

£1500, but restrictable in terms of the Aberdeen Act. Of course, if the free agricultural rental is now to be reduced to £220, that has a material effect on these provisions, and a question might have arisen whether this charge could have been effected in the face of this bond? But this lady is, in the first place, in her 71st year, and we have, besides, the consent of all parties interested in this bond of provision. The petitioner's eldest son has also by a formal minute stated that he desires that the application should be granted; all the members of the family, in short, concur in the application, and accordingly I propose that your Lordships should grant authority as craved.

LORD DEAS, LORD MURE, and the LORD PRESIDENT concurred.

The Court pronounced the following interlocutor:—

“The Lords having heard counsel for the petitioners on the reclaiming note for them against Lord Adam's interlocutor of 6th November 1877, Recall the interlocutor in so far as it finds that it would not be beneficial to the estate that it should be charged with any greater expenditure in respect of improvements on the mansion-house, &c., than £1500: Find that the petitioners ought to be allowed to charge the estate on this account with the full amount of £3090 of improvement expenditure: Remit to the Lord Ordinary to modify and alter his interlocutor so as to give effect to this finding, with power to his Lordship to dispose of the expenses incurred in the Inner House.”

Counsel for Petitioners—Rutherford. Agents—Fraser, Stodart, & Mackenzie, W.S.

Friday, December 14.

FIRST DIVISION.

[Lord Curriehill, Ordinary.]

MACKENZIE v. CATTON'S TRUSTEES  
AND ANOTHER.

*Husband and Wife—Marriage-Contract—Entail—16 and 17 Vict. cap. 94, sec. 24—Reduction of an Excambion on the ground of Fraud by a Succeeding Heir of Entail.*

An heir of entail in possession of an entailed estate obtained in 1865 a decree of the Court under the Acts 6 and 7 Will. IV. cap. 42, 11 and 12 Vict. cap. 36, and 16 and 17 Vict. cap. 94, authorising an excambion of certain parts of the entailed lands for certain other lands belonging to him in fee-simple. Having executed a contract of excambion in pursuance of that decree, he, some years afterwards, conveyed the lands so excambied to the trustees under a marriage-contract entered into between his daughter and her husband, for behoof of her and him in life and the children of the marriage in fee. In a reduction of the decree, brought eight years afterwards by a succeeding heir of entail against the mar-

riage-contract trustees and the only child of the marriage, on the ground of irregularity in the proceedings, and of fraud on the part of the original petitioner for the excambion—held that the proceedings were, under the 24th section of the 16 and 17 Vict. cap. 94, final, the marriage-contract trustees and the child being “third parties acting bona fide on the faith” of the decree.

*Husband and Wife—Fraud—Marriage-Contract—Liability of Singular Successors under a Marriage-Contract for the Fraud of their Author.*

Held that the right of marriage-contract trustees and the heir of the marriage taking benefit by such a transaction as that narrated above is not liable to reduction by reason of the fraud of the party who conveyed to them in the marriage-contract.

Observed (per Lord Shand) that “it is quite settled that a marriage-contract is an onerous transaction, as much as a purchase or a loan would be.”

Counsel for Pursuer (Reclaimer)—Balfour—Moncreiff. Agent—A. P. Purves, W.S.  
Counsel for Defenders (Respondents)—Rhind—Hunter. Agent—Robert Menzies, S.S.C.

Saturday, December 15.

SECOND DIVISION.

[Sheriff of Renfrewshire.]

PAUL SWORD & COMPANY v. HOWITT.

*Ship—Charter-Party—Bill of Lading—Master's Gratuity—Liability of Assignee of Bill of Lading to Pay Gratuity.*

The master of a ship sued the assignees of certain bills of lading for payment of a gratuity which it was stipulated should be paid “on right and good delivery of the cargo.” This stipulation was in all the bills of lading but one, and the charter-party also contained it. The bill of lading which did not contain it stated that the freight was to be paid as per charter-party. The defence was that there was no right and good delivery of the cargo, it having been received in a damaged state; and further, that the stipulation to be binding must be contained in the bill of lading. Held that the defences must be repelled, in respect (1) that the terms of the charter-party, including the stipulation for gratuity, must be read into the bill of lading; and (2) that it was not averred that the damage was due to the fault of the master; and that in these circumstances the gratuity was as much due by the assignees as payment of freight.

By a charter-party, dated 11th May 1874, between the pursuer, who was master of the ship “Kishon,” and Fraser, Eaton, & Co., merchants at Sourabaya, it was agreed that a cargo of sugar should be shipped on board the pursuer's ship at various ports in Java to go to the United Kingdom. The terms of the charter-party, *inter alia*, were—“And deliver the same on being paid freight at the rate of £3, 12s. 6d. . . . per ton of 20 cwt. nett weight delivered, and 1s., say one shilling,