficulty in holding that

the clause would be applicable if the landlord proposed to take away the farmhouse and farm-steading, although that result might be under the letter of the agreement. I should be disposed to answer such a claim in the negative. I would construe the clause in what appears to me to be a sensible manner rather than read into it an implied obligation in the landlord to build a new farm-steading elsewhere.

But the present case does not raise any such considerations. The power of resumption is limited to taking ground in this outlying field, and I cannot limit the power of the landlord to resume the land there by the consideration that these outhouses have been built upon a part of it. Indeed, Mr Asher admitted that his argument must come to this, that if the ground was occupied by a dovecote or pigsty the clause could not apply. I think the landlord is within his power in making the resumption he proposes to make.

I also indicated an opinion—and indeed it is involved in what I have said—that I would not be indisposed to construe this clause having regard to the conduct of the parties during the time the lease was running. It was pressed upon us, indeed, that twenty years ago, in 1871, the tenant put up a byre, and the condition with the landlord was that at the end of the lease he should either be allowed to remove it or be paid for it, and it was said that he had done this with a view to the resumption of the ground by the landlord. But any anxiety about hardship which might exist in such a case as this is out of the question here, for the tenant has had the use of the byre for twenty years, and he is not to be deprived of it without getting compensation. I think we must hold that the lease under which he occupies his farm contains this clause of resumption as well as the clause prohibiting subfeuing. I think that the Lord Ordinary is right, and that we must affirm his judgment.

LORD RUTHERFURD CLARK concurred.

LORD TRAYNER — I am of the same opinion. I think that the Lord Ordinary is right, and that the right of the pursuer is based upon the only fair and permissible reading of the clause upon which the pursuer relies.

The LORD JUSTICE-CLERK concurred.

The Court refused the reclaiming-note and adhered to the Lord Ordinary's interlocutor.

Counsel for Reclaimer—Asher, Q.C.—Dundas. Agent—George F. Scott, S.S.C.

Counsel for Respondent—D.-F. Balfour, Q.C.—C. K. Mackenzie. Agents—Romanes & Simson, W.S.

Friday, May 29.

SECOND DIVISION.

MACLEAN AND OTHERS.

Will—Revocation—Bond of Annuity not Revoked by Subsequent Will Revoking "all Previous Wills and Testaments."

In 1881 the heir of entail in possession of an entailed estate granted a bond of annuity in favour of his wife if she should survive him, whereby he granted out of the entailed lands an annuity equal to the free yearly rental of the lands, and declared the provision to be "in full satisfaction to her of all terce of lands, or half or third of moveables, or every other claim competent to her on my death." Power to alter the deed was reserved. In 1882 the granter executed a trust-settlement, whereby he revoked "all former settlements and all writings of a testamentary character with the exception of" the bond of annuity. In 1889 he executed a holograph will, by which he made certain provisions for his widow, and declared, "I revoke all previous wills and testaments." *Held* that he had not revoked the bond of annuity.

Upon 16th July 1881 Alexander Thomas Maclean, one of the Judges of the High Court of Calcutta, and heir of entail in possession of the lands and barony of Ardgour and others, on the narrative that he was desirous of securing a suitable provision out of these lands and barony to his wife during her lifetime if she survived him, granted, under the provisions of the Aberdeen Act (5 Geo. IV. cap. 87), to her all the days of her life, if she should survive him, an annuity equal to one-third part of the free yearly rental of the lands and barony. The deed also declared that this annuity was restricted according to the provisions of the statute, and that it was to be accepted by his wife "in full satisfaction to her of all terce of lands, or half or third of moveables, or every other claim competent to her on my death," excepting any annuity which she might be found entitled to as his widow from the Indian Civil Service Fund. The deed concluded, "And I reserve power to revoke or alter these presents in whole or in part; and I dispense with the delivery hereof during my life, and I consent to registration hereof for preservation and execution."

On 19th August 1882 Mr Maclean executed a trust-disposition and settlement, in which he directed his trustees as to the disposal of his moveable estate. He appointed his wife to be the tutor and curator to his children during their minority, and declared—"And I hereby revoke and recal all former settlements and all writings of a testamentary character with the exception of a bond of annuity in favour of my wife dated 16th July 1881, executed by me prior to the date hereof, and I reserve full power to alter or revoke these presents in whole or in part."