the dwelling-house hereby disponed so as not to interrupt the lights thereof;' and they contend that this restriction extends at the point where the gable terminates to every portion of ground within a radius of 14 feet of any part of the gable wall, where an erection would interfere with its lights. I cannot accede to this view. I consider that the plain meaning of these words is that the 14 feet are to be measured straight out and at right angles with the line of the gable wall, and that to give them the meaning for which the compearing respondents contend is to place on them a very strained meaning indeed. It is a well-known principle of law that if two meanings can be placed on the construction of a clause imposing a servitude, that meaning is to be given effect to which is most favourable to the servient tenement.

"If a servitude such as the one under consideration were intended to extend over ground not exactly opposite the gable wall, it would require to be constituted in exact and unambiguous terms. I therefore hold that the ground on which the petitioners propose to build is not affected by the servitude in favour of the objectors, and that they are entitled to the warrant they crave."

The compearing respondents appealed, and argued—To interpret the stipulation founded on by the objectors as the Dean of Guild had done, was to read into the clause the words "*ex adverso*" between "14 feet" and "of the west gavel." This was not legitimate. If no such qualification was read in, then the plain meaning of the words was as maintained by the objectors. A building in the position of that proposed would seriously interfere with the light coming to the gavel in question.

Counsel for the petitioners were not called upon.

LORD JUSTICE-CLERK—I have no doubt in this case. The maxim referred to by the Dean of Guild is sound. If two meanings can be placed on a clause imposing a servitude, that meaning is to be given effect to which is most favourable to the servient tenement. On this principle, even if the meaning of the clause was doubtful, the petitioner would be entitled to prevail, and on that ground alone I am prepared to agree with the Dean of Guild's judgment. But I am prepared to go further. I think the clause cannot be reasonably read as the objectors propose to read it. It means that the light of the gable referred to is not to be interrupted by having any other building built on to it. In my opinion the Dean of Guild's interlocutor is right and ought to be affirmed.

LORD YOUNG—I agree.

LORD TRAYNER — I think the reading which the Dean of Guild has adopted is the only possible reading of the clause in question.

LORD MONCREIFF — I am quite of the same opinion.

The Court dismissed the appeal, and affirmed the interlocutor appealed against with expenses, and remitted the cause to the Dean of Guild to proceed therein as accords.

Counsel for the Petitioners — Dundas, Q.C. — Dewar. Agents — Carmichael & Miller, W.S.

Counsel for the Respondents—W. Campbell—Constable. Agents—J. & J. Galletly, S.S.C.

Tuesday, May 31.

OUTER HOUSE.

[Lord Kincairney.

LIDDALL *v.* SCHOOL BOARD OF BALLINGRY.

Process—Proof—Copy of Evidence.

Notice to certify notes of evidence *ad interim*, in order that parties might use them without obtaining a copy, *refused.*

In this action proof was led and adjourned for a considerable time. Before the adjourned diet the pursuer moved the Court to certify *ad interim* the note of the evidence led for the purpose of enabling his counsel to see it before closing his proof. The Lord Ordinary (KINCAIRNEY) refused the motion, observing that parties might obtain a copy of the evidence in the usual way.

Counsel for the Pursuer — Galloway. Agent—F. M. H. Young, S.S.C.

Counsel for the Defender — Constable. Agent—W. J. Lewis, S.S.C.

Friday, June 3.

SECOND DIVISION.

GRANT'S TRUSTEES *v.* GRANT.

Trust—Conditional Bequest—Provision—Condition held Void because contra bonos mores—"Not to Reside with Parents."

In his trust-disposition and settlement a grand-uncle directed his trustees to pay the income of half of the residue of his estate to a grand-niece, who, ever since she was two years of age, had resided with him apart from her parents, till she attained majority or was married, and on either of these events occurring to pay the capital over to her, but he directed that the grand-niece should forfeit all right to any interest whatever in his estate if before the capital was so paid she returned to live with her parents. The truster died when the grand-niece was twelve years of age. Her parents were both alive and of good character.

Held that the condition attached to the bequest was null, being *contra bonos*

mores, and that failure to fulfil it did not deprive the legatee of her right to the legacy.

About 1878 William Grant and his brother Peter Grant senior went to Keith where they resided together and carried on business as horse and cattle-dealers. They were both unmarried. William Grant had a natural daughter Margaret Grant, and she resided with him and his brother and kept house for them during all the time they were in Keith. About 1885 William and Peter Grant senior took to live with them a grand-niece Helen Grant, daughter of a nephew William Grant, shepherd, residing in Keith. Helen Grant, who was born on 14th December 1883, was then about two years of age. She continued to reside with her two grand-uncles till she was about ten years of age, when she was taken back to live with her parents. At that time she remained with her parents about six weeks, when, on returning from church one Sunday, she was seen by her grand-uncle William Grant, who took her home with him again, and she thereafter continued to live in family with him till his death.

William Grant, the grand-uncle of Helen Grant, died on 9th June 1893, leaving a trust-disposition and deed of settlement dated 5th May 1893. By the trust-deed he, after providing for payment of his debts and funeral expenses, and payment of a legacy of £20 to his natural daughter Margaret Grant Smith, Torrans, Tomintoul, disposed of the residue of his estate as follows, viz.—"(*Second*) With regard to the residue and remainder of my said estate above conveyed, I hereby direct my said trustees and their foresaids to pay to the said Peter Grant senior the free annual income, or proceeds thereof, during all the days of his life, but under the burden of his maintaining in family with him my natural daughter Margaret Grant, presently residing with me and my grand-niece Helen Grant, daughter of my nephew William Grant. (*Third*) Upon the death of my said brother, or at my death, should he predecease me, I hereby direct my said trustees to divide the said residue into two equal parts or shares, and to pay, assign, and dispone one equal part or share thereof to my daughter the said Margaret Grant; and with regard to the other equal part or share I hereby direct and appoint my said trustees, should the said Helen Grant be then under twenty-one years of age, or unmarried and living with the said Margaret Grant, or apart from her father and mother, and so long as she shall live apart from her father and mother, to pay the interest or annual income of the said other equal part or share to the said Helen Grant, or expend the same for her maintenance or behoof, and upon her marriage, or upon her attaining the age of twenty-one years complete, whichever event shall first happen, to pay, assign, and dispone the said equal part or share of said residue, along with any unexpended income to her as her absolute property. (*Fourth*) But should the said Helen Grant before the periods of payment of said residue herebefore mentioned return to live with her parents, she shall *ipso facto* forfeit all right to any interest whatever in my estate, and the share of the residue hereinbefore provided for her shall, with any unexpended revenue, be at once, on such an event happening, paid to my daughter the said Margaret Grant, but always with and under the burden before provided of the liferent of my said brother Peter Grant senior, and in the event of my daughter Margaret Grant surviving me, but predeceasing my said brother Peter Grant senior, and the said Helen Grant forfeiting her interest in my estate as aforesaid, then the share of my said estate so forfeited shall be disposed of by my said trustees in terms of any provisions thereanent contained in any settlement of his affairs by my brother the said Peter Grant senior which he is hereby empowered to make."

The free residue of the truster's estate amounted to about £1000. After the truster's death Helen Grant continued to reside with Peter Grant senior until his death on 14th August 1896. Shortly after the death of Peter Grant senior, the liferenter of the trust fund, one-half of the free residue of the truster's estate was paid by his trustees to Margaret Grant and the other half amounting to £533, 10s. 1d. was invested for behoof of Helen Grant.

After the death of Peter Grant senior Helen Grant resided with Margaret Grant till September 1897. Thereafter she was boarded in suitable lodgings in Land Street, Keith, but wished to return to her parents. The trustees were, however, not certain as to whether the provision in her favour would not be forfeited by her so doing.

For the settlement of this question a special case was presented to the Court by (1) the trustees, (2) Helen Grant, with consent of her father William Grant as her curator, and (3) Margaret Grant.

The parties stated in the case that William Grant, the father of the second party, "is employed as a shepherd, and earns a weekly wage of about 20s. His wife, the said Helen Grant's mother, is alive, and they have five children, including Helen, who is the eldest of the family. Both parents of the second party are of good character, and the first and third parties know of no objections on personal grounds to their acting as guardians of the second party."

The questions of law were—"Does clause fourth of the said trust-disposition and settlement validly and effectually impose a condition upon the bequest in favour of the second party to the effect that in the event of her returning to live with her parents before her majority or marriage, she shall forfeit all interest in the estate of the truster? Or, is the second party entitled, notwithstanding the terms of the said fourth clause, to return to and live in family with her parents without incurring forfeiture of the provisions in her favour?"

Argued for second party—Clause 4 of the trust-disposition, in so far as it provided for the forfeiture of the provision in her favour in the event of her returning to live with her parents was unreasonable, capricious, and *contra bonos mores*, as being an inter-

ference with natural and moral law. It was therefore not valid or binding, and she was entitled to return to and reside with her parents without incurring forfeiture of the provision—*Fraser* v. *Rose*, July 18, 1849, 11 D. 1466; *Wilkinson* v. *Wilkinson*, 1871, L.R., 12 Eq. 604.

Argued for third party—If this was held to be a conditional bequest, then the condition was valid and binding. It was a provision conferred by one who had no natural obligation to provide for the second party, and therefore the condition attached to it was valid even if in the case of a provision made by a parent for a child such a condition would be void—Stair, i. 3, 7; Erskine, iii. 3, 85, Lord Ivory's Note, 211; *Reid* v. *Coates*, March, 5, 1813, F. C.; Bell's Illustrations, ii. 407. The present case was different from *Fraser* v. *Rose*, because (1) the latter case was one of father and daughter, and the father was under a natural obligation to provide for the daughter, (2) the daughter was of full age, and (3) she had been living with her mother. In the present case the child had for most of her life resided apart from her parents, and it might be quite reasonable to suppose that the truster inserted this condition in order to prevent his legacy being employed not in maintaining the girl but her whole family at the expense of the girl. 2. This was not a conditional bequest at all. It was a gift subject to a limitation for a specified time. In such a case if the limitation was struck out the whole gift was rendered invalid; it was impossible to give effect to the gift without importing the limitation into it—*Trafford* v. *Maconochie*, 1888, L.R., 39 Ch. D. 116.

LORD JUSTICE-CLERK—I think that this case may be decided upon the principle that if a sum is bequeathed to a child upon the condition that the child shall not reside with its own parents, against whose character no allegation can be made, that condition shall not receive effect, and that the failure to fulfil the condition does not deprive the legatee of the right to payment of the legacy, such a condition imposed by another relative being *contra bonos mores*, and therefore to be held null.

LORD YOUNG, LORD TRAYNER, and LORD MONCREIFF concurred.

The Court answered the first question in the negative and the second question in the affirmative.

Counsel for the First Parties—A. J. M. Morison. Agent—Alex. Morison, S.S.C.

Counsel for the Second Party—W. Campbell. Agent—Charles George, S.S.C.

Counsel for the Third Party — Kincaid Mackenzie. Agent—Alex. Morison, S.S.C.

Friday, June 10.

FIRST DIVISION.

FORBES AND OTHERS (FORBES' TRUSTEES) *v.* MACLEOD.

Bankruptcy—Vesting of Heritable Bond in Trustee—Security Title—Tantum et tale —Bankruptcy Act 1856 (19 *and* 20 *Vict. cap.* 79), *sec.* 102.

The principle of the decision in the case of the *Heritable Reversionary Company* v. *Millar*, August 9, 1892, 19 R. (H.L.) 43, is applicable to security-titles as well as to trusts.

The law-agent of a trust advanced a sum of money to enable the trustees to take over a bond and disposition in security from the creditor in the bond. The assignation to the bond was taken in name of the law-agent, who granted a back-letter to the trustees acknowledging that the bond was in reality held by him in security for all sums due to him by the trustees, and undertaking upon payment of said sums to reconvey to them the bond and the subjects therein disponed. At the date of the law-agent's subsequent sequestration his accounts showed a balance in favour of the trustees after debiting them with the sum so advanced.

In a question between the trustees and the trustee on the law-agent's sequestrated estate, who maintained that he was entitled to retain the bond for behoof of the bankrupt's creditors, *held* that the trustees were entitled to have the bond assigned and the subjects conveyed to them, the bankrupt's right in the bond having been merely a right in security, and having been *de facto* redeemed.

Peter Forbes, the creditor in a bond and disposition in security for £2000, assigned the same, in consideration of that sum, to Miss Wingate on the footing that he should relieve her of any loss which she might sustain. Shortly after the assignation the debtor in the bond paid to Miss Wingate £500 on account of the principal sum, and the bond and disposition in security was discharged to that extent.

Mr Forbes died in 1890, leaving a trust-disposition and settlement whereby he disponed his whole estates to trustees for certain purposes. Samuel Macadam Carrick, Mr Forbes' partner in business, acted as law-agent and factor to the trustees.

In 1892 the debtor in the bond suspended payment, and a first and final dividend of 1s. 8d. in the £ on the amount of the bond and interest was received by Mr Carrick. In 1894 the personal obligation in the bond being now valueless, Miss Wingate called upon Forbes' trustees to repay her the sum of £1500 due to her under the bond and disposition in security.

At a meeting of Forbes' trustees, held on 25th April 1894, it was arranged that