rangement, he conveyed it to his wife, still subject to the bond for £150. At and prior to the date of the conveyance to his wife, the petitioner was not only solvent, but was more than able to meet his liabilities.

The petitioner was examined in the process of *cessio* on 18th October 1872, and in the course of his examination refused to sign a deed of revocation of the disposition conveying the above mentioned property to his wife. In consequence of this refusal Messrs Thomson & Co., creditors on his estate, objected to the granting of the *cessio*.

The petitioner answered that this was not an objection that fell to be considered under the statute, and further that the pursuer was not bound to sign such a deed.

On the 31st October 1872, the Sheriff-Substitute (HOPE) pronounced the following interlocutor:—"Having considered the examination of the pursuer on oath, the pursuer's state of affairs, the note of objections for the opposing creditors, and answers thereto, and whole process, and debate thereon—Refuses to grant the petitioner the benefit of the process of *cessio bonorum in hoc statu*, for the reasons stated in the subjoined note.

"*Note.*—The ground of objection to the granting of this application is one which falls to be disposed of according to the discretion of the Court. The Sheriff-Substitute has carefully considered the decisions in analogous cases, and all that was advanced for the pursuer against their applicability; and, on the whole, he thinks that the pursuer ought to revoke the conveyance to his wife before obtaining a decree in his favour. He can do so if he likes, but he will not. His motive may be a praiseworthy one as regards his wife, but the Sheriff-Substitute thinks that the creditors are entitled to some of his consideration too. The explanation of the transaction given in the state of affairs is not very satisfactory, and the circumstances are not free from suspicion, but the Sheriff-Substitute does not think it necessary to order further inquiry, as the objection is not based upon any alleged intention to defraud."

The petitioner appealed by reclaiming petition, and after answers the Sheriff (NAPIER), on 16th December 1872, pronounced the following interlocutor:—Finds, first, *in point of fact*, that it neither appears from anything in the process before the Sheriff, nor is it alleged by any of the opposing creditors as a reason for refusing this petition for the benefit of *cessio bonorum*, that the pursuer of it is *in mala fide* in any respect as regards the state of his affairs or the management of his funds: Therefore, under the whole circumstances of the case, finds, *in point of law and equity*, that the pursuer's declining to revoke the conveyance in question to his wife as a condition precedent to obtaining his *cessio*, is not a sufficient reason for refusing it: Therefore recalls the interlocutor appealed against: Finds the pursuer entitled to the benefit of the process of *cessio bonorum*; and with these findings in fact and law, remits the case back to the Sheriff-Substitute to proceed accordingly."

In pursuance of this interlocutor the Sheriff-Substitute, on 30th December 1872, granted the benefit of the process of *cessio bonorum* to the pursuer.

The creditors (objectors) appealed to the First Division of the Court of Session, and argued that although a husband may give his wife a reasonable provision, he is not entitled to dispone to her a property for her benefit—the fortunes of a wife must follow those of her husband.

Authorities relied on—I. L. R., Scotch Appeals, 109; *Rust* v. *Smith*, 3 Macpherson, 378; *Dunlop*, 3 Macpherson, 758; Ersk. Inst., 1, 6, 30.

At advising—

LORD PRESIDENT—I think the Sheriff is right. The peculiarity of the case is that there is no suggestion of fraud or improper conduct on the part of the pursuer of the *cessio*. He seems to have made a full disclosure of his affairs. The only objection is that he has conveyed a house to his wife. Now the value of the house, after deducting the debt to the Building Society, is only £50. The disposition of the house was intended as a provision for the wife, and if the pursuer was solvent at the time was the performance of a natural obligation. The objection stated by the creditor is not that the disposition was granted after bankruptcy, or in contemplation of bankruptcy, but that the pursuer refused to execute a revocation of the disposition. It is doubtful if he could revoke. If it is revocable, sequestration will operate a revocation, and if not revocable, the creditor is not entitled to call upon him to execute a deed of revocation as a condition of obtaining liberation.

The other Judges concurred, and the Court accordingly pronounced the following interlocutor:—

"Adhere to the interlocutors reclaimed against, and refuse the reclaiming note: Find the reclaimers liable in Five Guineas as the modified expenses of process incurred by the respondent in this Court, and decern for that sum; *quoad ultra*, remit to the Sheriff."

Counsel for Appellants—R. Johnstone. Agents—J. C. & A. Steuart, W.S.

Counsel for Respondents—H. Smith. Agent—John Whitehead, S.S.C.

Thursday, January 30.

FIRST DIVISION.

SPECIAL CASE—EDMONDS.

Testamentary Writing — Heritable and Moveable—Titles to Land Consolidation (Scotland) Act 1868, § 20—*Intention.*

A bequest of "property, either in money bonds, debts, business, and other effects whatsoever,"—*held* not to be effectual to convey heritage in terms of the Titles to Land Act 1868.

The late Thomas Edmund, hotel-keeper, Balfron, died on April 1, 1872, leaving a widow, the party of the first part, but no children. The party of the second part is his uncle and heir-at-law. After his death there was found in the said deceased Thomas Edmond's repositories a sheet of paper containing certain writings by him of a testamentary nature. The said writings were three in number, and were all holograph of and signed by the deceased. Each of said writings was also subscribed by two witnesses. The third of them alone bore any date, and parties admit that it was executed of the dat

it bore. The said sheet of paper also bore an indorsation holograph of the said Thomas Edmond.

These writings were in the following terms.—

"I do hereby Bequiath in event of my Death Before my wife Hannh Edmond the whole of Property ether in money Bonds Debets Bussness and other affects whatsoever, after all my just debets, are decuted from the same.

THOS. EDMOND.

Robert Brown, *witness.*
Margaret Brown, *witness.*

And I appoint Hannh Edmond my wife Heir and Executrix of this my last will and testimant.

THOS. EDMOND.

Robert Brown, *witness.*
Margaret Brown, *witness.*

This is the last will and testimant of Thomas Edmond.—*Balfron*, 10*th May* 1871.

THOS. EDMOND.

Robert Brown, *witness.*
Margaret Brown, *witness.*

(*Endorsed:*—)

Balfron, 10*th May* 1871.—thist he last will and testimant of

THOS. EDMOND."

The following questions were submitted to the Court:—

"(1) Whether the said testamentary writings of the said deceased Thomas Edmond are expressed in terms valid and sufficient, under the 20th section of the 'Titles to Land Consolidation (Scotland) Act, 1868,' to operate as a general disposition, *mortis causa*, of the deceased's heritable estate in favour of the party of the first part?

OR,

"(2) Whether the party of the second part is entitled to succeed to the said Thomas Edmond's heritable estate as his heir-at-law *ab intestato?*"

At advising—

LORD PRESIDENT—The question in this Special Case is whether the testamentary writings left by Thomas Edmond are sufficient to convey to his wife his heritable as well as his moveable estate. This depends on the meaning of the writings themselves, and on a construction of the 20th section of The Titles to Land Act of 1868. With regard to the writings themselves, it is not impossible to spell out of them an intention that his wife should have the heritable as well as the moveable property; and I should be disposed to say that such was his intention. But that is not sufficient for the disposal of the present question, because the statute does not say, that whatever the way or manner in which the intention has been expressed, it is to have effect given to it. The clause begins by enacting that lands may be conveyed by testamentary deeds as well as by dispositions. In the second place, that no testamentary deed shall be insufficient to convey lands on the ground that the word "dispone" has not been used. Now, it would not have been necessary to have enacted these two provisions if the statute had contained a sweeping provision that any expression of intention would be enough to convey lands. The third part of the clause is thus expressed "where such deed or writing"—that is, a testamentary or *mortis causa* deed, or writing purporting to convey or bequeath land—"shall not be expressed in the terms required by the existing law or practice for the conveyance of lands, but shall contain, with reference to such lands, any word or words which would, if used in a will or testament with reference to moveables, be sufficient to confer upon the executor of the granter, or upon the grantee or legatee of such moveables, a right to claim or receive the same, such deed or writing, if duly executed in the manner required or permitted in the case of any testamentary writing by the law of Scotland, shall be deemed or taken to be equivalent to a general disposition of such lands." In order to bring a testamentary writing purporting to convey lands within the meaning of this part of the clause, it is necessary that it contain words which would be sufficient to express a gift of moveables. It is not enough that the granter shall nominate an heir as he would an executor and universal legatee. It is plain that there must be words—I do not say of conveyance, but of gift—with reference to such lands, or, in other words, a gift of the lands. Here the granter does not use words of gift. He uses words of bequest of the "whole property." Now, if he had stopped there, we might have had a strong argument that heritable property was meant. But he goes on to derogate from the general bequest by the enumeration of "money Bonds, debets, Bussness, and other affects whatsoever." I think, upon the rules of construction applicable to discharges and other writs of a like description, enumeration may be held to derogate from a generality. The only word at all general which follows is "affects." We have already decided, in *Pitcairn's* case, that "effects" does not convey heritage. I am therefore of opinion that the heritable estate goes to the heir-at-law, and not to the widow.

The other Judges concurred, with the exception of LORD ARDMILLAN, who dissented so far as concerned the lease and goodwill of the hotel. His Lordship held that, looking at the terms of the document, the deceased had plainly meant to bequeath them to his widow, and the statute operated to the effect of making this bequest a valid conveyance.

Counsel for Mrs Edmond—Horn. Agents—Maitland & Lyon, W.S.

Counsel for Peter Edmond—Wm. Watson. Agents—J. & R. Macandrew, W.S.

HIGH COURT OF JUSTICIARY.

Friday, January 31.

HAZZARD *v.* MURDOCH.

BELL *v.* MURDOCH.

ALLAN *v.* MURDOCH.

Volunteer Act—Railway Clauses Act—Efficiency—Powers of Commanding Officer—Imposition o Fines.

These three cases arose out of bills of suspension presented by Hazzard, Bell, and Allan, against a conviction, sentence, and warrant of Nov. 18, 1872, pronounced by two Justices of the Peace for the county of Lanark, upon a complaint by Neil Murdoch, residing at Ashley Park, in the parish of Bothwell and county of Lanark, captain and com-