seded by the will of 1886, and I call it so, because I think that it is none the less a will because the clauses composing it are included in an antenuptial marriage-contract.

Lord Craighill concurred.

Lord Rutherfurd Clark—The question is whether Mrs Bertram's settlement of 1879 was revoked by her marriage-contract in 1886.

I may notice, though in my view it is not very material, that the marriage-contract is not a universal settlement. It only conveyed the estate which belonged to Mrs Bertram at the time of her marriage, or which she might acquire during its subsistence. It is only by the accident of her having predeceased her husband that it can in any sense be regarded as a universal settlement, and it is a question whether in any case it can include the savings from accruing income.

The primary purpose of the marriage-contract is to protect the estate of the wife during the subsistence of the marriage. But for this it would never have come into existence. It is, however, also a will in as much as in a certain event Mrs Bertram gives the estate thereby conveyed to heirs *in mobilibus*. But the direction in their favour is only to take effect if she does not otherwise appoint by a writing under her hand. I regard that as meaning that they are to take if she does not leave a will. I cannot hold that it indicates any intention of revoking a subsisting settlement.

If the marriage-contract had not contained any direction in favour of heirs, I do not think that it was disputed that the settlement of 1879 would have regulated Mrs Bertram's succession. I fail to see how by reason of the existence of the direction the marriage-contract can be held to have any revoking power, when the gift to heirs is expressly postponed to any appointment which she may make, or, as I construe these words, to any will which she may leave.

It was argued that the only appointment which could have legal efficacy was an appointment made after the date of the marriage-contract. I do not think that this view is sound. The words are, as she "may appoint by any writing under her hand." I think that these words apply to and include any writing which she may leave at her death expressive of her will, whatever the date may be. All testamentary writings operate as at death, and unless the words of the marriage-contract necessarily exclude prior writings, which I think they do not, I am of opinion that the settlement of 1879 is the unrevoked will of Mrs Bertram, and that it must receive effect, either apart from the marriage-contract altogether, or as an appointment which takes precedence of the direction in favour of heirs *in mobilibus*.

The Court pronounced this interlocutor:—

"Find (1) that the settlement of 1879 has been revoked by the said marriage-contract between William Bertram, Esq., and Mrs Jessie Merry Forrester or Matheson, dated 18th September 1886; (2) that the accumulations of Mrs Bertram's income and the household furniture and jewellery referred to in the special case fall under the marriage-contract; and (3) that the interest which has accrued on the sum of £4000 referred to in the special case falls under the marriage-contract: Find it unnecessary to dispose of the fourth question in the case," &c.

Counsel for the First Parties — Gillespie. Agents—Mackenzie & Kermack, W.S.

Counsel for the Second and Third Parties—Fleming. Agents—J. A. Peddie & Ivory, W.S.

Counsel for the Fourth Parties—Asher, Q.C.—Napier. Agents—Mackenzie & Black, W.S.

Counsel for the Fifth Parties—Balfour, Q.C.—Low. Agent—Donald Mackenzie, W.S.

Saturday, March 10.

FIRST DIVISION.

CLARKE *v.* M'NAB AND OTHERS.

Inhibition—Recall—Misdescription in Letters of Inhibition—General Mandate by Creditor.

In a bond and disposition in security the grantees were designed as trustees for each other, and as individuals. They assigned their beneficial interests under the bond, and the borrower granted a corroborative disposition in security to the assignee. The grantees then raised letters of inhibition, as trustees under the bond and disposition in security, against the granter, who presented a petition for their recall, on the ground that the true creditor under the bond was the assignee, and that the inhibition was used without her knowledge or consent. *Held* (1) that the respondents, in designing themselves as trustees under the bond had correctly set forth their title, and that it was not necessary for them to set forth the subsequent transmission of the beneficial interest; and (2) that although the assignee had given no special mandate the diligence was not therefore unauthorised, as she had given general instructions to her agent to act in the matter, and was represented by counsel.

This was a petition for recal of inhibitions used against the petitioner by the respondents.

By bond and disposition in security, dated and recorded 13th and 14th October 1876, David Wilkie Clarke, the petitioner, and David Crabb, as trustees and also as individuals, borrowed from the respondents Mrs Jane Jack or M'Nab, Martha M'Nab, and John M'Nab, £1600, and from the respondent James Cuthbert £400, which two sums they bound themselves to repay to the respondents and their assignees, both as trustees for the said Mrs Jane Jack or M'Nab, Martha M'Nab, and John M'Nab, and James Cuthbert, and as individuals, as the lenders of the said sums. In security the borrowers, as trustees for themselves and as individuals, disponed to the respondents certain heritable subjects in Dundee.

On 13th November 1877 Mrs Margaret Scott or Bell acquired right to the bond and disposition in security, and lands and others thereby disponed, and the sums of money thereby due, conform to assignations in her favour by James Cuthbert, and by Mrs Jane M'Nab, Martha M'Nab, and John M'Nab.

By a corroborative disposition in security, dated 19th March 1883, the borrowers, under arrangement between them and Mrs Bell, disponed to the respondents, and the survivors and last survivor, as trustees, in manner above mentioned, for behoof of Margaret Scott or Bell, the party in right of the beneficial interest in the bond and disposition in security, lands, and sums of money therein contained, the heritable property therein specified, and that in real security to the respondents, as trustees, and for behoof foresaid, of the foresaid sum of £2000, with the interest thereof, and penalties before specified in case of failure if incurred.

The respondents, as trustees under the said bond and disposition in security, on 17th January 1888 raised letters of inhibition whereby the petitioner was inhibited, as a trustee and as an individual, from selling or burdening his heritage to the prejudice of the respondents anent the security and payment to them of the sum of £2000, and on 26th January 1888 the petitioner was again inhibited to the same effect.

David Wilkie Clarke presented this petition for recal of these inhibitions, and averred that at the date of the inhibitions the respondents other than Mrs Margaret Scott or Bell possessed no right, title, or interest in or to the bond and disposition in security, the sums due thereunder, or the properties thereby conveyed; the true creditor under the bond and disposition in security was the respondent Mrs Margaret Scott or Bell, and the letters of inhibition were taken, and the inhibitions used, without her knowledge or consent, and contrary to her wishes; the inhibitions were therefore inept and illegal, and proceeded at the instance of persons who had no right, title, or interest to recover the sums above mentioned from the petitioner, or to grant a discharge therefor upon payment.

The respondents, including Mrs Bell, lodged answers. They averred — "The respondents other than the said Margaret Scott or Bell continued to hold in trust the right to the said bond and disposition in security, and the personal obligation of repayment of the loan therein contained. The respondent Mrs Margaret Scott or Bell has never acquired any right to demand repayment of the said loan, and she has no title to do so except through the intervention of the other respondents as trustees holding for her behoof. . . . Mrs Margaret Scott or Bell is an infirm old lady, and her affairs are managed by Mr Cumming, solicitor, Bank Street, Dundee. Mr Cumming has her general authority to act in her interests as he thinks proper. The petitioner called upon the respondents, Mrs M'Nab and Mrs Margaret Scott or Bell, and endeavoured to persuade these ladies not to call up the loan. The respondent Mrs Margaret Scott or Bell referred him to her law agent Mr Cumming, to whom she on 7th January 1888 sent a letter in the following terms:—'Mr Clarke called upon me on Wednesday, and I just told him you were my man of business, and referred him to you. I quite approve of what you are doing in calling up the money.'"

Argued for the petitioner—(1) The letters of inhibition were invalid from misdescription. They were raised at the instance of the respondents as trustees under the bond and disposition in security. These parties were designed trustees, but they were in fact the creditors in the advances made. They had assigned their whole beneficial right and title to Mrs Bell, and they now held as trustees for her, and no longer for themselves. It was therefore fatal to their diligence that it was raised by the respondents as trustees for themselves—*Walker* v. *Hunter*, Dec. 15, 1853, 16 D. 226. (2) Mrs Bell, the true beneficiary, was not alleged to have given authority for the diligence.

Argued for the respondents—In the first place, there was no misdescription in designing the respondents as trustees under the bond and disposition in security. They acted under it, although it was true that the money due was not now payable to them but to Mrs Bell. There was no doubt that the debtor was answering to the right person in answering to the trustees. In the second place, it was sufficient that Mrs Bell was represented by counsel.

At advising—

Lord President—I do not think that either objection to the letters of inhibition is good.

The first reason why it is said that the letters of inhibition are bad is, because in them the trustees are designed simply as trustees under a certain deed. But they are bound to recite the deed under which they act. They do so, and recite it quite accurately. They do not need to do more. They are not bound to give any information except that they are trustees under the deed, and as such creditors of the party against whom inhibition is used.

In regard to the second objection that cannot be held good. For in the first place, Mrs Bell is here as one of the parties supporting the inhibition. She has therefore adopted the inhibition as for her benefit. And in the second place, I cannot adopt the Dean of Faculty's argument, that in using inhibition the respondents were resorting to such an extraordinary measure that it required a special mandate from their client. Their client was an old lady, and not used to business, and she would have been puzzled if the question had been put to her whether this remedy should be adopted to recover her money.

I consider that this case is much the same as when a client puts himself in his agent's hands, and gives him general authority under a general mandate. I am therefore for refusing the petition.

Lord Adam—I am of the same opinion. It seems that the petitioner is debtor to the trustees under the original bond, and nothing else. What happened afterwards does not affect him. The trustees have the sole title and right to discharge the original bond, and it is not necessary for them to set forth the subsequent transmissions of the beneficial interest to Mrs Bell.

What Mrs Bell knew, and what she did not know, is of no matter; she is represented here, and so no further inquiries need be made.

Lord Kinnear concurred.

Lord Mure and Lord Shand were absent from illness.

The Court refused the petition.