forced. All that is relied on is the mere lapse of time. I agree that it is possible to imagine cases where the delay might be long enough to ground a plea of bar, but it is quite out of the question to maintain such a plea in the present case.

I agree also on the second question. We are asked to consider this point on the assumption that both parties are agreed that the decree of removing is not good if the subject occupied by the complainer falls under the provisions of the Agricultural Holdings Act, in respect that warning was not given in the form prescribed by the statute. I desire to reserve my opinion on that point. It is unnecessary to consider it, because I think the Agricultural Holdings Act inapplicable for the reasons stated by your Lordship and by the Lord Ordinary.

LORD M'LAREN was absent.

The Court adhered.

Counsel for the Complainer — C. N. Johnston—Crabb Watt. Agent—Charles Garrow, Solicitor.

Counsel for the Respondent — Æneas Mackay—C. K. Mackenzie. Agents—Melville & Lindesay, W.S.

Wednesday, January 27.

SECOND DIVISION.

[Sheriff of the Lothians.

MIDDLETON (HEWAT'S MARRIAGE-CONTRACT TRUSTEE) *v.* SMITH.

Trust—Antenuptial Contract of Marriage—Sale of Subjects Conveyed to Marriage-Contract Trustees—Bona fides.

By antenuptial contract of marriage the intending husband disponed to trustees—"(Third) All and sundry the whole household furniture, . . . pictures, and other effects of every description in his house" for the purposes mentioned in the deed. After the marriage the husband fell into financial difficulties, and obtained a guarantee for the payment of a certain instalment to his creditors. In security he assigned to the guarantor, *inter alia*, certain pictures, of which six were in the house at the time of the marriage, and were conveyed to the marriage-contract trustees. The guarantor sold the pictures by public roup.

The sole surviving marriage-contract trustee sued the guarantor for recovery of the pictures or their value. It was proved that the guarantor knew that the marriage-contract conveyed the furniture to the trustees, but it did not appear that he knew that the pictures, or at least the pictures assigned to him, had been conveyed to the trustees.

Held that the pictures sued for had been acquired for value and in good faith, and the defender *assoilzied.*

By antenuptial contract of marriage of date 3rd December 1883, between Richard George Hewat and Harriet Aitken Middleton, Hewat disponed to trustees named therein a house in Portobello, a policy of insurance for £400, and (3) "All and sundry the whole household furniture, silver plate, bed and table linen, books, pictures, and other effects of every description in his house at Bellfield, Portobello," for the liferent use of the spouses, and payment of the estate conveyed to the children of the marriage on the death of the last survivor. In 1890 Hewat's circumstances became embarrassed, and a composition of 7s. 6d. in the £ was accepted by his creditors. This composition was payable in three instalments, and William Carruthers Smith became cautioner for payment of the last instalment on condition of receiving security. Security was given in the form of a sum in cash, a quantity of tea, and 48 pictures. Among the pictures were six which it was admitted were in Hewat's house at the time the contract of marriage was executed, and which remained in his house after his marriage. In order to recoup himself for the loss sustained in paying the last instalment of Hewat's debts Smith sold the pictures by public roup, including five of the said six pictures. Thereafter James Middleton, M.D., the sole surviving trustee under the marriage-contract trust, raised an action in the Edinburgh Sheriff Court to have Smith ordained to deliver up the six pictures referred to, or to pay £250 as their price. He averred—"These pictures were in Bellfield House at and prior to the execution of the said contract of marriage, and had been conveyed to the said trustees by and in virtue of the said contract of marriage. The conveyance of the pictures to the guarantor was done without communicating the fact to the pursuer, the only trustee in this country except the defender's said son. In carrying out this illegal arrangement the said pictures were removed and placed in the defender's hands. The defender knew of the existence and terms of the said marriage-contract."

The defender averred—"He got as security a sum in cash, a certain lot of teas, and a number of paintings, including those sued for. Explained that the defender was not aware that the pictures were affected by the said marriage-contract. Explained further that Mr Hewat was very anxious that the defender should undertake the obligation for the last instalment of his composition, and the said pictures were removed from Bellfield House to Dowell's by the said Richard George Hewat, and the defender got possession of the pictures in Dowell's Rooms in George Street, Edinburgh, in March 1890, conform to agreement between the defender and Mr Hewat, dated 21st and 26th days of March 1890. The defender was not aware of the terms of the said marriage-contract, and he had no communication with his son (at that time one of the trustees) on the subject."

The pursuer pleaded—"(1) The pictures in question being the property of the trust,

it was illegal in the defender to take possession of them in security of an obligation undertaken by him for his brother-in-law."

The defender pleaded—"(2) The pursuer's statements are irrelevant. (3) The conveyance in said marriage-contract being granted by Mr Hewat of moveables *retenta possessione*, and the moveables sued for having been delivered by Mr Hewat to the defender, who received them without notice or knowledge of said conveyance, the defender is not bound to deliver them to the pursuer, or to account to him for the value thereof, until he is relieved of the obligation referred to in his answers, of which he holds them as security. (4) The trustees having permitted the said Richard George Hewat to possess and deal with the articles, delivery of which is sued for, as his own, are barred from insisting on delivery."

A proof before answer was allowed.

R. G. Hewat deponed—"I remember specially of one meeting with defender in his back sitting-room, sometime between January and February 1890, when we were speaking about the security for the last instalment. On that occasion defender said, 'If you will satisfy my agent Mr Young that I do not run any risk I will give you my name.' At that meeting there was also something said about the marriage-contract. The defender said that the contract was not worth anything, as there was no inventory to it; and even if there had been an inventory, it was very doubtful if it was worth anything. I said, 'I suppose that is information you have got from your law agent;' but defender said, 'Oh! I have known that for twenty years.' After hearing that expression of opinion I believed that the contract was useless. If I had had any doubt as to the correctness of his view I would never have conveyed to him the pictures which are the subject of this action. Defender was often in my house before the arrangement, and had seen the pictures and things in my house."

Mr Thomas White, S.S.C., agent for Hewat in 1890, deponed that he "attended a meeting of the creditors of Hewat & Company on 11th February 1890. . . . The antenuptial contract was also produced at the meeting and fully discussed. There was about an hour's conversation about it. There was a long discussion about the furniture and pictures, which arose in this way. There was produced at the meeting a valuation by an Edinburgh auctioneer, in which the furniture was put down at a very trifling sum; one of the creditors thereupon said that the pictures in Mr Hewat's dining-room and drawing-room were alone worth four times the amount of the valuation, and that led to a great deal of discussion about the marriage-contract. Mr Millar then explained that the articles acquired by Mr Hewat since his marriage were not included in the contract, and that that was the reason of the small valuation."

The defender deponed—"My agent told me that Mr Hewat was offering pictures and tea as security, but there was nothing said about the pictures being subject to a marriage-contract. On 3rd March I authorised my agent to agree to my becoming security for the composition, provided security was given to the satisfaction of my agent. I next heard from my agent on 8th March by letter, telling me of the arrangement come to that day with Mr Hewat. I approved of that arrangement, and about the end of March signed the composition bills. The first I heard of the pictures being subject to the marriage-contract was in a letter from Mr Mackersy on 17th February 1891. I know that Mr Hewat has been dealing in pictures for the last twenty years. (Q) Mr Hewat said you had a meeting with him in your back-room on one occasion—was anything said between you at that meeting about the marriage-contract?—(A) Nothing. *Cross.*—On being referred to Mr Hewat's account of his interview with me in February 1890, I am perfectly certain that I never used anything like the words he attributes to me. On one occasion, shortly after his failure, I recollect of his making the remark that his house and furniture were settled on his wife, but there was nothing said about a contract. That was long before the agreement was signed, and I remember of saying to him at that time, 'I don't think the furniture being settled on your wife will be very much benefit unless it is inventoried, because I remember that the same thing occurred to me. My furniture was settled on my wife, and I was told afterwards that it was not worth the paper it was written on.' That conversation took place in Mr Hewat's office in the beginning of February 1890."

Mr James Young, the defender's agent, deponed—"Mr White came to Leith, and proposed to me that I should ask defender to become security for the last instalment of the composition. He offered certain securities. He said Mr Hewat had a collection of pictures, some of them valuable, which he would give as security. He stated the value of the securities to be £500 . . . I heard nothing further until 3rd March, when Mr Hewat called upon me and said that defender was willing to become cautioner for the last instalment of composition, provided I was satisfied with the security. I asked Mr Hewat what his security was, and he said, pictures which he valued at £500, and tea which he valued at £200. I said I would require to get the pictures valued by Mr Dowell, and the tea by some one who knew about tea, and Mr Hewat left me on the understanding that I was to get the pictures and tea valued. I arranged by telephone that Mr Dowell should value the pictures, and the result was that he valued them at £300, less the expense of realisation. On the same day, 7th March, I wrote Mr Hewat stating that the tea had been valued at £185 and the pictures at £270, so that there was still a balance of about £200 to be provided for. Mr Hewat called upon me the same day and was much annoyed at the low valuation, stating that he was quite sure that the pictures were worth at least £500. I said I would take no valuation but Mr Dowell's. On the following day, 8th March, Mr Hewat returned with a deposit-receipt

for £65, and said that he had arranged for another friend to become security for a portion of the composition bill, so that defender would only be asked to sign for £540. On examining the figures I saw there was £20 or £30 still required, and I said the arrangement could not go on, as the securities were of a kind that would probably realise less than we were estimating them at. The arrangement was finally completed on the 8th March, however, and the agreement was signed, and the bills were signed some days afterwards."

Upon 3rd November 1891 the Sheriff-Substitute (RUTHERFURD) found—"(1) That the pursuer is the sole trustee now acting under the antenuptial contract of marriage, dated the 3rd of December 1883, between Richard George Hewat, tea merchant, Edinburgh, and Miss Harriet Aitken Middleton, whereby Mr Hewat conveys to trustees, for the purposes therein mentioned, a house in Portobello belonging to him, with a policy of assurance on his life effected with the Northern Assurance Company, and the household furniture, pictures, and other effects in the said house; (2) that the marriage-contract trustees were infeft in the house aforesaid, and the assignation in their favour of the said policy of assurance was duly intimated to the Assurance Company, but Mr Hewat, who occupied the house at the date of the marriage-contract, was allowed by the trustees to continue in possession thereof, and of the furniture, pictures, and other effects therein, which included the six pictures mentioned in the prayer of the petition; (3) that Mr Hewat thereafter fell into pecuniary difficulties, and at a conversation relative to his affairs between him and the defender in the beginning of February 1890, the conveyance of his furniture and effects to his marriage-contract trustees was specially referred to; (4) that on the 7th of March 1890 Mr Hewat caused a number of pictures, including those mentioned in the prayer of the petition, to be delivered to the defender's agents, through Mr Dowell, auctioneer, in part security of an obligation which the defender subsequently undertook by agreement with a view to the payment of a composition to Mr Hewat's creditors; (5) that by the defender's instructions the pictures aforesaid were sold at public auction on the 19th of April 1890, with the exception of the picture first mentioned in the prayer of the petition, which is still in the defender's possession, no purchaser having been found for it: Finds in point of law (1) that the defender being in the knowledge of the said antenuptial contract of marriage, was not entitled to rely upon Mr Hewat's possession of the pictures aforesaid as a ground of credit, or to assume that Mr Hewat was at liberty to deal with the pictures as he pleased; and (2) that the defender is bound to account to the pursuer for the said pictures or the value thereof: Therefore repels the defences, and decerns and ordains the defender to deliver to the pursuer the picture which is still in his possession as aforesaid, *videlicet*, a picture entitled 'London Bridge' by Mr F. C. Noble: *Quoad ultra* continues the cause that parties may be heard as to the sum payable by the defender in lieu of the other pictures mentioned in the prayer of the petition, reserving in the meantime all questions of expenses.

"*Note.*— . . . The pursuer avers that the defender knew of the existence and terms of the marriage-contract, and as this averment is denied by the defender a proof was allowed, the result of which is unfortunately not very satisfactory, for there is a material discrepancy between the statements of Mr Hewat and his agent Mr White on the one hand, and those of the defender and his agent Mr Young on the other. It is admitted by the defender that at a meeting which he had with Mr Hewat in the beginning of February 1890, about a month before he got delivery of the pictures, the conveyance of Mr Hewat's furniture, &c., to his marriage-contract trustees formed a topic of conversation, and he (defender) observed—'I do not think the furniture being settled on your wife will be very much benefit unless it is inventoried, because I remember that the same thing occurred to me. My furniture was settled on my wife, and I was told afterwards that it was not worth the paper it was written on.' Acting apparently on this view of the matter the defender considered himself in safety to take the pictures referred to in the prayer of the petition as a security for the obligation which he subsequently undertook by the agreement. It is obvious, however, that Mr Hewat, in dealing with these pictures as his own property, was acting *in fraudem* of the marriage-contract, and the Sheriff-Substitute is of opinion that the defender cannot be held to be in a more favourable position, seeing that he was aware of the conveyance of Mr Hewat's furniture, &c., to the marriage-contract trustees at the time when he got delivery of the pictures in question."

The defender reclaimed.

Case cited for the respondent—*Orr's Trustees* v. *Tullis*, July 2, 1870, 8 Macph. 936; M'Laren on Wills and Succession, i. 417.

At advising—

LORD JUSTICE-CLERK—In this case I think the Sheriff-Substitute has fallen into error. At the time when Hewat executed his antenuptial contract of marriage there were six particular pictures in his house, and these he is said to have conveyed to the marriage-contract trustees by this deed. Then he fell into difficulties, and in his endeavours to get his brother-in-law Smith to assist him he agreed to convey these six pictures, along with a number of others, as security for the advances he was to receive. They were handed over, and Smith sold them, but the pursuer now says that these six pictures were not the property of Hewat at all, but that, like everything else in the house at the date of the antenuptial contract, they became the property of the trustees, and that Smith must either give

up the pictures or account for the price of them.

It was not contended that Smith and Hewat had entered into a fraudulent scheme to defraud the marriage-contract trustees of property under the trust. The whole transaction had been gone about in good faith. The true state of the case appears to me to be contained in the third plea-in-law for the defender — [*His Lordship read the plea*]. I think that is a sound proposition, and directly applicable to the facts of the case, and I think we should recal the judgment of the Sheriff-Substitute and assoilzie the defender.

LORD YOUNG—I concur. I think that the defender in this case was a *bona fide* onerous holder of the pictures.

LORD RUTHERFURD CLARK—I think it is out of question here to impute fraud to the defender. He holds these pictures for value, and he got them in an honest transaction.

LORD TRAYNER concurred.

The Court pronounced this judgment—

"Find in fact (1) that Mr Hewat remained in possession of the furniture and other effects conveyed in his contract of marriage; (2) that the defender received the pictures mentioned in the prayer of the petition in security of an onerous obligation without notice or knowledge of the conveyance in said marriage-contract: Find in law that the defender is not bound to deliver the said pictures to the pursuer, or to account for the price or value thereof: Therefore sustain the appeal: Recal the interlocutors of the Sheriff-Substitute appealed against: Assoilzie the defender from the conclusions of this action: Find him entitled to expenses in the Inferior Court and in this Court," &c.

Counsel for Appellant—W. Campbell—Hunter. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for Respondent—Wallace. Agent—Lindsay Mackersy, W.S.

Wednesday, January 27.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE *v.* PETRIE.

Revenue—Inhabited-House-Duty Act 1808 (48 *Geo. III. c.* 55), *Schedule B, Rule* 2—*Customs and Inland Revenue Act* 1878 (41 *Vict. c.* 15), *sec.* 13, *sub-sec.* 1—*Stables.*

A hotel and stables were occupied together, though between them there ran a passage over which the public had a right-of-way. In addition to the hotel the landlord carried on a horse-hiring business, and kept horses at livery in the stables. *Held*—following the case of *Douglas* v. *Young*, November 14, 1879, 7 R. 229—that the stables ought to be included in an assessment of the hotel under the Inhabited-House-Duties Acts.

William Petrie, hotel-keeper, appealed to the Income Tax Commissioners for the Forfar district of the county of Forfar against the assessment made upon him for the year 1891-92 of £1, 19s., being the inhabited-house-duty at the rate of 6d. per pound on £78, the annual value of the hotel and stables and coach-house occupied by him, so far as the said assessment included the stables and coach-house.

The Commissioners having sustained the appeal, Robert S. Smith, the Surveyor of Taxes, expressed his dissatisfaction with the decision as being erroneous in point of law, and requested a case to be stated for the opinion of the Court of Exchequer.

The following facts were set forth in the case stated by the Commissioners—"First, the appellant is proprietor and occupier of the licensed premises situated as after mentioned, known as the Salutation Hotel, and of stables and coach-house adjoining. Second, the said hotel has a frontage both to East High Street and South Street, Forfar, with a bar entrance at the junction of those streets. The principal entrance to the hotel is from South Street. There is another entrance to the hotel from East High Street. The kitchen door of the hotel enters from a passage running from South Street to East High Street at the back and side of the hotel. The said passage separates the hotel from the stables and coach-house, which are under an entirely separate roof from the hotel building, and are situated at the back corner thereof. The carriage entrance to the stables and coach-house is from East High Street, the said passage being only a foot-passage from South Street. Third, it was stated by the appellant that the general public have a right-of-way over this passage, and that it is subject to a servitude of passage in favour of three feuars having properties adjoining. This statement was accepted as correct by the Surveyor. Fourth, in addition to the hotel business the appellant carries on a horse-hiring business, and puts up horses at livery in the said stables. It was admitted by him that people who put up their horses in the said stables frequently partake of refreshment in the said hotel. Fifth, it was agreed by both parties that the value of the hotel was £58 per annum, and that the value of the stables and coach-house was £20 per annum. The appellant claimed relief from the assessment as far as it included the stables and coach-house, on the ground that the hotel and the stables and coach-house are distinct tenements separated from each other by the public right-of-way and servitude of passage above mentioned. The Surveyor Mr R. S. Smith, on the other hand, contended that the hotel and stables and coach-house formed one assessable subject, and were all chargeable under the second rule of Schedule B of the Act 48 Geo. III. c. 55, and in support of his con-