

case, there would not be much diversity in the result between that which took place in Scotland and what would have taken place here, I should submit to your Lordships that that part also of the decision of the Court below—throwing the expenses on the appellants—should be affirmed. If your Lordships concur with me in opinion, the effect will be to affirm the judgment of the Court below with respect to those several points.

Feb. 22. 1828.

SPOTTISWOODE and ROBERTSON—MONCREIFF, WEBSTER, and THOMSON,—Solicitors.

POOR ISOBEL M'DIARMID and Husband, Appellants.

No. 3.

Fullerton—Wilson—Bere.

JOHN and JAMES M'DIARMID, Respondents.

Keay—T. H. Miller.

Fraud.—A daughter and her husband having obtained from her father, who was eighty-three years old, facile, and addicted to habits of intoxication, a deed in the shape of an agreement and obligation between them and him, by which he conveyed to them, without any onerous consideration, funds of the value of about L. 4000, reserving an annuity of L. 40 out of these funds; and which deed was prepared by their agents without the intervention of any man of business on his part; and under the erroneous impression that unless he executed it he might be reduced to poverty;—Held (affirming the judgment of the Court of Session), That the deed was not binding on him.

JOHN M'DIARMID had, by his wife Catherine Cameron, two sons, Angus and Hugh, and two daughters, Christian and Isobel, the latter of whom (the appellant) was married to Daniel Drummond, farmer in Perthshire. Angus was a vintner in Edinburgh, and after having been married for several years, he and his wife executed, in 1813, a mutual trust-disposition and deed of settlement, by which she renounced her legal, and accepted conventional provisions, and under burden of certain legacies the residue was provided to the issue of Angus, if he should have any; and the deed then proceeded in these terms:—‘ In case I, the said Angus
‘ M'Diarmid, shall leave no issue of my body, of the present or
‘ any subsequent marriage, at my death, or their afterwards failing,
‘ then our said heritable and moveable means and estate before
‘ disposed, shall fall and belong to John M'Diarmid and Catherine
‘ Cameron or M'Diarmid, my father and mother, and the
‘ survivor of them; whom failing, to Hugh M'Diarmid, presently
‘ residing in the neighbourhood of London, Christian M'Diarmid
‘ mid and Isobel M'Diarmid or Drummond, wife of Daniel

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1ST DIVISION.
Lord Eldin.

March 28. 1828. ' Drummond, farmer in Cowden, near Comrie, my brother and
 ' sisters, equally among them, their respective heirs, executors,
 ' or assignees.' It was also provided, that ' in case of the said
 ' John M'Diarmid, my father, surviving his present wife, my
 ' mother, and marrying again, in the event of them or him suc-
 ' ceeding as aforesaid to our said heritable and moveable estate
 ' before disposed, his right shall determine, and the same shall
 ' devolve and belong to my said brother and sisters, before named
 ' and designed, and their foresaids; and in place thereof, the said
 ' John M'Diarmid, my father, shall have right to the said house
 ' presently occupied by him and my mother at Quarryholes, in
 ' liferent during his life, and my said trustees shall make pay-
 ' ment to him of L. 40 sterling per annum, to be paid him quar-
 ' terly, per advance, during his lifetime.'

On the 10th of February 1823 Angus died without issue, and was survived by his wife and by his father, in the latter of whom, (according to the provisions of the above deed), his property vested, subject to the burden of the widow's annuity and the legacies.

The property was partly heritable and partly moveable, and amounted to about L. 6000. The rents of the heritable subjects were said to yield L. 300 a-year.

At this time the father was a widower, and eighty-three years old. His other son Hugh, and his daughter Christian, were dead; and therefore his daughter Isobel, the wife of Drummond, was the next substitute, and was entitled to succeed to the property in the event of her father marrying a second time. The trustees accepted and entered into possession. On the extent of the property being ascertained, the widow of Angus brought a reduction of the deed, with the view of betaking herself to her legal provisions, and in which, if successful, the succession would be diminished to about L. 4000. Immediately on hearing of the death of Angus, Isobel and her husband came to Edinburgh, and took up their residence in the house of Angus, along with her father and the widow. Towards the end of March they employed their own agents to draw a deed in the form of a mutual agreement and obligation, by which the father, in consideration of the payment of an annuity of L. 40 out of the trust-funds, was to convey to them the whole succession which he had acquired by the death of Angus. This deed proceeded on the narrative that
 ' It is contracted, agreed, and ended, between the parties follow-
 ' ing, viz. John M'Diarmid, lately residing in Quarryholes, at
 ' present in Edinburgh, on the one part; and Isobel M'Diarmid
 ' or Drummond, wife of Daniel Drummond, farmer in Cowden,

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' near Comrie, and the said Daniel Drummond, her husband,
 ' for his interest, and as taking burden on him for his said wife,
 ' and these two spouses, with joint assent and consent on the
 ' other part.' After reciting the trust-disposition and settlement,
 the deed then proceeds in these words:—' And now seeing that
 ' the parties to the present deed have arranged and agreed that
 ' the said John M'Diarmid shall enjoy an annuity of L. 40 per
 ' annum out of the foresaid funds, in lieu and place of the rights
 ' that have opened to him by the death of the said Angus
 ' M'Diarmid, which shall determine from this date, and shall
 ' devolve and belong to the other persons named in the foresaid
 ' deed of settlement: therefore, on the one part, and in considera-
 ' tion of the foresaid annuity of L. 40 per annum, the said John
 ' M'Diarmid hereby, for himself, his heirs, executors, and suc-
 ' cessors, renounces and discharges all his right to and interest
 ' in the property, heritable and moveable, conveyed in trust as
 ' aforesaid, (excepting the annuity); and he hereby binds and
 ' obliges himself, and his heirs, executors, and successors whomso-
 ' ever, to come under no obligation, and to make, grant, and
 ' subscribe no deed or deeds inter vivos or mortis causa, whereby
 ' the terms and purposes of the foresaid deed of settlement shall
 ' be altered or departed from, or defeated in any respect, from
 ' and after the date of the present deed, or the rights of any of
 ' the parties substituted to him shall in any way be affected; but
 ' on the contrary, he hereby expressly agrees and declares, and
 ' binds and obliges himself and his foresaids, that his right to the
 ' foresaid heritable and moveable estate, excepting to the extent
 ' of the annuity of L. 40 sterling, before and after mentioned,
 ' shall henceforth cease and determine, and the same shall de-
 ' volve and belong, and the said John M'Diarmid hereby gives,
 ' grants, assigns, and dispones, from him and his foresaids, the
 ' same, to the person or persons having right after him to the
 ' said heritable and moveable property by the foresaid deed of
 ' settlement: And further, the said John M'Diarmid binds and
 ' obliges himself and his foresaids to make, grant, subscribe, and
 ' deliver all dispositions, assignations, renunciations, or other
 ' deed or deeds, in legal form, conveying all right vested, or that
 ' may be vested in his person, or in the person of the foresaid
 ' trustees for his behoof, by the foresaid deed of settlement, to the
 ' foresaid trustees themselves, or to the second parties to the
 ' present deed, or to such other person or persons, or in such way
 ' and form as may be deemed necessary for carrying the purposes
 ' and intentions of the present deed into full effect: and he

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‘ declares, that any deed or obligation to be granted by him, con-
 ‘ trary to the intentions and purposes of the present deed, shall
 ‘ be null and have no effect. And on the other part, the said
 ‘ Isobel Drummond or M'Diarmid, and Daniel Drummond, her
 ‘ husband, for his interest, and as taking burden on himself for
 ‘ her, and they both with mutual consent and assent, bind and
 ‘ oblige themselves, and their heirs, executors, and successors, to
 ‘ make payment to the said John M'Diarmid, out of the trust-
 ‘ funds, of the foresaid sum of L. 40 per annum, payable quarterly
 ‘ per advance, beginning the first quarter's payment upon the 1st
 ‘ day of May next, and that during the lifetime of the said John
 ‘ M'Diarmid, with interest of each quarterly payment from the
 ‘ time it falls due until paid, and a fifth part more of penalty in
 ‘ case of failure: And both parties to the present deed hereby
 ‘ request, and authorize and require, the trustees before mention-
 ‘ ed, named by the said Angus M'Diarmid, and those assumed
 ‘ or to be assumed by them, to pay the said John M'Diarmid,
 ‘ out of the trust-funds under their charge, the foresaid annuity
 ‘ of L. 40 sterling quarterly per advance as aforesaid, and other-
 ‘ wise to give effect to the present deed in all respects, and also
 ‘ to pay his funeral expenses; and the said parties hereby respec-
 ‘ tively bind and oblige themselves, and their foresaids, to war-
 ‘ rant these presents to each other and their foresaids, at all
 ‘ hands, and against all deadly, as law will; and they consent to
 ‘ the registration hereof in the books of Council and Session, or
 ‘ others competent, therein to remain for preservation, and that
 ‘ letters of horning on six days' charge, and all other legal
 ‘ execution necessary, shall pass hereon in form as effeirs.’
 The draft of this deed was sent to Drummond by his agents,
 who at the same time wrote to him that ‘ We send you the draft
 ‘ of the deed of agreement between Mr M'Diarmid and Mrs
 ‘ Drummond and you, that it may be revised by Mr M'Diarmid
 ‘ and you, and the blanks filled up. We should wish, as in all
 ‘ cases, that this draft should be revised by some man of busi-
 ‘ ness on behalf of Mr M'Diarmid, that he may be perfectly
 ‘ satisfied it is drawn up in conformity to your agreement with
 ‘ him. If he has no man of business, the draft may be read over
 ‘ and explained to him by Mr Ritchie, or any other respectable
 ‘ and intelligent stranger, who has no interest in the matter, or
 ‘ by any other of the trustees.’ The father had no agent, but
 the trustees had one. The deed, however, was not shewn to the
 trustees or their agent, but it was said that it was read over by
 Ritchie to the father, who approved of it, and suggested an

addition relative to his funeral expenses. The deed was then extended, and was executed by the parties on the 1st of April. On the following day inhibition was executed at the instance of Isobel and her husband against her father on the deed; and on the 18th it was presented to the trustees, on which occasion the following minute of what took place was made:—‘ Mr Drummond being present, produced to the meeting a deed entered into between himself and Mrs Drummond on the one part, and Mr John M'Diarmid on the other part, whereby the latter restricted his right in the succession to an annuity of L. 40 sterling; and the meeting, after considerable deliberation, are unanimously of opinion, that there has been great impropriety on the part of Mr Drummond, in inducing Mr M'Diarmid to grant a deed of this description; more especially as it appears from the statement of Mr M'Diarmid himself, that he did not understand, till it has now been explained to him, the real import and consequences of that deed. And they agree, that every proper means should be used for setting it aside; but delay the further consideration of the subject till another meeting.’ No copy of the deed had been delivered to the father, and after some difficulty one was procured. On the 7th of May he executed a new deed in favour of James M'Diarmid, a grandson by Hugh, with power to set aside the prior one. Accordingly an action of reduction of the deed, at the instance of the father and James M'Diarmid the grandson, was raised against Isobel and her husband, on the ground ‘ that the deed of agreement was elicited and impetrated by the defenders through gross fraud and circumvention on their part, and through facility on the part of the pursuer, the said John M'Diarmid, granter thereof, without any onerous or just cause, to his great hurt or enormous lesion:’ And after reciting the deed of settlement by Angus, the summons set forth, ‘ that for the purpose of effecting their fraudulent scheme of depriving the pursuer of all management of his own affairs, and securing to themselves an undue share of his property and succession, the said Isobel M'Diarmid or Drummond, and Daniel Drummond, fraudulently misrepresented to the said pursuer the real terms and import of the said deed of settlement, and, by false and fraudulent pretences, prevailed upon him to subscribe the foresaid deed of agreement, whereby, without any onerous or just cause, and contrary to his intention at the time, he is made to renounce his whole right to the property conveyed to him by his said son, excepting to the extent of an annuity greatly

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March. 28. 1828. ' inadequate for his comfortable subsistence; and the said deed
 ' was so elicited and impetrated from the pursuer, the said John
 ' M'Diarmid, who is of an extreme old age, by the said Isobel
 ' M'Diarmid or Drummond, his daughter, and the said
 ' Daniel Drummond, at a time when he, the said pursuer, was
 ' labouring under peculiar infirmities and affliction, and in-
 ' capable of understanding the same, without his being allowed
 ' an opportunity of advising with his other relations and friends
 ' upon the subject thereof. That the terms of the foresaid deed
 ' of agreement, obligation, &c. are in themselves grossly irra-
 ' tional; and the same was granted and subscribed by the pur-
 ' suer, the said John M'Diarmid, in entire ignorance and mis-
 ' apprehension of its real import and effect, to the enormous
 ' lesion of himself and family. That the foresaid deed of agree-
 ' ment contains intrinsic evidence of the fraud and circumven-
 ' tion by which it was obtained, and is null and void, in respect
 ' that while, by its form, it professes to be a mutual and one-
 ' rous deed, it is, in point of fact, merely gratuitous on the part
 ' of the pursuer, the said John M'Diarmid, who is thereby,
 ' without any onerous cause or consideration whatever, made to
 ' renounce and convey away his whole property, and to interdict
 ' himself from granting or subscribing any deed in relation
 ' thereto, restricting himself to an annuity out of his own
 ' property, which is inadequate for his subsistence.' The de-
 fenders denied the libel generally, and averred that the deed
 had been deliberately made and executed by the father: that
 under the circumstances, and particularly as the widow had in-
 stituted legal proceedings for setting aside Angus's deed, it was
 rational and proper: that it had been read over to him before
 execution, and fully approved of by him. But they admitted,
 that he was eighty-three years of age; that he was weak and
 infirm; that he was liable to get intoxicated; that no agent
 was employed on his part; that he was under the impression,
 that unless he made the deed, he might be reduced to poverty;
 that they were not under any obligation to pay to him any thing
 except out of his own funds; and that the amount of these,
 after deduction of the widow's claim, would be about L.4000.
 The Lord Ordinary, on the 3d February 1824, sustained ' the
 ' reasons of reduction, conform to the conclusion of the libel and
 ' amendment thereof,' and found the pursuers entitled to their
 expenses. The defenders having reclaimed, the Court, on the
 31st May 1825, altered, and remitted to his Lordship to appoint
 ' a condescence to be given in by the pursuer of the grounds

‘ of reduction of the agreement mentioned between John M'Diarmid, senior, and his daughter.’ This interlocutor having been brought under review by the pursuer, the Court, before answer, ordered a condescence; and thereafter, on the 18th May 1826, having advised the process with condescence and answers, ‘ they recalled their interlocutor reclaimed against ‘ of 31st May 1825, and returned to the interlocutor of the Lord ‘ Ordinary, of date the 3d February 1824, sustaining the reasons ‘ of reduction; and of new reduced, improved, decerned and ‘ declared, conform to the conclusions of the libel and amend- ‘ ment thereof, but found no expenses due to either party.’*

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The defenders appealed.

Appellants.—The Court, without calling on the respondents to prove any thing, have decided in their favour a pure question of fact. It is true, that the defenders have admitted that the pursuer, John M'Diarmid, is an old man and frail, given to intoxication, and when in that state easily imposed on; but, on the other hand, they have averred and offered to prove, that when sober, he is perfectly able to conduct his affairs with prudence and propriety; and they deny that he was intoxicated at the time of entering into this transaction. They have also averred, and are ready to prove, that the deed was deliberately read over to, and understood and approved of by him; that it was by his instructions that the agents who prepared it were employed; and that it was seen and considered by Mr Ritchie, who, indeed, is an instrumentary witness. It is no doubt true, that the annuity is to be payable out of the trust-funds, and that one inducement to execute the deed, was to secure himself against the effects of the reduction by the widow; but this proceeded from his own suggestion, and the respondents have greatly exaggerated the amount of the funds remaining, after deduction of her claims. It is no objection, that the deed assumed the shape of an obligation and agreement. Suppose it even to be considered as a purely gratuitous donation on the father's part, it would nevertheless be good. A gift is a valid transference, and the shape of the deed matters not. Inequality in a deed creates no vice. Neither does mere facility per se. A tendency to inebriation has no more fatal effects. To vitiate a deed, the weakness of intellect must be total; and the drunkenness sufficient utterly to cloud the reason. Even a

* 4. Shaw and Dunlop, No. 373. where the Judges' opinions will be found. On the same day judgment was pronounced in favour of the widow. See 4. Shaw and Dunlop, No. 372.

March 28. 1828. mistake, unless relating ad essentialia, will not authorize annulment. The using inhibition was a precautionary measure, suggested by the old man, who knew his infirmity when exposed to designing people, and wished his children to be protected even against himself. The deed he executed was wise and considerate. He reserved to himself a provision more than sufficient, looking to his situation and habits. The rest he gave, as the trust-deed directed, to his children, and children's children, if lawfully born. The necessity of an irrevocable deed of some kind or other is proved by the present action of reduction, from which it appears that the old man has actually yielded to the very design he was most anxious to prevent, and has executed in favour of a grandchild, who they aver is illegitimate, a settlement disinheriting his own daughter.

*Respondents.**—There is no necessity of any proof being led in this case. The appellants have made admissions quite sufficient to support the judgments under appeal. They admit, that their father is eighty-three years old, frail, facile, addicted to intemperance, and, when in liquor, exposed to the importunities and practices of any persons round him. In this situation they do not deny that they found him when they came to Edinburgh; that they did not consult the trustees as to the proposed deed, nor employ the agent under the trust. All the instructions to the agents came from the appellants themselves. They did not, even in obedience to the directions given them by these agents, employ on the part of their father a man of business to revise the draft. Within twenty-four hours after they had got his signature to the deed, they executed an inhibition against him, as if he was an insolvent debtor. On the first opportunity which he had of understanding what really was the import of the deed, he expressed his objections. The deed was grossly inadequate. He is made to relinquish what could not be less than L.3500, for L.40 per annum, and that secured out of his own funds. It is idle to speak of any total danger arising from the widow's reduction. She only concluded for reduction to the extent of her own rights. If, however, the old man entertained any alarm, then the deed has been executed under mistake; and the appellants cannot avail themselves of an act which never would have had existence, had they not created or fostered the old

* The Lord Chancellor stopped the respondents' Counsel, being satisfied, from the appellant's admissions, that the judgments appealed from were well founded. The argument is taken from the respondents' Case.

man's 'fear of losing all.' The deed executed in favour of his grandson protects the interests of his descendants. James M'Diarmid is the lawful son of Hugh, and has a right to his corresponding share. Even the appellants have not been omitted. If mere inequality of bargain, or mere facility, does not afford grounds of reduction, both conjoined certainly do, and much more where deception and lesion enter as ingredients into the case. March 28. 1828.

The House of Lords 'ordered and adjudged, that the appeal be dismissed, and the interlocutors complained of affirmed.'

LORD CHANCELLOR.—I would submit to your Lordships, that it is not necessary that the Counsel for the respondents be further heard in this case.

The question arises on a deed executed by a person of the name of John M'Diarmid, whether that deed was obtained from him by fraud and imposition? The facts, as they appear in the printed Cases, and are stated at the Bar, are shortly these:—A man of the name of Angus M'Diarmid made a settlement of the property in question, by which that property was in certain events to be vested in John M'Diarmid,—John M'Diarmid being the father of Angus M'Diarmid. Those events occurred, and John M'Diarmid became, under this deed, entitled to property to the value probably of L. 200 or L. 300 a-year, or, taking it in a gross sum, that which was vested in him amounted to about L. 3000 or L. 4000. John M'Diarmid is admitted by the appellants to have been 'a very old and frail man;'—those are the words made use of by the appellants themselves. He appears to have been above eighty-three years of age at the time this deed was executed; and it is stated by the appellants, that, when he was labouring under the effect of liquor, he was very easily bent by the solicitations of the persons about him.

Almost immediately after this property came into the possession of John M'Diarmid, the father of the present appellant, she went to reside with him; and very shortly afterwards an agreement was drawn up by the appellants themselves, in the handwriting, I believe, of one of them, which agreement was the foundation of the present deed. When that agreement was prepared it does not appear that any legal adviser whatever was consulted on the part of this old man,—the appellants were alone with him,—and after the agreement had been so prepared, it was sent by the appellants to their own solicitors, Messrs Tod and Wright, and Messrs Tod and Wright framed a deed upon the footing of this agreement. That deed, which was thus framed, was afterwards executed by John M'Diarmid; and it does not appear that any legal adviser whatever was called in on the part of the respondent previously to the execution of this deed, although it was suggested by the solicitors on the part of the appellants, that that was the course which

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ought to be taken. It does not appear that any one of the trustees of this property was informed of the existence of the deed, although the solicitors for the appellant suggested that that was the proper course. Under these circumstances, the deed which was thus executed is the subject of a very strong suspicion ; but that suspicion is very much strengthened when we come to look at the deed itself.

My Lords,—In the situation in which John M'Diarmid stood, he was entitled to an income arising out of the property to the extent of upwards of L.200 a-year. In another view of the case, he was entitled to the whole property and the disposition of it. The property amounted, as far as he was interested in it, to L.3000 or L.4000. The whole of this property was conveyed away by this deed, with the reservation of L.40 a-year to John M'Diarmid for his life, without any equivalent whatever. I think, therefore, your Lordships, considering the manner in which the deed was obtained, the situation of the party executing the deed, and the dispositions of the deed itself, will view the transaction with very great suspicion.

But it is material to consider the frame of the deed itself, according to the substance of the deed. It was nothing more than a renunciation of property to which this old man was entitled. He gives up the whole of the property, reserving to himself L. 40 a-year during his life. It is nothing more than a relinquishment of property, and it ought to have appeared obviously on the face of the deed. But when you look at the deed itself, it purports to be an obligation or agreement between the parties ; and the deed professes to give something as an equivalent for that renunciation of property, being entitled an obligation and agreement on the back of the deed itself. The consideration is stated to be the grant of this annuity. My Lords, there was no annuity granted ; it was nothing more than a retention on the part of this individual of property to which he was entitled. There was, in point of fact, no consideration whatever ; and yet on the face of the deed it purports to be for the consideration of this annuity, which the parties do not bind themselves to pay, but which is to be paid out of the trust-funds.

My Lords,—Considering the situation of the individual himself, who executed the deed,—his character,—his age,—his infirmity,—his liability to be operated upon by the suggestions of those who were about him ; considering the manner in which that deed was obtained, no person having been called in to advise upon it ; and considering that the suggestions which were made by the solicitors for the appellants themselves, as to the course which ought to be pursued, were disregarded ; considering also the frame of the deed, it does appear to me, with all submission to your Lordships' judgment, that there was abundantly sufficient to justify the decision of the Court below, who considered this transaction as an imposition and fraud on this old man.

One of the grounds stated by the appellants for the purpose of justifying this transaction is this, that a provision was made for the widow of Angus by the original deed ; that she was dissatisfied with that

provision, and that she had instituted proceedings for the purpose of reducing the original deed; and it is supposed that the old man, being apprehensive that, if the original deed was set aside in this action by the widow, he would be deprived of all means of subsistence, and therefore that he was willing to make this species of compromise. But, my Lords, that was a gross delusion. If the widow had a right to set aside the deed, she had a right to set it aside only to the extent to which she was herself interested, and the rest of the deed must remain; and, as one of the learned Judges stated in the Court below, that forms an additional reason for vacating this transaction, as having been founded in delusion on the part of this old man. I think your Lordships will be of opinion that the Court below were fully justified in the opinion they formed of this transaction, that there is sufficient in the case, as it now appears, to justify the Court in setting aside this deed, under the circumstances under which it was obtained.

My Lords,—It may be satisfactory to your Lordships to know, that when this case was opened by the appellant's counsel, a noble and learned Lord, who held the office to which I have the honour to succeed, was present, and paid great attention to every part of it. I have had some conversation with him upon the subject, and he has authorized me to state, that he perfectly concurs in the view I have stated to your Lordships. Under these circumstances, I conceive your Lordships will be of opinion that this judgment ought to be affirmed.

Appellant's Authorities.—Smith, Dec. 23. 1697, (4955.); Gordon, Feb. 7. 1729, (4956.); Maitland, Feb. 13. 1729, (4956. and Craigie and Stewart's Appeal Cases, April 20. 1732, p. 73.); Swintoun, Dec. 10. 1679, (4962.); Mackie, Nov. 24. 1752, (4963.); Scott, Nov. 17. 1789, (4964.); Ersk. Inst. 4. 1. 27.

Respondents' Authorities.—Ersk. 4. 1. 27.; Gordon, April 28. 1730, (Craigie and Stewart, p. 47.); Murray, Jan. 21. 1826, (4. Shaw and Dunlop, 374.); M'Neil, May 26. 1826, (4. Shaw and Dunlop, 620. and 2. Shaw's Appeal Cases, No. 29.)

J. HYNDMAN—MONCREIFF, WEBSTER and THOMSON,—Solicitors.

ANNA MARIA GRAHAM OF TEMPLER, and Lady MONTGOMERIE,
Appellants.—*Adam—Wilson.*

No. 4.

The Reverend GEORGE HENRY TEMPLER, and Others,
Respondents.—*Sugden—Keay.*

Trust—Clause—Succession.—A party having conveyed his estate to trustees, for behoof of a contingent heir, whom failing, other substitutes, with a general assignation of rents for behoof of the contingent heir;—Held, (affirming the judgment of the Court of Session), That the heirs-at-law had no claim to the rents arising between the death of the party and the succession of the heir.