

Saturday, October 19.\*

OUTER HOUSE.

[Lord Adam.

ROBERTSON AND SPOUSE v. MOORE (ROBERTSON'S TRUSTEE) AND OTHERS.

*Provisions to Husbands and Wives—Antenuptial Marriage-Contract—Right of Creditors to Alimentary Provision conceived in favour of Granter of Deed.*

Under an antenuptial marriage-contract a husband conveyed to the trustees certain ground-annuities in security of an annuity therein provided for his wife. The trustees were to hold the annuities for behoof of both spouses during their joint lives for their alimentary uses allenarly, and after the death of the wife, if she predeceased, for the husband's behoof, in liferent for his alimentary use allenarly. Held (by the Lord Ordinary (Adam) and acquiesced in) that in so far as the husband was concerned the declaration that the subjects were to be held *stante matrimonio* for alimentary uses only was a stipulation in his own favour which could receive no effect in a question with onerous creditors.

This was an action of reduction at the instance of Thomas Robertson and spouse against Alexander Moore, trustee upon his sequestrated estate, and the trustees under an antenuptial contract of marriage between him and his wife, dated 22d April 1873. By that deed Thomas Robertson bound himself to pay to his wife, in case she should survive him, a free liferent annuity of £200, to be restricted in the event of her entering into a second marriage to £100—which liferent annuity was further declared to be purely alimentary. In security of that annuity Thomas Robertson under the antenuptial contract conveyed to the trustees, *inter alia*, two ground-annuities of £45, 11s. 8d. and £55, 5s. 1½d. payable from two steadings of ground fronting the Great Western Road, Glasgow, binding himself to execute a more formal and valid disposition of them so soon as he obtained a title; but it was provided in the deed that the trustees were to hold the ground-annuities for behoof of the spouses during their joint lives, for their liferent alimentary use allenarly, and after the death of the wife, if she predeceased, for the husband in liferent for his liferent alimentary use allenarly. For the two ground-annuities conveyed in security as above narrated there were afterwards substituted two other ground-annuities of the yearly value of £31, 17s. 8d. and £55, 5s. 1½d., and the marriage-contract trustees were infeft upon a conveyance of these.

Thomas Robertson having become bankrupt, the trustee upon his sequestrated estate brought an action against him and his spouse and their marriage-contract trustees, asking for declarator that under his act and warrant of confirmation there was transferred to him "the sole and exclusive right to all and every payment" of the ground-annuities above-mentioned. The marriage-contract trustees declined to defend that action

unless they were supplied by the other defenders with funds, and decree was granted in absence. Robertson and his spouse now sought reduction of the decree in that action.

The pursuers pleaded, *inter alia*,—" (2) The fund forming the said provision not forming part of the pursuer Thomas Robertson's estate, is not affected by his sequestration."

The defenders pleaded, *inter alia*,—" (4) The bankrupt being entitled to the benefit of the ground-annuities in question during his lifetime, his declaration in the marriage-contract that the same shall be alimentary is ineffectual against creditors. (5) The provisions of the marriage-contract relative to the disposal of the bankrupt's ground-annuities during his lifetime being invalid, and in fraud and to the hurt and prejudice of his creditors, the defender is entitled to the decree which he has obtained."

The Lord Ordinary (ADAM) pronounced an interlocutor in which he assoilzied the defenders. He added this note—

"Note.—These ground-annuities were the property of Thomas Robertson, and were conveyed to, and are now held by, the trustees under an antenuptial contract of marriage entered into between him and his wife, who is also a pursuer.

"The trustees hold the ground-annual for behoof of the pursuers during their joint lives for their liferent alimentary uses allenarly, and after the death of the wife, in the event of her predeceasing her husband, for his behoof in liferent for his alimentary use allenarly.

"It appears to the Lord Ordinary that during the subsistence of the marriage the marriage-contract trustees are bound to pay the ground-annuities to the pursuer Thomas Robertson, and also after its dissolution in the event of his surviving his wife. The declaration that the ground-annuities are to be held by the trustees for the liferent alimentary uses allenarly of the spouses is a stipulation in so far as Robertson is concerned in his own favour, which cannot receive effect in a question with onerous creditors—*Kerr's Trustees v. Justice*, Nov. 7, 1866, 5 M. 4; *Wood v. Begbie*, June 7, 1850, 12 D. 963. The Lord Ordinary is therefore of opinion that during his lifetime the trustees on his sequestrated estate is entitled to payment of the ground-annuities."

The interlocutor was acquiesced in.

Counsel for the Pursuers—Rhind. Agent—W. B. Hay, S.S.C.

Counsel for the Defenders—R. V. Campbell. Agents—Maitland & Lyon, W.S.

\* Decided 12th March 1873.