

was that he should do that work, and in doing that work for other people he had to do it in such a way as was consistent with their requirements, and to that extent he may be said to be under their control; but that he was obeying orders of his masters, viz., the Clyde Trustees, in doing that work I have no doubt whatever. The owner of a vessel going there could only get his work done as regards the use of the crane by making a contract with the Clyde Trustees. In point of fact he could not get it done any other way, because that was the only place where he could get it done at that port, and no one could work the crane except the servant of the trustees. According to their rules he was compelled to contract with them for that part of the loading and unloading of his ship; and accordingly he asks them to provide a crane and a man paid by them. All he can do is to accept the man they offer, who is their servant; and if that man does not do the work properly, or if he is dissatisfied with him, he can try to get the Clyde Trustees to give him another man, and if in the meantime he requires to stop work that may give rise to a question of damages. But that he has any control over the crane in the sense of service I cannot hold. The case of *Donovan* does not, I think, touch this case. I think the case of *Johnston v. Lindsay* is a case which practically rules this one, and I entirely concur with what has fallen from your Lordships.

The Court pronounced the following interlocutor:—

“Sustain the first plea-in-law for the pursuer: Assess the damages at the sum of £50, and decern against the defenders to make payment thereof to the pursuer.”

Counsel for the Pursuer—Young—A. S. D. Thomson. Agents—Whigham & Macleod, S.S.C.

Counsel for the Defenders—Ure Q.C.—Deas. Agents—Webster Will & Ritchie, S.S.C.

Friday, June 17.

SECOND DIVISION.

FOWLER'S TRUSTEES v. FOWLER.

Marriage-Contract—Antenuptial Contract—Revocation—Power to Revoke Contained in Deed itself—Construction.

An antenuptial marriage contract contained the following provision in regard to the funds conveyed by the wife to the trustees under the deed, “if during the subsistence of the marriage” the wife “shall by a writing or writings under her hand require the said trustees to do so, they shall be bound to pay over to her, for the purpose of purchasing a dwelling-house or residence for herself and her said intended husband and their family, and

furnishing the same, or for any other purpose, such amount of the trust funds in their hands as shall be specified in such writing or writings, and if a house shall be purchased and furnished from the money so to be paid, the title thereto shall be taken in favour of the said trustees, and the same shall form part of the trust estate.”

Held (diss. Lord Moncreiff) that the trustees were bound, on being requested to do so by writing under the wife's hand, to pay over to her absolutely the whole trust estate settled by her in the marriage-contract.

Joseph Hamilton Fowler and Catherine Mann were married on 4th October 1893. By antenuptial contract of marriage Mr Fowler bound himself to pay an alimentary annuity of £500 to Mrs Fowler in the event of her surviving him, and in security *pro tanto* thereof conveyed to trustees a policy of insurance on his life for £2000. On her part Mrs Fowler conveyed to the trustees five investments of the value of £3538 or thereby, and all other means and estate that belonged to her or might be acquired by her during her marriage, with the exception of money then deposited in the bank in name of Mrs Fowler, and a sum of £15,000 bequeathed under her father's will to her in her life and her children in fee. The following provisions were applicable to the estate so conveyed by Mrs Fowler. The proceeds were to be paid to her during her life for her alimentary use on her own receipt and outwith the *jus mariti* and right of administration of her husband. In the event of Mrs Fowler predeceasing Mr Fowler the nett yearly income was to be paid to the latter for his own maintenance and that of the children, and on the death of the last survivor of Mr and Mrs Fowler the trust estate was to be divided among the children in such proportions as Mrs Fowler might appoint by writing, failing such writing in such proportions as Mr Fowler might appoint by writing after his wife's decease, and failing any writing, equally. Power was given to the trustees, in the ninth place, to pay over any part of the funds of the trust-estate in terms of the fourth purpose of the deed. This fourth purpose was in the following terms:—“If during the subsistence of the said marriage the said Catherine Mann shall, by a writing or writings under her hand, require the said trustees to do so, they shall be bound to pay over to her, for the purpose of purchasing a dwelling-house or residence for herself and her said intended husband and their family, and furnishing the same, or for any other purpose, such amount of the trust funds in their hands as shall be specified in such writing or writings, and if a house shall be purchased and furnished from the money so to be paid, the title thereto shall be taken in favour of the said trustees, and the same shall form part of the trust-estate.” The following was the eighth purpose of the deed:—“In the event of the said Joseph Hamilton Fowler predeceasing the said Catherine

Mann, it shall be lawful to and in her power to require the said trustees to reconvey to her as her absolute property the whole trust-estate then vested in and held by them, and on being so required they shall be bound to do so, and the said Catherine Mann shall be bound to discharge them of the trust, which shall then cease and determine."

There were two children of the marriage born on 17th August 1894 and 4th October 1895.

By letter of request dated 19th February 1894 Mrs Fowler, with consent of her husband, required the trustees to realise three of the investments specially conveyed by her in the marriage-contract, and to pay her the proceeds, the purpose assigned for such a request being that she wished to employ the money in such a manner as to increase her income. These investments were sold, and the proceeds—viz., £818, 17s. 7d.—paid over to her.

By letter of request dated 28th June 1895 Mrs Fowler, with consent of her husband, required the trustees to realise another of the investments so conveyed by her, and to pay her the proceeds, the letter of request bearing that the money was required by her to be expended mainly in furnishing a house, buying a new carriage and horse, and in giving her husband assistance in procuring a partnership in a business in Greenock. This investment was sold for £2707, 8s. 3d., and the proceeds paid to Mrs Fowler.

A house known as Carlogie was bought by Mrs Fowler, with entry at Whitsunday 1896, the price paid being £1800. The title was taken in Mrs Fowler's name. In order to meet the balance of the price and certain expenditure in connection with furniture and furnishings, £1000 was borrowed upon the security of the house, under bond and disposition in security granted by Mr and Mrs Fowler. In addition to this expenditure on house and furniture Mr and Mrs Fowler built a stable and coach-house, and painted and papered the house and furnished the same complete at a cost of £1000, no part of which was paid. By disposition dated 10th, and recorded 12th December 1896, Mrs Fowler, with consent of her husband, disposed the house, subject to the bonds upon it for £1000, to the trustees under the marriage-contract in implement of the terms thereof, and also assigned to the trustees the whole household furniture and plenishing in the house.

Thereafter proceedings were taken by creditors to enforce payment of claims against Mr and Mrs Fowler. An arrangement was entered into by which it was proposed to apply the available funds of the spouses in payment of their debts, and Mr and Mrs Fowler were desirous of having the proceeds of the house and furniture, and the remaining investment conveyed by her to the trustees in the marriage-contract, made available for the purposes of this arrangement.

By letters of request dated 17th June and 12th October 1897, Mrs Fowler, with consent of her husband, made application

to the trustees to sell the house and furniture and the said investment and pay over the proceeds to her, the purpose assigned being "to get the liabilities incurred by her husband and myself (largely in connection with the house) discharged."

The trustees sold the house with offices and pertinents for £1900, and were prepared to sell the furniture, but were in doubt whether they could safely pay over the proceeds thereof and of the said investment to Mrs Fowler.

For the decision of the question a special case was presented to the Court by (1) the marriage-contract trustees (2) Mr and Mrs Fowler, and (3) the children.

The question at law was—"Are the trustees under the said contract of marriage entitled and bound, in compliance with the request made by Mrs Fowler, to pay over to her absolutely the proceeds of the whole remaining trust-estate settled by her, including the house known as Carlogie, with offices and pertinents, and furniture and furnishings therein, or of any and what part of the said estate?"

Argued for the first and third parties—Mrs Fowler's powers had been exhausted by the payments which she had already received from the estate, and separately, the house and furniture were not subject to these powers, in respect that it was provided in the marriage-contract that the title was to be taken in favour of the trustees, and that Mrs Fowler having elected to buy, and having bought, a house, and the same having been vested in the trustees, the trustees were entitled and bound to continue to hold it as a trust-estate. Further, Mrs Fowler's powers did not go the length of defeating the trust altogether by exhausting the trust assets, which would be the result if her present request were complied with.

Argued for the second parties—(1) By the fourth purpose of said marriage-contract no limit was placed on the amount which might be demanded by Mrs Fowler for the purpose to which the money might be applied. (2) By the ninth power the trustees were specially empowered to pay any part of the trust-estate in terms of the fourth purpose. (3) The £1300 which helped to purchase the house was payable to Mrs Fowler in terms of her request of June 1895, and was therefore her own absolute property, free from the trustees' control, and she acted voluntarily in arranging to transfer, and in subsequently transferring the house and furniture to them.

At advising—

LORD JUSTICE-CLERK—The question in this case turns upon the words of the fourth clause of the antenuptial contract between the first parties. Mrs Fowler placed certain funds in the hands of trustees, and the 4th purpose was—[*His Lordship read it.*] The question now is whether Mrs Fowler having demanded that a balance of the fund be paid over to her, the trustees are bound to do so. It is argued that the clause indicates a duty on the trustees to part with the funds only for

the providing of a house and furniture or some similar purpose, and not that Mrs Fowler can take the fund out of their hands for any purpose she may please. I find myself unable so to read it. I cannot find that the words do more than keep the funds in the hands of trustees, while the lady shall choose that they shall do so—more a placing of the funds under the protection of requiring a formal demand for them than a tying of them up so that they could not be claimed by her at all. If she were to ask from the trustees payment of any part of the funds for any purpose, under the words of the contract I think they were bound to accede to her demand. A writing under her hand is sufficient exoneration to them for parting with them. In this case it seems likely that the payment to her will be, perforce of circumstances, for the benefit of her creditors. But I am unable to hold otherwise than that such a clause is inoperative to prevent the success of a demand by her for the funds. I think therefore that the question must be answered in the affirmative.

LORD YOUNG—I have had some difficulty in coming to the conclusion at which your Lordship has arrived, because the clause as it is expressed leads to an absurd conclusion that cannot have been intended by the parties, viz., it gives the wife leave to withdraw the whole capital of her funds from the hands of the trustees. I cannot think that the case in itself is of much importance. Such a bungled clause has not in my experience occurred before in a will, and is not likely to occur again. The only general question of importance is whether it is within the *nobile officium* of the Court to turn nonsense into sense, and so give effect to what was obviously the intention of parties. I think that in a case where a “not” has been inserted, and manifestly turns a clause into nonsense by changing it from affirmative into negative, the Court might exercise its *nobile officium* and omit the word obviously inserted by mistake. But here the declaration is that the trustees, on being required to do so by writing under her hand, shall be bound to pay over to her for any purpose such amount of the trust funds in their hands as shall be specified in such writing. I do not think that there is any authority entitling us to read in after these words “as the trustees in their discretion may approve.” On the whole matter I have come to the conclusion that we must take the clause as it stands, and let the parties bear the consequences of this deed being ill-drawn.

LORD TRAYNER—I am of opinion that the first parties are bound on the written request of Mrs Fowler to pay over to her such amount of the trust funds in their hands as she shall specify in her written request. The clause in the marriage-contract which creates the trust, upon which Mrs Fowler bases her right to demand payment of the trust-funds, appears to me to be scarcely open to

construction. Its language is clear and unambiguous. No doubt the clause deals primarily with a demand for trust funds required for the purchasing and furnishing of a house, but it also provides for a demand for funds “for any other purpose.” The provision could not be broader or more comprehensive. It is quite true, as was urged upon us by the first and third parties, that to give the meaning to the clause which the second parties contend for, is to hold in effect that Mrs Fowler could recal or annul the trust at pleasure. However unsatisfactory such a result may appear, I think that that is the meaning and effect of the language used. A clause in a trust-deed for management on behalf of the trustor entitling him to recal the trust is not unknown, but I confess it is a novel clause to find in a marriage-contract, where a trust is generally created to protect the wife and children against the consequences of improvidence or impotency on the part of others. But as the clause is expressed I am unable to give any other meaning to it than that which I have stated, however willing I might have been to come to another conclusion.

LORD MONCREIFF—Your Lordships are prepared to hold that the first parties, the trustees under the antenuptial contract between Mr and Mrs Fowler, are bound to pay over to Mrs Fowler absolutely the proceeds of the whole remaining trust estate. I am not satisfied that we are bound to come to this conclusion. Mrs Fowler's contention is that under the fourth purpose of the trust she is entitled at any time to call upon the trustees to make such payment or payments out of the trust funds as she thinks proper to demand, that the amount which they are bound to pay to her is only limited by the amount of the trust funds, and that the purpose for which she requires the money is absolutely immaterial. Her contention, if it is good for anything, is good for this, that she might have brought the marriage-contract trust to an end a week after the marriage by demanding payment unconditionally of the whole of the trust funds, assigning any purpose which she thought fit to name.

Now, such a construction of this fourth purpose, which ostensibly occupies a comparatively insignificant place amongst the other purposes, would completely stultify the marriage-contract. It is an onerous deed containing provisions for the husband and the children of the marriage; it makes careful provision for the income of the trust-estate being paid for the alimentary use of Mrs Fowler; and in the eighth purpose the trustees are required on demand to reconvey the whole trust-estate to Mrs Fowler in absolute property, but only in the event of her husband predeceasing her. All these provisions made it in the last degree improbable that the object of the fourth purpose was to enable Mrs Fowler to bring the trust to an end whenever she chose, and, inaccurately as I think the fourth purpose is expressed, there is enough in it to show that this is not its

purport. Its meaning is that in the event of an advance of capital being required for a limited purpose for the benefit of the family, the trustees should be bound to make it on being called upon.

The primary purpose for which the money is to be advanced is for purchasing a dwelling-house or residence "for herself and her said intended husband and family and furnishing the same." It is said that the words which immediately follow, "or for any other purpose," upon which the whole argument of the second parties depends, must be read as if they were entirely unconnected with those which immediately precede. I do not think so. I think the natural meaning of these words, looking to their collocation, is that they are meant to cover some purpose of the same kind, such as building a stable or addition, or at least that the purpose shall be such as permanently to benefit the family.

Then again the amount which the trustees are directed to pay out of the trust funds is not the whole of the trust funds, but such amount of them as shall be specified. And lastly, if a house is bought, the title is to be taken in the name of the trustees, and the house is to form part of the trust-funds.

If the purpose of this clause was to enable Mrs Fowler at any time if she chose to obtain possession of the whole of the trust-estate, those expressions to which I have called attention would have been absolutely superfluous. At the desire of Mrs Fowler the trustees purchased a house; she now calls upon them to sell it and give her the price. If her present argument is right, it was unnecessary to go through that farce; she could have obtained the money at once, assigning any purpose she pleased.

From this I gather, *first*, that it is not every purpose for which the trustees are bound to pay the money on the demand of Mrs Fowler; and *secondly*, that at least the trustees are not bound to pay over the whole trust-estate. Questions might have arisen as to the purposes for which the money was desired which would properly have been for the trustees and not for the Court to decide; but the question being whether the second parties are entitled to the whole trust-estate for the purpose specified, namely, to pay debts unnecessarily incurred, I am not prepared to answer that question in the affirmative.

The Court pronounced the following interlocutor:—

"Answer the question therein stated by declaring that the trustees are bound in terms of Mrs Fowler's written request to pay over to her absolutely the proceeds of the whole remaining trust-estate settled by her, including the house known as Carlogie, with offices and pertinents and furniture and furnishings therein: Find and declare accordingly."

Counsel for First and Third Parties—
Balfour, Q.C.—M'Clure. Agents—Bruce,
Kerr, & Burns, W.S.

Counsel for Second Parties—Guthrie,
Q.C.—Clyde. Agent—R. Addison Smith,
S.S.C.

Thursday, June 23.

FIRST DIVISION.

HOLLAND HOUSE ELECTRICAL
MANUFACTURING COMPANY,
LIMITED, PETITIONERS.

Company—Reduction of Capital—Addition of Words "and Reduced" to Name of Company—Motion to Dispense with on Presentation of Petition for Confirmation—Companies Act 1877 (40 and 41 Vict. cap. 26), sec. 4, sub-sec. 2.

The Holland House Electrical Manufacturing Company, Limited, presented a petition to the Court for an order confirming a reduction of its capital resolved on by special resolution duly passed and confirmed by the company. In Single Bills the petitioners, on moving for intimation and advertisement, craved the Court to dispense in the meantime with the addition of the words "and reduced" to the name of the company, in virtue of the powers conferred by sub-section 2 of section 4 of the Companies Act of 1877. They founded in support of their motion upon the case of *Colonial Real Property Company, Limited*, March 3, 1896, 23 R. 547.

The Court, in respect that no special reason had been adduced for granting it, *refused* the motion to dispense with the words "and reduced."

Counsel for Petitioners—Boswell. Agents—
H. B. & F. J. Dewar, W.S.

Friday, June 24.

FIRST DIVISION.

LANGSTON (SURVEYOR OF TAXES)
v. GRANT.

Revenue—Inhabited-House-Duty—Stat. 57 Geo. III. cap. 25, sec. 1—Stat. 5 Geo. IV. cap. 44, sec. 4—Stat. 41 Vict. cap. 15, sec. 13 (2).

Held, on the authority of *Scottish Widows' Fund Society v. Solicitor of Inland Revenue*, January 22, 1880, 7 R. 491, and *Glasgow and South-Western Railway Company v. Banks*, July 16, 1880, 7 R. 1161, that the proprietor of premises consisting of two storeys, of which he occupied the upper as a dwelling-house, while in the lower he carried on the trade of a licensed retailer of spirits, there being no internal means of communication between the two storeys, was not entitled to exemption from inhabited-house-duty as regards