of Dalgleish, and the eighteen others in the same position, the only evidence in support of the objections was incompetent, both as hearsay and as not applying to the qualifying year, and therefore these claims must be treated as if there had been no evidence at all against them. The statutory presumption must therefore be given effect to, and the claims allowed.

Argued for the respondent—The provision in section 14 of the Registration Act 1885 only meant that the declaration should be *prima facie* evidence of the qualification until the claim was objected to and proof led. The Sheriff-Substitute was bound to decide upon the evidence before him independently of the presumption. The claimants were cited to appear as witnesses at the diet of proof, and did not appear. Had they done so, the statements in their declarations might have been sifted by cross-examination, and their evidence might have been used to connect the Assessor's evidence as to the previous year with the year in question. They were not entitled to any advantage from failing to compear in answer to the citation.

At advising—

LORD KINNEAR—All the claimants claim to be qualified as lodgers, and in support of their claim they found upon section 14 of the Registration Act of 1885. This section provides that "In the case of a person claiming to vote as a lodger, the declaration annexed to his notice of claim, shall, for the purposes of revision, be *prima facie* evidence of his qualification." Now, all these claimants produced a claim and declaration in terms of the statute, but their claims were objected to in the Registration Court, and evidence was led before the Sheriff in support of these objections. It is to the competency of this evidence that the third question of law refers.

That question must be construed with reference to the special facts set forth in the case. It is not intended to raise a general question as to the competency or incompetency of evidence as to the state of possession of the subjects during the period preceding the qualifying period. Such evidence might very probably be competent if it were connected by other evidence in the case with the state of matters during the qualifying period. But in this appeal all we have to decide is, whether claims for registration can properly be rejected on evidence relating exclusively to a period other than the qualifying period, and not connected with it in any way. Where that is the sole evidence against a claim it ought, in my view, to be disregarded, and effect given to the statutory presumption.

In the list of claims on this appeal eighteen out of twenty-three are in this position. The only evidence led against these claims was that of the Assessor, who does not profess to know anything personally of the matter, but says that he was informed by some persons unnamed that during the year preceding the qualifying year the claimants occupied lodgings below the statutory value. The question then is, whether the declaration which is by statute evidence—although only *prima facie* evidence—of the qualification has been rebutted by the testimony of a single witness, who does not speak to the qualifying period at all, and speaks only to hearsay about the preceding period. I think this evidence ought not to have been received. In these eighteen cases therefore, if your Lordships agree with me, the judgment of the Sheriff must be altered and the claims allowed.

LORD TRAYNER concurred.

LORD KINCAIRNEY—I am of opinion that it appears from the case that the Sheriff has not given the due legal effect to the statutory presumption, because he has held the presumption rebutted by the hearsay evidence of the Assessor, to which it was not as a matter of law competent for him to give effect.

The Court sustained the appeal, and reversed the Sheriff-Substitute's judgment, and remitted to him to add the name of the appellant, Dalgleish, to the register of voters for the county of Linlithgow. They also found that the decision in this case ruled the other eighteen cases referred to.

Counsel for the Appellants — Graham Murray, Q.C.—Blackburn. Agents—Russell & Dunlop, W.S.

Counsel for the Respondent—Monteith Smith. Agents—Emslie & Guthrie, S.S.C.

COURT OF SESSION.

Wednesday, Decmbeer 19.

SECOND DIVISION.

[Sheriff of Lanarkshire.

AITKEN *v.* THE RAWYARDS COLLIERY COMPANY, LIMITED.

Reparation — Property — Road Trustees — Compulsory Purchase—Right of Support —Damage by Mineral Workings—Act 1 *Geo. IV. cap.* 84, *sec.* 47.

By section 47 of the Act 1 Geo. IV. cap. 84, the road trustees of the county of Lanark were empowered to "purchase or to take on lease" such pieces of ground as they might think most convenient for the erection of toll-houses. Section 71 provided that all lands which might be acquired by the said trustees in pursuance of the Act should be vested in them by the simple discharge of the agreed-on price, and that it should be sufficient to record the discharge in the Sheriff Court books of the county, whereupon the trustees should hold the lands as validly and effectually as if the owners had executed in their favour regular disposi-

tions, and infeftments had followed thereon.

Under the provisions of this Act a portion of the lands of R was acquired by the Lanarkshire Road Trustees, who erected and maintained a toll-house upon it until the passing of the Roads and Bridges Act of 1878, by which the ground, with the toll-house built thereon, was transferred to the local authority of a burgh, within which the ground was situated. The local authority subsequently sold the ground with the buildings thereon, and the purchaser pulled down the toll-house and erected a larger and heavier house in its place. Some years afterwards this building was injured by the workings of a colliery company, who had a lease of the minerals under the lands of R.

In an action of damages by the purchaser against the colliery company, the latter pleaded (1) that the pursuer had no title to sue, in respect that he had not acquired an absolute right of property in the ground which he had purchased; and (2) that, as the ground had originally been acquired under compulsory powers for the erection of a toll-house, the pursuer must be held to have taken the risk of putting heavier buildings upon it.

Held that the pursuer was entitled to damages, in respect that, there being no evidence as to the character of the transaction by which the County Road Trustees had acquired the ground, they must be taken to have acquired it in property without restriction as to the weight of the buildings which they might put upon it, and that the pursuer, as coming in their place, was entitled to support for the buildings which he had erected.

Waddell v. *Earl of Buchan*, March 26, 1868, 8 Macph. 690, *distinguished.*

The Act 1 Geo. IV. cap. 84, entitled an Act for making and maintaining certain roads and bridges in the counties of Lanark and Dumbarton, provided as follows— Section 47. "And be it further enacted that the said trustees (*i.e.*, the road trustees of the counties of Lanark and Dumbarton) or their committees aforesaid shall be and they are hereby empowered to purchase or to take on lease for the purpose of erecting toll-houses with suitable offices and gardens thereto, such pieces of ground as they shall think most convenient not exceeding one-eighth or one-fourth of an acre as the case may be, and the right, interest, and property of and in all and every the gates or turnpikes, toll-houses, weighing-engines, and premises continued, erected, or to be erected by virtue of this Act, shall be and the same is hereby declared to be vested in the said trustees." Section 71. "And be it further enacted that all lands and houses which may be acquired by the said trustees in pursuance of this Act shall be vested in the said trustees by the simple discharge for the agreed price or appraised value thereof, or by consignation, . . . and it shall be sufficient to record the discharge or the voucher of consignation in the Sheriff Court books of the said counties of Lanark or Dumbarton, as the case may be, whereupon the said trustees shall be entitled to take and use the said lands and houses and shall hold the same as validly and effectually to all intents and purposes as if the respective owner thereof had executed in their favour regular dispositions of the same, and infeftments had followed thereon." Section 79. "And be it further enacted, if the situation of any toll-gate, toll-house, and premises or place for depositing materials or either of them shall be changed, and the same be no longer requisite for the purposes of the trust, the said trustees are hereby empowered to sell the same." . . .

Under the powers conferred by the above Act, the Road Trustees of the county of Lanark acquired from Mr Motherwell, proprietor of the lands of Rawyards, a piece of ground upon which they erected and maintained a toll-house until the passing of the Roads and Bridges (Scotland) Act 1878. By that Act (section 37) the ground and buildings thereon were transferred to the Provost, Magistrates, and Council of the burgh of Airdrie, as the local authority within the burgh, and they received powers of sale.

By disposition dated 14th April and 13th November 1885 the Provost, Magistrates, and Council of Airdrie disponed the said ground and buildings to Robert Aitken, heritably and irredeemably, but always with and under the burdens and conditions contained in the titles or otherwise affecting the subjects. When he acquired the property Aitken pulled down the toll-house and built a large tenement two storeys high upon it.

By a lease dated August 22nd and September 2nd 1873 John Motherwell of Rawyards leased to the Rawyards Coal Company the whole coal seams, so far as existing unwrought and belonging to him, within the lands of Rawyards, with certain exceptions and reservations. The colliery company bound themselves and their assignees "to pay to the proprietors, feuars, tenants, and occupiers of the lands under, upon, or adjoining which the workings and operations under this lease are to be carried on, or other parties having right to claim the same respectively, all damage of whatever kind which may be done or occasioned by their workings and operations to the said lands, . . . and the houses and buildings now or hereafter to be erected thereon."

The company worked the coal under the lands until 1st December 1888, when it went into liquidation, and the liquidator thereafter conveyed the lease, and the whole right and interest of the old company therein, to a new Rawyards Coal Company, Limited. The new company continued to work the coal, with the result, as Aitken alleged, of causing injury to the buildings upon his property.

Aitken accordingly brought an action in the Sheriff Court at Airdrie against the colliery company for payment of £500 as damages.

The defenders averred—"The site was acquired compulsorily under Act of Parliament solely for the erection of a toll-house, which structurally was of little value, and it was purchased by the pursuer for the sum of £205, and he must be held as taking upon himself the responsibility and risk of erecting the existing expensive and substantial buildings of two storeys in height in room of the old toll-house."

The defenders pleaded—"(1) No title to sue. (7) The site in question having been acquired compulsorily for a specific and limited purpose, the pursuer must be held to have taken upon himself all risk in erecting the present buildings thereon."

After various procedure the Sheriff (BERRY) remitted to the Sheriff-Substitute to take proof in regard to the injury alleged to have been caused to the pursuer's buildings by the defenders' workings. No information was placed before the Court as to the particulars or character of the transaction by which the County Road Trustees had acquired the ground upon which the toll-house had been erected. It was proved that considerable damage had been done to the pursuer's buildings by the defenders' operations. Some evidence was led by the defenders to the effect that their operations would have caused no damage to the old toll-house or a building of similar weight, but no questions on this point were put to the pursuer's witnesses.

Upon 20th March 1894 the Sheriff-Substitute (MAIR) found—"(1) That the pursuers, as trustees of the now deceased Robert Aitken, the original pursuer in the action, and sisted therein, are proprietors of a plot of ground in Rawyards, Airdrie, with the buildings thereon known as the 'Old Toll-House,' and which plot of ground is described in the disposition granted by the Provost, Magistrates, and Town Council of the burgh of Airdrie, as the local authority of the burgh, in favour of the deceased Robert Aitken, dated 18th April and recorded 13th November 1885; (2) that by lease entered into between John Motherwell, the proprietor of the lands of Rawyards, and the Rawyards Coal Company, Limited, dated in August and September 1873, Mr Motherwell let to the Rawyards Coal Company, Limited, the whole seams so far as then existing unwrought and belonging to him, except the splint coal and humph coal seams within the lands of Rawyards, and that the lessees thereby bound themselves, *inter alia*, 'to pay to the proprietors, feuars, tenants, and occupiers of the lands under, upon, or adjoining which the workings and operations under this lease are to be carried on, or other parties having right to claim same respectively, all damage of whatever kind which may be done by their workings and operations;' (3) that this lease was assigned to the present defenders by disposition and assignation dated 20th December 1888 by the liquidator of the then Rawyards Coal Company, Limited, by which disposition and assignation the defenders became bound to fulfil the whole obligations and prestations incumbent on the said Rawyards Coal Company, Limited, by *inter alia*, the said lease, and that the defenders have continued to exercise the tenants' rights under the said lease by, *inter alia*, working the coal in the said lands of Rawyards; (4) that the defenders have, since they acquired the colliery, wrought out two seams of coal under and around the pursuer's property, and that in consequence of these operations the property of the pursuer has been seriously injured and damaged: With reference to the above findings in fact, Finds in law that the defenders are liable in compensation to the pursuer for the injury and damage caused to his said property, and repels the defences; assesses the damage at £293, 10s.; and decerns against the defenders for the said sum, with the legal interest thereon from the date of citation till payment," &c.

Upon appeal the Sheriff adhered.

The defenders appealed, and argued—The pursuer had no title to object to the defenders working the minerals under their lease in any manner that was suitable, and could claim no compensation for damage done by the working. He held under a title from the Magistrates of Airdrie, but they had acquired the property from the Road Trustees, and the Road Trustees could not give a title of property in the subjects. The ground upon which this toll-house was built had been acquired from the proprietor of the land under the compulsory powers of an Act of Parliament for the sole purpose of building a toll-house in connection with a highway, and they had no conveyance of the ground. That mode of taking the land gave them only a right for a special and limited purpose, and could not confer an absolute right of property upon the trustees. This had been decided in the case of land taken for the purpose of forming a highway; the right under this Act was of the same kind, and was the only right conferred upon the pursuer as coming in place of the Road Trustees—*Waddell* v. *Earl of Buchan*, March 26, 1868, 6 Macph. 690. Assuming, however, that the pursuer had such a right of property in the subjects as would entitle him to sue for compensation if he showed that damage had been done, he was not entitled to damages in this case. When the lease—under which alone the defenders could be held responsible—was granted to the mineral tenant the only building upon the subjects was a toll-house. The pursuer had now erected a large two storeyed tenement upon the ground, and the *onus* was upon him to show that the increased weight he had put upon the ground was not the cause of the subsidence, and he had not discharged that *onus*. Where it was proved, as here, that the buildings upon the lands at the time when a mineral lease was entered into would not have received damage from the mineral workings, the defenders were not liable for damage caused to larger buildings subsequently erected upon the lands—Rankine on Land Ownership, 439; *Caledonian Railway Company* v. *Sprot*, June 16, 1856, 2 Macq. 449; *Sprot* v. *Caledonian Railway Company*,

February 15, 1854, 16 D. 559; *White's Trustees* v. *Duke of Hamilton*, March 10, 1887, 14 R. 597; *Richards* v. *Jenkins and Others*, May 5, 1868, 17 Weekly Reps. 30; *Neil's Trustees* v. *Dixon, Limited*, March 19, 1880, 7 R. 741; *Stroyan, &c.* v. *Knowles, &c.*, January 12, 1861, 6 H. & N. 454; *Brown* v. *Robins*, January 19, 1859, 4 H. & N. 186. Under the Act 1 Geo. IV. cap. 84, sec. 71, the lands in question became vested in the trustees by a discharge for the agreed price or value of the lands. The pursuer did not set forth this discharge as the beginning of his title to the subjects, and could not sue as proprietor.

Argued for the pursuer—It was true that the ground on which the subjects in question were built was acquired compulsorily for the erection of a toll-house, and probably the trustees could not have built anything else, but they had acquired a right of property in the subjects, and they were entitled to sell their property if they had no further use for it. If they sold, then they gave the purchaser the full rights of a proprietor in the subjects, so that he could deal with them in the same way as any other proprietor, and with the same rights of compensation. His title was higher than their own. The pursuer therefore was within his right in building a larger building than the trustees had put on the ground. Even if this right was to be measured by that of the trustees, he was entitled to succeed, because it was not only a small toll-house that could be erected, but stables and other buildings that might have covered the whole surface of the ground, and it was not proved that the buildings he had erected were heavier than the trustees might have erected under their compulsory powers. It could not be said on the evidence that it was the greater weight of the edifice that caused the damage complained of, but even if it had been, the defenders could not plead that the buildings were heavier than they had a right to expect, because, although the original lease of minerals was granted in 1873, the defenders did not acquire right to them till December 1888, after the pursuer had got possession of the subjects. Whatever might be the rule of law in England on this subject, the law of Scotland was plain, that the proprietor of each estate was entitled to make the best use he could of it provided nothing was done emulously. The maxim applicable to all this class of cases was, *Sic utere tuo ut alienum non lædas*—*Dunlop's Trustees* v. *Corbet, &c.*, June 20, 1809, F.C.; *Hamilton* v. *Turner and Others*, July 19, 1867, 5 Macph. 1086. Under the lease the defenders were liable for all damage to buildings "now or hereafter to be erected thereon." *Waddell, supra*, was a case concerning damage to a roadway, and all that the Road Trustees there had was a right of support to the road; here the pursuer had a right of property.

At advising—

LORD TRAYNER—The pursuer in this case sues for recovery of damages on account of injury done to his property by the coal workings of the defenders. There is no doubt that the pursuer's property was injured by the defenders' workings, and no question is now raised as to the amount of the damages awarded by the Sheriff. The questions which were raised and maintained before us by the defenders were (1) whether the pursuer has any title, as proprietor of the subjects injured, to make the present claim, and (2) whether, assuming him to be the owner of the land on which the injured subjects are erected, he was entitled to erect such buildings as were erected, as in a question with the defenders.

The ground now claimed by the pursuer as his was acquired by the Road Trustees of the county of Lanark under the provisions of the Act 1 Geo. IV. cap. 84, which provided (sec. 47) that they should be entitled "to purchase or to take on lease for the purpose of erecting toll-houses, with suitable offices and gardens thereto, such pieces of ground as they shall think most convenient," not exceeding one-fourth of an acre for each toll-house, offices, and gardens. Upon the site so acquired the trustees erected and maintained a toll-house and offices which remained their property until the passing of the Roads and Bridges Act 1878. By that Act, sec. 37 (c), the foresaid site and buildings thereon were transferred to the local authority of the burgh of Airdrie, by whom again they were duly conveyed to the pursuer in 1885, since which time the pursuer has been in possession. Accordingly, it appears clear enough that the pursuer is now vested in the whole right which the Road Trustees originally acquired. This I think was not seriously disputed by the defenders, who rather based their objection to the pursuer's title on a view of the character and extent of the right vested in the Road Trustees, and subsequently in the pursuer. As I understood the defenders' argument, it amounted to this—that the only right which the Road Trustees acquired was a right to use the ground in question for the purposes of a toll-house, offices, and garden; that it was not in any correct sense a right of property, but more like a right of servitude. In support of this view the case of *Waddell*, 6 Macph. 690, was cited. But it appears to me that that case affords no precedent for the decision of the question now before us, and indeed gives little aid towards its solution. What was decided in *Waddell's* case was that Road Trustees acting under an Act of Parliament which authorised them to make, widen, and alter roads, and for that purpose to remove fences, pull down houses, or other obstructions, &c., on making compensation to persons interested in the grounds and hereditaments through which such roads should pass, had no right of property in the *solum* of the roads and no right to the minerals beneath. So far as the right to the minerals is concerned *Waddell's* case has no bearing upon the present, for the pursuer does not now claim the minerals below his ground, that part of his claim

(as originally made) having been disallowed by the Sheriff, whose judgment has been acquiesced in. Whether the pursuer is the owner of the *solum* on which his tenement is built is a different question, and one which comes nearer to the case of *Waddell.* Even upon that question, however, *Waddell's* case cannot be regarded as a precedent. The question of who was proprietor of the *solum* was only considered there as affecting the main question, namely, who was proprietor of the minerals beneath, and was not dealt with as a separate and independent question. Further, the *solum* in question there was the *solum* of the public road itself—not land acquired by the Road Trustees for the purpose of building a toll-house—and opinions were certainly expressed adverse to the claim of the Road Trustees to be regarded as proprietors of the *solum* of the public road. These opinions proceeded upon a construction of the special terms of the Act of Parliament under which the Road Trustees were acting, and which, as appears from the report of the case, were in some respects similar to, although not the same as, the terms of the Act with which we are now more immediately concerned. There was there, however, no purchase of land. The Lord President in his opinion says—"I should very greatly doubt whether that which the statute here contemplates is a proper purchase of lands by the Road Trustees, but I think it is unnecessary to enter into that question, because that course (provided for by this section) was not that which was adopted in the particular case which we have to decide. There was no agreement in the present instance as to the sale of land." In this case we have no information as to the particulars and character of the transaction under which the Road Trustees acquired the ground now possessed by the pursuer. All that is said upon record (and it is said by the defenders) is that "the site was acquired compulsorily under Act of Parliament solely for the erection of a toll-house." Now, as the Act of Parliament in the section which I have already quoted, only authorised the Road Trustees to acquire land for building a toll-house by lease or purchase, I take it that the compulsorily acquirement which the defender avers was a purchase. If it had been merely a lease, the defenders would have averred that. If, however, it was a purchase, then the effect of such a purchase is the question upon which no decision was given in *Waddell's* case. But whatever may be said in general about the right of road trustees to the *solum* of the public roads under their management (regarding which I give no opinion), I am clearly of opinion, having regard to the terms of section 47, which I have above quoted—section 71, which provides for the manner in which lands and houses acquired by the road trustees are to be vested—feudally vested—in them; and section 79, which authorises the sale by the Road Trustees of all premises, including toll-houses, "no longer requisite for the purposes of the trust," it was contemplated and authorised by this Act, with which we are concerned, that the Road Trustees should become proprietors by purchase of the *solum* on which such toll-houses or other houses were to be erected.

It is also of importance to notice as matter of distinction between *Waddell's* case and this, that in *Waddell's* case the proprietors of the minerals did not dispute that whatever was the right or title under which the Road Trustees held, they were certainly entitled to all necessary support for their roads, and buildings in connection with the roads. That is really the main point in this case. For whether the Road Trustees purchased the site in question absolutely or only acquired a more limited right, they certainly acquired the right in the site such as it was for the purpose of building thereon. That involved necessarily the right to support for their building, of which the proprietor of the land and his tenants or others could not deprive them. Accordingly, if the toll-house originally built had still been there, the defenders would not have been entitled by their underground workings to deprive it it of support. But the toll-house has been removed and other buildings substituted, and this leads me to the second question, whether the pursuer was entitled to erect such buildings as were injured as in a question with the defenders.

If the Road Trustees (in whose place the pursuer now stands) were purchasers and owners of the site, as I think they were, there was no restriction placed upon them by the seller as to the extent, character, or weight of the buildings which they should erect thereon. At least no such restriction is averred by the defenders, and restrictions on the use of property by its owner are not to be presumed. The defenders do aver that the site was acquired solely for the purpose of erecting a toll-house, which is true in the sense that that was the purpose of the trustees, and the only purpose for which they could compulsorily acquire the land. But as purchasers they were put under no restriction by the seller, that they should never use the site for any other purpose, nor any obligation to restrict their buyer in its use if under the authority of their Act they subsequently sold the ground. The pursuer therefore was not restricted in the use to which he should put the ground, nor in the character of the buildings which he should there erect. If this view be correct there is an end of the case. The pursuer having built upon his own ground, the defenders are liable for any damage wrongfully inflicted by their operations on the pursuer's property. This excludes any inquiry as to whether the pursuer had erected a building which was larger or heavier than those previously existing on the site. But even if that inquiry be gone into it appears to me that this case is not within that class of cases where the proprietor of minerals, or his tenant working the same, may claim exemption from liability for damages done to buildings which imposed an extraordinary weight on the surface,

and such as were beyond the reasonable contemplation of parties when the rights of surface and minerals were separated. There is some evidence adduced by the defenders, although not much, to the effect that the defenders' operations would have done no harm to the old toll-house or any erection of similar extent or weight. But that evidence cannot have much, if any, weight attached to it, for the reason that no question of that kind was put by the defenders to any of the pursuer's witnesses; the point seems only to have been raised after the pursuer's proof was closed.

On the whole matter, I am of opinion that the appeal should be dismissed and the judgment of the Sheriff affirmed.

LORD YOUNG, LORD RUTHERFURD CLARK, and the LORD JUSTICE-CLERK concurred.

The Court found in fact and law in terms of the Sheriff-Substitute's interlocutor of March 20th 1894.

Counsel for the Pursuer—Vary Campbell—Clyde. Agents—Drummond & Reid, S.S.C.

Counsel for the Defenders—Asher, Q.C. —Deas. Agents—J. & A. Hastie, Solicitors.

Friday, December 21.

SECOND DIVISION.

[Sheriff of Forfarshire.

M'INTYRE *v.* WESTWOOD'S TRUSTEES.

Husband and Wife—Mutual Trust-Disposition—Widow's Obligation to Aliment Stepchild.

In a mutual trust-disposition and settlement between husband and wife the spouses disponed the whole estate of which each was possessed to the survivor in liferent, but with a power to gratuitously dispone the whole of the estates so conveyed. There was also a declaration that the survivor should be bound to pay the cost of maintaining an imbecile son of the husband by a former marriage, "so long as he shall be unable to maintain himself." The son had funds of his own, amounting to about £360. The income of these funds was insufficient for his maintenance. The wife survived her husband.

Held that on a sound construction of the mutual trust-disposition she was not bound to contribute to the imbecile's maintenance until his own funds were exhausted.

Joseph Westwood was twice married. By his first marriage he had a son, William Stratton Westwood, who was an imbecile, and was confined in an asylum.

Upon August 28th 1877 Joseph Westwood and his second wife executed a mutual trust-disposition and settlement. By this deed the spouses assigned and disponed to the survivor the whole means, estate, and effects, heritable and moveable, then belonging or which should belong to each at death, in liferent, with the power of disposal hereinafter mentioned, and on the death of the survivor to three trustees named for certain purposes mentioned in the deed, "Declaring, as it is hereby expressly provided and declared, notwithstanding the restricted right of liferent hereby given to the survivor of us, that it shall be in the power of such survivor to sell, burden, or affect with debt, or even gratuitously to dispone the whole or any part of the estates and effects, heritable and moveable, above conveyed as fully and freely as if he or she were absolute fiar thereof: And declaring also, as it is hereby expressly stipulated, provided, and declared, that the survivor of us shall be bound to pay the cost of maintaining William Stratton Westwood, son of the said Joseph Westwood, in an asylum or elsewhere, so long as he shall be unable to maintain himself, and also to pay such sum annually as may be fixed by the trustees above named, or their foresaids, as the cost of maintaining any other children that may hereafter be procreated of the marriage between us, and the liferent provision and power of disposal hereby conferred upon the survivor of us is so conferred under the express burden of maintaining such child or children."

Joseph Westwood died on 23rd May 1883 survived by his widow, his son, William Stratton Westwood, and a son of the second marriage, Joseph Westwood. After his death the trustees named in the mutual trust-disposition and settlement entered upon the possession and management of the estate, and paid over the free annual income to the widow.

Mrs Westwood died on June 6th 1889 leaving a trust-disposition and settlement by which she conveyed to trustees named therein her whole means and estate, including all estate over which she had a power of disposal, for behoof of her son, Joseph Westwood, in the event of his surviving her (which happened).

At the date when the mutual trust-disposition and settlement was executed, William Stratton Westwood had moveable property to the value of over £360. Upon 21st May 1881 Daniel M'Intyre, who was one of the trustees under the mutual trust-disposition and settlement, was appointed *curator bonis* to William Stratton Westwood. The income of the ward's estate was insufficient to pay for his maintenance in the asylum, and in 1882 his father paid to the *curator bonis* £20, 15s. 4d., being the sum by which the expenditure of the ward's funds had exceeded the revenue at the date of payment.

For three years after her husband's death Mrs Westwood contributed nothing to the ward's support, but at Whitsunday 1886, and at each term of Whitsunday and Martinmas thereafter, she paid £20 to the *curator bonis*, and since her death her trustees had paid £40 annually towards the ward's maintenance.