was in accordance with Mrs M'Laurin's instructions, and that it gave effect to the pursuers' wishes in regard to the disposal of the estate therein mentioned, and Mr Lawrence thereafter induced the pursuers to sign the said deed under the same error in fact on his part."

The pursuers pleaded—"The pursuers are entitled to decree of reduction as concluded for —(1) Because the said deed was signed by them under essential error. (2) Because in signing the said deed the pursuers were under essential error induced by the said Dr and Mrs Stafford and Robert Lawrence, or one or other of them. (3) Because the said deed was obtained from the pursuers by fraudulent concealment practised by the said Dr and Mrs Stafford and Robert Lawrence, or one or other of them. (4) Because the said deed was obtained from the pursuers by false and fraudulent representations as to its tenor and effect made by the said Dr and Mrs Stafford and Robert Lawrence, or one or other of them."

The defenders denied the whole material averments of the pursuers, and the following issues were, after discussion, approved of by the Lord Ordinary for the trial of the cause :—"Whether the pursuers, in granting the disposition dated on or about the 12th day of November 1874, of which No. 7 of process is an extract, were under essential error as to the tenor and effect of the said deed? Whether the pursuers were induced to grant the said deed by fraudulent concealment practised by the said Doctor and Mrs Stafford, and Robert Lawrence, or one or other of them; or false or fraudulent representations made by them, or one or other of them, as to the tenor and effect of the said deed?"

The defenders reclaimed, and after hearing before the First Division, the Lord President intimated that the Judges were divided in opinion whether the words "induced by the defenders" should be inserted to define the "essential error" in the first issue, as contended for by the defenders, or not. In these circumstances the case was ordered to be argued on this point before seven Judges.

At the hearing before the seven Judges, the Lord Justice-Clerk and Lords Ormidale and Gifford having been called in, the defenders argued — It was not enough to prove error to have the deed set aside; the error must be "induced by the defenders." A mere mistake on the part of a person *sciens et prudens* would not warrant reduction. The kind of error was also generally inserted in the issue. It was different where the error was such as the party could not guard against; in that case a general issue was allowable.

Authorities—*Maclagan* v. *Dixon*, Dec. 4, 1832; 11 S. 165; *Conston* v. *Miller*, Feb. 26, 1862, 24 D. 607; *Alexander* v. *Alexander*, Jan. 12, 1866, 4 Macph. 291; *Ritchie* v. *Ritchie's Trustees*, Jan. 13, 1866, 4 Macph. 292; *Purdon* v. *Rowatt's Trustees*, Dec. 19, 1856, 19 D. 206; *Munro* v. *Strain*, Feb. 14, 1874, 1 R. 522; *Hogg* v. *Campbell*, 2 Macph. 848, 36 Scot. Jur. 428; *Harris* v. *Robertson*, Feb. 16, 1864, 2 Macph. 664; *Lord Wemyss* v. *Campbell*, June 6, 1858, 20 D. 1090; *Waddell* v. *Waddell*, March 17, 1863, 1 Macph. 635.

The pursuers argued—This was a case of pure essential error. In such a case, the deed being gratuitous, there was no authority for the contention of the defenders. If an agent made a mistake as to the meaning of his clients, that error would entitle them to have reduction. On the matter of "error," with the exception of the rule as to *onus*, English law was the same as our law.

Authorities—*Dickson* v. *Halbert*, Feb. 17, 1854, 16 D. 586; *M'Conechy* v. *M'Indoe*, Dec. 23, 1853, 16 D. 315; *Johnston* v. *Johnston*, March 11, 1857, 19 D. 706, 3 Macqueen (H. of L.), 619; *Wilson* v. *Caledonian Railway Co.*, July 6, 1860, 22 D. 1408; *Adamson* v. *Glasgow Waterworks Commrs.*, Jan. 23, 1859, 21 D. 1010; *Murray* v. *Murray*, Feb. 12, 1839, 1 D. 484; *Gibson* v. *Jeyes*, 6 Vesey 276; *Cooke* v. *Lamotte*, 15 Beaven 234.

At advising—

Lord President — The Court are of opinion in this case that the first issue should be approved of without the variation proposed by the defender.

The following issues were therefore finally adjusted for the trial of the case: — "Whether the pursuers, in granting the disposition dated on or about the 12th day of November 1874, of which No. 7 of process is an extract, were under essential error as to the substance and effect of the said deed? Whether the pursuers were induced to grant the said deed by fraudulent representation or fraudulent concealment practised by the defenders, and Robert Lawrence, solicitor in Oban, or one or other of them?

Counsel for the Pursuers—Dean of Faculty (Watson)—Asher. Agents—Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Defenders—Balfour—J. P. B. Robertson. Agent—Thomas White, S.S.C.

Friday, December 17.

OUTER HOUSE.

[Lord Rutherfurd Clark.

AITON'S FACTOR—PETITIONER.

Judicial Factor—Discharge—Accounts—Audits.

In an application for discharge by a judicial factor there was produced in process an extrajudicial discharge which had been granted to him by the sole beneficiary, and it was stated that the accounts of the factor had been examined by an accountant acting on behalf of this beneficiary. In these circumstances it was urged for the factor that there was no necessity for a judicial audit, but that he might be at once discharged, or at all events that a warrant should be granted for delivery of his bond of caution. The Lord Ordinary, upon the authority of the case of *White*, (July 17, 1860, 22 D. 1473) granted the warrant for delivery of the bond of caution, but as there had been no judicial audit, refused to grant a discharge.

Counsel for Petitioner — Scott-Moncrieff. Agents—Scott-Moncrieff & Wood, W.S.

Tuesday, January 4, 1876.

SECOND DIVISION.

SPECIAL CASE—GRANT AND OTHERS.

Marriage-Contract—Trust—Renunciation of Liferent.

By an antenuptial contract of marriage it was provided, in the event of the husband predeceasing his wife, that certain sums should go to her in liferent, and to the children of the marriage upon her death, either in such proportions as the spouses might direct by a joint-deed, or failing such deed equally amongst them, and that if any of the children predeceased the term of payment leaving issue, such issue should have right to their parent's share. The husband predeceased his wife, leaving three children, and the interest of these sums continued for some time to be paid to the widow.—*Held*, in a Special Case submitted by the parties interested, that (in conformity with the case of *Pretty* v. *Newbigging*, 2d March 1854, 16 D. 667) the trustees were not bound to keep up the trust until the arrival of the period fixed in the contract of marriage for the division of the fee, but that they might denude, upon receiving a renunciation of the widow's liferent interest, and a discharge from her and the children of the marriage.

This was a Special Case submitted by Mrs Emilia Baillie or Grant, widow of the deceased Patrick Grant, Writer to the Signet, her son and two daughters, the only surviving children of the marriage between her and the late Mr Grant, and her marriage-contract trustees.

By the antenuptial contract of marriage entered into by Mr and Mrs Grant, Mr Grant made over to certain trustees two certificates or policies of insurance on his own life for the respective sums of £1000 and £999, 19s., and Mrs Grant also assigned and conveyed to the trustees the sum of £4000 sterling. By the third purpose of the contract of marriage the trustees were directed to lend out or invest the said sum of £4000 in their own names, and to pay the interest or yearly profits to Mrs Emilia Baillie or Grant during her lifetime, exclusive of the *jus mariti* of her husband; and it was thereby declared that in the event of the death of Mr Grant before Mrs Grant, £3000 of the said sum of £4000 should be paid to Mrs Grant for her own right and use, and subject to her own absolute and uncontrolled disposal, and that the remaining portion of the said sum of £4000, as well as the fee of the sums that might become due on the said policies of insurance, should be paid to the child or children of the marriage after the death of Mrs Grant in such proportions as the spouses might direct by any joint-deed under their hand, and failing thereof, the same should be divided equally among the children, "declaring always that if any child or children of the said marriage shall die before the said sum provided to him, her, or them under these presents, or the exercise of the said power of division, shall be paid or become payable, leaving lawful issue of his, her, or their bodies, the said issue shall have right to the share of such deceasing child or children in the same manner as if such parent had received payment or the same had become payable during the parent's lifetime."

Mr Grant died in April 1870. He was survived by his widow and three children, who had all reached majority. No deed of apportionment was ever executed. The £3000 provided by the marriage-contract to Mrs Grant was paid to her by the trustees shortly after her husband's death, and the whole fund remaining under trust management consisted of the remaining £1000 and the policies on the life of Mr Grant. The widow and children being anxious to have the trust brought to an end, offered to execute a renunciation of Mrs Grant's liferent interest in the trust-funds and discharges by all the parties interested. The trustees, however, maintained that they were bound to keep up the trust until the arrival of the period fixed in the contract of marriage for the division of the fund. The two following questions were submitted to the Court:—"Whether the parties of the third part are bound now to denude of the trust and to pay over the proceeds of the trust-estate to the parties of the first and second parts, on receiving a renunciation from Mrs Grant of her liferent interest, and a discharge from her and her family of the whole of their intromissions and actings in usual form? or, Whether they are bound to keep up the trust until the arrival of the period fixed in the contract of marriage for the division of the fee of the estate?"

At the debate the counsel for the trustees admitted that the point was decided by the case of *Pretty* v. *Newbigging*.

Authorities—*Pretty* v. *Newbigging*, March 2, 1854, 16 D. 667; *Routledge* v. *Carruthers*, May 19, 1812, F.C.

At advising—

Lord Ormidale—Had it not been for the case of *Pretty*, I would have considered this a question of some difficulty, but when I find that case to be quite in point, and the counsel at the bar concurring in holding it to be in point, I can have no doubt as to the answer which we should give to the question put.

Lord Gifford—I am of the same opinion. *Pretty* is a binding authority, and there being no distinction between that case and the present, we must follow it. Apart from this, I am not disposed to say that, in the case of a marriage-contract, those who are not creditors under the deed can prevent those who are from winding up the trust created. The purposes have all been served, and it would require a strong case to establish that the grandchildren were creditors. I am of opinion that they are not, and that the children can along with the widow concur in bringing this trust to an end.

Lord Neaves—The case of *Pretty* is quite in point, and was, I think, rightly decided. It often happens that access to a fee may be propelled, and this is only reasonable if there be no proof of any necessity for keeping it up. I think, therefore, that on the concurrence of all these parties, who are the only creditors, the trustees are bound to wind up the trust.

The Lord Justice-Clerk was absent.