Lord Justice-Clerk (Moncreiff) observed—"The views which your Lordships have expressed will have different effects in different circumstances. All will depend on the circumstances of the particular case." That seems to me to suggest caution in laying down or accepting any rigorous or absolute definition of the terms used by the Act. We must take the facts of the particular case and see whether they answer the description of the statute. There can be no question that in ordinary language to "frequent" a place means not to be found there on a single occasion but to visit the place often, to be much there, to resort to it often. But there is no general rule to determine how often the visits must be repeated, or over how long a period. In the present case I agree with your Lordships for the reasons you have given that the facts justify the finding that the appellant was in truth frequenting the street for the purpose of bookmaking.

The Court dismissed the appeal.

Counsel for the Appellant — A. S. D. Thomson. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Respondent — Cowan. Agents—Campbell & Smith, S.S.C.

COURT OF SESSION.

Friday, January 16.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

STEVENSON *v.* WILSON.

Reparation—Slander—Judicial Slander—Privilege — Statements on Record by Trustee in Bankruptcy — Malice — Averments of Malice — Facts and Circumstances Inferring Malice.

A trustee in bankruptcy brought an action of reduction of a transfer of certain shares in favour of A, on the allegation that the transfer was granted within sixty days of the bankruptcy. In this action the trustee averred that the transfer was obtained by A in the knowledge that the bankrupt was insolvent, and was an attempt to constitute a fraudulent and illegal preference in favour of A. There was also a plea-in-law to the effect that in respect of these allegations the pursuer was entitled to decree. In this action A obtained decree of absolvitor. A thereafter brought an action of damages against the trustee founding on the statements made regarding him in the former action. He averred that the trustee knew that these averments were untrue, and made them maliciously and without probable cause, with the object of inducing A to relinquish his rights. *Held* (*aff.* judgment of Lord Kincairney, Ordinary) that the defender was entitled to absolvitor, in respect that he was privileged in making the statements complained of, and the pursuer had failed to set forth facts and circumstances from which malice might reasonably be inferred.

In August 1899 John Wilson, C.A., Glasgow, was appointed trustee on the estate of James Colquhoun, writer, Glasgow, who was sequestrated on 31st July 1899. He had previously been employed by certain creditors to make an examination of the affairs of Colquhoun's firm.

In January 1900 Wilson, as trustee, raised an action in the Court of Session against Daniel Macaulay Stevenson, merchant, Glasgow, concluding for reduction of a transfer of certain shares in a company known as J. M. Smith, Limited, bearing to be granted by Colquhoun's wife and daughter in favour of Stevenson. In this action Wilson averred that the shares in question, although in the name of Mrs and Miss Colquhoun, were really the property of James Colquhoun the bankrupt. He also averred as follows:—"The said transfer in favour of the defender Daniel Macaulay Stevenson was made over and delivered voluntarily in security of prior debt and within sixty days of the bankruptcy of the said James Colquhoun. Moreover, at the date of said transfer the said James Colquhoun was insolvent, and was known by the defender Daniel Macaulay Stevenson to be insolvent. The said transfer was obtained by him for the purpose of obtaining security for the advances made by him, and so securing a preference over the other creditors of the said James Colquhoun. The said transfer was an attempt to constitute a fraudulent and illegal preference in favour of the said Daniel Macaulay Stevenson." "Moreover, the said transfer is not signed by Mrs Colquhoun and her daughter. Both of their signatures, or at all events that of the said Jessie Macdonald Colquhoun, are false and fabricated, and were not made or adhibited by them. The pursuer believes and avers that the signatures in question were written or fabricated by the bankrupt James Colquhoun, or by some one acting in concert with him. Or otherwise, if the signatures are genuine, they were adhibited after 1st June 1899, the pretended date of said transfer."

The third plea-in-law was as follows:—"The said transfer having been obtained by the said Daniel Macaulay Stevenson in the knowledge of the said James Colquhoun's insolvency and for the purpose of securing an illegal or fraudulent preference over the other creditors of the said James Colquhoun, the pursuer is entitled to decree in terms of the second conclusion of the summons."

In this action of reduction, after a proof, the defender was assoilzied.

Thereafter Stevenson brought the present action against Wilson concluding for £1000 damages for slander alleged to have been contained in the record in the action of reduction. In this action, after quoting the passage from the record and the plea-in-law above quoted, the pursuer made the

following averments:—"Said statements are of and concerning the pursuer, and are false and calumnious. They were intended by defender to represent, and did represent, that the pursuer was a dishonest person, that in stating that the transfers were delivered to him duly signed on 1st June 1899 the pursuer had deliberately stated what was untrue, that he conspired with the said James Colquhoun to defraud the latter's unsecured creditors, that he was guilty of forgery or connivance at forgery, that he had uttered or connived at the uttering of forged documents, and that he had knowingly made use of a document which he knew to be false." "In making said statements of and concerning the pursuer the defender had no reasonable or probable cause for believing them to be true; on the contrary, he well knew them to be false, and the said statements were made by him maliciously and for the purpose of intimidating the pursuer (who is a prominent citizen and a magistrate and councillor of the city of Glasgow, and naturally reluctant to see such charges, however unfounded, appearing against him in the public prints, especially when made by a professional accountant on his responsibility as a trustee in a notorious bankruptcy), and compelling him to relinquish said shares and rank as an ordinary creditor on the estate of James Colquhoun. The defender some months before the action was raised had satisfied himself by inquiry that the pursuer had actually advanced to the said James Colquhoun said sums of £3000 and £1200 on the dates mentioned against said transfers, and also that said transfers were not an attempt to constitute a fraudulent and illegal preference in favour of the pursuer. The defender had also satisfied himself that immediately prior to 1st June 1899 the said James Colquhoun was not indebted to the pursuer in any sum. The pursuer had on 1st August a meeting with the defender at the defender's own request, when he gave him full particulars of the advances, and on the same date he wrote a letter to the defender, also at the defender's request, confirming these particulars in the following terms:—'1*st August* 1899.—Dear Sir—*Colquhoun*—Referring to the conversation I have just had with you (5·30 P.M.), the exact dates of the advances are June 1st £3000, June 26th £1200. On the former date Dr Colquhoun called here and asked the loan of £3000, tendering in security the "*Evening News*" shares, and promising to repay the money within a month or two and in no case later than the beginning of September. The loan on 26th was given on his assurance that it would be repaid within three days. He gave me a cheque for the amount, but asked on the 29th that it be not presented until he saw me. On the 30th he telephoned to me that he had not been able to call, but would do so shortly, and meantime not to cash the cheque. He never called.—Yours truly,' (Signed) 'D. M. STEVENSON.' The defender had also before raising said action made an examination of the said James Colquhoun's books and bank accounts, and had satisfied himself that the statements complained of were false." "The proof in said action of reduction was set down for 17th December 1901, and before that date the pursuer, through his agents, approached the defender and requested him to withdraw the statements complained of, as he had no evidence to lead in support of them. The defender, in pursuance of his scheme of intimidation already referred to, declined to accede to that request, and the case accordingly went to proof on the whole of the defender's averments. Having failed, however, in his object to intimidate the pursuer as aforesaid, and knowing that he had no evidence whatever to lead in support of his charges against the pursuer, the defender at the proof abandoned that part of his case."

In his defence Wilson pleaded—"The statements complained of being made by a party litigant without malice and on probable cause, and being relevant to the cause, the defender is entitled to absolvitor."

On 5th July 1902 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Finds that the averments made in the action referred to in the summons were pertinent to the questions raised in that action, and were therefore privileged: Finds that there are no relevant averments of malice on the part of defender in making the said averments: Finds therefore that the averments of the pursuer are irrelevant to support the conclusions of the action: Therefore disallows the issue proposed by the pursuer, and assoilzies the defender from the conclusions of the summons, and decerns."

"*Opinion.*—This is an action of damages for judicial slander, brought by D. M. Stevenson, merchant, Glasgow, against John Wilson, C.A. The slander is said to have been uttered in an action by Mr Wilson, as trustee on the sequestrated estate of John Colquhoun, against, *inter alios*, the present pursuer D. M. Stevenson. That action concluded for reduction of a transfer of certain shares bearing to be dated 1st June 1899, and bearing to be granted by the wife and daughter of James Colquhoun in favour of Mr Stevenson. It was averred in that action that these shares, although in the name of Mrs and Miss Colquhoun, were really the property of James Colquhoun, and it was averred that the transfer in favour of Mr Stevenson was delivered to him 'voluntarily in security of prior debt, and within sixty days of the bankruptcy of the said James Colquhoun, when he was insolvent and was known by the defender Stevenson to be so. It was averred that 'the said transfer was obtained by him for the purpose of obtaining security for the advances made by him, and so securing a preference over the other creditors of the said James Colquhoun. The said transfer was an attempt to constitute a fraudulent and illegal preference in favour of the said Daniel Macaulay Stevenson.'

"It was further averred that the transfer was not signed by Mrs Colquhoun or her daughter, but that their signatures, or at

least the signature of Miss Colquhoun, were 'false and fabricated, and were not made or adhibited by them. The pursuer believes and avers that the signatures in question were written or fabricated by the bankrupt James Colquhoun, or by some one acting in concert with him. Or otherwise, if the signatures are genuine, they were adhibited after 1st June 1899, the pretended date of said transfer.'

"In that action the pursuer of it—that is, Mr Wilson the present defender—pleaded, 'The said transfer having been obtained by the said Daniel Macaulay Stevenson in the knowledge of the said James Colquhoun's insolvency, and for the purpose of securing an illegal or fraudulent preference over the other creditors of the said James Colquhoun, the pursuer is entitled to decree in terms of the second conclusion of the summons.'

"The transfer in question bore date 1st June, and Colquhoun's estates were sequestrated on 31st July following. The present pursuer Stevenson lodged defences in the action, and a proof was led. I do not know whether any question was raised as to the computation of the sixty days before bankruptcy, but in any case the defence was successful, Mr Stevenson was assoilzied, and I suppose his character was cleared from all the imputations made against him in that action. He has, however, raised the present action of damages, and has been allowed to lodge issues, which allowance, however, leaves open to the defender his plea that the action is irrelevant.

"The issue lodged by the pursuer is whether the statements which have been quoted above were made concerning him, and were false, calumnious, and malicious.

"The pursuer has not suggested any innuendo, but has merely quoted the record.

"The defender has maintained that the action is irrelevant, and that no issue can be allowed.

"He maintained that the record contained nothing defamatory of the pursuer. I understood him to maintain that the averment in the first passage quoted, that the transfer was an attempt to constitute a fraudulent and illegal preference in favour of the pursuer, and that the language of the plea-in-law, quoted in the record, imputed no blame or dishonesty to the pursuer, but truly imported nothing except that he had brought himself within the scope of the Act 1696, and that the words used were words of style, not words charging dishonesty or fault. I do not concur in that view, and think that this part of the record clearly and unambiguously imputed dishonesty to the pursuer, and would have been actionable had the defender not been in a position of privilege.

"With regard to the allegation of forgery, the defender maintained that it was not directed against Stevenson at all but only against Colquhoun, and that it is quite impossible to read the words as conveying any charge of that kind against Stevenson. I agree in that, and would in any view disallow this branch of the issue as it is framed, that is, without an innuendo. But in condescendence 7 the statements are innuendoed as representing that the pursuer had conspired with Colquhoun to defraud Colquhoun's unsecured creditors and was guilty of forgery or connivance at forgery, that he had uttered or connived at the uttering of forged documents, and that he had knowingly made use of a document which he knew to be false; and I understood the pursuer's counsel to ask to be allowed to add this innuendo or some such innuendo to his issue, if he could not get an issue without an innuendo. Not without hesitation I have come to think that the words might be stretched to cover this innuendo or some innuendo of a similar kind, and I have no doubt that the words used so innuendoed would undoubtedly be defamatory in an unprivileged cause. In order to add this innuendo, however, it would be necessary to recast the whole issue. But I am unable to assent to the argument for the defender that the record in the action of reduction contained nothing which was defamatory. I am of the contrary opinion.

"But the defender had another objection to the issue which is of more importance, and arises from the circumstance that this is a case of judicial slander, and that the defender is in a highly privileged position. His privilege arises not only from the fact that he used the words complained of with the privilege of a litigant, but also that he was in an exceptionally privileged position. Because he was not pleading for himself but for Colquhoun's creditors, and was without any personal interest in the averments which he made and the pleas which he submitted to the Court. In an ordinary action it is the privilege of the litigant to put on record the averments and pleas which he believes to be true and sound and for his advantage, but in an action by a trustee in bankruptcy that is not only his privilege but his duty. Hence I think that the action complained of had as much privilege as any action could have. Further, the peculiar character of the case is not to be overlooked. Colquhoun's bankruptcy was notoriously of a very scandalous and dishonest character, and called for the most stringent, severe, and searching scrutiny by the trustee. In these circumstances, and seeing that no doubt is or could be suggested as to the relevancy and pertinency of the statements complained of as defamatory, there can be no question about the obligation of the pursuer to prove malice, and that obligation has not been disputed, and the pursuer has accordingly put malice in his issue. But the real question in this case is not whether malice must be proved but whether malice is sufficiently averred.

"It is, I think, settled in practice that an action of damages for judicial slander is one of these actions in which it is necessary not only to aver malice generally but also to aver the facts and circumstances by which the defender's malice has been evinced and evidenced. The following authorities appear to establish this rule of practice conclusively:—*Scott* v. *Turnbull*, July 18, 1884, 11 R. 1129; *Gordon* v. *British*

and Foreign Metaline Company, November 16, 1886, 14 R. 75; *Beaton* v. *Ivory*, July 19, 1887, 14 R. 1057, *per* President; *Williamson* v. *Umphray*, 17 R. 905, 913; *Selbie* v. *Saint*, November 8, 1890, 18 R. 88.

"The real and somewhat difficult question in this case is whether the pursuer has averred such facts and circumstances, looking to the peremptory and exigent duty of the trustee in bankruptcy, the character of the bankrupt, and the suspicious nature of the whole circumstances. I am of opinion that the facts averred by the pursuer afford no indication at all of malice in the mind of the defender, and that on that ground, viz., that malice is not relevantly averred, the action must be held to be irrelevant, and the defender must be assoilzied.

"Another question was argued, with which, however, I do not require to deal, viz., whether, if an issue had been allowed it would have been proper to put in issue want of probable cause. It is, I think, not usual to insert these words in an action of damages for judicial slander of an ordinary sort. But if the litigant whose language is complained of acts in the fulfilment of a duty as well as in the exercise of a right the point may be a doubtful one, although I do not think it of importance."

The pursuer reclaimed, and argued—It was not disputed that the pursuer in an action like the present must not only aver malice but set forth circumstances from which it could reasonably be inferred. But it was sufficient to aver that the pursuer had made the statements complained of knowing them to be untrue and from an ulterior motive— *Williamson* v. *Umphray*, June 11, 1890, 17 R. 905, 27 S.L.R. 742. That was clearly averred here, the ulterior motive being to induce the pursuer to desist from a just claim.

Argued for the respondent—This was a case of judicial slander, and the defender was therefore entitled to a high decree of privilege. It was not enough for the pursuer merely to say that the defender had no grounds for his statement—*Beaton* v. *Ivory*, July 19, 1887, 14 R. 1057, 24 S.L.R. 744. That was all that was really averred, because in the circumstances the question at issue in the action of reduction was a question of law, and not of fact. A trustee in bankruptcy, in circumstances like the present, was entitled to attempt to reduce a security obtained within a short time before bankruptcy, even if his own opinion was that it had been granted outside the sixty days' limit.

LORD PRESIDENT — There are three findings in the interlocutor which is submitted for review, the first being — "That the averments made in the action referred to in the summons were pertinent to the questions raised in that action and were therefore privileged." I do not understand that in the argument this proposition was impugned; on the contrary, as I understood, the whole argument proceeded on the assumption that the statements were privileged. The second finding which is challenged is this—"Finds that there are no relevant averments of malice on the part of the defender in making the said averments."—that is to say, that it is not well alleged that the statements were made maliciously; and the question whether this finding is right depends upon the terms of the condescendence. It is material in arriving at a conclusion on this, the only point disputed, to advert to the nature of the averments generally, and the circumstances under which they were made. In condescendence 2 it is stated that in July the pursuer presented certain transfers to J. M. Smith, Limited, for registration, and that the company raised the question as to his right to be registered; that in the middle of July the defender was consulted, it is not said by whom, but I think it has been assumed that it was by the creditors, or other persons interested in the matter—that is by the creditors of James Colquhoun and his firm—and that he made up a statement of their affairs. I understand that this averment is introduced for the purpose of showing that the defender was a person who had some knowledge in regard to the affairs of James Colquhoun. It is then stated that "On 1st August 1899, after the sequestration, but before his appointment as trustee, the defender requested an interview with the pursuer, at which he received full information regarding the pursuer's transactions with James Colquhoun, and at his request the pursuer on the same day put the information in writing by sending him" a letter. The defender seems to have been at this time in an intermediate position between a purely private person and a trustee in bankruptcy, and he did not act rashly, but communicated with the pursuer, and gave him an opportunity of supplying him with all the information which he could supply with respect to his dealings with the bankrupt. The next statement in the condescendence which is material is contained in article 3, where the grounds are narrated upon which he laid claim to the 142 ordinary B shares and 69 preference shares — being that the signatures of the said Mrs and Miss Colquhoun on the transfer granted by them were forgeries, and that the said James Colquhoun, or someone acting in concert with him, had forged said signatures. He also claimed the shares on the ground that the said transfer constituted an illegal preference over the other creditors of James Colquhoun in favour of the pursuer." Now, that is admitted, and so far as I see, there is down to this point nothing from which any issue could be extracted, because this statement was apparently according to the fact, unless it is to be imputed that the present pursuer had forged the signatures. It is not easy to see what bearing this averment has unless it shows that when the defender made the statements which he afterwards did make he had knowledge of the circumstances of Colquhoun's failure and sequestration which should have prevented him from making these statements. But the condescendence goes on in the fourth

article to say that notwithstanding the information in possession of the defender he raised an action of reduction. I suppose he was perfectly entitled to do so. He may not have believed the information given to him, and no wonder. But he wanted at all events to try the question in regard to it, and therefore down to this point it seems to me that no relevant ground of complaint is stated.

But then it is said that in article 6 of the condescendence he averred that "The said transfer in favour of the defender Daniel Macaulay Stevenson was made over and delivered voluntarily in security of prior debt, and within sixty days of the bankruptcy of the said James Colquhoun. Moreover, at the date of said transfer the said James Colquhoun was insolvent, and was known to the defender Daniel Macaulay Stevenson to be insolvent. The said transfer was obtained by him for the purpose of obtaining security for the advances made by him, and so securing a preference over the other creditors of the said James Colquhoun." In short, as the article puts it, "the said transfer was an attempt to constitute a fraudulent and illegal preference in favour of the said Daniel Macaulay Stevenson." Now that, it will be observed, is a statutory fraud because it is founded upon the sixty days, and I do not see that there is anything to show that, upon the information which this defender had at the time, he was not within his right in making that statement. He was in court when he made it, as he believed, or may well be held to have believed, in the prosecution of a just claim against Stevenson.

The next article (7) related to the signatures of Mrs Colquhoun and her daughter being forged, and he says they "were written or fabricated by the bankrupt James Colquhoun, or by someone acting in concert with him." It is not said that the pursuer Mr Stevenson had anything to do with that. There is no innuendo, so far as I can see, to suggest that Mr Stevenson was a person who had acted in concert with James Colquhoun in forging the signatures of his wife and daughter. More was attempted to be made of the third plea-in-law, which is referred to in Cond. 6. But it is to be observed that it is only a plea-in-law, and it is founded on the legal meaning of the statement of facts previously made. It is to the effect that "the said transfer having been obtained by the said Daniel Macaulay Stevenson in the knowledge of the said James Colquhoun's insolvency and for the purpose of securing an illegal or fraudulent preference over the other creditors of the said James Colquhoun" it ought to be reduced. That is no doubt an averment, and quite a plain and unambiguous one, charging an attempt to get an illegal or fraudulent preference, which, as we know from the articles of the condescendence which I have already read, meant a preference in respect of something given within sixty days of the bankruptcy of Colquhoun. I do not see any averments relevant to infer anything except a statutory fraud or sixty days' preference, and therefore it does not appear to afford any ground for the present action.

The pursuer seems to have felt that he could not merely upon these averments ask or expect an issue, and accordingly in condescendence 7 he makes an innuendo out of what he has previously said, and alleges that these statements "were intended by the defender to represent, and did represent, that the pursuer was a dishonest person, that in stating that the transfers were delivered to him duly signed on 1st June 1899 the pursuer had deliberately stated what was untrue," and so on. Now, that is merely his innuendo or interpretation of what has been said, and in judging of the relevancy in a case of this kind we are not bound to take the innuendo, but we are entitled to see whether the things stated warrant or sustain it.

I do not think that there is much more that it is necessary to advert to, and the questions come to be (first) whether the case is one requiring averments of malice, and (secondly) whether any relevant averments of malice have been made. I agree with the Lord Ordinary that there are no relevant averments of malice on the part of the defender in making these statements. He was making the statements in support of what he believed to be a legal right, and must be supposed to have made them in the performance of a duty, because it was one of his duties as a trustee when appointed, or probably at an earlier stage when asked extra-judicially to make the inquiries and to investigate the case. I do not find that throughout the averments made in this condescendence there is any distinct or unequivocal allegation that the defender did not make the statement for the purpose of maintaining what he believed to be a just right and performing what he believed to be a duty as the trustee on the bankrupt estate. I therefore agree with the Lord Ordinary in thinking that there is a want of such an allegation of malice as is required in a case where the things complained of were said or done in the performance, or apparent performance, of a duty. For these reasons I agree with the Lord Ordinary in the view he has taken of the case.

LORD ADAM concurred.

LORD M'LAREN—I am of the same opinion. We are not here in the region of absolute privilege which the law, for reasons of public policy, accords to statements made by judges and counsel in open Court. This is a case of judicial slander by a party to the cause. Now, when we are outside the region of absolute privilege there are, I think, many degrees of privilege, and certainly this is a case where the privilege is peculiarly strong, because it concerns the statements made in an action in the Supreme Court, and by a party not in his own interest but in the supposed interests of a body of creditors whom he represents under a public appointment. The only positive rule of law on the subject seems to be that in such cases it is not enough to aver, as in cases of the lowest degree of

privilege, that the statement was false and malicious. There must be a circumstantial statement of the grounds of that averment, which will be different according to the nature of the case and the degree of the privilege. I can understand that in a case, for example, like *Williamson* v. *Umphray*, where a person appearing in a Licensing Court represented that the applicant was a drunkard, that in such a case it might be sufficient to say that the party made that statement knowing it to be false. It would be a little difficult to see how the ground of malice could be otherwise stated. But where the question relates to the solvency of a person who at the time when a security was granted had not been adjudged bankrupt, and to the good faith of the person making the representation that he was known to be insolvent, these are not matters of definite fact which must be either true or false, and I agree with the Lord Ordinary that it is not enough in such a case to say that the trustee has made a false statement on the record knowing it to be false. I see nothing in the statement that has been read to us that would take the trustee out of his privilege—out of the ordinary privilege which a litigant has to state all facts which are pertinent to the issue which he desires to raise.

LORD KINNEAR—I agree. I do not think it necessary to consider whether the pursuer would be entitled to an issue, or what we should have done had there been relevant averments of facts and circumstances that would show malice, because I do not think the question arises, and I agree with the Lord Ordinary on the grounds he has stated, that in the first place, this being an action of judicial slander it is necessary not only to aver malice in general terms, but to aver facts and circumstances by which such malice has been "evinced and evidenced," as the Lord Ordinary puts it, and certainly I think there is no such averment of facts and circumstances to be found in this record.

The Court adhered.

Counsel for the Pursuer and Reclaimer—W. Campbell, K.C. — Graham Stewart. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Defender and Respondent—Clyde, K.C.—R. S. Horne. Agents—Webster, Will, & Ritchie, S.S.C.

Friday, January 23.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

ANDERSON *v.* ANDERSON.

Husband and Wife—Donatio inter virum et uxorem—Provision or Donation—Conveyance of Shares to Wife Taking Effect stante matrimonio—Revocation.

A husband in 1898, nineteen years after the date of his marriage, by transfer bearing to take effect as at its date, and not bearing to proceed upon any obligation, transferred to his wife 564 shares in a limited company. The deed of transfer was in the ordinary form. Thereafter the wife at her husband's request transferred 164 of said shares to third parties. The husband having executed and intimated a formal deed of revocation of the remaining 400 shares, brought an action against his wife, in which he sought to have it declared that the transfer having been executed gratuitously and without consideration, was a *donatio inter virum et uxorem*, and had been competently revoked, and craved a decree ordaining her to retransfer the balance of 400 shares, and failing her doing so that the shares should be adjudged to him. The wife averred that the transfer had been made to her in lieu of an antenuptial provision which, owing to facts concealed from her and her father at the time of the marriage by the pursuer, was of no value, and which with the consent of her husband she had renounced in 1885 as being of no value. She pleaded that the transfer having been granted in implement of a legal or natural obligation, and forming a reasonable provision in her favour was irrevocable. *Held* that the defences were irrelevant, and decree *granted* in terms of the conclusions of the summons.

This was an action at the instance of Eric Sutherland Anderson, planter, Oakbank, Elgin, against his wife Mrs Margaret Mackenzie Hay or Anderson.

The summons concluded for declarator—(*First*) that a transfer of five hundred and sixty-four ordinary shares of the Yatiyantota Ceylon Tea Company, Limited, made by the pursuer in favour of the defender, conform to deed of transfer executed upon 30th March 1898, and thereafter duly registered in the register of the said company, was a conveyance made by the pursuer gratuitously *stante matrimonio* to the defender and constituted a *donatio inter virum et uxorem*, and that the same was therefore revocable at the instance of the pursuer; and (*Second*) that said donation and conveyance or transfer was competently and validly revoked by the pursuer as regards four hundred of said shares, conform to deed of revocation duly executed