facts to raise it. These vague suspicions cannot be called knowledge.

Lord Shand—As to the proposition argued in bar against this office, viz., that they went on taking premiums after they had knowledge of the falsity of the representations of the insured; if the case had come up to this, that they had full knowledge of the truth, and had notwithstanding gone on for years to take premiums, that would be a serious question; but the case does not approach that. The only allegation is as to their knowledge of his habits; there is not said to have been any knowledge of his proposals to other offices or of the state of his health. That falls far short, therefore, of what would be necessary for barring an office from such an action. I am clearly of opinion that there is nothing to bar the Insurance Company from insisting in this action.

The Lord President was of opinion that the policy had been obtained by gross and deliberate fraud. His Lordship went on to say—There has been a plea in bar of this action raised which it is necessary to notice; all that is said in support of that plea is, that some suspicious circumstances as to the habits of the insured became known to some of the Company's officers. That imposed no duty on the Company at all; their suspicions were vague and ill-supported, and I can conceive nothing more rash and ill-advised than to intimate a challenge of the policy on such grounds as these. What do the defenders mean to say was the duty of the Company? To refuse premiums? That would have been a very strong measure, and one not justified by the state of their knowledge. If it is said that they should have communicated their vague suspicions to the assignees, I say again that that would have been most rash and ill-advised. If after an assignation an insurance company becomes aware of objections so clear and conclusive that a statement of them is sufficient, I do not say that it is not the duty of the insurance company to make the assignee aware of them. In such a case it would not be consistent with good faith to go on taking premiums. We have no such circumstances here, and I only make these remarks in case it might be supposed that there could not be circumstances in which this plea might be maintained.

The Court adhered to the Lord Ordinary's interlocutor.

The judgment in this case was held to apply to two other actions of reduction raised by different offices against assignees of policies entered into by Moir on similar fraudulent representations.

Counsel for the Scottish Widows Fund—Asher—Pearson. Agents—Gibson-Craig, Dalziels, & Brodies, W.S.

Counsel for the Scottish Equitable—Balfour—Pearson. Agents—Campbell & Lamond, C.S.

Counsel for the General Life and Fire Assurance Company—Dean of Faculty (Watson)—Strachan. Agent—James S. Mack, S.S.C.

Counsel for the Defenders and Reclaimers—Fraser—Scott—J. P. B. Robertson. Agent—James M'Call, S.S.C.

Friday, July 13.

SECOND DIVISION.

SPECIAL CASE—JOHN BOYD AND OTHERS (BOYD'S TRUSTEES).

Husband and Wife—Marriage-Contract—Trust—Acquirenda.

By antenuptial contract of marriage the wife conveyed to trustees "all and sundry estate and effects which she may conquest and acquire during the subsistence of this said marriage by purchase, succession, bequest, or otherwise." *Held*, upon a consideration of the whole terms of the marriage-contract, that this did not include (1) a liferent, and (2) an annuity.

This was a Special Case for (1) John Brack Boyd of Cherrytrees, and others, trustees under the antenuptial marriage-contract of Mr and Mrs William Brack Boyd; and (2) Mrs William Brack Boyd, and her husband for his interest.

By the said marriage-contract Mrs Boyd had conveyed to the trustees a capital sum, and "also all and sundry other estate and effects which she, the said Elizabeth Bell Wilson, may conquest and acquire during the subsistence of the said marriage by purchase, succession, bequest, or otherwise, provided the same shall amount to £300 sterling or upwards; and for the more effectual completion hereof the said Elizabeth Bell Wilson hereby binds and obliges herself to execute all deeds requisite and necessary."

The purposes of the trust were—(1) Payment of expenses thereof; (2) payment to Mrs Boyd of the annual proceeds of the "said principal sum and other estate hereby assigned," exclusive of the *jus mariti* of her husband; (3) in event of the predecease of Mr Boyd, for payment to Mrs Boyd "of the one-half of the said principal sum, and of the whole other estate hereby assigned, and her heirs, executors, and assignees," and of the other half of the said principal sum to her in liferent only, and to the children of the marriage in fee; (4) in event of Mrs Boyd predeceasing, for payment of the interest or annual proceeds of the "principal sum and other estate" to Mr Boyd, and the fee to the children; (5) in event of there being no children, for Mr and Mrs Boyd in liferent, and on the death of Mr Boyd for payment of the whole to Mrs Boyd, her heirs, executors, or assignees.

It was also provided that the trustees might (in their discretion) pay over to Mr Boyd "the said principal sum," or "any other principal sums, conquest as aforesaid, or any portion thereof," if he desired to purchase an estate.

Mrs Boyd's father, James Wilson, died prior to the date of the marriage-contract, leaving a disposition and settlement whereby he conveyed his estate of Otterburn and his whole moveable estate to his son John, under certain burdens and provisions, the second of which was in the following terms:—"*In the second place* (but always with and under the declarations after written), with the burden of payment of the interest of the sum of £3000 to the said Elizabeth Bell Wilson, my only daughter, during all the days of her life, for her liferent use only, and that at two terms in the year, Whitsunday and Martinmas, by equal por-

tions, beginning the first term's payment thereof at the first of these terms after my decease, for the period preceding that date, and so forth yearly and termly thereafter during the life of the said Elizabeth Bell Wilson, with a fifth part more of liquidate penalty in case of the not punctual payment of the said interest; declaring that while my said daughter remains unmarried the said interest shall not be at a lower rate than four per centum per annum, but in the event of her marriage it shall thereafter be regulated by the market rate for the time; also declaring that the said interest shall be payable to my said daughter exclusive of the *jus mariti* of any husband whom she may marry, and the receipts for the same, to be granted by her alone, shall be valid and sufficient to the receiver thereof without the consent of her said husband; and after the decease of the said Elizabeth Bell Wilson the said John Wilson and his foresaids shall be bound and obliged to make payment to the child or children to be lawfully procreated of her own body of the said sum of £3000, and that in such proportions and at such terms as the said Elizabeth Bell Wilson by any writing under her hand may appoint."

In regard to this bequest there was a special provision in the marriage-contract in the following terms:—"And further, it is understood and declared by the contracting parties that the sum of £3000 bequeathed to the said Elizabeth Bell Wilson in liferent by her father's, the said James Wilson's, disposition and settlement, dated the 26th day of April 1850, to which reference is hereby made, shall be held, taken, and received by her in all respects in conformity with the provisions thereanent contained in said settlement."

At the date of this Special Case Mr and Mrs Boyd had three children, Adam Boyd, Jessie Milne Boyd, and James Wilson Boyd.

Mrs Boyd's brother, John Wilson, died in 1870 leaving a trust-disposition and settlement whereby he conveyed his estate of Otterburn and whole other estate, heritable and moveable, to trustees, and after directing them to pay certain legacies and annuities he directed them to dispose of the whole residue of his means and estate, heritable and moveable, in the following terms:—"My trustees shall pay the whole free annual proceeds, interests, and profits thereof, after deducting the expenses of management and other legal disbursements, to my only sister, the said Mrs Elizabeth Bell Wilson or Brack Boyd, spouse of the said William Brack Boyd, aye and until their son Adam Boyd, or the other substitutes to him mentioned in the eighth purpose of this trust, shall have respectively attained the age of twenty-one years complete, when her interest in the said annual interests, profits, and others shall be restricted to a free yearly annuity of £300, payable half-yearly at two terms in the year, Whitsunday and Martinmas, beginning the first payment at the term following the majority of the said Adam Boyd, or of the other substitutes to him aftermentioned, for the portion of the said annuity which may be payable for the period between such majority and such term, and the next term's payment at the next Whitsunday or Martinmas thereafter, and so on termly during the lifetime of the said Mrs Elizabeth Wilson or Brack Boyd; declaring that the said William Brack Boyd shall have no concern with the rents, interests, and profits of the said residue of my estate and effects or with the said annuity in virtue of his *jus mariti* or any other title whatever, and that the same shall not be liable to his debts or deeds, nor subjected to the legal diligence of his creditors, but that notwithstanding it shall be in the power of the said Mrs Elizabeth Bell Wilson or Brack Boyd, by herself alone, without the consent of her husband, to uplift and discharge the rents, interests, and profits of said residue, and the said annuity and her receipts and discharges therefor shall be sufficient."

By the said trust-disposition and settlement it was further provided that on Adam Boyd attaining majority the trustees were to convey the estate to him, subject to Mrs Boyd's annuity, and failing Adam Boyd and his issue the estate was to go to the other children of Mrs Boyd, and failing them to certain substitutes therein named. By a codicil it was provided that in event of failure of Mrs Boyd's children her liferent of the whole estate was to continue or revive.

The free income of the residue of Mr Wilson's estate amounted to about £1500.

In these circumstances the following questions were submitted to the Court:—"(1) Whether the parties hereto of the first part are entitled to demand that the interest of the sum of £3000 provided to Mrs Boyd by her father's settlement shall be paid over to them for the purpose of the trust created by the said marriage-contract? (2) Whether the parties hereto of the first part are entitled to demand that the annual income of the residue of the estate of the deceased John Wilson, and the annuity of £300 when it arises, shall be paid over to them for the purposes of the said trust? (3) In the event of the two preceding questions, or either of them, being answered in the affirmative, whether the parties hereto of the first part are bound to pay the said interest and income, or either of them, and the annuity when it arises, to Mrs Boyd as income, or to capitalise the said interest and income, or either of them, and the annuity when it arises, by selling the same to an insurance office, or otherwise?"

Authorities—Bell's Conveyancing (N.E.), ii. 903; *Diggins* v. *Gordon*, 3 Macph. 609, 5 Macph. (H. of L.) 75; *Thurburn's Trs.* v. *Maclaine*, 3 Macph. 134; *Mainwaring's Settlement*, L.R. 2 Eq. 487; *Marchioness of Townshead*, 1858, 27 L.J. Ch. 553; *St. Aubyn* v. *Humphrey*, 22 Beavan 175; *White* v. *Briggs*, 22 Beavan 176 (foot-note); Peachy on Settlements, 536.

At advising—

LORD JUSTICE-CLERK—This case was very ably argued, but from the very outset I confess I had not much doubt about the matter. I think that these clauses in the marriage-contract, and the words used, have reference to "estate," "property," or "effects" in fee, and it is only reasonable to infer that that which is only a right to the produce and not to the fee is not comprehended by these clauses. The meaning of the terms employed is that the trustees are to hold the capital of any funds *salva rei substantia* for the wife, and it appears to me that no better illustration of this point can be found than in the case of an annuity. The very notion of capitalising an annuity and of giving to the annuitant only the interest on the capital so obtained is extraordinary and far-fetched. That would be in itself a consideration

of sufficient weight, to my mind, for the decision of this question, but, if necessary, these views are strengthened by the observations of Lord Hatherley in the case of *Mainwaring*, and similar remarks may also be found in the *Townshead* case. Again, the case of *White* is just like the present one, and there the income fell under the terms of the settlement just as much as it does here.

The whole tenor of the marriage-contract here is in accordance with this view, and the word "principal," incidentally, or accidentally we might almost say, slips into the deed. The provision is, moreover, expressly referred to as a principal sum —"The said principal sum of £2000 and such other principal sums," &c.; or again—"The said trustees shall hold the said principal sum and other estate," &c. From this I draw the conclusion that my interpretation of the meaning of the words "estate and effects" is a true one, and that where the trustees do not hold the fee the life-interest does not fall under the conveyance.

A second ground for arriving at this result also presents itself to my mind. The husband, who is the creditor in the marriage-contract, is by the settlements of Mrs Boyd's father and brother expressly excluded from having any concern in the fund at all.

Generally, then, my judgment is based upon these two considerations—(1) From the very nature of the fund it does not fall under the marriage-contract conveyance according to the true interpretation of the words thereof. (2) The husband is by the terms of the settlements expressly excluded.

It is not necessary to go into the distinctions between the interest of the £3000 and the residue of John Wilson's estate.

Lord Ormidale—I have come to the same conclusion. As to the general principles which govern this case, it must be held to be settled on the rationale of the thing that these life-rents are not and never were meant to be comprehended under the marriage-contract. It is said, in the first place, that neither the father nor brother excluded them from the contract, and that no doubt is true as regards any express exclusion, but in another sense it is very doubtful whether there is not a positive exclusion; to this, however, I will again refer. Secondly, it is said that by the deeds of her father and brother Mrs Boyd's trustees are made the creditors or proprietors of the fund. Against that contention this fact is, to my mind, quite conclusive; these funds consist, not of capital at all, but of interest or liferent in favour of Mrs Boyd, and this in its very nature excludes the idea of their being carried off by the marriage-contract trustees. I could conceive a marriage-contract expressed in such terms as to carry a fund of this kind, but it would require to be very specific. I quite concur with your Lordship in the chair that in the deed itself there are to be found indications which point to the idea that the parties in contracting meant only to refer to principal sums.

To refer, however, again to the exclusion by the father and brother in their deeds, nothing can be more stringent than that exclusion. I think it looks very much like an exclusion also of their marriage-contract trustees, and of everyone save Mrs Boyd herself. This view I regard as by no means unreasonable.

As to the £3000 I quite concur. The exclusion as to this sum is even clearer than the rest, and the English decisions are quite in point.

Lord Gifford—I am of the same opinion. The questions here turn on the construction of this marriage-contract. The purpose of the assignation was to enable the capital to be retained by the trustees under the marriage-contract. Where the wife, it provides, shall succeed to a principal sum exceeding £300, that must be handed over to the trustees; but when a sum over £300 falls in it becomes at once essential to distinguish between capital and produce. The very object of the marriage-contract being that Mrs Boyd should get the fruits, that object would be defeated by handing over this income as it accrued to the trustees. All "estate, conquest or acquired," means here all "capital estate." Without going beyond the four corners of the deed, I think Mrs Boyd is entitled to this income.

The Court answered the first two questions in the negative, and found it unnecessary to answer the third.

Counsel for First Parties — Asher — Darling Agent—J. S. Darling, W.S.

Counsel for Second Parties—Balfour—Low Agents—J. & J. Turnbull, W.S.

HIGH COURT OF JUSTICIARY.

Friday, June 29.

APPEAL—FRANCE *v.* PROCURATOR-FISCAL OF INVERNESS-SHIRE.

Education Act 1872, *sec.* 70—*Conviction.*

Circumstances in which a conviction of a parent, charged under sec. 70 of the Education Act with failure to provide elementary education for his son, was *quashed.*

Education Act 1872, *sec.* 70—*Certificate—Title to Sue—Evidence.*

Held that a written certificate in terms of sec. 70 of the Education Act 1872, given by the School Board to the Procurator-Fiscal, is required in every prosecution of a defaulting parent under that section.

Opinions that the certificate ought to be libelled in the complaint and also produced.

Opinion (*per* Lord Young) that it is competent and proper to take the evidence of the accused in such prosecution.

This was a case stated under the Summary Prosecutions Appeals Act 1875 by the Sheriff-Substitute (Blair) at Inverness, in a complaint at the instance of the Procurator-Fiscal of Inverness-shire charging George France with a contravention of the Education (Scotland) Act 1872, sec. 70, in so far as for three months prior to 25th May 1877 he had been, and was still at the date of the complaint, grossly and without reasonable excuse failing to provide his son with elementary education.

The appellant pleaded before the Sheriff tha