cannot pass against a limited company in liquidation which has its registered office outside of Scotland. The cases referred to, however, were cases of companies which had been compulsorily wound up, or in which the liquidation had been placed under the supervision of the Court. Here the liquidation is a voluntary one, and as the Lord Ordinary points out, it is not even said that the company is insolvent. In any case I apprehend that a voluntary liquidation is no bar to enforcing payment of a debt in the ordinary courts of the country. If it were so, an English limited company which litigated in Scotland could always defeat its agent's claim for a charging order by simply going into voluntary liquidation, and this of itself is sufficient to show the fallacy underlying the respondent's argument. Apart altogether from this, although a charging order may enable the creditor who obtains it to obtain a preference over other creditors, that is exactly what the statute has authorised, the presumption being that without the petitioner's work the fund recovered in the litigation, so far as not necessary to meet the agent's accounts, would not have been available for payment of other debts. The creditors therefore are not entitled to the sums so recovered except after providing for the legitimate expenses of the agent in recovering them for their behoof. I am therefore of opinion that on this point also the Lord Ordinary has come to a sound conclusion.

The interlocutor reclaimed against, however, goes beyond the prayer of the petition, for it contains a decree against the Syndicate, the liquidator, and a receiver appointed by the debenture-holders of the Syndicate, for the amount of the taxed account. In my opinion we must vary the interlocutor by deleting this decree. The interlocutor also falls to be corrected in one other particular, by qualifying the words "all other sums due by the Reid Newfoundland Company to the said Syndicate" by adding the words "in terms of the decree of 15th September 1908." No doubt the petitioner will see that this decree is properly described in our interlocutor. *Quoad ultra* I think we should substantially repeat the interlocutor of the Lord Ordinary.

LORD DUNDAS—At the conclusion of the argument I thought that Mr Robertson had not shown any sufficient ground for interfering with the Lord Ordinary's interlocutor—except indeed on the two points in regard to which it falls to be modified. The reasons why I so thought were substantially those which my brother Lord Salvesen has fully expressed, and I am therefore content to say that I concur in his opinion.

The LORD JUSTICE-CLERK concurred.

LORD ARDWALL was absent.

The Court adhered to the Lord Ordinary's interlocutor as varied and corrected to the effect mentioned in the opinion of Lord Salvesen.

Counsel for Petitioner (Respondent)—M'Kechnie, K.C.—Ingram. Agent—Party.

Counsel for Respondents—W. J. Robertson. Agents—Simpson & Marwick, W.S.

Friday, July 14.

SECOND DIVISION.

M'GREGOR'S TRUSTEES *v.* KIMBELL.

Succession—Testament—Partial Intestacy —Provision to Widow in Full of her Legal Claims—Right of Widow to Jus Relictæ out of Undisposed Estate.

A testator by a settlement disposing of his whole estate directed his trustees to pay the annual income thereof to his wife, and in the event of her entering into a second marriage to pay her one-third of the annual income. He further directed that the balance of income forfeited by his widow on re-marriage should fall into the capital of his estate until the period of division, which was the date of her death, should arrive. The settlement, which was signed by the testator's wife as well as by himself, contained a clause in which the wife accepted of the provisions in her favour in lieu of terce, *jus relictæ*, and every other claim competent to her through her husband's death. The testator died in 1881, and his widow thereafter received payment of her conventional provision. She re-married in 1894. In 1902 the direction to accumulate the balance of income set free by her re-marriage became inoperative under the Thellusson Act (39 and 40 Geo. III, cap. 98), and the balance thereafter fell into intestacy.

Held, in a special case, that the clause in the settlement whereby the wife accepted the provisions in her favour in lieu of her legal rights was to be regarded as having been intended solely for the protection of the settlement, and that the widow, in addition to her conventional provision, was entitled *jure relictæ* to one-half of the proportion of income falling into intestacy—*Naismith* v. *Boyes*, July 28, 1899, 1 F. (H.L.) 79, 36 S.L.R. 973, *followed*.

Sim v. *Sim*, December 18, 1901, 4 F. 944, *distinguished*.

On 14th July 1911 a Special Case was presented to the Court by David Edward and another, trustees of the late James M'Gregor, 28 Hamilton Drive, Hillhead, Glasgow, *first parties;* Mrs Alice Jeffs or M'Gregor or Kimbell, widow of the said James M'Gregor, and now wife of William Alfred Kimbell, Herne Hill, London, *second party;* John M'Gregor, San Francisco, U.S.A., and others, the whole brothers or sisters or descendants of brothers and sisters of the said James M'Gregor, *third parties;* and William Jeffs, 34 Testerton Street, Kensington, London, and others, the whole brothers and sisters or descendants of brothers and sisters of

the said Mrs Alice Jeffs or M'Gregor or Kimbell, *fourth parties*.

The following *narrative* of the *facts* of the case is taken from the opinion of Lord Dundas—"The testator James M'Gregor died on 26th November 1881. He left no issue, but was survived by a widow, who married again on 24th November 1894 and is the second party to this case. Mr M'Gregor left a trust-disposition and settlement of his whole means and estate dated in 1876, by which, after sundry prior provisions, he directed his trustees (fourth) to invest the balance of his estate and pay the annual income thereof to his wife so long as she should remain his widow; and in the event of her entering into a second marriage the trustees were directed to pay her one-third of the annual income of his estate during all the years of her life. By the fifth purpose, in the event of the testator leaving issue and his said wife entering into a second marriage, the trustees were directed, after satisfying the said provision in her favour, to apply the balance of the income of his estate to the maintenance and education of his children; and in the event of his leaving no issue, the said balance of income was to fall into the capital of his estate until the period of division of his trust estate should arrive. By the sixth purpose of the settlement the truster directed that on the death of his said wife the trustees should convert into money the whole trust estate under their charge and pay and make over one-half thereof to his brothers and sisters german, equally among them, the lawful issue of predeceasers taking their parents' share; and the other half thereof to the brothers and sisters of his wife equally among them, the lawful issue of predeceasers taking their parents' share, all as by the said purpose provided. The settlement, which was signed by the truster's wife as well as by himself, also contained the following clause—'And I, the said Alice Jeffs or M'Gregor' (the wife) 'do hereby accept of the provisions conceived in my favour by the foregoing settlement in lieu of terce, *jus relictæ*, and every other claim which might have been competent to me in consequence of the death of the said James M'Gregor.' After the testator's death his widow did in fact accept and receive payment of her conventional provision under the settlement. In these circumstances various questions have arisen, for the determination of which this Special Case has been brought. We are asked to decide whether, looking to the provisions of the Thellusson Act (39 and 40 Geo. III, cap. 98), it was lawful for the trustees, after the expiry of twenty-one years from the truster's death (viz., 26th November 1902), to accumulate as capital of the estate the balance of the income arising in each year after payment to the widow of her restricted provision of one-third thereof [*not reported on this*]; and if not, whether that portion of the income was distributable, and among whom."

The following *questions of law* were, *inter alia*, submitted for the opinion and judgment of the Court—"2. Are the first parties entitled or bound to accumulate, as directed by the trustee, any part of the income of the estate after 26th November 1902? [*Answered in negative*; *not reported*]. 3. Should the second question be answered in the negative, is the second party entitled, *jure relictæ*, to one-half of the surplus income after payment of her restricted annuity for each year since 26th November 1902, and so long as she survives?"

Argued for the second party—The widow was not barred from claiming *jus relictæ* out of what had fallen into intestacy. Her renunciation did not touch that part of the estate which by a *casus improvisus* had not been dealt with under the will. It had been conclusively settled by the House of Lords that the only object of a clause which barred the widow's legal rights was the protection of the settlement—*Naismith* v. *Boyes*, July 28, 1899, 1 F. (H.L.) 79, 36 S.L.R. 973. This affirmed a unanimous judgment of the First Division—May 27, 1898, 25 R. 899, 35 S.L.R. 702. The husband had only bought off the wife from making any claim against his estate which would disturb the provisions of his will. *Naismith* v. *Boyes* had been followed in the Court of Session in *Moon's Trustees* v. *Moon*, November 28, 1899, 2 F. 201, 37 S.L.R. 140, and in *Mackay's Trustees* v. *Mackay*, 1909 S.C. 139, 46 S.L.R. 147. The case of *Sim* v. *Sim*, July 1, 1902, 4 F. 944, was distinguishable. The wife's renunciation in that case was in an antenuptial contract of marriage, which became the law of the marriage and governed the rights of the parties. Here the renunciation was merely in reference to a particular deed. There was a marked distinction between a contractual provision and a provision by way of testamentary gift.

Argued for the third parties—The House of Lords did not intend to lay down an absolute general rule in *Naismith* v. *Boyes* (*sup. cit.*). Every case of the kind depended on the intention of the testator, which was to be gathered from the settlement. It was always a question of circumstances—Lord Watson in *Naismith* v. *Boyes*, at 1 F. (H.L.) 82, Lord Davey at 86, and Lord M'Laren (in the Court of Session) at 25 R. 902. In this case there were the plainest indications that the testator intended his wife in the event of her re-marriage to get one-third of the income, and nothing more. In *Naismith* v. *Boyes*, on the contrary, there were no such indications in the settlement. It was true that *Moon's Trustees* v. *Moon* (*sup. cit.*) was not distinguishable from the present case, but that decision should be reconsidered. It had there been assumed that *Naismith* v. *Boyes* laid down a general rule, and it was followed without any argument. Moreover, the latter case was so recent at the date of *Moon's Trustees* v. *Moon* that it had not yet been reported. In *Mackay's Trustees* v. *Mackay* (*sup. cit.*) it was again assumed that *Naismith* v. *Boyes* applied. In *Sim* v. *Sim* (*sup. cit.*), where the exclusion of legal rights was by marriage contract, *Naismith*

v. *Boyes* was distinguished in respect that it related to a testamentary provision. In the present case also the exclusion was contractual because the wife was a party to her husband's settlement. *Farquharson* v. *Kelly*, March 20, 1900, 2 F. 863 (Lord President at 869), 37 S.L.R. 574, was also referred to.

At advising—

LORD DUNDAS—[*After narrating the facts as above quoted and dealing with contentions of parties with which this report is not concerned, and holding, inter alia, that (as was conceded by the parties) the accumulation of the balance of income arising in each year since 26th November 1902 was prohibited by the Thellusson Act, and that such balance fell into intestacy of the truster*] . . . It remains to consider a question—the only one in respect of which we thought it right to take time for consideration of the case,—viz., whether or not the widow is entitled to claim, *jure relictæ*, one-half of the proportion of the income which falls (as already explained) into intestacy in each year after 26th November 1902, in addition to receiving her conventional provision of one-third of the annual income of the trust estate. The widow, whose claim is opposed by the truster's heirs *in mobilibus ab intestato*, relied upon the decision by the House of Lords in *Naismith* v. *Boyes* (1899, 1 F. (H.L., 79). That case appeared to be conclusive of the point in her favour. But Mr Blackburn presented an earnest argument to the effect that *Naismith* v. *Boyes* was a case of some specialty, and did not lay down any general rule or principle; that every case of the kind must be decided in accordance with the intention of the testator as it may be gathered from the language of his settlement; and that Mr M'Gregor's trust-deed affords sufficient indications of a contrary intention to differentiate it from that under consideration in *Naismith's* case. He admitted that *Naismith* v. *Boyes* was followed by this Division of the Court in *Moon's Trustees* (1899, 2 F. 201), which could not be distinguished from the present, but he submitted that the decision then arrived at ought to be reconsidered, because the Judges appear to have simply accepted *Naismith* v. *Boyes* (then so recently decided that no adequate report of it may have been available so as to afford proper opportunity for its discussion or distinction) as a conclusive authority. Counsel also referred to *Mackay's Trustees* (1909 S.C. 139), where the applicability of *Naismith* v. *Boyes* seems to have been assumed rather than decided; for though the point now under consideration was directly involved in one of the questions put to and answered by the Court, and *Moon's Trustees* appears to have been mentioned by counsel, the matter is not noticed either in the rubric or by the Lord President, who delivered the only opinion. In view of Mr Blackburn's argument I have re-perused *Naismith's* case as carefully as I can, and I have come to the conclusion that no sufficient reason has been shown for convening a fuller Bench in order to reconsider *Moon's Trustees*. I do not think Mr Blackburn was able to distinguish Mr M'Gregor's trust settlement in any material respect from that of the testator in *Naismith* v. *Boyes*; and it seems to me that in that case both the Court of Session and the House of Lords proceeded expressly upon a rule of general, though not necessarily of universal, application, and not upon any speciality in the case before them. I think this rule was to the effect that a clause in a general settlement whereby provisions to a wife or children are declared to be in full of legal rights is in general to be regarded as having been intended solely for the protection of the settlement, and its acceptance therefore will not, as a rule, bar the acceptor or acceptors from claiming rights competent to her or them arising out of resulting partial intestacy of the testator. Lord M'Laren, who delivered the opinion of the First Division in *Naismith's* case said (25 R. at p. 903)—"I think we must apply to this clause of exclusion the ordinary and time-honoured principle of construction, that such clauses are intended to enable full effect to be given to the testator's testamentary dispositions by putting all persons who take benefit from the will under a disability to put forward legal claims which would have the effect of withdrawing something from the estate disposed of. As regards all that remains over when the provisions of the will are satisfied, . . . the law of intestacy takes effect upon it just as if it had been formally excepted from the will. . . ." In the House of Lords the Lord Chancellor (Lord Halsbury) expressly adopted (1 F. (H.L.) 79) Lord M'Laren's language as the basis of his judgment. Lord Watson said—"In a case like the present, where the testator settled upon the members of his family all the property, both heritable and moveable, of which he was possessed, I do not think it can be reasonably assumed in the absence of any provision to that effect, either express or implied, that he intended to regulate the disposal of any part of his estate which might possibly lapse into intestacy. In my opinion the testator, when he inserted a clause in his settlement barring the legal rights of the appellant and respondent, had no object in view except to protect the settlement by preventing the enforcement of these claims to the disturbance of his will and to the detriment of the beneficiaries whom he had selected." Lord Shand put the matter in a sentence thus—"The true meaning of the clause excluding the rights of the widow and children is to protect the provisions in the settlement, but if those provisions entirely fail it appears to me that in consequence and by direct implication the declarations in regard to the rights of the widow and the children fail also." Lord Davey pointed out that, in the absence of any Scottish authority upon the point, the case must be decided on principle, and concurred, though with hesitation, in the judgment.

I am not surprised, therefore, that in *Moon's Trustees* the Judges of this Division (except Lord Young, who dissented, holding that intestacy had not arisen) accepted *Naismith* v. *Boyes* as a conclusive authority upon the point. Our attention was called to a more recent decision in this Division—*Sim* v. *Sim*, 1902, 4 F. 944—where *Naismith's* case appears to have been referred to and distinguished. There a husband had by his antenuptial marriage-contract bound himself and his heirs to pay to his wife after his death an annuity of £250 during her life, which provision she by said contract accepted in full satisfaction of all terce, *jus relictæ*, and everything she could claim from her husband or his heirs, executors, and representatives by and through his death if she should survive him. The husband predeceased his wife intestate and leaving large moveable estate. In a question between the widow and the children of the marriage it was held that the former was not entitled *jure relictæ* to one-third of the moveable estate and that it all fell to the children. It is unfortunate that so far as appears from the report (which seems to be the only one) no opinions were delivered by the Judges, and one cannot therefore affirm with certainty their grounds of decision. The report bears that it was argued for the children that *Naismith* v. *Boyes* was distinguishable in respect that it "related to a testamentary provision, whereas here the first party had by her marriage-contract contracted that her conventional provision should be in full of her legal rights." I do not, however, suppose that the judgment was rested upon any distinction between a contractual provision, on the one hand, and a provision by way of testamentary gift on the other. I apprehend that if a testamentary provision, declared to be in full of legal rights, is accepted as such, the position becomes *eo ipso* one of contract. I do not attach special importance to the fact that in the case before us the wife's acceptance of the testamentary provision in full of her legal rights is expressed in the settlement as in her own name and over her signature. The wife's acceptance was, I think, none the less a condition made by her husband, but whether or not she might have succeeded after his death in electing to take her legal rights in place of the provision, she did in fact accept the latter. It seems to me, therefore, that in this case, and in *Naismith* v. *Boyes*, the position of the widow after she accepted her provision was one of contract; and I do not think there is room for any material distinction in this matter between the exclusion of legal rights by a formal contract and a testamentary provision offered and accepted in full of legal rights. I find some support for this view in the opinions of the Judges, particularly Lord Kinnear, in the case of *Moon's Trustees*, 1909 S.C. 185, to which, though it was not cited to us, I may also refer as the most recent occasion where *Naismith* v. *Boyes* seems to have been under consideration by the Court. The real ground of distinction between such cases as *Naismith* v. *Boyes* and that now before us, on the one hand, and that of *Sim* v. *Sim* on the other, appears to me to be that in the former there is a universal disposal of his estate by the granter and in the latter there is not. In the former class of cases, therefore, it is presumed that his intention in excluding legal rights was only to protect his settlement, and if part of his estate turns out to be undisposed of by the deed it lies outside the settlement, and therefore of the clause in the settlement which is founded on as barring the claim for legal rights in the resulting intestacy. But in a case like *Sim* v. *Sim* the wife is bound by her antenuptial marriage-contract, which defines the limits of her possible claims upon the husband's estate after his death, and she is therefore effectually barred, though he should die intestate, from claiming anything beyond what falls within the limits of her provision.

If the views which I have expressed are well founded, they afford material for answering the specific questions put to us in the case, to which I now turn. . . . [*His Lordship then dealt with the other questions on which the case is not reported.*] . . . The answer to the third question should, in my opinion, upon the grounds I have endeavoured to explain, be in the affirmative. . . .

LORD SALVESEN—The questions raised by this Special Case depend for their solution on the construction of three clauses in the trust-disposition and settlement of the late James M'Gregor. By the fourth clause he directed his trustees to invest the balance of his estate, after payment of debts and special legacies, and to pay the annual income thereof to his widow, and in the event of her entering into a second marriage "to pay her one third of the annual income of my estate." By the fifth clause he directed that in the event of his leaving no issue (which actually happened) the balance of income forfeited by his widow on re-marriage should fall into the capital of his estate until the period of division arrived. The sixth purpose is thus expressed—[*His Lordship quoted the clause.*]

The testator died in 1881, and his widow remarried in 1894. On 26th November 1902 twenty-one years had elapsed since the death of the testator, and the direction to accumulate the two thirds of the income set free by the widow's second marriage became inoperative by virtue of the provisions of the Thellusson Act. The leading questions in the case are whether this two-thirds part of the income of the estate falls to be paid to the heirs *ab intestato* or to the legatees mentioned in the sixth purpose of the settlement, and, in the former event, whether the widow is entitled to one half *jure relictæ* notwithstanding that she was a party to the settlement which contains a clause by which she accepted of the provisions thereby conceived in her favour as in lieu of terce, *jus relictæ*, and every other claim which might have been competent to her in consequence of her husband's death.

[*His Lordship then dealt with contentions of the parties with which this report is not concerned.*]

The remaining question in the case is whether the widow is entitled, *jure relictæ*, to one-half of the income set free by her re-marriage. If so, the result is certainly at first sight surprising, because after 1902, when further accumulation became illegal, she would be entitled to two-thirds of the income of her husband's trust estate, although by the terms of the settlement she had accepted one-third as in full satisfaction of her legal claims as a widow.

If the question were open it would have demanded very serious consideration. In my opinion, however, it has been conclusively settled in favour of the widow by the judgment of the House of Lords in the case of *Naismith* v. *Boyes* (1 F. (H.L.) 79), which affirmed a unanimous decision of the First Division. I observe that in that case also the truster's widow was entitled to the whole income and annual proceeds of the trust estate so long as she remained unmarried, restricted to one-half in the event of her second marriage. There too, as here, a portion of the estate fell into intestacy through a circumstance which the testator had not foreseen, and against which he had not provided. In a carefully considered opinion delivered by Lord Watson in the House of Lords, that eminent Judge came to the conculsion that "the testator when he inserted a clause in his settlement barring the legal rights of the appellant and respondent, had no object in view except to protect the settlement by preventing the enforcement of these claims to the disturbance of his will, and to the detriment of the beneficiaries whom he had selected. When, accordingly, by the premature decease of his children of the second marriage, the residue provided to them by his settlement became intestate, I do not think it can be held that the testator contemplated or intended that the exclusion of the legal rights of his widow and surviving child should any longer remain operative." That was also substantially the ground of judgment of the First Division, as expressed in the opinion of Lord M'Laren.

It was pointed out that there is this difference between that case and the present, that the widow here was a party to her husband's settlement, and that an element of contract or quasi-contract is accordingly present here which did not exist in the other case. I do not think that this circumstance creates any substantial distinction. When Mrs Boyes after her husband's death accepted her conventional provisions and took payment of them for four and a half years, in the full knowledge of all that was material to a valid election, she just as effectually barred herself from challenging the provisions of the will as the widow has done in the present case. Reference was made to the case of *Sim* (4 F. 944), but in that case the discharge was contained in an antenuptial contract of marriage, and to such a deed the rule laid down by Lord Watson was not necessarily applicable. The decision of the House of Lords in *Naismith* v. *Boyes* has been followed in two cases—*Moon's Trustees*, 2 F. 209, decided by the Second Division, and *Mackay's Trustees*, 1909 S.C. 139, decided by the First Division in circumstances which are admittedly quite indistinguishable from those which exist here. I am therefore of opinion that it is our duty to follow this consistent current of authority, and that we must sustain the widow's claim to one-half of the surplus income. and accordingly to answer the third question in the affirmative. . . .

LORD JUSTICE-CLERK—Under the will of the late James M'Gregor his wife was to have a liferent of his free estate, but this was to be reduced to a liferent of a third on her entering into a second marriage. In this event, which occurred, he directed that if he left no issue, which proved to be the case, the income of the two-thirds was to fall into capital until the time for division, viz., the death of the widow, and was then to be divided, one-half among his brothers and sisters and one-half among his wife's brothers and sister, children of predeceasers in each case taking the parents' share.

The wife was a party to this settlement, and signed it, thus giving effect to a clause whereby she accepted the provision made by the will and renounced all legal rights, and she in fact received and accepted the provisions made by the settlement. [*His Lordship then dealt with contentions with which this report is not concerned.*]

It only remains to consider whether the widow can, in virtue of her *jus relictæ*, claim her share of the sums which year by year now fall into intestacy in consequence of the accumulations being stopped by the operation of the Thellusson Act, which brought them to an end in 1902. This matter is, I consider, settled by decision in the cases referred to in the debate, by which it has been held that a declaration in a settlement that its provisions are to be in full of legal rights is a clause to guard the settlement only, and does not affect those accepting in any question relating to what may prove to be intestate succession of the maker of the settlement. I content myself with expressing the opinion formed after consideration of the cases and the able arguments of counsel on both sides. I have had an opportunity of reading the opinions prepared by my brethren, in which the cases are fully—and very fully by Lord Dundas—considered, and I agree with all that their Lordships say in regard to the cases.

The result will be that the third question will fall to be answered in the affirmative.

LORD ARDWALL was absent.

The Court answered the third question of law in the affirmative.

Counsel for the First Parties—J. R. Dickson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Second Party — Crabb Watt, K.C. — J. G. Jameson. Agents—Wishart & Sanderson, W.S.

Counsel for the Third Parties—Blackburn, K.C.—Maconochie. Agents—Fraser, Stodart, & Ballingall, W.S.

Counsel for the Fourth Parties—Wilson, K.C.—D. Anderson. Agents—Fraser & Davidson, W.S.

Thursday, June 15.

FIRST DIVISION.

INGLIS' TRUSTEES *v.* MACPHERSON.

(*Ante*, 3rd November 1909, 1910 S.C. 46, 47 S.L.R. 43.)

Right in Security — Heritable Creditor — Ejection of Debtor in Occupation of Subjects—Heritable Securities (Scotland) Act 1894 (57 *and* 58 *Vict. cap.* 44), *secs.* 5 *and* 6. *Observations* (*per* the Lord President) as to the effect of sections 5 and 6 of the Heritable Securities (Scotland) Act 1894 with regard to the remedies of the holder of a bond and disposition in security.

[The case is reported *ante ut supra.*]

The Heritable Securities (Scotland) Act 1894 (57 and 58 Vict. cap. 44) enacts—Section 5—"When a creditor desires to enter into possession of the lands disponed in security, and the proprietor thereof is in personal occupation of the same, or any part thereof, such proprietor shall be deemed to be an occupant without a title, and the creditor may take proceedings to eject him in all respects in the same way as if he were such occupant, provided that this section shall not apply in any case unless such proprietor has made default in the punctual payment of the interest due under the security, or in due payment of the principal after formal requisition." Section 6—"Any creditor in possession of lands disponed in security may let such lands held in security, or part thereof, on lease, for a period not exceeding seven years in duration."

Mrs Catherine A. Hugonin or Inglis, Alton House, Inverness, and Etienne Hugonin, solicitor, there (Mr and Mrs Inglis' marriage contract trustees), *pursuers*, brought an action in the Sheriff Court at Inverness against Mrs Rebecca Brown or Macpherson, widow of the late Donald Macpherson, teacher, Inverness, *defenders*. The prayer of the initial writ was—"To grant warrant summarily to eject the defender, her dependents and effects, in virtue of section 5 of the Heritable Securities (Scotland) Act 1894, from the portion of the security subjects comprehending the dwelling-house known as Hanover House, Ness Bank, Inverness, now occupied by her without title; and further to grant warrant to cite the defender on an induciæ of three days."

The following *narrative* is taken from the opinion (*infra*) of the Lord President—"In this appeal the pursuers are a set of trustees who are the undoubted holders of a bond and disposition in security; and the action is one in the Sheriff Court, in which they pray the Court to grant warrant summarily to eject the defender, who is occupying a portion of the security subjects, namely, the dwelling-house known as Hanover House, Ness Bank, Inverness. The initial writ bears that they base that crave upon section 5 of the Heritable Securities Act of 1894.

"The history of the matter is this, that the bond and disposition in security was granted by the defender and her husband. Afterwards there were other money transactions between the defender and Mr Etienne Hugonin, who is a solicitor in Inverness, and who is one of the body of trustees. There was another bond granted which does not enter into the matter; but eventually there was a disposition granted by the lady—who afterwards became full proprietrix, the husband being dead—there was a disposition granted by her of the property in favour of Mr Etienne Hugonin. She says that the disposition was an out-and-out disposition and that at the time it was granted Mr Hugonin promised her that she should not be disturbed in her occupancy of a portion of the subjects, namely, this house Hanover House, Ness Bank, Inverness.

"Now the only question that could be raised was whether the crave of the pursuers was a legal crave. One can understand that if the defender considered that she had had this undertaking from Mr Hugonin she would consider herself very hardly used at being put out of her house by anybody for whom Mr Hugonin was really responsible. But at the same time in law there is no question that the body of trustees are separate persons from Mr Hugonin, and that the rights of the body of trustees under their bond and disposition in security cannot be affected by any engagement made by Mr Hugonin as an individual.

"Now the Sheriff-Substitute held that the section did not apply because he found that the section only dealt with a proprietor in occupation, and he thought that, standing the absolute disposition which I have mentioned, it could not be said that Mrs Macpherson was the proprietor. To that view the pursuers made answer that they should be entitled to prove that she really was proprietor, and that the disposition, though *ex facie* absolute, was truly a disposition in security; and they contended—and I do not suppose there was any doubt as to that—that if she was truly the proprietor then she answered to the description of proprietor in section 5 of the Act of 1894.

"Accordingly the learned Sheriff reversed the decision of the Sheriff-Substitute and allowed the pursuers a proof upon that matter; and having taken a proof, he came to the conclusion that the disposition, although *ex facie* absolute, was truly a disposition in security, and that the defender still remained proprietor. He therefore held that the section applied and granted the remedy craved."

The interlocutors of the Sheriff-Substitute (GRANT) and Sheriff (WILSON) were—"*3rd February* 1911—The Sheriff-Substitute