objections by the pursuers to his report and the answers thereto by the defenders: Recal also the same interlocutor in so far as it sustains the objections by the pursuers to the charge of £1070 for procuring the Parliamentary deposit, and disallows said charge: Repel the said objections of the pursuers to the said report by Mr Campion on the account of Mr W. H. Beattie: Approve of said report: Find that in terms thereof the defenders are entitled in the accounting in the present action to credit for the sum of £2494, 1s. 4d., being the taxed amount of said account: Find that the defenders are also entitled to take credit in the accounting for the sum of £1803, 17s. 5d., being the amount at which the Auditor of the Court of Session has taxed the account of Messrs A. & G. V. Mann: Find that the defenders are also entitled in the accounting to take credit for the commission paid by them to the Union Bank in connection with the said Parliamentary deposit, with interest thereon at such rate as may be allowed in the accounting."

Counsel for the Pursuers—Salvesen—C. K. Mackenzie. Agents—Graham, Johnston, & Fleming, W.S.

Counsel for the Defenders—H. Johnston—Clyde. Agents—A. & G. V. Mann, S.S.C.

Wednesday, July 15.

FIRST DIVISION.

[Lord Low, Ordinary.

ANTROBUS AND ANOTHER *v.* ACCOUNTANT OF COURT.

Statute—Court of Session Consignations (Scotland) Act 1895 (58 *and* 59 *Vict. c.* 19), *secs.* 3 *and* 5—*Titles to Land Consolidation Act* 1868 (31 *and* 32 *Vict. c.* 101), *sec.* 122—*Whether Enactment in Conveyancing Statute Repealed by Implication by Statute Dealing with Judicial Arrangements.*

Whatever the import of its general language may be, the effective and operative provisions of the Court of Session Consignations Act 1895 indicate that its scope is confined to consignations of money in judicial proceedings in the Court of Session.

Held accordingly that that Act does not by implication repeal sec. 122 of the Titles to Land Consolidation Act 1868, and therefore that money consigned in terms of that section was properly consigned.

Opinion reserved as to whether money directed by Act of Parliament to be consigned subject to the orders of the Court would fall under the provisions of the Consignations Act.

In 1895 Lord Overtoun and others, trustees of the Free Church of Scotland, called up a bond and disposition in security for £24,000 which they held over the estate of Kinnaird, and in virtue of the powers contained in the bond and disposition in security exposed the said estate for sale by public roup.

The estate was sold for £28,650, and on 11th November 1895, after applying that sum in liquidation of the bond and disposition in security and in various other payments, the said trustees, in terms of sec. 122 of the Titles to Land Consolidation Act 1868, consigned the surplus of the price, amounting to £2528, in the joint names of the sellers and purchaser in the National Bank of Scotland, Limited.

On 27th February 1896 Hugh Lindsay Antrobus and the Hon. Henry Dudley Ryder, the holders of a postponed bond and disposition in security for £12,000 over the estate of Kinnaird, presented a petition for authority to uplift the money so consigned upon the narrative that both the sellers and the purchaser declined to endorse the consignation receipt.

The Accountant of Court presented a note, in which, after citing sections 2 and 3 of the Court of Session Consignations Act 1895, quoted below, he prayed the Court to refuse the prayer of the petition until consignation should be made in terms of that Act.

The Titles to Land Consolidation Act 1868 (31 and 32 Vict c. 101), sec. 122, provides that the creditors selling under a heritable security shall, upon receipt of the price, be bound to hold count and reckoning therefor with the debtor and postponed creditors or any other party having interest, and to consign the surplus which may remain (after deducting the debt secured, interest and expenses) in bank "in the joint names of the seller and purchaser for behoof of the party or parties having best right thereto."

The Court of Session Consignations (Scotland) Act 1895 (58 and 59 Vict. c. 19), sec. 2, enacts—"In this Act the expression 'consignation' shall extend or apply to any sum of money consigned or deposited in any bank under orders of the Court, or in virtue of the provisions of any Act of Parliament, and shall include any sum of money . . . received by the Accountant of Court or by any of the clerks of Court, as the case may be, for deposit or consignation in any cause or proceeding, whether by order of Court or otherwise, and any sum of money lodged by way of caution or security in corroboration of any bond." Sec. 3—"The provisions of sec. 35 of the Judicial Factors Act 1869, and of sections 5 and 6 of the Bill Chamber Procedure Act 1857, so far as relating to consignations, are hereby repealed, and in lieu thereof it is hereby provided that the Accountant shall be the sole custodier of all consignations under this Act, and the Clerk of Court, in each process in which, after the passing of this Act, a consignation is made, shall forthwith lodge the same with the Accountant, whose receipt therefor shall be a discharge to such clerk." Sec. 5—"Within ten days after receipt of any consignation in money the Accountant shall lodge the same on

deposit-receipt in one of the banks in Scotland established by Act of Parliament or royal charter, and every deposit-receipt for money lodged in any of the said banks representing a consignation, whether lodged by the Accountant or any party to a cause, or by any other person, shall be taken in name of the Accountant and his successors in office, and shall bear on the face of it the name of the party or parties by whom or on whose behalf the consignation is made, and of the cause or proceeding or bond to which it relates."

On 20th March 1896 the Lord Ordinary (Low) reported the petition and note to the First Division.

Note.—"The question which is raised by the note which the Accountant of Court has lodged in this petition is whether the provisions of the Court of Session Consignation (Scotland) Act 1895 are applicable to the surplus of the price of heritable subjects sold by the creditor in a bond and disposition in security, and consigned in bank in terms of the 122nd section of the Titles to Land Consolidation Act 1868. . . .

"It was on the one hand contended for the Accountant of Court (1) that the consigned money fell within the definition of a consignation in the Act of 1895, being money consigned in virtue of the provisions of an Act of Parliament; and (2) that the provision of the 5th section of the Act of 1895 that every deposit-receipt for a consignation should be taken in the name of the Accountant, whether lodged by him or 'by any other person,' was wide enough to cover the case of money consigned under the 122nd section of the Titles to Land Act.

"On the other hand, the petitioners contended that if the Act of 1895 had been intended to apply to the case of the surplus price of property sold by a bondholder, the 122nd section of the Titles to Land Act would have been repealed. They further founded upon the last clause of the 5th section, which provides that the deposit-receipt shall bear on its face the names of the parties by whom or on whose behalf the consignation is made, 'and of the cause or proceeding or bond to which it relates.' The latter words are a repetition of the words of the 2nd section, which refer to money received by the Accountant or a Clerk of Court for deposit or consignation in any cause or proceeding, and to any sum received by way of caution or security in corroboration of any bond. In the case of the surplus price of lands sold by a bondholder, the receipt could not be in the form required by the 5th section, because in such a case there is no cause or proceeding in which money is consigned with the Accountant or a Clerk of Court, and the money is not consigned by way of caution or security in corroboration of any bond.

"The question appears to me to be not without difficulty, and as it is of importance that the scope of the Consignations Act should be authoritatively defined I have thought it right to report the case.

"As there is some hardship in keeping the petitioners out of their money until the Summer Session, I have granted warrant to them to uplift the consigned fund with the exception of the sum of £100, which will remain in bank until the question of the application of the Consignations Act is determined."

The arguments for the petitioners and for the Accountant appear sufficiently from the Lord Ordinary's note and the judgments.

At advising—

LORD PRESIDENT—The lands of Kinnaird were sold by the holders of a first bond and disposition in security; and the bondholders, after satisfying their own debt, consigned the surplus, in terms of the 122nd section of the Titles to Land Consolidation (Scotland) Act 1868, in the joint names of the seller and purchaser, for behoof of the party or parties having best right thereto. The petitioners are second bondholders for a sum much exceeding the consigned money, and they ask warrant to uplift it. Their right to have this is indisputable, unless it is affected by the question raised by the Accountant of Court.

That question is this—the consignation was made in November 1895, and in the June previous the Court of Session Consignation (Scotland) Act had passed and came into operation. The Accountant says that this consignation ought to have been made in his name, in virtue of the Consignations Act, and not in the names of the seller and purchaser, as prescribed by the Act of 1868.

The question thus raised is whether the provision in the Act of 1868 is repealed by the Act of 1895.

It was not made clear to us what effect, if any, an affirmative answer would have had on the right of the petitioners to have up this money; and I have not realised any valid reason for refusing the prayer whichever answer is given. But this of itself suggests some doubt of the soundness of the Accountant's theory of the legislation under consideration,

Proceeding, however, to consider the question raised by the Accountant, it is well to put ourselves in the position of the first bondholders, and to ask which was their true statutory guide when considering in whose name to consign. The matter in hand, be it observed, is in its nature highly technical, affecting heritable title and forming part of a conveyancing system embodied in statute. For this exact and particular case sec. 122 contains a precise and peremptory direction—the consignation is to be made in the names of the seller and purchaser. Let it be noted also that the selling bondholder does not require to go near a court of law—the Legislature directs him as to the due mode of exercising his rights for himself. The enactment of 1868, therefore, is in a totally different chapter of law from that which regulates the disposition of moneys in the hands of law courts or of suitors in law courts.

Now, the Court of Session Consignations Act, whatever other regions it may be proved to touch or invade, is, at all events *prima facie* an Act about judicial arrangements. I do not speak merely of the title,

as prescribed by sec. 1, but of the Act read as a whole.

But then the Accountant has drawn our attention to the effect of the 2nd section on the 3rd section, and to the relative provision of the 5th section, and we must give heed to the definition of consignation in the 2nd section as "any sum of money consigned under any Act of Parliament," and to the very general words of sec. 5, which speak of the consignations falling under the Act as being in some instances made by "any other person" than the Accountant or any party to a cause.

Now, for myself, I am bound to say that, if those words are to be taken in their primary sense, they would cover the present case, which is that of a consignation made under an Act of Parliament. But then it may be that the other parts of the Act, and the scheme of the Act generally, show that these words are not used in their full latitude, but are limited by the practical provisions of the Act.

Now, if the operative provisions of the Act are examined it will be found that there are effective provisions about consignations made in the course of all sorts of judicial proceedings, but there are no effective provisions which can be applied to such a consignation as we are now considering, which is made in relation to no judicial proceeding. Adhering, as I desire to do, to the question directly before us, I cannot discover any indication that the Legislature intended, incidentally to a Court of Session Act, to revise the Conveyancing Code in a matter not relating to the Court of Session. It is, I think, certain that in a matter of this kind there would have been a business-like revision and adjustment of the existing statutory regulations, and express provisions or an express repeal of conflicting provisions. The absence of any such evidence of intention is strong support to the limited view of the Act suggested by its title, and this view is further confirmed by the complete absence of any machinery for compelling conformity with the provisions of the Act if it have the wider sense.

The leading enactment in the statute is in the 3rd section. The pith and gist of the Act is that the Accountant "shall be the sole custodier" of consignations falling under the Act. Now, whereas the Act, by practical steps puts judicial consignations into his custody by the enforced action of officials, there are no similar steps taken for his even so much as obtaining the custody of consignations like the present.

Here, for instance, are lands being sold all over Scotland, some small and some large, and consignations being made in all the branches of all the banks. If the Legislature had intended to alter the Conveyancing Code in order to obtain the custody desired, it would of course have set up some machinery for obtaining for the Accountant, from the banks or from the consigners, immediate intimation of consignations. As things stand, it must be by pure accident if the Accountant ever hears of such consignation, for it is not his duty to organise a system of inquisition, nor is it the duty of anyone else to inform him of particular cases.

Such considerations lead me to the conclusion that the general words of the Act of 1895 must be checked by its effective provisions, and, in particular, that it was not intended to repeal or alter the 122nd section of the Act of 1868. The Acts of Parliament mentioned in the general words of the Court of Session Consignations Act are probably the Acts which require consignation in judicial proceedings. But those words do not necessitate or warrant the conclusion that they apply to Acts of Parliament dealing with matters outside the system which is effectively dealt with by the Act. The effective and operative enactments of a statute evidence and determine its scope. It is not to be lightly concluded that the Legislature would make an excursion from what is *prima facie* in its scope to unsettle conveyancing practice, and while not expressly repealing a statutory rule of that practice (against which no one has ever heard any complaint), to prescribe a proceeding which would not result in the achievement in the case of such consignations of that "custody" which is the object of the Act. Accordingly, I am of opinion that the 122nd section of the Act of 1868 was rightly followed in the case before us.

LORD ADAM—This case has been reported by the Lord Ordinary in order that an authoritative decision of the Court may be obtained as to the scope of the Court of Session Consignations (Scotland) Act 1895, and in particular whether its provisions are applicable to the surplus of heritable subjects sold by the creditor in a bond and disposition in security, and consigned in bank in terms of the 122nd section of the Titles to Lands Consolidation Act 1868.

That section expressly directs that such surplus shall be consigned in bank "in the joint names of the seller and purchaser for behoof of the parties having best right thereto." That was done in this case, and the deposit-receipt taken in the terms prescribed by the Act.

The Accountant of Court, however, maintains that this consignation was erroneous, and that the money should have been deposited in his name, and the deposit-receipt transmitted to him.

As I understand, he founds this contention on the 2nd section of the Court of Session Consignations Act, which enacts that in that Act the expression "consignation" shall extend and apply to any sum of money consigned or deposited in any bank under orders of the Court, "or in virtue of the provisions of any Act of Parliament," and on the 5th section, which enacts that "every deposit-receipt for money lodged in any of the said banks," that is, banks in Scotland established by Act of Parliament or royal charter, "representing a consignation, whether lodged by the Accountant or any party to a cause or by any other person, shall be taken in name of the Accountant and his successors in office"—and he argues that this money is

consigned in bank in virtue of the provisions of an Act of Parliament, that it is therefore a consignation to which the Act applies, and that therefore the deposit-receipt should have been taken in name of the Accountant. If this construction of the Consignation Act be correct, there can be no doubt that its scope is very wide indeed. It would not only repeal the express provision as to the mode of consignation in the case in question—but similar provisions in many other Acts which contain express directions as to the mode and manner in which money should be consigned. I should demur to the proposition that such express provisions contained in other Acts are to be held as repealed by the mere general words used in this Act. But I do not think that the Act was intended to have or has any such wide reaching effect. I think it deals only with consignations of money in the Court of Session, and the short title of the Act, which is, "the Court of Session Consignations (Scotland) Act 1895," certainly suggests that. Then, again, the wide definition of the word consignation which is to be found in the 2nd section is merely a definition of the word as used in that Act, and has no effect except in so far as it is brought into operation by the subsequent clauses of the Act.

The 3rd section obviously refers solely to the Court of Session and to its officers, the Accountant and clerks of Court.

The 4th section refers solely to the Court of Session, and to the duties of the Accountant.

The 5th section provides that the Accountant, within ten days after the receipt of any consignation in money, shall lodge the same in one of the banks of Scotland established by Act of Parliament or royal charter—so far the clause relates only to the Court of Session and its officer. Then it goes on to provide for the terms in which deposit-receipts are to be taken, and enacts that every deposit-receipt for money lodged in any of the said banks—that is, banks established by Act of Parliament or royal charter — representing a consignation, whether lodged by the Accountant, or any party to a cause, or any other person, shall be taken in the name of the Accountant and his successors in office. The Accountant says, "any other person" here means any other person whatever, whether a party to a cause or concerned with a cause or not. I do not think so, because the clause goes on to provided that the deposit-receipt shall bear on the face of it the name of the party or parties on whose behalf the consignation is made, and of the cause or proceeding or bond to which it relates. Therefore the deposit-receipt referred to is a deposit-receipt relating to some cause or proceeding which is to be set forth on the face of it. I do not think that the clause has any wider application than to causes and proceedings. It will be observed that it applies only to deposit-receipts for money consigned in banks established by Act of Parliament or by royal charter—presumably because it is only in such banks that the Court orders consignation. But there is no such limit to consignations under the Titles to Land Act, and accordingly the money in this case was consigned in the National Bank, which is not one of these banks, and the 5th section on which the Accountant relies does not in terms apply to it.

I think the Accountant must make out that the effect of the Consignations Act is not merely to alter the parties in whose names the deposit-receipt is to be taken, but also to limit the banks in which consignation may be made. I do not see how otherwise he can bring the case under the 5th section—and I see no warrant for that.

The 6th section provides that the Accountant shall be responsible for the safe custody of the consignations made with him, and shall be bound to account for the same to the person having right thereto, subject to the orders of Court. It therefore relates solely to the Court and its officers.

These are the only clauses of the Act which were referred to as bearing on the construction of the Act for which the Accountant contends. In my view, there is nothing in any of these clauses directing in whose names or in what terms deposit receipts shall be taken, except in the 5th, and that relates only to deposit-receipts for money consigned in causes or proceedings in Court, and therefore that the Act has no application to parties in the petitioners' position.

I may be permitted to add a few words as to the results which would follow if effect were given to the construction of the Act contended for by the Accountant. Take, for example, consignations under the Titles to Land Act, under which the present question arises. I suppose these consignations are more or less numerous all over Scotland. I have never heard of any inconvenience arising from the present practice, and I can conceive no reason why the deposit-receipts should be taken in the name of the Accountant of Court and all sent up to Edinburgh, with the result that the money could only be uplifted by incurring the expense of an application to the Court. In most cases, as I understand, the money at present is uplifted by the seller and purchaser simply endorsing the deposit-receipt. Why that facility was not given effect to in this case I do not know.

Another example may be taken from the Bankruptcy Statute of 1856, the 129th section of which provides that all disputed dividends shall be deposited in bank in names of the trustee and commissioners until the appeals are disposed of. It does not occur to me that it would be desirable that these deposits should be deposited with the Accountant—only to be got up again by an application to the Court.

Or take the Sheriff Court Consignations Act, which was passed only two years ago, and which contains provisions applicable to the Sheriff Court very similar to those in the Court of Session Consignations Act.

By section 4 of the Sheriff Court Act

all consignations of not less than £5 are directed to be deposited in bank, and the deposit-receipts therefor taken in the name of the Sheriff Clerk and his successors in office. I cannot suppose it was intended that this should be repealed, and the deposit-receipts for all these small sums taken in the name of the Accountant of Court and remitted to him, yet that would be the result of the Accountant's contention, instead of their remaining as at present subject to the orders of the Sheriff, as no doubt they ought to be.

I have no doubt there are numerous other statutes which would be similarly affected.

On the whole matter I am of opinion that the money was properly consigned in this case, and that warrant should be granted to the petitioners to uplift the balance remaining in bank.

LORD M'LAREN—I concur, but I reserve my opinion as to the effect of any Act of Parliament directing money to be consigned subject to the orders of the Court. As at present advised, I should rather apprehend that money so consigned would fall under the provisions of the Consignations Act.

LORD KINNEAR—I am of the same opinion. I concur, as I understand your Lordships also do, in what Lord M'Laren has said.

The LORD PRESIDENT and LORD ADAM intimated their concurrence with Lord M'Laren's observation.

The Court granted the prayer of the petition so far as the balance remained consigned, and found the Accountant liable in expenses to the petitioners.

Counsel for the Petitioners—Dundas. Agents—Dundas & Wilson, C.S.

Counsel for the Accountant of Court—Cooper. Agent—W. J. Dundas, C.S., Crown Agent.

Wednesday, July 15.

SECOND DIVISION.

[Dean of Guild Court, Portobello.

HOY *v.* MAGISTRATES AND COUNCIL OF PORTOBELLO.

Burgh—Dean of Guild—Dwelling-House—Open Space Attached to Dwelling-House—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. c.* 55), *sec.* 170.

By section 170 of the Burgh Police (Scotland) Act 1892 it is enacted—"Every building erected for the purpose of being used as a dwelling-house . . . shall have all the rooms sufficiently lighted and ventilated from an adjoining street or other open space directly attached thereto equal to at least three-fourths of the area to be occupied by the intended building, and such space shall be free from any erections thereon other than water-closet, ashpit, coal-houses, or other conveniences, all which conveniences shall, as to height, position, and dimensions, be subject to the consent and approval of the commissioners."

Where a proprietor proposed to build in a burgh two tenements of dwelling-houses parallel to one another, both facing public streets, and separated by an open unbuilt-on space belonging to him—*held* that in calculating the open space required by the above section to be attached to the back of each tenement, the whole area between the tenements was to be taken into account.

Benjamin William Hoy presented a petition to the Dean of Guild Court of Portobello for warrant to pull down certain buildings on ground facing the Promenade, Portobello, and to erect tenements of shops and dwelling-houses thereon facing the Promenade and Straiton Place.

The following statement of the facts is taken from the note to the interlocutor of the Dean of Guild:—"The petitioner is proprietor of buildings fronting the Promenade on the sea-beach occupied as a temperance hotel and baths, with vacant ground at the side and back thereof. He proposes to pull down and remove the buildings so as to have an area of vacant ground on which to erect certain tenements of shops and dwelling-houses. This area is bounded on the north partly by the Promenade and partly by a two-storey building belonging to and occupied by John Grant, publican; on the west partly by said building and partly by Bath Street; on the south by Straiton Place, and on the east by a lane running from Straiton Place to the Promenade. The petitioner claims warrant to build upon the Promenade frontage two tenements of shops and dwelling-houses, three storeys in height above the shops, with attics, containing sixteen separate dwellings, and one tenement of dwelling-houses, four storeys in height, with attics containing ten separate dwellings, and upon the Straiton Place frontage, four tenements of dwelling-houses, three storeys in height, with attics containing thirty-seven separate dwellings. The tenements facing the Promenade and those facing Straiton Place will be built on parallel lines with a vacant piece of ground between them. This ground is not of sufficient size to allow of appropriating to the Promenade tenements a space of three-fourths of the area to be occupied by them, and also of a like space for the Straiton Place tenements although it is much more than sufficient for either of them. The full measurement necessary to meet both of these requirements would be 1,489 square yards or thereby, while the superficial area of the ground in question is only 1072 square yards. The proposed tenements are shown on the block plan to be each 45 feet deep from the street fronts, and the space between the back walls measures 53 feet across. The width of Straiton Place is 30 feet, including footpaths."