

Friday, December 19.

FIRST DIVISION.

[Lord Trayner, Ordinary.]

RENNEY v. THE MAGISTRATES AND  
COUNCIL OF THE BURGH OF  
KIRKCUDBRIGHT.

*Process—Expenses—Negligence—Reparation—Contributory Negligence.*

The master of the vessel "Janets and Ann" when approaching the harbour of Kirkcudbright, and at the time subject to the orders of the harbour-master, received orders from the latter which resulted in the vessel running aground and suffering damage. In an action of damages at the instance of James Renney, the owner of the "Janets and Ann," against the Magistrates and Council of the burgh of Kirkcudbright, the original fault of the harbour-master, who was the defenders' servant, was proved; but the plea of "contributory negligence" having been taken by the defenders, it was also proved that those in charge of the vessel were well acquainted with the place, and might have avoided the damage if they had navigated their ship with prudence after the orders were received. This plea being sustained, the defenders were assolvied, and on a motion for expenses, *held*, that though guilty of negligence, they were entitled to expenses without modification in accordance with the general rule.

Counsel for the Pursuer—Asher, Q.C.—Younger. Agents—J. & J. Ross, W.S.

Counsel for the Defenders—Jameson—Crole. Agent—John Bell, W.S.

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SECOND DIVISION.

KENNEDY AND OTHERS (HUGHES'  
TRUSTEES).

*Succession—Testate Succession—Heritable Security—Heritable or Moveable—Titles to Land Consolidation (Scotland) Act 1868 (31 and 32 Vict. cap. 101), sec. 117.*

A testator left his whole estate, heritable and moveable, to trustees, with directions to dispose of the heritable portion in one way and the moveable portion in another way. The estate consisted, *inter alia*, of a bond of annuity and disposition in security, and of two bonds and dispositions in security. *Held* that regard must be had to the provisions of the 117th section of the Titles to Land Consolidation (Scotland) Act 1868, and that all these bonds fell to be disposed of as moveable estate. The Titles to Land Consolidation (Scot-

land) Act 1868 (31 and 32 Vict. cap. 101) provides by section 117 that "From and after the commencement of this Act no heritable security granted or obtained either before or after that date shall, in whatever terms the same may be conceived, except in the cases hereinafter provided, be heritable as regards the succession of the creditor in such security, and the same, except as hereinafter provided, shall be moveable as regards the succession of such creditor, and shall belong after the death of such creditor to his executors or representatives *in mobilibus*, in the same manner and to the same extent and effect as such security would under the law and practice now in force have belonged to the heirs of such creditor: Provided always, that where any heritable security is or shall be conceived expressly in favour of such creditor and his heirs or assignees or successors, excluding executors, the same shall be heritable as regards the succession of such creditor, and shall after the death of such creditor belong to his heirs in the same manner and to the same extent and effect as is the case under the existing law and practice in regard to heritable securities." . . .

Mrs Helen Mitchell Whyte or Hughes, widow of the late James Hughes, sometime contractor, Dundee, died upon 27th February 1890, leaving a trust-disposition and settlement, dated 23rd August 1889, and registered 26th March 1890, by which she assigned and disposed her whole means and estate, heritable and moveable, to John Kennedy and others in trust for certain purposes.

By the third purpose of the trust she directed the trustees how to deal with her moveable estate, and by the fourth purpose she provided for the disposal of her heritable estate.

She died possessed, *inter alia*, of a bond of annuity and disposition in security for £76, 1s. 6d. for ever, and of two bonds and dispositions in security for £750 and £400 respectively, and a question having arisen as to whether these bonds were to be regarded as heritable or as moveable estate of the truster, a special case was presented for the opinion and judgment of the Court by the said trustees of the first part, and by the beneficiaries of the second, third, fourth, fifth, sixth, seventh, and eighth parts.

The questions of law were—"Whether the said bond of annuity and disposition in security, as also the said two bonds and dispositions in security for £750 and £400 respectively, or any and which of them, fall to be disposed of by the first party under and in terms of the third purpose of the said trust-disposition and settlement? Or, Whether the same, or any and which of them, fall to be disposed of by the trustees under and in terms of the fourth purpose of the said trust-disposition and settlement?"

Argued for second and third parties—By the 117th section of the Titles to Land Consolidation (Scotland) Act (31 and 32 Vict. cap. 101) heritable securities, which by the