

It is also clear that school boards could not make contracts with old schoolmasters which they could not make with new ones. No doubt the rights of old schoolmasters were preserved by the Education Act, but it was not in the power of any school board to increase these rights so as to fetter future school boards. For example, provision was made for retiring allowances, but suppose a school board had resolved that an old schoolmaster's retiring allowance when he came to retire was to be doubled, could that fetter succeeding school boards? Certainly not.

On the whole matter my opinion is that there was no contract whatever between the School Board and the schoolmaster in 1873 binding upon the School Board now existing. It is in their power to assign to the schoolmaster what they think right and fitting out of the Government grant up to the whole amount, but that is a question for their discretion at the time, and considering the circumstances of the time, not because of any arrangement in 1873.

LORD RUTHERFURD CLARK—The first question is, whether there is a contract binding upon the present School Board, and the second question is as to its meaning if it exists.

I take the case as the parties state it. On the first question it was scarcely disputed that there was a contract, and little was said as to its being legal. I think the case of *Somers* puts the question of its legality beyond dispute. On the second question I agree with the Lord Ordinary, and am of opinion with your Lordship that his interlocutor should be affirmed.

LORD TRAYNER—At their meeting held on 23rd October 1873 the School Board of Inveraray and Glenaray, as then constituted, resolved to allow the pursuer a certain salary, and added that they were "disposed to agree to give" (that is, to the pursuer) "all the Government grants without any deductions except the salary or salaries of a pupil teacher or pupil teachers." The minute of that meeting, expressed in the language I have quoted, was apparently communicated to the pursuer, who wrote thereon, "I hereby agree to the foregoing arrangement." From the date of that minute down to the month of August 1887—that is, a period of nearly fourteen years—the arrangement or agreement constituted by the resolution in the minute and its acceptance was acted on by the parties. The pursuer is now asking nothing more than that that agreement should be fulfilled. It was not maintained at the bar in the course of the discussion that the minute and acceptance did not constitute an agreement or contract between the parties, and indeed when it was suggested to the defenders that such an argument might be maintained on the somewhat peculiar words of the minute—that the School Board was "disposed to agree"—that suggestion was not adopted. Both parties represented that there was a contract between them, but the defenders

maintained that it was *ultra vires* of the then School Board to enter into the agreement in so far as it related to the Government grants, at least to the effect of binding their successors, and that the agreement, even if still in force, did not entitle the pursuer to the particular Government grant now in question. On both these points my judgment is against the defenders.

That such an agreement or contract was one which the School Board had power to make so as to be binding on them and their successors, has already been decided by the case of *Somers*. I feel the very great force of the observations made by Lord Young upon that decision, but I am prepared in this case to follow it. Even if so disposed, I should not think it desirable to question the authority of that decision now, because since its date agreements may have been entered into on the footing that the law as there determined is sound, and because future agreements between school boards and schoolmasters who held office prior to 1872 are in the nature of things likely to be very few. It is only with reference to agreements made with such schoolmasters that the case of *Somers* is of any great importance.

As to whether the Government grant which was more directly in question, is one which the pursuer can claim under his agreement, I agree with the Lord Ordinary. I think this grant is not a new grant, either in character or purpose, but is merely the enlargement or increase of a grant existing at the time the agreement was made.

The Court adhered.

Counsel for the Pursuer—Comrie Thomson—W. C. Smith. Agent—Adam W. Gifford, W.S.

Counsel for the Defenders—Shaw—C. S. Dickson. Agents—Carmichael & Miller, W.S.

Tuesday, December 8.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

CALEDONIAN RAILWAY COMPANY v. M'BRIDE.

Railway — Reparation — Railway Clauses Consolidation (Scotland) Act 1845, sec. 6—Glasgow Central Railway Act 1888, sec. 41, Sub-sec. (L) and (O)—Glasgow Police Act 1866, sec. 328.

Section 328 of the Glasgow Police Act 1866 authorises the Glasgow Corporation to carry sewers through any lands or heritages within the city "provided that they make reasonable compensation to the proprietors of such lands and heritages for any damage" they may suffer.

By section 41 of the Glasgow Central

Railway Act 1888 it is provided for the protection of the Corporation (L) that where any of the works done by the railway company under that Act interfere with any sewer or drain under the control of the Corporation the company shall provide for new or altered works in such way as the Corporation may deem necessary, "(and for the construction of which they shall be bound to afford all reasonable facilities and communicate their powers so far as necessary)," and (O) that the special provisions contained in that section for the protection of the Corporation shall not be deemed to dispense with the provisions of the Railway Clauses Consolidation Act except in so far as inconsistent therewith.

Section 6 of the Railway Clauses Act provides that a railway company in exercising the power given them by any special Act to construct a railway shall make full compensation to all parties interested in lands affected by the construction thereof for all damage.

Held that a proprietor who complained that his buildings had been injured by operations of the railway company in constructing a sewer under the provisions of sub-section (L) of section 41 of the Glasgow Central Railway Act had no claim to statutory compensation either under the Railway Clauses Act or the Glasgow Police Act, in respect that the damage complained of had not been caused by the construction of the railway, and that the sewer constructed by the railway company had not been carried through any lands or heritages belonging to him.

By the Glasgow Central Railway Act 1888, and other Acts therewith incorporated, the Caledonian Railway Company were authorised to construct and maintain certain railways in Glasgow.

On 24th November 1890 John P. M'Bride, metal and machinery merchant in Glasgow, served the railway company with a notice and claim whereby he gave them notice, in terms of the Lands Clauses Consolidation (Scotland) Act 1845, the Railways Clauses Consolidation (Scotland) Act 1845, the Glasgow Police Act 1866, the Glasgow Central Railway Act 1888, and the Caledonian Railway Act 1890, that he was heritable proprietor of a machinery yard and certain tenements in M'Alpine Street, Glasgow, which he occupied for the purposes of his business; and that his business had been considerably interfered with by the railway company's operations in constructing a large tunnel or sewer in the front of said property, whereby the buildings themselves had been seriously damaged, and the access to his premises completely blocked for several months, with the result that he had suffered damage which he estimated at £5500. Notice was further given that unless the railway company were prepared to pay him that sum, he required them within twenty-one days to present a petition to the Sheriff to summon a jury for settling the foresaid

question of disputed compensation under the Acts mentioned.

By notice and tender dated 4th December 1890 the railway company, while protesting against the competency of M'Bride's claim, gave notice that they would under protest petition the Sheriff to summon a special jury for settling the question of disputed compensation, and further stated that they were willing (but always under protest) to pay M'Bride £55 in full of his claim. This offer having not been accepted by M'Bride, the railway company presented a petition to the Sheriff, and on 15th December 1890 the Sheriff-Substitute fixed 30th January as a diet for nominating a special jury, and ordained service to be made on M'Bride, and service was thereafter duly made.

On 25th January 1891 the railway company presented a note of suspension and interdict against M'Bride, craving the Court to suspend the proceedings complained of and interdict the respondent from following out the notice and claim served upon the complainers on 24th November, and from proceeding with the said pretended claim for compensation, and to suspend the deliverance pronounced by the Sheriff-Substitute on 15th December.

The complainers founded on section 41, sub-sec. (L), of the Glasgow Central Railway Act 1888, and on section 328 of the Glasgow Police Act 1866, and averred, *inter alia*—The respondent's notice and claim for compensation is incompetent, invalid, and not conform to statute. The sewer in question is outside the limits of deviation of the railways and works authorised by the Glasgow Central Railway Act 1888, and was executed by the complainers under the provisions of section 41 sub-sec. (L) of that Act—"No sewer was carried or continued by the complainers into or through any lands or heritages belonging to or occupied by the respondent. The loss and damage to the respondent's business, in respect of which compensation is claimed, was occasioned, as set forth in said notice, by the temporary obstruction of the street, and the claim in respect of such loss and damage is incompetent, and unauthorised by statute, and irrelevant to found any claim against the complainers."

The respondent did not dispute that the work done by the complainers on the sewer had been done under section 41, sub-section (L), of the Glasgow Central Railway Act 1888, but averred that his property had been injuriously affected in the sense of section 6 of the Railway Clauses Consolidation (Scotland) Act 1845.

The complainers pleaded, *inter alia*—" (2) The operations complained of having been executed under the authority and subject to the provisions of the Glasgow Police Act 1866, as the said Act is incorporated with the Glasgow Central Railway Act 1888, and the respondent having no right of compensation under said Acts in respect of any of the matters referred to in said notice and claim, the said notice and claim are incompetent, and the complainers are entitled to decree as craved."

The respondent pleaded, *inter alia*—" (2)

The respondent's property having been injuriously affected, within the meaning of the Railway Clauses Consolidation (Scotland) Act 1845, the respondent is entitled to compensation, and to have the same assessed in terms of the Lands Clauses Acts."

Section 41 of the Glasgow Central Railways Act 1888 provides—"For the further protection of the Lord Provost, Magistrates, and Council of the city of Glasgow as a municipal Corporation, and as trustees or commissioners acting in execution of the several public and local or personal Acts, by which any powers, jurisdiction, or authorities are conferred on them, . . . the following provisions shall have effect and be binding on the company (that is to say)—(L) Where any of the works to be done under or by virtue of this Act shall or may pass over, under, or by the side of, or so as to interfere with any sewer, drain, water-course, defence, or work under the jurisdiction or control of the Corporation, or shall or may in any way affect the sewerage or drainage of the district under their control, the company shall make good any damage which may be done by their operations to any of the sewers, and shall clean the same should they get silted up in consequence of any of the operations of the company during or after the construction of the company's works, and shall provide by new, altered, or substituted works, including outfall sewers, in such manner as the Corporation may deem necessary (and for the construction of which they shall be bound to afford all reasonable facilities, and communicate their powers so far as necessary) for the proper protection of, and for preventing injury or impediment to the sewers and works hereinbefore referred to, by or by reason of the said intended works, or any part thereof, and shall save harmless the Corporation against all and every the expense to be occasioned thereby, and all such works may be done by or under the direction, superintendence, and control of the Corporation, and the costs, charges, and expenses in all respects of the company, and all reasonable costs, charges, and expenses thereby occasioned shall be paid by the company on demand, and if any dispute shall arise as to the amount of such costs, charges, and expenses, the same shall be settled as hereinafter provided, and when any new, altered, or substituted works as aforesaid, or any works or defence connected therewith shall be completed by or at the costs, charges, and expenses of the company under the provisions of this Act, the same shall thereafter be as fully and completely under the discretion, jurisdiction, and control of the Corporation as any sewers or works now or hereafter may be, and nothing in this Act shall, except as hereinbefore provided, extend to prejudice, diminish, alter, or take away any of the rights, powers, or authorities vested or to be vested in the Corporation, but all such rights, powers, or authorities shall be as valid and effectual as if this Act had not been passed." (O) "The special provisions herein contained for the protection of the Corporation and the Glas-

gow Botanic Institution shall not be deemed to supersede or dispense with the provisions of the Railway Clauses Consolidation (Scotland) Act 1845, but these, except in so far as they may be inconsistent with any of the special provisions herein contained, shall be and remain in full force and effect."

Section 328 of the Glasgow Police Act 1886 provides—"The Board" (of Police of Glasgow) "shall make provision for draining in a suitable manner the portions of the turnpike roads within the city and the public streets, and may with that object construct or continue in or under any of the said roads or streets one or more ordinary or special public sewers, and may from time to time alter, renew, or add to such sewers as to them shall seem proper, and may carry and continue the said sewers into or through any lands or heritages within the city, and may repair, maintain, and cleanse the said sewers, provided that they shall make reasonable compensation to the proprietors and occupiers of such lands and heritages for any damage which may be done by reason of the exercise of the powers hereby conferred, and such compensation shall, in the option of the Board, be assessed either by the Dean of Guild or in manner provided by the Lands Clauses Consolidation (Scotland) Act 1845, for determining the amount of compensation to be paid for lands taken under the provisions thereof."

Section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 provides—"In exercising the power given to the company by the special Act to construct the railway and to take the lands for that purpose, the company shall be subject to the provisions and restrictions contained in this Act and in the said Lands Clauses Consolidation (Scotland) Act, and the company shall make to the owners and occupiers, and all other parties interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties by reason of the exercise, as regards such lands, of the powers by this or the special Act, or any Act incorporated therewith vested in the company, and except where otherwise provided by this or the special Act the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Act for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the said last mentioned Act shall be applicable to determine the amount of any such compensation, and to enforcing the payment or other satisfaction thereof."

On 8th July 1891 the Lord Ordinary (KYLACHY) pronounced this interlocutor—"Sustains the reasons of suspension; suspends, interdicts, prohibits, and discharges, in terms of the note of suspension and interdict: Declares the interdict formerly granted perpetual, and decerns," &c.

“*Opinion.*—If this case had to be dealt with as originally presented, I should not have had much difficulty in refusing to interfere with the statutory proceedings, because while there is undoubtedly room for argument on the general question as to the respondent’s rights to compensation under the General Railway Acts for the complainers’ interference with the public street opposite his property, I do not think it would be possible to decide that question, which is largely a question of degree, and depends on the exact facts, upon the mere terms of the notice and claim or before the facts had been ascertained by the statutory procedure. The Court will not, as I understand the practice, deal with such questions *ab ante*, or interdict statutory proceedings except on the clearest grounds.

“But the complainers have in their amended record raised a totally new question, which admits, I think, of being at once disposed of. They allege, and the fact is not disputed, that the operations in connection with which the pursuer claims compensation are being executed by them in pursuance of their obligations to the Corporation of Glasgow under section 41 of their special Act of 1888, and particularly in pursuance of the obligation contained in sub-section (L) of that section, which sub-section is not quoted on record, but is as follows—[*quoted supra*].

“The complainers contend that in these circumstances, and in virtue of the provisions of this section, they are vested with all the powers, and by consequence all the immunities of the Corporation, and that the result of that is to bring them within the provisions of the 328th section of the Glasgow Police Act of 1866, which is quoted in article 6 of the complainers’ statement, and provides in effect for the construction, renewal, or repair of sewers in or through any lands or heritages within the city on payment of compensation ‘to the proprietors and occupiers of such lands and heritages for any damage which may be done by reason of the execution of the powers hereby conferred.’ The respondent being merely a frontager to the street in which the complainers’ operations are being conducted, and not being an owner or occupier of any land or heritage occupied by those operations, it is contended that his claim for compensation is expressly excluded.

“The respondent’s answer is, that although the complainers were vested with the powers of the Corporation, they are not vested with its immunities, and they appeal to sub-section (O) of the same 41st section of the special Act, which provides as follows—[*quoted supra*].

“I have not been able to read the last sub-section as enlarging the claims for compensation competent to individuals in the position of the respondent. The whole section is declared to have for its purposes merely the protection of the Corporation and certain other specified public bodies, and the sub-section I have just read cannot, I think, be construed without reference to the limitation, and with respect to the

argument that a transfer of powers does not necessarily imply a transfer of immunities. I am afraid it is rather against that argument that under the provisions of sub-section (L) the works in question might have been executed by the Corporation themselves at the expense of the railway company, in which case it is difficult to see how the respondent could have made good any claim for compensation except under the limitation expressed in the 328th section of the Glasgow Police Act above referred to.

“On the whole, therefore, I think that the matter is sufficiently clear on record and on the statutes to make it vain to proceed with the proposed jury trial, and I shall therefore grant interdict against so proceeding, with expenses to the complainers since the date of the second closing of the record.”

The respondent reclaimed, and argued—Statutes conferring powers for the benefit of private persons or bodies were to be construed very strictly in regard to the privileges conferred, and favourably as regards the public, and the right of neighbouring proprietors and occupiers to claim compensation for damage done by operations under such Acts would not be held to have been taken away unless there was a clear provision to that effect—Maxwell on Statutes, 363; *Clyde v. Glasgow City and District Railway Company*, July 16, 1885, 12 R. 1315; *Scales v. Pickering*, 1828, 4 Bingham’s Rep. 448; *Kingston-upon-Hull Dock Company v. La Marche*, 1828, 8 B. & C. 42; *Stockton Railway Company v. Barrett*, 1844, 11 Cl. & F. 590. The complainers had power to enter on the street in question under sub-section (L) of section 41 of their Act, and the parenthetical clause was not required to enable them to do so. If in the course of the operations authorised by that sub-section they did damage to neighbouring proprietors, they were liable in damages or to pay compensation under the Railway Clauses Act, the application of which was expressly saved by sub-sec. (O). The immunities conferred on the Corporation by the Police Act were not transferred to the complainers. Assuming, however, that section 328 of the Police Act was applicable to the operations of the complainers, it was not to be construed so as to exclude a claim for compensation by the proprietor of houses in a street on account of damage sustained by reason of operations in the street.

Argued for the complainers—The question was not whether the respondent had a good claim of damages, but whether he had a right to have his claim of compensation assessed under the statutes. Admitting that a proprietor had a claim for damage to his buildings caused by operations carried on by a neighbour on his own ground, that did not affect the question at issue. The complainers had carried on the works complained of in virtue of powers transferred to them in terms of sub-sec. (L) of section 41 of their Act. The object of that

section was to protect the Corporation of Glasgow, and sub-section (L) had nothing to do with the undertaking of the complainers. It was not an authorising section at all, but merely provided parenthetically for the transfer of powers necessary to enable the complainers to repair any damage the construction of their railway might do to the Corporation sewers. The power to execute the works in question were derived from section 328 of the Glasgow Police Act, which provided only for payment of compensation to the owners and occupiers of lands and heritages through which sewers were carried. The respondent had accordingly no claim to compensation under that Act, for the work complained of was carried on in the street, and by section 289 all the streets in the city were vested in the Board of Police, nor had the respondent any claim under the 6th section of the Railway Clauses Act, for that provided for compensation only where the injury had been done in the exercise of the power conferred on the railway company to construct their railway—*Hammersmith v. Bran*, L.R., 4 Eng. & Irish App. 171, *per* Lord Colonsay. If the operation of that Act were excluded, then sub-section (O) could have no bearing on the question. If the respondent had no right to a statutory arbitration, the case was at an end, but it might further be argued that he had no claim against the complainers at all. The right of action might be taken away by statute, and no corresponding right to compensation given—*Deas on Railways*, 271-281. Where powers were conferred by statute, members of the public had no right to compensation for injuries sustained owing to the exercise of those powers except as allowed by the Acts themselves—*Hammersmith case*, *supra*; *Vaughan v. Taff Vale Railway Company*, 1860, 5 H. & N. 679; *Rea v. Pease*, 4 B. & A. 30. To these cases the following case formed instructive contrast—*Jones v. Festiniog Railway Company*, L.R., 3 Q.B.D. 733.

At advising—

LORD PRESIDENT—A claim for compensation under the statutes has been made by the claimer Mr M'Bride against the Caledonian Railway Company for injurious affection of his lands, and he has given what purports to be the statutory notices in that behalf. The company ask interdict of further proceedings under those notices, and their pleadings challenge the claimer to state under what statute his claim for compensation arises. His reply, given in the 6th answer and 2nd plea, is under the 6th section of the Railways Clauses Consolidation (Scotland) Act 1845.

Now, the alleged injury to the claimer's property is that certain buildings in M'Alpine Street, Glasgow, have been damaged, and the access temporarily blocked, by the construction of a sewer in the centre of the street. Those operations, however, are admittedly not within the limits of deviation of the railways authorised by the special Act (which is the Glasgow

Central Railway Act 1888), and the 6th section of the Railways Clauses Act gives right to compensation for injurious affection only where the construction of the railway is the cause. The section founded on by the claimer therefore fails to support his claim.

This is, in my opinion, decisive of the case, unless it could have been shown that the 6th section of the Railway Clauses Act has been by some other enactment extended or applied to works not included in its own terms.

I think that there has been no such extension or application, and shall state the relation of the several enactments bearing on the question.

The sewer in M'Alpine Street was constructed by the railway company in consequence of the 41st section of their special Act. That section has nothing to do with the description of the railways authorised by the Act, and its object being stated in its opening words to be the further protection of the Glasgow Corporation, the Glasgow Tramway Company, and the Glasgow Botanic Institution. Among its very numerous and miscellaneous sub-sections, sub-section (L) is concerned with the safety of the sewers belonging to the Corporation, and requires the company, in certain events, to provide for their protection by new works. Incidentally to this, and in furtherance of it, it is enacted that the Corporation shall be bound to afford to the company all reasonable facilities and communicate their powers so far as necessary. This sewer in M'Alpine Street was constructed by the company in fulfilment of their obligations to the Corporation under this sub-section, and the company point to the 328th section of the Glasgow Police Act as containing powers conferred on the Corporation which have been communicated to them, which authorise this operation, and which, while providing for compensation, does so only to the owners of lands into or through which the sewers have to be taken. Now, admittedly, this sewer in M'Alpine Street was not taken into or through the claimer's lands, and therefore he is not in the one case for which compensation is directly provided in this section.

But the claimer founds on sub-section (O) of the 41st section of the special Act, which lays it down that the special provisions for the protection of the Corporation and the Botanic Institution shall not be deemed to dispense with the provisions of the Railway Clauses Consolidation (Scotland) Act, but that these, except in so far as they may be inconsistent with any of the special provisions contained in section 41, shall be and remain in full force and effect. Now, it is enough to say that this is only a salvo of the Railway Clauses Act for such cases as its terms cover, and is not an extension of it to cases which its terms do not cover. The terms of the 6th section of the Railway Clauses Act would cover a number of cases arising under various of the sub-sections of the 41st section of the special Act; they do not cover,

and are not here intended to cover, the case of works outside the railway itself.

Whether the powers of the Corporation (and by consequence the company) under the 328th section of the Glasgow Police Act gives right to withdraw support from the lands, or from the buildings, or from any particular building, in the streets in which they operate, are questions which do not arise here. What we decide is, that if they do, there is no statutory right to compensation such as is here sought, and if they do not, it is obvious that the remedy for an excess of statutory power cannot lie in statutory compensation.

I am for adhering to the interlocutor of the Lord Ordinary.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court adhered.

Counsel for the Claimants—Sol.-Gen. Graham Murray—Clyde. Agents—Hope, Mann, & Kirk, W.S.

Counsel for the Respondent—Comrie Thomson—Guthrie—Deas. Agent—Robert Stewart, S.S.C.

Tuesday, December 1.

FIRST DIVISION.

[Lord Wellwood, Ordinary.]

THE LORD ADVOCATE v. THE DUKE OF HAMILTON.

Revenue—Succession—Legacy and Inventory Duty—Liferent—36 Geo. III. c. 52, sec. 14—Process—Amendment of Record—Crown not Prejudiced by Neglect of Officers.

A testator conveyed to his trustees, *inter alia*, his whole moveable means and estate in Scotland which should belong to him at the time of his death, and after providing for payment of his debts he directed his trustees to make an inventory of the collection of "marbles, bronzes, objects of vertu, buhl, pictures, ornaments, china, and the library" in his house, which articles were to remain vested in and to be held by them as part of his trust-estate, the liferent use thereof being permitted to his eldest son D, whom failing to the substitute heirs of entail entitled to succeed to the estate. After all his debts, &c., had been "completely paid and extinguished," the trustees were directed to divest themselves of the whole of his heritable and moveable estate, and dispose the same by deed of entail as follows—"In the event of the liquidation of the said debts and obligations during the lifetime of D, the said trustees shall assign and make over to him the whole of the moveable estate

hereby conveyed, and directed to be liferented as aforesaid."

D, by an arrangement with the creditors of the testator, liquidated his debts partly by payment and partly by taking upon himself the burden of the balance, but the art collection continued to be held by the trustees during his life.

In a claim by the Crown against the executor and general donee of D for legacy and inventory duty upon this collection as having been *in bonis* of D—held that by the provisions of the trust-deed the art collection was to become the property of the heir in possession of the estate upon certain debts being extinguished, and these having been paid off during D's life the collection vested in him, and that the defender was bound to lodge accounts of the personal estate and effects of the testator and of D in order that the legacy and inventory duties respectively remaining due thereon might be ascertained.

This was an action by the Board of Inland Revenue against the Duke of Hamilton for legacy and inventory duty on the collection of pictures, bronzes, and articles of vertu known as the "Hamilton Collection," which was formed by Alexander Duke of Hamilton, and sold by the present Duke in 1882.

Alexander Duke of Hamilton died on 18th August 1852. He left a trust-disposition and settlement dated 12th October 1850, and recorded in the Books of Council and Session 16th September 1852. By that deed he conveyed to certain trustees the whole heritable means and estate in Scotland, of whatever denomination, then belonging to him, or which might belong to him at the time of his death, and also his whole moveable means and estate in Scotland of whatever kind and denomination, heirship moveables included, marbles, bronzes, objects of vertu, buhl, pictures, and ornamental china, and his library at Hamilton Palace, and in general his whole moveable means and estate in Scotland that should belong to him at the time of his death.

The deed set out as follows—"My object and intention in executing these presents is to evince my solicitude for the welfare and advantage of my descendants, for the continued honourable and fitting maintenance of my ancient name, and for the preservation of the paintings, books, and objects of art at Hamilton Palace belonging to me—a collection which if dispersed could not be replaced. This feeling, paramount at all times, has become more intense from a consideration of the tendency of the late enactments of the Legislature. These objects I have promoted myself at great personal sacrifice and inconvenience, and my wish and desire is that the fruits should be preserved by my successors."

The purposes of the trust after payment of debts were as follow—"Secundo. That the said trustees shall apply such portion of the balance of my said moveable