simple. In England, in such a case, if there was to be any objection as to such sales, it would form the subject of special covenant, and he doubted the law as laid down by the Court of Session judges in Scotland. The question on the proof was as to whether Miss Reid was bound to prove she had given a consent to Mr Keith's lease on the condition that he was not to sell by auction; and, on a review of the proof, he must hold she had not proved such a conditional assent; that, therefore, Keith was free to hold such a sale, and that, therefore, the judgment must be reversed.

LORD WESTBURY said the question was, did the word "shop" in law mean a place for private sales only? Nothing, he thought, could warrant such an interpretation. No doubt a dwelling-house could not be made into a beer-house or a factory, and there were other such cases, but here it could not be said there was any such inversion of the proper use. His Lordship made a violent attack upon the Scotch system of legal procedure. It afforded an opportunity to legal advisers to drag their clients through a disgraceful amount of litigation.

LORD COLONSAY concurred. He thought the interpretation sought to be put on the lease by Miss Reid pressed too hard on the tenant.

Appeal dismissed, with costs.

Agent for Appellant—William Officer, S.S.C.
Agents for Respondent—Hill, Reid & Drummond, W.S., and William Robertson, Westminster.

Friday, June 17.

FRASER *v.* CONNEL AND CRAWFORD.

(*Ante*, vol. vi, p. 214.)

*Arbitration—Award—*Ultra vires*—Compensation.* Circumstances in which *held* (affirming judgment of the Court of Session) that an arbiter had power to deal with a question of extra work, and to pronounce a finding that a claim for unfurnished work was counterbalanced by a claim for extras.

This was an appeal from a judgment of the First Division in an action for reducing a decree-arbitral pronounced by Mr George Bell, architect, Glasgow, on a matter in dispute between the appellant and respondent. The circumstances are these:—By a minute of agreement and sale, dated 22d February 1858, James Connell, accountant in Glasgow, sold to Alexander Fraser, merchant in Glasgow, an uncompleted house, No. 13 Hamilton Park Terrace, for £1250. By this minute Mr Connell was to paint and paper the premises in a suitable manner, and was to receive £750 on giving a good title to the house, and the remainder of the price in instalments of £100. Mr Bell was by this minute arbiter. Mr Fraser did pay the £750, but there still remained part of the price unpaid, and as to this the present dispute has arisen, Mr Fraser claiming a reduction in respect of unfinished work. The matter was then brought before Mr Bell as arbiter, and he pronounced a decree-arbitral, finding that Mr Fraser had paid in all £1170 of the price, and that Mr Fraser's claim in respect of unfinished work was counterbalanced by a claim which was made by Mr Connell for extra work done, and that therefore Fraser was due Connell £80. Mr Fraser then attempted to overturn this decree-arbitral, on the ground that the arbiter had no right to take into consideration this extra work, as it was a matter not within the submission. The whole question, therefore, turns upon the terms of the minute of agreement, and whether it gives Mr Bell power to deal with these extras. By that minute it is agreed that "any difference that may occur between the parties as to the furnishing, or generally under these presents, is hereby referred to Mr Bell." And again, after narrating certain additional work to be done and paid for by Mr Connell, the minute goes on thus—"Any further alterations or additions not herein enumerated are to be paid for by the said second party," that is, by Mr Fraser. Mr Fraser pleads upon this that it was *ultra vires* of the arbiter to decide the case on the question of extras; but the Court of Session held that Mr Bell was entitled under the minute of agreement to do so.

Mr Fraser appealed to the House of Lords.

LORD ADVOCATE and MELLISH, Q.C., for him.

GORDON, Q.C., and SHIRESS-WILL, for the respondent, were not called on.

At advising—

The LORD CHANCELLOR said that the main question in the case was whether the claim set up by the respondent for extra work was within the terms of the submission to Mr Bell, the arbiter? The submission referred to Mr Bell arose out of the building and completing of a house sold by Mr Connell to Mr Fraser, and all differences that might arise between the parties as to the finishing, or generally under these presents, were referred to Mr Bell; and in the list of additional work it was added that any further additions or alterations were to be paid for by Mr Fraser. Now, this showed that Mr Connell was not bound to pay for the extra work that might be done; and if he had executed such work, it was clear that he was entitled to be paid for it. The consideration of this extra work seems, therefore, to be within the submission. The Lord Advocate had argued that it was a separate contract; but though Mr Connell himself seemed at first to think his claim would not be completely entertained by the arbiter, this was obviously a mistake. The arbiter ultimately entertained it; and though it was alleged by the appellant that he had no opportunity of going into the matter, at all events when the minutes or drafts of the award were sent to the appellant, he then had an opportunity of going into it. He failed to do so, and now it was attempted to go behind the decree. That, however, he could not now do, and the judgment of the First Division was right in holding the decrees binding. The appeal must therefore be dismissed, with costs.

LORD CHELMSFORD concurred, and said the value of the subject matter in dispute was £80, and it was perfectly lamentable to think of the enormous expense that had been incurred in these proceedings. There could be no reasonable doubt that the claim to extra work was competently entertained and disposed of by the arbiter, and that the appellant had an opportunity of objecting to it, and he now tried to set aside the findings of the arbiter.

LORD WESTBURY said the clause for extra work was certainly included within the terms of the reference, which was comprehensive enough to include it. Nothing was more contrary to all principles of law than to allow parties who have agreed to refer their disputes to an arbiter to go after-

wards to a court of law, and attempt to take objections to the decision of the arbiter, on the ground of some irregularity in the proceedings. Courts will always, in such cases, give credit to the propriety of the proceedings before the arbiter. This litigation, after hanging on for some eight or nine years, had culminated in a point of very small value; and it would have only excited indignation in their Lordships' minds, if it were not that such frivolous litigation occurs in these appeals from Scotland day after day. If the people of Scotland only knew the miserable slavery to which they were subjected by the carrying on of this class of cases, and by the state of the law which permitted of it, they would probably think of some remedy.

Lord Colonsay also concurred.

Judgment affirmed, with costs.

Agents for Appellant—J. & R. D. Ross, W.S.
Agents for Respondents—D. Crawford and J. Y. Guthrie, S.S.C.

Monday, June 20.

LESLIE *v.* M'LEOD.

(*Ante*, vol. v, p. 275.)

Marriage-Contract—Provision to Younger Children—Heir-male of the Marriage—Creditor under Marriage-Contract—Liability of Heir for Debts of Ancestor. A bound himself, in antenuptial articles of marriage, to convey a certain estate to himself and the heir-male of the marriage, and also to secure a sum of money to the younger children. A postnuptial contract of marriage was executed giving effect to these stipulations. A died, and his son took the estate. A's executry being insufficient to satisfy the provision to the younger children, *held* (affirming judgment of the Court of Session) that the son, as heir of his father and so liable for his father's debts, was bound to implement his father's obligation to the younger children, *intra valorem* of the estate to which he succeeded.

Agreement—Bond—Conditional Right—Obligation to Relieve. An heir taking the heritable estate of his father executed a bond for £5000 in favour of his sister, she granting in return a discharge of all claims against her father's estate. It was subsequently discovered that the sister was entitled, under the father's marriage-contract, to a provision of £16,000. *Held* (affirming judgment of the Court of Session) that the sister was not entitled to decree for the £16,000 until she should relieve the heir and his estate of the obligation for the £5000.

This was an appeal from a decision of the First Division, along with three Judges of the Second Division, of the Court of Session as to the construction of a marriage-contract. The late Mr Leslie of Dunlugas in 1820 married Mrs Mary Ramsay or Brebner. There was an antenuptial contract, which was afterwards carried out by a postnuptial contract. By this contract Mr Leslie bound himself to convey the estate of Dunlugas to himself and the heir-male of the marriage in fee, and also to secure to the younger children of the marriage £16,000. Mr Leslie died in 1856, leaving one son, the appellant, and one daughter, who had married the respondent. The estate of Dunlugas was valued at £28,000, and there was only about £1500 of personal estate. At the time of the death it was not known that the marriage-contract had been entered into, and the deceased Mr Leslie had left a trust-disposition whereby, among other things, he left £5000 to Mrs M'Leod and her children. That sum was paid accordingly, but afterwards it was discovered that there had been a marriage-contract, and the heir-at-law reduced the trust-disposition on the ground of deathbed. Thereupon the question came to be, what was the construction of the marriage-contract? Mr M'Leod, as representing his deceased wife, claimed from the appellant payment of the sum of £16,000 in full, on the ground that she was a creditor of the father to that extent, and that the appellant was bound, as representing his father, to pay it. The appellant, on the other hand, contended that he was not liable, or, at all events, if he was liable, he was a creditor of his father's estate in the same sense that his sister was, and therefore the proceeds of the estate must be divided in the proportion of £16,000 to £28,000. The respondent having raised an action against the appellant, the Lord Ordinary held that the true construction was, that Mrs M'Leod, the sister of the appellant, did not take a preferable right to the appellant, but both were entitled to prove against the father's estate for their respective provisions. On a reclaiming note, the First Division reversed this finding, and held that the appellant was bound to pay the whole of the £16,000 to the respondent. Thereafter the further point was raised, whether in payment of the £16,000 the appellant was entitled to deduct the £5000 which had already been paid to the respondents under the trust-disposition. The First Division held that the £5000 must be deducted from the £16,000. There was an appeal and cross-appeal upon these judgments.

The case was argued in March.

Sir Roundel Palmer, Q.C., and Lancaster for the Appellants.

Anderson, Q.C., and Nevay in answer.

Their Lordships took time to consider their judgment.

At advising—

Lord Chancellor—My Lords, the facts of this case are a little complicated, and the point of law here raised has been argued before us with great ability and in great detail; but I confess it appears to me that the whole determination of the case rests (as regards the original appeal) upon the construction of a single sentence of the settlement which was executed by the settlor in the present instance, and that the construction of that sentence may be arrived at in a very few words.

Now the facts are simply these. Mr Leslie, who appears to have been a wealthy gentleman, on his marriage in March 1820 executed an antenuptial contract, which was implemented soon afterwards by a fuller and more complete instrument following the terms of the contract. That contract is the contract we have to consider. His wife died before him. Under the contract his wife would have taken a liferent, and also a certain sum of money was charged in her behalf. I need not any more deal with her interest in the matter. She died before him. He died on the 4th of March 1856. Then upon his death the present appellant in the original appeal, Mr Leslie, served himself as heir-general. It so happened that, at the time of the