absence of this, in contrast to what is said in the first direction, is very significant by way of contrast. Where the testator means to give an addition he says so. When, in a further and substantive direction, he refers to the previous legacy given he omits any reference to an addition. Then the language by which the application of the "said principal sum of £6000" is described is just a short summary of the much longer description of the legacy in the principal deed. It is no doubt true that there is a presumption in such a case as the present in favour of a double legacy, but very slight circumstances indeed may sometimes displace that presumption. I think the presumption is here displaced, and I am therefore of opinion that the first parties are not entitled to more than one legacy of £6000.

Lord Adam—I think this is a very difficult and a very narrow case. I quite approve and adopt the law as expressed by your Lordship in the case of *Muir's Trustees* to the following effect—"One rule at least is well settled, and that is, that when exactly the same amount is given twice in the same paper, the presumption is that it is a mere repetition arising from some mistake or forgetfulness, but where the same amount is bequeathed in two distinct testamentary papers, both equally formal, then both legacies are payable unless it can be shown from the settlement of the deceased, or by other competent evidence, that his intention was to give one legacy only." I think that is a distinct and accurate statement of the law.

We have heard an argument upon the competency of the evidence as to the testator's position and circumstances at the dates of the execution of the settlement and subsequent codicil, and I agree with Lord Shand in the opinion which he has expressed in regard to that matter. I think the rule of law applicable to it is accurately stated in the passage which has been quoted from Mr Jarman's book on Wills (i. 425-430), to the effect that evidence to prove intention as an independent fact is inadmissible. The Court is not entitled to look at contemporaneous jottings or other writings for the purpose of arriving at the testator's intention as expressed in his testamentary papers. These are not competent. But it is not only competent, but in the present case it is most material, to look at the memoranda which have been produced for the purpose of seeing the amount of the testator's estate at the two dates of the making the will and the codicil. In the latter document the testator tells us what addition he intended to make to the provisions under his settlement. The additions consisted of a liferent in favour of his brother of a sum of £6000. That is the only addition specified in the codicil. There is further a direction to pay the £6000 so liferented to the Free Church trustees after the death of the two liferenters, but this latter direction is not, as matter of construction, affected by the words contained in the first portion of the codicil as to its being "in addition." Yet if it were to be treated as an additional legacy, it would be a much greater addition than that which the testator has particularly specified. I think the contention that the second £6000 is the same as that previously conferred by the settlement must be given effect to.

The Court found that the first parties were entitled to only one legacy of £6000.

Counsel for First Parties—Balfour, Q.C.—Guthrie. Agents—Dalmahoy & Cowan, W.S.

Counsel for Second Parties—R. V. Campbell—Wood. Agents—Maitland & Lyon, W.S.

Counsel for Third Parties—R. V. Campbell. Agents—Maitland & Lyon, W.S.

Thursday, January 27.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

GOURLAY (MILLEN'S TRUSTEE) *v.* MACKIE.

Bankruptcy Act 1696, *cap.* 5—*Voluntary Assignation within Sixty Days of Bankruptcy—Illegal Preference—Security for Prior Debt.*

A debtor borrowed a sum on his promissory-note, handing at the same time to the lender a certificate for certain shares belonging to him, and a letter obliging himself during the currency of the note, if the creditor desired it, to execute in his favour a transfer of the shares. A month afterwards he became bankrupt, having prior to the sequestration, at the creditor's request, executed in his favour a transfer of the shares. *Held* (*rev.* judgment of Lord Kinnear) that the principle of *Moncreiff* v. *Union Bank*, 14 D. 200, applied to the circumstances, and that the trustee was entitled under the Act 1696, c. 5, to reduce the transfer on the ground that it was not made in respect of a *novum debitum*, and not a mere completion of what the debtor was under an unconditional obligation to grant, but a further security in the sense of the Act.

On 23d December 1885 Richard Mackie, Leith, lent to John Millen & Company the sum of £450. Millen & Company gave in exchange their promissory-note for £462, 10s. (the difference representing interest and exchange), payable four months after date, and a letter which was in the following terms—"In consideration of your having this day discounted for our sole benefit our acceptance, at four months from date, for (£462, 10s.) four hundred and sixty-two pounds ten shillings sterling, and handed us proceeds of same, we hereby hand over to you, as security for same, 100 shares for £6 paid in Holmes Oil Company, and bind ourselves to transfer same to you at any time during the currency of the bill if you desire it." On the same day the scrip or share certificate of the shares in the Holmes Oil Company was delivered to him, but no transfer was then executed. The shares belonged to John Millen, who acted for his firm.

The affairs of Millen & Company having become embarrassed, were on 14th January 1886 placed in the hands of a firm of chartered accountants, and intimation of the fact made by circular to their creditors. On 15th January Mackie obtained a transfer of the said shares. The transfer was dated 23d December 1885, the date of the letter. He intimated it to the company, who issued a new certificate of the shares in his name. On 28th January the estates of John Millen & Company were sequestrated. John Gourlay, C.A., was appointed trustee.

Mr Gourlay raised this action in order to reduce the transfer, and have the defender ordained to make over the certificate of the shares to him, as trustee, the ground of action being that the transfer was

signed and delivered voluntarily and without consideration, in satisfaction of and as security for a prior debt due to Mackie on the eve of sequestration and within sixty days of bankruptcy, and therefore was contrary to the Act 1696, c. 5.

The defender in answer explained that the contract between him and Millen was simply that of a loan on security. "The advance was made solely on the faith of its being covered or secured by the oil shares standing in the name of John Millen, and it was understood by both parties that the security was made effectual by the delivery of the stock certificate."

The pursuer pleaded—"(1) The transfer or assignation having been given in security or satisfaction of a prior debt within sixty days of bankruptcy, contrary to the terms of the Statute 1696, chap. 5, the pursuer is entitled to have the same reduced and set aside. (2) The pretended sale of the said shares described in the said transfer or assignation by the bankrupt John Millen to the defender not having been a *bona fide* sale, and the same having been an illegal and fraudulent transaction between the parties, it is void, or at least reducible at common law, and the pursuer and the creditors of the said bankrupts are entitled to be reponed thereagainst. (3) The transaction complained of having been fraudulent at common law and under the Bankrupt Acts, and to the prejudice of the bankrupt's creditors, the pursuer is entitled to decree as concluded for."

The defender pleaded—"(1) The said shares having been transferred to the defender in implement of a prior obligation by the said John Millen & Company to do so, the action, so far as based on fraud at common law, is unfounded. (2) The said shares having been transferred in respect of a *novum debitum*, and in specific implement of a prior specific obligation, the action, as based on the Act 1696, cap. 5, is unfounded."

The Lord Ordinary (KINNEAR) repelled the pursuer's pleas-in-law, sustained the pleas-in-law stated for the defender, and assoilzied the defender from the conclusions of the summons.

"*Opinion.*—The only question in this case is, whether the security which the pursuer seeks to reduce is struck at by the Act 1696, c. 5? for apart from the statute I think it clear that there is no relevant averment of fraud. The general rule of law by which the question must be determined cannot be better stated than in two propositions laid down by Professor Bell in his Commentaries, and cited with approval by the Lord President in *Stiven* v. *Scott*, June 30, 1871, 9 Macph. 930. The first is, that 'wherever money is paid or advanced, or property made over, in consideration of a general promise of security, not over a specific subject, the distinction is sanctioned between the debt and the security subsequently granted, and in its true intent and meaning the rule of the statute is understood to apply to the security, when it comes to be granted, as being truly a security for a previous debt.' The second proposition is, that 'wherever there is stipulated a specific security over a particular subject, in consideration and on the faith of which an advance of money or transfer of goods is made, the completion of that security, although after an interval of time, and after the term of constructive bankruptcy has begun, is not within the intent and meaning of the Act.' The question is, under which of these two categories the disputed security falls, and I am of opinion that it falls under the second.

"The transaction between the defender and the bankrupts was a very simple one, and there was no dispute as to its terms. On the 23d December 1885 the defender made a loan to the bankrupts of £450 by discounting their acceptance, and on the same day they delivered to him the scrip or share certificate of certain shares in the Holmes Oil Company, and a letter addressed to him, in which they say—'In consideration of you having this day discounted, for our sole benefit, our acceptance at four mo's from date for (£462, 10s.) four hundred and sixty-two pounds ten shillings stg., and handed us proceeds of same, we hereby hand over to you, as security for same, 100 shares for £6 paid in Holmes Oil Coy., and bind ourselves to transfer same to you at any time during the currency of the bill if you desire it.' It is true that the delivery of the certificate did not of itself operate as a transfer of the shares, but the letter shows that the transaction was in intention and substance a loan on the specific security of the shares, and the obligation to execute a formal transfer was instantly prestable. The advance and the security were parts of the same transaction, and it is a transaction which appears to me to satisfy the requirements of the law as these are explained by the Lord President in the case of *Stiven*, where his Lordship says—'If the party come under an obligation to do something immediately and unconditionally, it shall have the effect of creating a good security, and when I say 'come under an obligation' I mean nothing short of this, that he subjects himself to an obligation instantly and absolutely enforcible. When he comes under such an obligation as that, then the fulfilment of that obligation, although within sixty days, will not make a case under the statute, because then the security is substantially granted before the sixty days, and at the same time that the debt is contracted. It is a security contemporaneous in that point of view with the contraction of the debt.' It is true that the security was not in this case granted before the sixty days, but that is because the debt was contracted within that period. It was a new debt contracted within sixty days of bankruptcy, and if I am right in thinking that it was contracted on the security of the shares, the completion of the transaction cannot be considered as the voluntary granting of a further security for a prior debt.

"I do not think this view inconsistent with *Moncreiff* v. *The Union Bank*. There is no doubt a certain resemblance between the facts of that case and those of the present, but I think the two cases distinguishable in a very material point. The Union Bank made an advance to the bankrupts more than sixty days before their bankruptcy on the security of a promissory-note, and took from them at the same time a missive addressed to the manager, binding themselves at any time required to assign a heritable bond and certain policies of insurance, which were immediately deposited with the bank. The assignation was not required till the promissory-note fell due, six months after the date of the loan, and within six days of the bankruptcy of the bor-

rowers. It appears to me that the only question of difficulty in that case was a question as to the construction of the contract upon which the advance was made, and the ground of judgment, as explained by Lord Fullerton, was 'that the missive taken by the defenders showed that the instant granting of the security was not the consideration of the advance. There was no absolute stipulation for the security at the time of the advance.' And accordingly the Court distinguished the case from those in which, although the security was not actually given prior to or simultaneously with the advance of the money, the granting of the security really formed by the terms of the original contract the consideration for such advance. In the present case, on the other hand, I think the missive shows that the security upon which the defender made the advance was not the personal obligation contained in the bankrupt's promissory-note, but the specific security of the shares in question. It is said that the obligation to transfer the shares is qualified by the words 'if you desire it,' and that this must mean just what was meant by the words 'if required' in the case of *Moncreiff* v. *The Union Bank*, so that on the authority of that decision it must be held that the obligation to transfer was not absolute and unconditional, but dependent upon after requirement. But the whole letter must be read to ascertain the terms of the contract, and if it be clear, as I think it is, from the previous words that the advance was made on the specific security of the shares in the Holmes Oil Company, it is impossible to infer from the words in question that the security was not an absolute term of the bargain, but that it was left open for after consideration whether any such security should be required or not. It appears to me that the words 'if you desire it' take nothing from the force of the absolute and unconditional obligation to transfer provided it be clear that the contract between the parties was an advance on the specific security of the shares. The case of *Moncreiff* v. *The Union Bank* is an authority for the rule of law which may be extracted from it, but it is no authority for the construction of a different contract from that which was then in question.

"If I am right in the construction I put upon the present contract, the case falls within the rule, which must now be taken as firmly established, that 'wherever on an advance of cash a simultaneous engagement is made to give a specific security for the specific advance, such security may be validly completed within sixty days of bankruptcy, and is not struck at by the Act of 1696.' The rule is settled by a series of decisions, but *Taylor* v. *Farrie* [*infra cit.*] is probably the most important, since it was a judgment of the whole Court.

"I do not think the rule displaced by the consideration (if that can be gathered from the contract) that the parties may have been uncertain as to the form which might be necessary for making the security effectual. The important matter is that the advance was made substantially on the security of the shares, and that the obligation to transfer the shares on demand for the purpose of making the security effectual was absolute and unconditional. There was no new transaction between the parties, and no voluntary transference by the bankrupts."

The pursuer reclaimed, and argued—The transaction in question was truly, as was said in *Moncreiff's* case, a mere device of the most dangerous description, looking to the interests of the general creditors, to evade the operation of the statute. No present security for the debt was either constituted or intended. There was certainly no transfer on the face of it. What was obviously intended was a future security for the debt, which the creditor was to have it in his power to call for should the necessities of the case, or (it might be) the altered circumstances of his debtor eventually prompt such a demand. So long as no demand was made there was no actual obligation incumbent upon the debtor even to give this security. Such obligation was only to arise on the creditor's requisition. The case must be ruled by *Moncreiff* v. *The Union Bank*, December 16, 1851, 14 D. 200, the *species facti* in both being almost identical. In it Lords Ivory, Lord President Boyle, and Lord Fullerton referred to the previous case of *Inglis* v. *Mansfield* as conclusive, saying that the obligation to assign went for nothing, and that the time of granting the security was the point of time alone to be looked to. Then followed *Taylor* v. *Farrie*, March 8, 1855, 17 D. 639; *Lindsay* v. *Shield*, March 19, 1862, 24 D. 821; and *Rose* v. *Falconer*, June 26, 1868, 6 Macph. 960. In all of them the principle laid down in 2 Bell's Com., 7th (M'Laren's) ed., pp. 206 and 211, was given effect to, the *rationale* of the decisions being whether the transference had been taken in specific implement of an obligation *ad factum præstandum*. Lastly came the case of *Stiven* v. *Scott & Simson*, June 30, 1871, 9 Macph. 923, the facts in which case were almost identical with those in the present case. There in fact the transaction takes the form of an obligation *ad factum præstandum* instantly enforceable and unconditional; then and then only can it be considered a voluntary deed in the sense of the statute.

The defender replied—The present transaction was not of the nature of that in *Moncreiff's* and *Stiven's* cases. It was quite clear that the advance was made on the specific security of the shares. The parties considered the security sufficient, but they agreed that if found to be necessary the subsequent transfer was to be granted. There was an absolute obligation imposed to grant such transfer. He had then a right *in specifica obligatione*, just as he would have had if the shares had been sold to him, and the second proposition laid down by Bell, *supra*, and which was expressly approved of by the Lord President in *Stiven's* case, p. 932 of the report, fell to be given effect to. The case of *Moncreiff* v. *The Union Bank* was distinguishable on two grounds — 1st, In it the only security was the promissory-note of the debtor, the obligation undertaken being something additional, while in the present case on the face of the contract the advance was made on the face of a specific security. 2d, There was no limit in time for the enforcing of the obligation, the words being "at any time required," while here there was one. The cases of *Taylor* v. *Farrie* and *Lindsay* v. *Shield* were expressly in point, and must govern here. *Stiven's* case was decided distinctly on the absence of all intention of really transferring the goods from one party to the other.

The true test of all such cases was (1) whether the obligation could be instantly enforced? (2) whether, if the borrower had conveyed to anyone else, he would have been committing a fraud —*Cranston* v. *Buntine* (H.L.), July 6, 1826, 6 W. & S. 79.

At advising—

Lord Justice-Clerk—The question raised in this case is, whether a transfer of certain shares in the Holmes Oil Company, executed on the 15th of January 1886 in favour of the defender, is reducible under the Act 1696 as a voluntary preference granted in favour of a prior creditor within sixty days of the bankruptcy of the debtor.

The debtor John Millen was sequestrated on the 28th January 1886, and the pursuer is the trustee on his estates. The circumstances under which this transaction took place were the following—[*His Lordship here stated the facts*]. These facts are not disputed, but it is alleged that the advance was made solely on the faith of the security being granted.

The Lord Ordinary has assoilzied the defender, but I cannot concur in his judgment. I do not doubt that where money is advanced on the faith of a specific security, stipulated for as part of a present transaction, it will not vitiate the security that it is formally completed within sixty days of the granter's bankruptcy. The security is in that case truly granted in fulfilment of a prior obligation. But this case in my opinion belongs to an opposite category. The money here was not advanced on the faith of a present or instant security. It was advanced without security and in the knowledge that there was none, but under a promise from the debtor that if and when the creditor desired it the shares in question should be transferred to him. The meaning of this is quite plain. It was a transaction separate from the advance, and was not absolute but conditional. So far as the parties were concerned neither desired that any present or instant security should be then given. The debtor wished to avoid the notoriety the transfer would imply. The creditor was willing to forego it as long as he thought he could do so with safety. The position was precisely that described by Lord Ivory in his note in the case of *Moncreiff* v. *Union Bank*, which I think well decided, and from which I cannot distinguish the present. In that case the debtors, Messrs Tod & Hill, had applied for and obtained an additional cash-credit for £3000 from the bank, and by a relative letter Mr Tod agreed to convey to the bank at any time required certain securities therein specified. The bank demanded the assignation of these securities within six days of the debtor's bankruptcy. In this state of matters Lord Ivory reduced the security, and the Court adhered. Lord Ivory says in his note—"The agreement neither constituted any present security for the debt, nor was it in any just sense contemplated or intended as one which should operate in that manner. It was in truth a mere device, and one of the most dangerous description, looking to the interests of the general creditors, to evade the operation of the statute." "What was intended was not a present but a future, or in the words of the statute, a further security." This being so, I am at a loss to understand the ground on which the Lord Ordinary hesitated to follow a precedent so plainly applicable. It is true Lord Gifford in the case of *Stiven* expressed a doubt whether the case of *Taylor* v. *Farrie*, decided three years afterwards by the whole Court, did not shake its authority. But the Lord President in the case of *Stiven* expressed a clear opinion that nothing had occurred to overrule the case of *Moncreiff* v. *Union Bank*, and that the case of *Taylor* proceeded on facts entirely dissimilar.

I think the interlocutor should be altered and decree of reduction pronounced in terms of the conclusions of the summons.

Lord Young—I am of the same opinion, and on the same grounds. I think the case of *Moncreiff* v. *The Union Bank* is exactly in point, and therefore conclusive unless we are to disregard it as an authority, which I am not prepared to do. On re-reading the case I was somewhat surprised that the Lord Ordinary thought the reverse, and accordingly I read again the observations which he made in his note on the case, but I cannot find his view more distinctly stated than in the passage where he says—"The case is an authority for the rule of law which may be extracted from it, but it is no authority for the construction of a different contract from that which was then in question." I rather think that that being interpreted means no more than I have understood is a common observation in England when the Court have thought a case ill-decided, though it had been decided by the House of Lords so as to be binding as an authority, but as yet as a case to be followed by itself. The Act of 1696 has given occasion to great diversity of opinion. It seems fated that it should continue to do so, and Lord Fullerton once said that it was altogether impossible to reconcile the decisions, but yet we have some propositions established. It does not apply to a sale—that is, to implementing a contract of sale—made by a bankrupt seller who has delivered goods after bankruptcy or within sixty days of bankruptcy. That has been provided for since the case of *Cranston* v. *Bontine* [*supra cit.*] by the Mercantile Law Amendment Act, which enacts that where the seller of goods becomes bankrupt with the goods in his possession, and the price has been paid, the buyer gets delivery. But the case is useful as establishing the principle that a buyer paying the price of goods bought and received, or a seller delivering goods which have been sold and been paid for, is not a case of satisfaction or security for debt. It is a case of exactly satisfying an obligation, but there is no debt secured or unsecured, satisfied or unsatisfied. It was on that principle that *Taylor* v. *Farrie* was decided. It was a case of purchase and sale, and all that was done was to give implement to the seller for what was paid for by the buyer. Here a security was given—a security providing for a prior debt—and so, admittedly, struck at by the Act 1696, unless the contract is binding and effectual in law to the contrary. I quite agree with the doctrine of Professor Bell quoted by the Lord Ordinary. I assent, however, to it only as meaning this—That the security bargained for is to be simultaneous with the debt and contemporaneous. If it is given as soon as may be, though the bankruptcy come on so soon that the actual giving of it be within the sixty days, it will be considered a simultaneous and contemporaneous security, just as in this case

which is familiar. A sale is none the less one for ready-money where an article is bought across the counter. The buyer gets delivery often before he takes out his purse to pay for it, or he may (even) get it before he goes to the bank to get the money to pay for it. So where there is an advance on a security stipulated for as instantaneous it will be considered as such, notwithstanding some days may elapse before the formalities are completed. Where the stipulation is not for a simultaneous security, but that the debtor shall give one over a particular subject whenever the creditor sees it for his interest to demand it, it is a different thing. Such was stipulated in *Moncreiff's* case, and Lord Ivory says it was a dangerous device to evade the statute. But for the device the Act would have applied in terms. The expression has arisen in recent years which perhaps was not so familiar in his, viz., "contracting yourself out of an Act." Now, I think people cannot contract themselves out of this Act of 1696. The Act 1696 is a public statute, and shall apply wherever circumstances make it applicable notwithstanding any contract between parties to the contrary. Here the contract was, "Go on and act as the owner of the shares, and whenever I desire it, you are to give a transfer, and it is also the contract between us that the Act 1696 shall not apply." That is a device to evade the operation of the statute, and an attempt by parties to contract themselves out of the statute. The result is that I agree with your Lordships that decree should be pronounced in favour of the pursuer.

Lord Craighill and Lord Rutherfurd Clark concurred.

The Court recalled the Lord Ordinary's interlocutor and decerned in terms of the conclusions of the summons.

Counsel for Pursuer — Dickson — Galbraith —Miller. Agents—W. & J. Burness, W.S.

Counsel for Defender — Pearson — Goudy. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Friday, January 28.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

THE SCOTTISH PROVIDENT INSTITUTION *v.* FLEMING AND OTHERS.

Writ—Delivery—Policy of Insurance—Destination to Wife "and Children of the Marriage."

A husband obtained a policy of insurance over his life bearing that certain persons as trustees, "as directed by writing under the hand of" the husband "for behoof of . . . his wife and the children of the marriage," whom failing his heirs and assignees, should, on his decease, be entitled to the sum contained in it. No such writing under his hand had been or ever was executed, and the policy remained in his possession and control without the trustees having ever heard of it for fifteen years, when he informed them of its existence, and obtained an assignation of it by them, and borrowed money on it. Thereafter, having executed a trust for creditors, he died, and the policy became payable. *Held* that the policy never having been delivered, its contents belonged to the trustee under the trust for creditors, and that no right in it had ever passed to the trustees for the wife and children.

On 6th September 1870 Nedrick Jarvie took out a policy for £1000 with the Scottish Provident Institution. The policy bore, that "whereas Jarvie had made payment of the sum of £35, 14s. 2d. sterling, being his first annual contribution to the funds of the said Institution in respect of the benefits thereinafter mentioned: Now these presents are to certify that in consideration of the premises the said Nedrick Jarvie has been duly admitted a member, and that Alexander Fleming of Craigenduinn, merchant, Glasgow; Alexander Miller junior, calico printer, Busby; and William Miller, manufacturer, residing in Busby, and the survivors and survivor of them, and the heirs of the last survivor in trust, as directed by writing under the hand of the said Nedrick Jarvie, for behoof of Mrs Eliza Miller or Jarvie, his wife, and the children of their marriage, whom failing the heirs and assignees of the said Nedrick Jarvie, shall be entitled to receive out of the funds of the said Institution, at the end of six months after the decease of the said Nedrick Jarvie, the sum of £1000 sterling, or such other sum as shall become due or payable upon the aforesaid contingency agreeably to the laws and regulations of the said Institution," subject always to the condition that Jarvie should regularly pay the annual premium in future years.

By assignation dated 6th and 7th April 1885 the trustees mentioned in the policy, with the consent of Mr Jarvie's wife and children, Mr Jarvie signing as administrator-in-law for his wife and minor children, conveyed the policy to Mr Jarvie on the narrative that Mr Jarvie had paid the whole premiums to keep the said policy in force, and had never delivered the policy to them, and that the fact of its existence had only become known to them when asked to sign the assignation, and that they had never acted in any way as trustees, and that Jarvie represented to them that the policy had all along been and remained in his possession undelivered, and that he had given no direction by writing under his hand, or otherwise as to the disposal of the said policy and the sum thereby assured, and that the donation or provision which he contemplated making had never been completed, but that the policy remained his own property and at his free disposal.

On 14th April 1885 Mr Jarvie obtained a loan of £230 from the Scottish Provident Institution on the security of the policy, and granted a bond and assignation therefor. The interest was paid up to 6th October 1885, but not subsequently.

By trust-deed dated 8th February 1886 Mr Jarvie conveyed his whole estates, heritable and moveable, to Mr James Martin in trust for his creditors. The trust-deed was duly intimated to the Scottish Provident Institution.