

ground for saying so. On the contrary, the husband reserves to himself the right to dispose in the amplest terms, and so doing, he left the right of property in himself. In these circumstances I have no hesitation in coming to the same conclusion as the Lord Ordinary.

LORD SHAND—I am of the same opinion, and I think the grounds of judgment are very clearly set forth by the Lord Ordinary. If this provision had stood upon the words of the dispositive clause alone, without any clause of reservation, then undoubtedly it would have been a good provision. The words are, “in favour of the said deceased James Robertson and the defender the said Elizabeth James or Robertson, his spouse, in conjunct liferent for the said Elizabeth James or Robertson, her liferent use alienary.” . . . A provision of this kind if reasonable would of course have received effect, but then the husband goes on to qualify the provision by these words. [*His Lordship here read the reservation above quoted.*]

It is impossible to view this as in any way an irrevocable provision, and that being so, the husband's creditors are entitled, in his place, to revoke the donation. The only effect of this deed was to secure a settlement upon the wife, which would come into operation after her husband's death, and in the event of his not having revoked it or incurred debt as he has done.

LORD ADAM—No doubt the husband here retained the full beneficial enjoyment of his property during his lifetime, and what he was apparently trying by this deed to do was, to put it *extra commercium*, and at the same time retain for himself the full benefit of it—a state of matters which this Court will not consent to. Looking to the terms of the reservation, the effect of this deed was to create in the wife a testamentary provision, and that only.

Being so, it is open to the diligence of her husband's creditors.

The Court adhered.

Counsel for Pursuers—A. S. D. Thomson.
Agents—Finlay & Wilson, S.S.C.

Counsel for Defenders—Scott—Gardner.
Agent—D. Todd Lees, S.S.C.

Wednesday, December 8.

FIRST DIVISION.

[Lord Trayner, Ordinary.]

TWEEDIE, PETITIONER.

Curator bonis—*Recal of Curatory—Jurisdiction of Junior Lord Ordinary—Petition.*

The Junior Lord Ordinary has jurisdiction to grant a petition for recal of the office of *curator bonis* on the recovery of the ward.

On 30th October 1885 James Tweedie of Quarter, Biggar, was appointed *curator bonis* to Miss Jane Macmaster, of Edinburgh. He thereafter duly entered on the duties of his office, and made up and lodged with the Accountant of Court an inventory of his ward's estate.

On 21st October 1886 the curator presented a petition to the Junior Lord Ordinary praying for discharge and delivery of his bond of caution, on the ground that the ward was now of sound mind and capable of managing her own affairs. Medical certificates to this effect were duly lodged. In these circumstances the petitioner applied, as above set forth, for discharge and exoneration, and for delivery of the bond of caution.

On 16th November 1886 the Lord Ordinary (**LORD TRAYNER**) appointed the petition and relative documents to be boxed to the Judges of the First Division of the Court.

“*Note.*—It appears to me that this petition, in so far as it prays for the recal of the curatory, is one with which I cannot competently deal—*Kyle*, June 10, 1862, 24 D. 1083; *Lockhart*, 24 D. 1086; *Sinclair*, 23 S.L.R. 737. I have therefore reported it to the Court. If the curatory is recalled I can dispose of the remaining part of the prayer of the petition.”

Argued for the petitioner—The question here was whether, when the curator applied for discharge, it was competent for the Junior Lord Ordinary to recal the appointment—*Kyle*, June 10, 1862, 24 D. 1083. The difference between that case and the present was, that there the petition was for the appointment of a new curator; here that was unnecessary, because the ward had become sane. The recal of the curatory was merely ancillary to the curator's discharge in respect of his acts and intrusions, and the Lord Ordinary could grant that. The difficulty arose from there being no provision in the Distribution of Business Act (20 and 21 Vict. c. 56) for the recal of curatories. Authorities cited by the Lord Ordinary.

Appearance was also made for the Accountant of Court, who stated that ever since the decision in *Kyle's* case it had been customary for the Lords Ordinary to deal with the whole matter connected with such applications, and there was nothing so very special in the circumstances of the present application as to take it out of the ordinary rule.

The Court pronounced the following interlocutor:—

“The Lords, on the report of Lord Trayner (Ordinary), and having heard counsel for the petitioner and for the Accountant of Court, remit to the said Lord Ordinary to recal the appointment of James Tweedie as *curator bonis* to Miss Jane Macmaster, and to proceed with the cause as may be just.”

Counsel for Petitioner—Burnet. Agent—Knight Watson, Solicitor.

Counsel for Accountant of Court—Low. Agents—Mackenzie, Innes, & Logan, W.S.