a trustee for the complainer, and that the complainer now does not desire that any assignation to Mr Stewart should be granted. The position which, as I understand, the respondent does take up is that it is his duty and intention to expose the policy to public roup, and although that may be unfortunate for the complainer and his family, I am afraid it is entirely within the respondent's rights, and certainly there is nothing in this record which would justify me in interdicting him from doing so. In these circumstances I see nothing for it but to refuse the note."

The complainer reclaimed, and argued—The Lord Ordinary should have allowed proof of the alleged bargain for the sale of the policy. A truster and trustee might bargain as to the sale of the trust property; if a fair price was paid for it, the creditors had no concern with the purchaser. When the policy had been handed to the debtor, the trustee would not be bound again to sell it for the benefit of the creditors, as he would be barred from again selling that which he had sold for a price. The same argument had been urged unsuccessfully in regard to the *jus mariti*—Stair, i. 4, 9; Robson's Bankruptcy Law (6th ed.) 619, note K; *Kitson* v. *Hardwick*, May 30, 1872, L.R., 7 C.P. 473; *ex parte Tinker*, July 24, 1874, L.R., 9 Ch. App. 716; *ex parte Caughey, re Caughey*, January 15, 1877, L.R., 4 Ch. Div. 533.

The respondent argued—The complainer had not relevantly averred any agreement. It was possible for a debtor who had granted a trust-deed to arrange with his friends that they should purchase part of his estate, and hold it for him in such a way that he might ultimately get the benefit of it, but that was not what the complainer averred. If he had really made a bargain with the trustee to have the policy assigned to himself, that could avail him nothing, because the trustee would be bound to recover it from the debtor, and sell it for the benefit of the trust-estate—Bell's Comm. 126.

At advising—

LORD TRAYNER—I agree with the Lord Ordinary, and think his judgment ought to be affirmed.

It is quite plain that the complainer cannot insist on a sale or conveyance of the policy in question to his friend Mr Stewart, who, it appears, had at one time intervened in the interest of the complainer, and entered into negotiations with the respondent in reference to the purchase of the policy. Mr Stewart has withdrawn, and declines to proceed with the transaction on account of differences between him and the complainer as to the terms in which the conveyance or assignation in Mr Stewart's favour shall be expressed. There is therefore no longer any question as to Mr Stewart's right to the policy, or the complainers' right through Mr Stewart. It is averred, however, by the pursuer that the defender agreed to sell to the complainer himself the policy in question at an agreed-on price, and the complainer asks that the respondent should be interdicted from dealing with the policy in any other way than by assigning it to him in terms of that agreement. Although the complainer avers the agreement between him and the respondent in the way in which I have just stated it, it is very evident from the context of that averment that any negotiations between the complainer and respondent as to the sale or purchase of the policy were had upon the footing that some friend would intervene on behalf of the complainer, pay the purchase price, and take an assignation in his own favour, although it might really be in trust for the complainer or his family. Apart from such intervention, it does not appear to me that the parties could lawfully or effectually enter into the agreement here alleged. The policy in question being part of the assets of the complainer, had to be realised by the respondent for behoof of the complainer's creditors. How could the complainer purchase the policy or any part of his assets from his trustee? If he had no money, he could not pay the contract price—that is, he could not purchase; if he had money, it belonged to the respondent as trustee, assigned to him by the trust-deed granted by the complainer in his favour, and was improperly withheld from him. I never heard of a bankrupt or insolvent under trust purchasing part of his assets. He may purchase back his whole estate on payment of a composition if his creditors and he can agree upon it. But I know of no other way in which a bankrupt can be re-invested in his estate or any part of it.

I think the respondent in offering the policy for sale is only fulfilling his duty to the creditors, with whose interests he is charged, and that no cause has been shown for interdicting him as craved.

The LORD JUSTICE-CLERK—That is the opinion of the Court.

The Court adhered.

Counsel for the Reclaimer—Jameson—F. C. Cooper. Agent—R. Ainslie Brown, S.S.C.

Counsel for the Respondent—Ure—Guy. Agents—Wishart & Macnaughton, W.S.

Saturday, June 10.

FIRST DIVISION.

LEIGH-BENNETT, PETITIONER.

Public Record—Foreign—Authority to Exhibit Deed Recorded in Books of Council and Session in English Court—31 *and* 32 *Vict. cap.* 34, *section* 1.

A domiciled Englishman died abroad leaving a will whereby he bequeathed his whole estate, subject to certain small legacies, to B, who was also a domiciled Englishman. The will made no reference to Scots estate, but having been transmitted after the testator's

death to agents in Scotland, it was registered by them in the Books of Council and Session. B having subsequently applied for probate in England, the English Court refused to grant it unless exhibition was made of the original will, and issued a subpœna to the Deputy Clerk Register to produce it.

On the petition of B, the Court, in the special circumstances of the case, and under the powers of the Act 31 and 32 Vict. cap. 34, section 1, *authorised* the Deputy Clerk Register, or other person authorised by him, to obey the subpœna, and to exhibit the will in the English Court, but *directed* that the will should not be parted with except under the authority of the English Court for the purposes of the probate suit.

William George Borthwick died at Pau on 22nd February 1893, leaving a will dated the same day in favour of Mr Henry Currie Leigh-Bennett of Thorpe Place in the county of Surrey, subject to certain small bequests. The deceased was a domiciled Englishman.

On 17th March 1893 the will was recorded in the Books of Council and Session.

On 8th June Mr Leigh-Bennettt presented a petition, in which, after setting forth the above facts, he stated that he had applied for probate in England, that the application was unopposed, but that the English Court refused to grant it unless the will was exhibited in Court, and had issued a subpœna to Mr Stair Agnew, the Deputy Clerk Register, or to any person authorised by him to obey it, to attend the English Court with the deed.

The petitioner therefore craved the Court "to grant warrant to and authorise and appoint the said Stair Agnew, or other person authorised by him to obey the said subpœna, to take with him and exhibit in the said Division of the High Court of Justice in England the said principal will for inspection at the hearing of the said suit."

Argued for the petitioner—Down to 1861 the Court had frequently authorised its officers to take recorded deeds out of its jurisdiction, but of recent years the course usually followed was to authorise delivery of the deed to the petitioner's agent upon his finding caution to return it. The reason for the change of practice was explained in the case of *Dunlop*, November 30, 1861, 24 D. 107, to be that a deed sent in the custody of an officer of this Court had once been detained by the English Court. The petitioner believed that there was no fear of the deed in question being impounded. In the special circumstances of the case the application should be granted. The deed was holograph, and exhibition of the original document was necessary to prove that fact; it was executed by a domiciled Englishman, who possessed no real estate in Scotland; the petitioner, who was the party primarily interested in it, was a domiciled Englishman, and it had been registered without authority.

At advising (after consultation with the Second Division)—

LORD PRESIDENT—Under the 1st section of the Act 31 and 32 Vict. cap. 34, it is provided—"From and after the passing of this Act no writ that shall have been given in to be registered in the Books of Council and Session shall be taken out by the party or any one employed by him, nor shall any such writ be given up by the keepers of the Register for any purpose at any time, either before or after the same has been booked, excepting only when authority of the Lords of Council and Session has been expressly given thereto, and then only under such conditions and limitations as may be expressed in such authority, anything in the said recited Act or in other Act or any law or custom to the contrary notwithstanding." We are asked under the present application to give authority to the Keeper of the Register for the purposes described in that section. That Act imposes on us the duty of carefully attending to the preservation of all the writs which are in this register, and we have to consider what is said about this particular writ.

It is the will of a certain William George Borthwick, who died at Pau in France, and the will, which is a very short one, has been read to us at the bar. We are told, and must proceed on the footing, that Mr Borthwick was a domiciled Englishman. The will contains no reference to Scots estate of any kind. And the circumstances explained to us at the bar, combined with the tenor of the deed itself, seem to show that it was more or less by casual circumstances that the will has been registered in the Books of Council and Session at all. The will is by a domiciled Englishman in favour of a domiciled Englishman as universal legatory. Now, it appears that probate has been craved in the Probate, Divorce, and Admiralty Division of the High Court of Justice in England. It is stated that the will is required in the English Court, and *prima facie* it is plain enough that in the administration of justice, viewing it not as an international question but as a whole, it is right that this writ should be produced in England. We have to attend to the peculiar circumstances of this writ in order to see what degree of authority we should give to the official who is in charge of it, and while I should be very slow indeed to grant any warrant which would give countenance to the idea that we shall in all circumstances place a deed which has been registered in the Books of Council and Session at the disposal of another Court, yet I think there is enough here to show that we shall further the cause of justice, and at the same time comply with the statutory limitations of our authority, if we authorise the keeper of the register to take with him this writ and exhibit it in the Probate Division of the High Court of Justice for inspection in the suit mentioned in the petition, and go on to direct him not to part with the same, except under the order of the Probate Division of the High Court for the pur-

poses of that suit. I think it is right in the exercise of our duty to further justice, here and elsewhere, that we should enable the English Court to pronounce such orders as are necessary for the purposes of this suit in dependence there. I close by repeating that if this is done it will by no means relax our control over the writs in the Register, but the Court will be vigilant on future occasions, as it is on this, to see that nothing is done to impair the maintenance of the Register in Edinburgh in its integrity. In the special circumstances of the case we grant the authority.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced the following interlocutor:—

"The Lords having considered the petition, and heard counsel for the petitioner in the special circumstances of the case, and under the powers of the Act 31 and 32 Vict. cap. 34, sec. 1, grant warrant to, and authorise and appoint Stair Agnew, C.B., Advocate, Depute Clerk Register of Her Majesty's General Register House, Edinburgh, or other person authorised by him, to obey the subpœna issued on 6th June current by the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, and to exhibit in said Division of said High Court the principal will of the late William George Borthwick mentioned in the petition for inspection at the hearing of the suit also mentioned in the petition; the said Stair Agnew or other person authorised by him not to part with the said will except only under the order of the said Division of said High Court for the purposes of the said suit, and decern."

Counsel for the Petitioner—Blackburn. Agents—Russell & Dunlop, W.S.

Tuesday, June 13.

FIRST DIVISION.

[Lord Low, Ordinary.

BRODIE AND ANOTHER *v.* BRODIE AND OTHERS.

Succession — Vesting— Postponed Date of Conveyance—Dies Incertus.

A testator directed his trustees to "transfer, convey, and make over to and in favour of my eldest son . . . on his arriving at the age of twenty-five years complete, so as effectually to vest the same in his person (if not previously disposed of) all my Z landed property in M, and all lands there held by me in lease with their balances and obligations." There was no destination-over. The trustees had a power of sale under the declaration that "in the event of any of the properties specially destined to my said sons being sold or disposed of, the price or proceeds thereof shall come in place of the properties themselves and be invested for behoof of and paid over to my said sons respectively."

Held (*aff.* Lord Low) that the Z property did not vest in the eldest son until he reached the age of twenty-five, and that he had no right to the income of the estate up to that date, but only to the estate with its balances and obligations as it then stood.

Trust — Supervening Trust by Different Person—Effect on Previous Provisions.

A truster left certain properties to his sons upon their attaining the age of twenty-five, with power to his trustees to pay them respectively out of the general trust-estate £200 a-year, more or less, until they reached that age. The eldest son, when twenty-four, out of respect for his father's supposed wishes, and having regard to the fact that a property destined to his younger brother had become worthless, and that his youngest brother had been born after his father's settlement, executed a trust in favour of his father's trustees by which he divided his own property into three, giving equal shares to himself and his two brothers, and which took immediate effect.

Held (*rev.* Lord Low) that his trust was entirely independent of that of his father, and that the fact that he had provided for his brothers in no way restrained his father's trustees, if they thought proper, from continuing to pay to them an annual allowance of £200 each until they respectively reached the age of twenty-five.

Trust—Action of Accounting against Trustees—Pursuer the Executor of One of the Trustees—Bar.

Opinion indicated that an executor, unable to specify any error as to their legal rights into which they had fallen, was barred from bringing an action of accounting against a body of trustees where the deceased had himself been a trustee, had granted the trustees a discharge at a particular date, and thereafter had authorised the regular audit of the trust-accounts by a firm of accountants who had annually reported thereon.

Trust — Personal Liability of Trustees—Alleged Improper Renewal of a Loan—Relevancy.

Held that general averments that trustees had, without consulting their co-trustees, continued a loan over heritable securities at a lower rate of interest than formerly and that the securities were now valueless, but which did not set forth that a higher rate of interest could then have been obtained, that the securities could have been realised without loss, and did not specify in what way the trustees had been negligent, could not found an action for