With regard to the other matter as to the Judge's notes, to suppose, that a mere directory Statute like this, according to which a Judge has to furnish the notes which he has taken of a trial, has not been complied with, because something that was left inaccurate in taking it down, has been corrected before it was handed to the Court, is really to attribute to the Legislature their intention of requiring something which in many cases would be totally impossible. In my opinion there is not the least foundation for that view of the case, and I concur with the LORD CHANCELLOR in thinking, that this appeal ought to be dismissed with costs.

LORD KINGSDOWN.—My Lords, I am quite of the same opinion.

Interlocutors affirmed with costs.

Appellants' Agent, J. H. Ward, Westminster.—*Respondents' Agents*, John Martin, W.S.; Willoughby, Cox, and Lord, London.

JUNE 2, 1865.

Mrs. JEAN BREAKENRIDGE or DUNLOP, *Appellant*, *v.* The Rev. JAMES BOYD, D.D., and SAMUEL GREENLEES (Greenlees' Trustees and Executors), *Respondents.*

Deed—Writ—Attestation—Signature of Wife as Consenter—*Donatio inter virum et uxorem*—Revocation—*During marriage, Mr. G., by deed of* 1835, *substituted a conventional for the legal provision of Mrs. G. Her name was not mentioned in the body of the deed as a party, but the testing clause narrated, that, in token of her consent, she also signed the deed before the same witnesses. In a subsequent deed of* 1851, *Mr. G. altered the disposition to meet the case of some of his children predeceasing him, but in other respects confirming the deed of* 1835, *and not substantially altering the wife's provision. Mrs. G. was no party to the latter deed, but survived Mr. G. four years, and accepted the provisions under both deeds.*

HELD (affirming judgment), *That* (1) *the signature of Mrs. G. as a consenter effectually bound her;* (2) *that the deed of* 1851 *did not relieve Mrs. G. from the effect of the deed of* 1835; (3) *after Mrs. G.'s death, the next of kin had no power to revoke Mrs. G.'s consent, even if otherwise revocable by Mrs. G.*[1]

This was an appeal from a judgment of the First Division of the Court of Session. The appellant, Mrs. Jean Breakenridge or Dunlop, was the sister of Mrs. Greenlees of Campbeltown, widow of Matthew Greenlees, of the same place, and she, in 1861, raised an action before the Sheriff of Argyleshire against the Rev. James Boyd, D.D., of Campbeltown, and others, the trustees of the late Mrs. Greenlees. The pursuer claimed production of the accounts of the goods in communion between Mr. and Mrs. Greenless at the time of the dissolution of the marriage by the death of Mr. Greenlees in 1853, and claimed payment to her, as next of kin of Mrs. Greenlees, of one third of the said goods as her share.

Mr. Greenlees had in 1835 executed a *mortis causâ* disposition and settlement to regulate the disposal of his whole estate. By that deed he conveyed and disponed to his four children and other children to be born all his lands and goods, and appointed them his executors, subject to the payment of his debts; and he gave also to his wife, Janet Breakenridge or Greenlees, a yearly annuity of £40 during her life. He also discharged the children by his wife's first marriage of all claim for board and lodging. The deed also contained this clause:—"And I do hereby declare, that the provisions hereby given to my said wife shall be accepted of by her in full satisfaction to her of all terce of lands, third or half of movables, and every other claim competent to her by and through my decease in any manner of way, or that her nearest of kin could ask or demand of me through her decease in case I shall happen to survive her."

The testing clause of that deed was as follows:—"In witness whereof, these presents, written, etc., are subscribed by me, the said Matthew Greenlees, and by the said Janet Breakenridge or Greenlees in token of her consent to and approval of the foregoing settlement, before these witnesses," etc.

The deed was then signed "Matthew Greenless, Janet Breakenridge." The wife was not mentioned in the body of the deed as a party to it.

Before 1851, all the children of Mr. Greenlees by his first marriage had died, except Hugh

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[1] See previous report 2 Macph. 1; 36 Sc. Jur. 5. S. C. 3 Macph. H. L. 47; 37 Sc. Jur. 470.

Greenlees, who was a lunatic. There were no children of the marriage between Mr. Greenlees and Janet Breakenridge. In 1851 Mr. Greenlees made another trust disposition in virtue of a reserved power in the former deed. By the latter deed of 1851, to which Mrs. Greenlees was no party, he recalled the foregoing conveyance in favour of the children, and he disponed the whole estate to trustees, of whom Mrs. Janet Breakenridge or Greenlees was one. This second deed provided for payment of the testator's debts, then for delivery to the wife of his household furniture, then an additional annuity of £10, and also a further annuity of £10 for providing her a dwelling house. Lastly, the trustees were to convey the rest of the property to Hugh Greenlees and the heirs of his body, for aliment. This deed also contained a clause confirming the declaration, that the wife's provisions were in full of her legal rights, and also these clauses:—"And further, I do hereby provide and declare, that in case my said wife or son shall repudiate this settlement, and claim their legal provisions in place of the provisions hereby made for them respectively, or shall by any means prevent this settlement from taking effect in whole or in part, then my said wife or son shall thereby forfeit all right to any share of the dead's part," etc.

And there was this clause:—"And I hereby approve of the foregoing settlement in all other respects, so far as not expressly altered by this codicil at any time as I may see proper."

Mr. Greenlees died in 1853, being survived by his widow, Janet Breakenridge, and his son, Hugh Greenlees. The widow attended the meeting of the trustees; and at one meeting, the trust dispositions being read, she accepted the office of trustee, and she, along with the others who accepted, managed the affairs up to 1858, when she died. During those five years' survivance, she was put in possession of the furniture; she regularly received the annuity of £40 provided by the first deed of 1835, and of £20 additional provided by the deed of 1851. After the widow's death in 1858, the appellant, Mrs. Breakenridge or Dunlop, being her sister and sole next of kin, received possession of the furniture, and in 1859, being confirmed executrix, she raised an action before the Sheriff of Argyleshire, claiming an account of the goods in communion at the time of Mr. Greenlees' death, and claiming decree for payment of such sum, which was estimated at £2000. She contended in that action in the Sheriff Court, that Mrs. Greenlees had never renounced her legal provisions, and that the conventional provisions in lieu thereof were totally inadequate, and that her acting as a trustee was no homologation of the deeds; and if she acquiesced, it was in ignorance, and ought not to prevent the next of kin from now demanding full payment of the legal provisions in right of the widow. On the other hand, the trustees of Mr. Greenlees pleaded, that until the pursuer, Mrs. Dunlop, reduced and set aside the deed of 1835, to which Mrs. Greenlees consented, and her acceptance of the provisions in her favour contained in such deeds, the action was incompetent. The Sheriff substitute decided in favour of the trustees, finding, that the wife consented to the deed of 1835; that the deed of 1851 did not revoke the deed of 1835 *quoad* the wife; and that, as the widow had accepted of the provisions given to the widow, and never revoked her consent, or took steps to set aside the deeds, they were not reducible by the pursuer or next of kin. The pursuer appealed to the Sheriff principal, who adhered to the interlocutor of the Sheriff substitute.

The pursuer, instead of paying the costs found due against her under the interlocutor of the Sheriff Court, raised an action in the Court of Session, by which she sought to reduce and set aside the decrees of the Sheriff Court and the deed of 1835, in so far as it purported to be consented to by the wife, and for the usual accounts, on the footing of the pursuer being sole next of kin, and entitled to all that Mrs. Greenlees would have been entitled to, if she had relied upon her legal provisions. The facts set forth in this action and condescendence were the same as in the Sheriff Court; and the pursuer again contended, that the consent given by Mrs. Greenlees to the deed of 1835 was not effectual, because the signature to the deed was adhibited before the words in the testing clause expressive of her consent were written; and even if she had signed that deed, yet, as Mr. Greenlees afterwards in 1851 revoked that deed without her consent, she was altogether discharged, and that she had never done anything which amounted to acquiescence or renunciation of her legal rights. On the other hand, the trustees relied on the same defences in which they succeeded in the Sheriff Court.

The Lord Ordinary (Kinloch) found in favour of the trustees, holding that Mrs. Greenlees had validly consented to the deed of 1835, by signing it as she had done, and that the later deed of 1851 did not revoke the prior. On reclaiming note to the First Division, the Judges, namely, the Lord President (M'Neill), Lords Curriehill and Deas, unanimously adhered. The pursuer now appealed to the House of Lords, and appeared *in formâ pauperis*.

The appellant in her *printed case* contended, that the interlocutor should be reversed for the following reasons:—1. Because Mrs. Greenlees having survived her husband, one third of the movable or personal estate, denominated the goods in communion between the spouses, became vested in her as her exclusive property at his death, and she also became entitled, during her survivance of her husband, to one third of the rents of his heritable or real estate. 2. Because the alleged consent by Mrs. Greenlees to the deed of settlement executed by her husband on 18th February 1835 was void and ineffectual *ab initio*. 3. Because the liferent annuity appointed to be paid to Mrs. Greenlees under the settlement executed by her husband in 1835 was grossly

and flagrantly inadequate as a provision for her at his death in place of her legal rights of terce and *jus relictæ*. 4. Because the settlement executed by Mr. Greenlees in 1835 was revoked and altered by him, at least in important and essential particulars. 5. Because, according to the sound construction of the deed of settlement executed by Mr. Greenlees in 1851, his widow had the option conferred on her either to take the testamentary provisions thereby settled on her, or to claim her legal rights, and no party taking any right or interest under that deed can refuse to give effect to the provision therein made by the testator applicable to his widow or child repudiating the settlement. 6. Because there are no grounds for excluding the appellant from claiming the rights which were vested in her sister, Mrs. Greenlees, in consequence of alleged acts of homologation either on the part of Mrs. Greenlees or of the appellant.

The respondents in their *printed case* relied on the following reasons:—1. Because the disposition and deed of settlement having been subscribed by Mrs. Greenlees in token of her consent to and approval thereof, she thereby effectually discharged her legal claims, and this consent and discharge is effectual against her and the appellant as her representative. 2. Because the acquiescence of Mrs. Greenlees after her husband's death in the disposition and settlement and codicil of her husband, and her acceptance of the provisions in her favour therein conceived, shut out all challenge thereof by the appellant as her representative; and because, even assuming, that Mrs. Greenlees had power after her husband's death to revoke her consent to the deed as a donation, she did not make or attempt to make such revocation, and such right to revoke does not by law transmit to her representative.

Guthrie Smith and *Neish*, for the appellant.—The wife. (Mrs. Greenlees,) at her husband's death, would be entitled to about £2000 as her *jus relictæ*, and therefore she or her representative is entitled to set aside the settlement of 1835, by which a much smaller provision was substituted. This may be done long after the husband's death—*Hope* v. *Dickson*, 12 S. 222. There is nothing to prevent her doing so from the mere fact of her signing her name to the deed as a consenter. In order to be bound by the deed, she must have been a party to it, and must have subscribed it in the usual way in presence of two witnesses, in compliance with the Statute governing the execution of deeds: 1593, c. 179. Nothing short of the regular and usual mode of execution would bind her. It is said, that she did sign the deed in the usual way, for the testing clause narrates, that she did so. But the testing clause is no part of the deed; it is at all events not an operative part of the deed, and cannot supply a part of the deed which ought to have been inserted in the body thereof—*Watson's case*, M. 16,860; Bell on Testing of Deeds. As a proof of this it is enough to say, that the testing clause may be filled up years after the deed has been executed—*Kedder* v. *Reid*, 1 Rob. App. 183; *Macpherson* v. *Macpherson*, 17 D. 357. The Court will not give effect to a bare signature, which was all that was done by Mrs. Greenlees in the way of executing this deed, if the deed itself does not shew, that she was a party—*Guild* v. *Guild*, M. 6521; *Murray* v. *Murray*, M. 6525.

The sole function of the testing clause is to narrate how the party mentioned in the body of the deed executed it, but it cannot be looked to for the purpose of supplying a new party to the deed, whose name was never mentioned in the deed as a party thereto. It is true a blank is left for the testing clause when the parties sign the deed, but such blank is left for the sole purpose of adding the date and place of signature, and names of witnesses thereto, and nothing else can be legitimately added—Menzies' Conveyancing, 101, *et seq*. In *Leighton* v. *Russell*, 15 D. 126, the consent of the wife, though stated in the body of the deed, did not prevent the next of kin from afterwards claiming her legal right.

All the authorities are against the judgment of the Court below in this case except the authority of *Johnston* v. *Coldstream*, 5 D. 1297, where it was held, that a signature of a wife like the present would make her a party to the deed. But that case was not well decided. As it conflicts with the prior authorities, it ought now to be overruled. For all that any one knows, the signature of Mrs. Greenlees, and that part of the testing clause mentioning her signature, may have been added long after the original execution of the deed, and by a different person altogether.

[Their Lordships here called for production of the deed, and with a magnifying glass examined the handwriting of the testing clause. LORD CHELMSFORD then observed, that from ocular inspection it was evident, that the testing clause, including the statement of the wife's consent, was written by the same person who wrote the rest of the deed, and at the same time.]

Then if Mrs. Greenlees did not become a party to the deed of 1835 by virtue of her subscription, there is no evidence, that she is bound by virtue of her subsequent assent and homologation. The onus lies on the other side to establish by the clearest evidence, that she was fully cognizant of the particulars, and with her eyes open consented to the deed of 1835 taking effect, and altering her rights—*Bell* v. *Laurie*, Hume, 486; *Hope* v. *Dickson*, 12 S. 222; *Ross* v. *Masson*, 5 D. 483; *Selkirk* v. *Law*, 16 D. 715; *Lord Panmure* v. *Crockat*, 17 D. 84.

Even if she be taken to have consented to the deed of 1835, she did so to the entire deed as it then stood, and the deed of 1851 having altered the effect of the deed of 1835, she was no longer bound by them—*Morton* v. *Young*, 11th Feb. 1813, F. C.

Rolt Q.C., and *Anderson* Q.C., for the respondent.—It is true, that a deed between husband and wife, modifying the wife's legal provisions, is revocable, provided, that it is not reasonable nor remunerative. But this was an example of a reasonably remunerative deed, and therefore the deed of 1835 is binding on her if she duly executed it—Bell's Pr. § 1616. The testing clause shews she executed it. It is a mistake to say, that the testing clause is no part of the deed. The theory is, that the deed, including the testing clause, is complete at the time of signature, though in practice the filling up of the testing clause is often postponed. It is no doubt true, that the testing clause cannot control the dispositive part of the deed, but it is quite usual to insert in it the name of the consenter to the deed, though the name is not stated in the body of the deed—Galloway on Conveyancing, 446. And the signature of a consenter makes the deed binding on him—*Brown* v. *Muir*, M. 5624. A conclusive authority for the binding effect of Mrs. Greenlees' signature is *Johnston* v. *Coldstream*, which is directly in point. It was solemnly decided twenty years ago, and the practice during all that as well as preceding that time has been uniform.

[LORD CHANCELLOR.—We think you need not say more on that point. As regards the effect of the deed of 1851, which modified the wife's provisions as settled by the deed of 1835, did that not materially alter her security?]

No; the deed of 1851 in effect improved her security. The sole object of executing the deed of 1851 was to meet the case of the surviving child being a lunatic, and the other children having died; but it did not affect the wife's provisions at all. There is no change made except such as was caused by the death of the children.

There is also good evidence of homologation by the wife, if such evidence were necessary.

LORD CHANCELLOR WESTBURY.—My Lords, the object of the suit in which this appeal is brought was to obtain a declarator, that Mrs. Dunlop, the personal representative, was entitled to an account of all that Mrs. Greenlees herself, the widow of the truster, (whose deed of settlement forms the subject of this suit,) might have been entitled to in respect of her interest under the deed, and also in respect of her *jus relictæ*. The object of the suit, therefore, was in effect to annul not only a deed of 1851 to which Mrs. Greenlees became a party, but also to annul the effect of Mrs. Greenlees having assented to and accepted and enjoyed the benefit of the provisions made for her by her husband during her life.

The first point that has been presented to you is a point entirely of a technical nature turning upon the practice, that has prevailed in Scotland with respect to the execution and attestation of deeds of settlement. And, unquestionably, it would be a point of the utmost possible importance if your Lordships could, for a moment, be of opinion, that you are now to review and to reverse a decision pronounced upon this very point more than twenty-two years ago with the unanimous consent of four of the most eminent Judges in Scotland.

The point arises in the following way: Mr. Greenlees, by a deed of settlement, or will, dated 18th February 1835, declared, that the provision which he thereby made for his wife was a yearly annuity of £40 during her life, which should be accepted by her in full satisfaction of all terce of lands, third or half of movables, and every other claim competent to her to make against the husband, provided she survived him. The testing clause to that deed is conceived in these words. After the usual introductory words, and after making mention of the execution by Mrs. Greenlees, the testing clause contains these words: "And by the said Janet Breakenridge or Greenlees in token of her consent to, and approval of, the foregoing settlement." And at the foot of the testing clause her signature is appended to the deed.

The contention has been, that the introduction of the words which I have read, in the testing clause, is the introduction of a matter foreign altogether to the proper nature and intent of a testing clause; and thus the testing clause being confined entirely to a statement of the formalities of the execution and the fact of the execution, the introduction of this matter, which is proper to the body of the deed, and not proper to the testing clause, is the introduction of foreign matter, which must therefore be discarded altogether, and not taken as part of the deed.

The very same objection was brought before the Court of Session in 1843 by a reclaiming note from an interlocutor made by the Lord Ordinary. In that case, Lord Ivory, who was then Lord Ordinary, had stated the same doubt. That case of *Johnston* v. *Coldstream* is hardly distinguishable in its circumstances from the present case. The Lord Ordinary there stated, that "he was not aware of any case in which the testing clause had ever been recognized, or given effect to, for a purpose so entirely apart from its own proper and primary intent as should make it in this way the medium of rearing up an entirely new and substantive deed." That is precisely the contention, that your Lordships are now called upon to consider. That case was carried by appeal before the Inner House, and became the subject of very great consideration on the part of the learned Judges. And the Lord Justice Clerk at that time delivered a very long and elaborate opinion. In that opinion Lord Medwyn and Lord Meadowbank also concurred, and Lord Moncreiff, particularly, treated the matter as mere refinement on the part of the Lord Ordinary, and answered the objection in the most conclusive form, for the Lord Ordinary admitted the deed to probate; upon which Lord Moncreiff observes: "There is no doubt, that the deed is probative as to her subscription, (that is, the subscription of the wife to the trust

disposition,) and if this is genuine and probative, is it not a strange refinement to say, that the adhibition of her consent is not tested?"

In truth, it appears to me, that this objection proceeded upon a radical error. For the testing clause undoubtedly is, and always has been taken to be, according to the strict view of the subject by the law of Scotland, a part of the writ. And if it be part of the body of the writ, then, that which is inserted in the testing clause (the statutory formalities being observed) is as much part of the writ itself as if it had been found in the body of the writ. This is quite in accordance with the language of the Statute of 1681 and the subsequent Statute, which is here conclusively shewn by the reasoning of the Lord Justice Clerk. The whole objection thus falls entirely to the ground.

But your Lordships would undoubtedly, I think, concur in the observation, that nothing could be more dangerous than that, upon a matter of this description, which relates to a mere question of practice of every day occurrence, namely, what is in matters of this kind the proper form of a testing clause, your Lordships should now attempt to review and to subvert a solemn decision upon this point pronounced more than twenty-two years ago, and which undoubtedly has been regarded as establishing the rule in Scotland on the subject, and may have been followed in an infinite number of cases, and could not now be altered or departed from without the introduction of infinite mischief and danger after this rule, so laid down in a matter of mere technicality, has been, during so long a period, no doubt followed with regard to the preparation and the execution of these writs. I think, therefore, that your Lordships could not for a moment, entertain the idea of departing from that decision. But, whilst adhering to that general principle, which ought always to be regarded for the purpose of discouraging appeals of this description, it is a satisfaction to be able to add, that if your Lordships were now called upon to treat this matter as *res integra*, I apprehend you would rest your decision upon the grounds which are given by the Judges of the Court of Session in the reported case which came before them in the year 1843.

The rest of this case scarcely admits of a moment's doubt, or requires a single observation. This deed of 1835, the trust settlement of the husband, was followed by a subsequent deed or codicil in the year 1851. And the plain object of that codicil is to make such alterations with respect to the property of the truster as became requisite by reason of the death of three children of the truster in the intervening period between 1835 and 1851. That is the avowed purpose of the deed, and which it carries into effect. And, therefore, there was no alteration made in the substantial disposition relatively to the children, that could form a ground for entitling the wife to revoke the assent which she had given to the antecedent deed of 1835. The only other purpose of the codicil, or supplementary deed of 1851, was to make further provision for the testator's wife by adding to the annuity previously given an additional annuity of £10, and also a further annuity of £10 in lieu of providing a residence. There can be no ground, therefore, for asserting, that the widow had a right by reason of any alteration, by the terms of the codicil or subsequent deed of 1851, to revoke the assent which she had given to the deed of 1835, proceeding as it did upon her receiving an annuity from her husband, which revocation, indeed, is not proved, although opportunity of proof was offered.

All that remains to be stated is this, that the widow survived the husband for a period of about four years and a quarter; that she accepted the office of trustee of the deed of 1851; that she received the benefits provided for her by the deed of 1835 and the deed of 1851; and that she died without attempting in any manner to withdraw the consent which she had given to the deed of 1835, or to repudiate the provision, that had been made for her, or claiming the provision which by law she might have done. Under these circumstances the Court of Session unanimously refused to entertain this appeal; and it is indeed a matter of great regret, that appeals of this kind are constantly brought when they serve only as a means of infinite vexation, and I am afraid sometimes (although I do not mean for one moment to say that is the case here) they are resorted to for the purpose of exacting some terms of compromise or some concession which the respondent is compelled to consent to rather than sustain the necessary expenses of defending an appeal. Upon these grounds I move your Lordships to affirm the interlocutors of the Court below.

LORD CRANWORTH.—My Lords, I entirely concur in the observations of my noble and learned friend. The only observation I would make is, that with regard to the second instrument, the codicil, it was remarked, that the truster must have thought, that the consent of the wife did not bind her, because he says, "I do hereby provide and declare, that in case my said wife or son shall repudiate this settlement and claim their legal provisions in place of the provisions hereby made for them respectively, or shall by any means prevent this settlement from taking effect in whole or in part, then my said wife or son shall thereby forfeit all right." But I do not think, that was at all a superfluous provision, because whether the wife was or was not bound, would depend in part upon whether her consent was a consent to adopt a provision that was a remunerative provision. For if it was not a remunerative provision, it was open to her, and the truster might have known, that it would have been open to her to revoke. Therefore it appears to me, that that shadow of an argument entirely fails.

LORD CHELMSFORD.—My Lords, I concur entirely with my two noble and learned friends, and I must add, that from the moment when the case was fully opened, I have not brought myself to entertain the slightest doubt upon any of the questions which have been raised in this case. And I must concur with my noble and learned friend on the woolsack in expressing my regret, that the appellant in this case did not submit to the four decisions in Scotland against her, and that she has imposed upon the respondents the necessity of defending themselves at very considerable expense against the appeal which she has thought proper to make.

There are three questions in this case; and though I really hardly think it is necessary to add anything to what has fallen from my noble and learned friend on the woolsack, I will very shortly advert to each of them. The first question is, whether Mrs. Greenlees was bound by her signature to the deed of 1835? Now, upon that it is perfectly clear, that that question is concluded by the decision in *Johnstone* v. *Coldstream;* and although the Lord Ordinary in that case, Lord Ivory, expressed an opinion, that the testing clause ought to be confined to its immediate object, yet the learned Judges of the Court of Session, after a very careful consideration of the whole case, came to a different conclusion, and decided, that the statement of the consent and approval of the wife in the testing clause was quite sufficient to bind her. No doubt has ever been entertained with regard to the propriety of that decision. It was recognized in the case of *Leighton* v. *Russell*, and in the present case not one of the Judges who has had to decide the question, has expressed the slightest doubt as to the propriety of that decision. There was the decision first of the Sheriff substitute. Then that of the Sheriff, then that of the Lord Ordinary, and then the unanimous opinion of the Judges of the Court of Session. Certainly, under these circumstances, even supposing that we entertained any doubt as to the propriety of the decision in *Johnston* v. *Coldstream*, it would be a very dangerous thing, (as my noble and learned friend on the woolsack has said,) even to express any disposition to throw a doubt upon that decision, because it might affect the validity of many deeds which have been executed in the same way upon the strength of that decision.

Then the next question is, whether, supposing that Mrs. Greenlees was bound by the deed of 1835, she was relieved from the effect of her signature by the deed of 1851. It is quite clear, that that deed was not an entire revocation of the deed of 1835. It is expressly said to be revoked and recalled only in favour of the children and the survivors of them and the appointment of them as executors and universal legatees. The deed of 1835 is expressly approved. The truster says, "I hereby approve of the foregoing settlement in all other respects so far as not expressly altered by this codicil." It is perfectly clear, that there was no revocation of the deed of 1835. There were additional benefits given to the wife by the provisions of the deed of 1851. It is clear, therefore, that she was not relieved from the effect of her signature to the deed of 1835 by the deed of 1851.

Then the only remaining question is, whether the representative of Mrs. Greenlees has any power to revoke her consent. Now, it seems to me, that there is no doubt about this. Supposing it was a donation, and not a remuneratory contract,—supposing that Mrs. Greenlees had the power to revoke her consent, it is quite clear, that that power was personal to herself, and that her representative would have no right whatever to exercise it.

I feel that I ought to apologize (this being so very clear a case) for adding anything to the opinion which has been expressed by my noble and learned friend.

Interlocutors affirmed, with costs.

Appellant's Agents, M. Macgregor, S.S.C.; W. Robertson, Westminster.—*Respondents' Agents*, Morton, Whitehead, and Greig, W.S.; J. B. Greig, Westminster.

JUNE 12, 1865.

The EARL OF GALLOWAY, *Appellant*, *v.* HORATIO GRANVILLE MURRAY STEWART, *Respondent.*

Obligation—Bond—Provision for Younger Children—Obligation of Relief—Construction—*Earl G., on the marriage of his son, W., by bond stipulated to pay £5000 to the children of the marriage, provided if W. or the heirs of his body should succeed to the entailed estate of B., then they should be bound to charge the sum on the B. estate, and Earl G.'s obligation should cease. The marriage contract of W. repeated the same obligation, but declared the trusts of the £5000 to be for the younger children in the foresaid event of succeeding to the B. estate. W.'s grandson having afterwards succeeded to the B. estate, Earl G. claimed repetition of the £5000.*