Judge v. *Bennett*. In that case the opinions have evidently been taken down in a very cursory manner; but I do not think they differ from the views I have expressed. The beginning of Mr Justice Stephen's opinion cannot be correctly reported, as it is unintelligible. The result of his opinion is, I think, that it is the intention and character of the threats that must be looked to—whether they are threats which are intended to and calculated to raise alarm. By alarm I do not mean necessarily physical fear, but the alarm of a good citizen that he or his family may suffer personal violence. So also Mr Justice Smith says—"Intimidation is not merely to use violence or to threaten to use violence." What is the meaning of "intimidates?" Why, the using of language which causes another man to fear. I do not read that as meaning that fear must be actually produced. In the case in question there was no suggestion that there was any expression of fear on the part of the person intimidated.

Lord M'Laren—I think it is important that no doubt should be cast upon the interpretation of the seventh section of the Conspiracy and Protection of Property Act. That section was introduced into an Act which repealed certain disabilities which formerly existed regarding trade combinations, to make it clear that while persons were at liberty to combine for lawful purposes, the law would protect those who are outside the combination from illegal acts. I do not at all participate in the doubts that seem to have been entertained by the Sheriff-Substitute when he proposed to the prosecutor to make his case clear by averring that the persons intimidated had abstained from doing work which they had a legal right to do. The statute contains no such restriction. It gives protection to persons intimidated with a view to compel them to abstain from continuing to work. I should have held, independently of these prefatory words, that the offence of intimidation was complete, if the person to whom the threats were applied had been put in reasonable apprehension of harm to himself or his family, in consequence of his refusing to comply with the demand of the person threatening. I can hardly imagine that the Legislature could have enacted a clause that would give protection only to the coward who acts in accordance with the wishes of the person who intimidates him, and refuse protection to the honest and capable man who has the courage to resist intimidation while at the same time feeling a reasonable apprehension that the threats may be acted upon. The one is as much entitled to the protection of the law as the other. I agree that the Act of Parliament plainly contemplates such a case as is here averred, and that the complaint is quite relevant.

Lord Trayner—I think it would be to deprive the statute of a great part of its benefit if the idea were entertained that intimidation were not punishable unless it were successful. The purpose of the Act is to prevent intimidation, and if a man intimidates another with a view to prevent him doing something he has a right to do, he commits the offence. I have no doubt that the complaint is relevant.

Lord Wellwood—I am of the same opinion. I think it is plain that in order to make a charge under this section of the statute relevant it is not necessary to aver that the intimidation charged was successful in the sense of compelling the person intimidated to abstain from doing or to do any act which that person had a legal right to do or abstain from doing. The offence is complete when intimidation is practised "with a view to compel any other person to abstain," &c.

But it was argued that the prosecutor should at least have averred that the persons said to have been threatened were intimidated. If such an averment is required for the purpose of relevancy—and perhaps it is—it is in the complaint, because the complaint charges that the accused "did intimidate" the person in question.

If the meaning of the objection is that the prosecutor should have averred that the persons intimidated were made afraid, I do not think that the objection is well founded. To prove the statutory charge I think it is sufficient to prove that the intimidation used was such as to induce serious apprehension of violence in the mind of a man of ordinary courage, although it might not be successful in making him afraid.

The Court sustained the appeal and remitted the case to the Sheriff-Substitute.

Counsel for the Appellant—Maconochie. Agent—Crown Agent.

Counsel for the Respondent—W. Lyon Mackenzie. Agent—

COURT OF SESSION.

Friday, February 6.

SECOND DIVISION.

PEDDIE *v.* PEDDIE'S TRUSTEES.

Husband and Wife—Marriage-Contract—Postnuptial Deed—Provisions—Trust—Revocation.

By postnuptial contract of marriage a husband conveyed to trustees the whole means and estate that should belong to him at his death for behoof of his wife and any children that might be born of the marriage. By the same deed the wife conveyed to the same trustees her share of her father's trust-estate, and all other means and estate which she possessed or should acquire during the marriage, for behoof of herself in liferent and the children of the

marriage in fee, but reserved power to test upon part of the trust-estate in the absence of issue. Delivery followed on the marriage-contract, and the trustees in terms thereof received the wife's share of her father's trust-estate. Thereafter about six months from the date of the marriage the husband and wife became desirous of revoking the deed. *Held* that the husband and wife could not validly revoke the deed, and that the trustees were not entitled to reconvey the trust-estate in their hands absolutely to the wife.

Opinion per curiam that marriage-contracts whether antenuptial or post-nuptial have the same legal effect when the interest of third parties is not involved.

At Stirling on 20th December 1889 David Peddie and Williamina Gardiner Gibb were married to each other by declaration and warrant of the Sheriff-Substitute. At Edinburgh on 5th February 1890 Mr and Mrs Peddie went through a second ceremony of marriage after banns according to the forms of the United Presbyterian Church.

On 4th and 5th February, before the second marriage ceremony, the spouses executed a mutual deed or contract of marriage in favour of trustees.

By this deed the husband conveyed to the trustees the whole means and estate which should belong to him at the time of his death, for the following purposes—(1) For payment of his debts and the expenses of executing the trust; (2) that the trustees should pay his wife £50 for mournings; (3) that they should hand over to her his household furniture and plenishing; (4) that they should hold the residue of his estate and pay the free annual income to his wife for the maintenance of herself and the children of the marriage, with power to the trustees to pay the wife the whole or any part of the capital if they should consider the annual income insufficient; (5) that after the death of the wife they should hold the residue and divide it among the children of the marriage on the youngest attaining the age of twenty-one; and (6) if the husband should die without issue of the marriage, that they should convey the residue absolutely to the wife.

By the marriage-contract the wife on her part conveyed to the trustees her share or interest in the estate of her father under his trust-disposition and settlement, and all other property, heritable and moveable, which then belonged to her or which she might acquire during the subsistence of the marriage, with the exception of money legacies of sums not amounting to £200. The trustees were to hold the trust-estate for the following purposes—(1) That after payment of expenses the trustees should pay over the free annual proceeds to the wife herself, full power being reserved to her to dispose of the whole or any part of the trust-estate by *mortis causa* deed; (2) that in the event of the husband predeceasing the wife, if there should be children of the marriage the trustees should continue to pay her the free annual proceeds, but if there should be no children the trustees should pay over to her the capital of the whole trust funds; (3) that in the event of the wife predeceasing the husband and leaving issue, the trustees should pay the husband during his life the free annual proceeds of the whole estate, under this restriction, that in the event of there being children of the marriage who should attain majority, these children should be entitled to be paid one-half of their share of the capital of the trust funds, it being declared that the capital was eventually to be divided among the children of the marriage; (4) that in the event of the death of the wife without leaving issue, the estate was to be divided into two equal portions, one-half to be subject to the directions in any *mortis causa* deed left by the wife, the other half to be paid absolutely to the husband.

The trustees nominated in this post-nuptial contract of marriage accepted office. They received and invested Mrs Peddie's share of her father's estate, amounting to £1317, 16s. 7d., and concurred in granting a discharge to the latter's trustees. There was no other estate in the hands of the trustees under the marriage-contract.

About six months after the marriage Mr and Mrs Peddie became desirous to revoke the marriage-contract. They maintained that the said deed was revocable, and called on the trustees to reconvey the trust-estate absolutely to Mrs Peddie, offering them a full discharge of their intromissions. The trustees doubted whether the said deed was revocable by Mr and Mrs Peddie, and whether they were in safety to denude and reconvey as requested.

In these circumstances a special case was presented to the Second Division of the Court of Session, the parties thereto being (1) the husband, (2) the wife, and (3) the marriage-contract trustees.

The questions of law were—"1. Whether the said first and second parties can validly revoke the said deed of 4th and 5th February 1890? 2. Whether the third parties are bound or in safety, on a deed of revocation as aforesaid being duly executed, to reconvey the trust-estate absolutely to the second party?"

Argued for the first and second parties—The purpose and every provision of the deed was testamentary. The whole estate in the hands of the trustees belonged to the wife. She had full power under the deed to dispose of the trust-estate *mortis causa*. The husband got absolutely nothing except a testamentary liferent, and even that might be taken from him. There being no other beneficiaries in existence, and the trust being practically unilateral, it was able to be revoked by the wife—*Anderson* v. *Buchanan*, June 2, 1837, 15 S. 1073; *Low* v. *Low's Trustees*, November 20, 1877, 5 R. 185; *Mackenzie* v. *Mackenzie's Trustees*, July 10, 1878, 5 R. 1027; *Hamilton's Trustees* v. *Hamilton*, July 9, 1879, 6 R. 1216; *Melville* v. *Melville's Trustees*, July 15, 1879, 6 R. 1286.

Argued for the third parties—The deed was irrevocable. The provisions contained in it were reasonable. The deed created a trust. There was no clause in the deed allowing revocation. Delivery had followed in this case. The trustees were bound to protect the posterior interests of the children to be born of the marriage, who were entitled to the trust-estate presently in the hands of the trustees unless the wife disposed of it otherwise by will—Fraser's Husband and Wife, ii. p. 1503, and cases there quoted; *Smitton* v. *Tod*, December 12, 1839, 2 D. 225; *Allan* v. *Kerr*, October 21, 1869, 8 Macph. 34; *Menzies* v. *Murray*, March 5, 1875, 2 R. 507; *Low* v. *Low's Trustees, supra.*

At advising—

LORD RUTHERFURD CLARK—The question is, whether the spouses can with joint consent revoke a postnuptial marriage-contract into which they entered in February 1890? But it presents itself in two aspects—first as it relates to the husband, and second as it relates to the wife.

By this marriage-contract the husband conveyed to trustees the whole estate which should belong to him at his death. The purposes of the trust were that the trustees should pay £59 to the wife for mournings; that they should hand over to her the furniture and plenishing of the truster; that they should hold the residue for her in liferent, but with a discretionary power, should they consider the annual income insufficient for her maintenance, of paying to her the whole or any part of the capital; and lastly, that they should hold the residue for the children of the marriage.

It is plain that by this trust the husband was making a provision for his wife and for the children of the marriage. It is not said that these provisions are not fair and reasonable provisions, nor is there any ground for thinking that they do not possess that character. In these circumstances, the case of *Low*, 5 R. 185, seems to me to be directly in point. There it was held that a trust created by a husband with the view of making a suitable provision for his wife and children could not be revoked by the joint consent of the spouses, even though the deed did not take the form of a postnuptial marriage-contract, and although there had been no children born of the marriage. The Court held that the wife must be protected against herself, that she could not surrender provisions made by her husband in her favour, and that the trust must continue to subsist in order to secure for such children as might be born the benefits thereby conferred on them. I think that we must follow the rule of this case, and hold that the husband cannot revoke the trust which he has created, even with the consent of his wife.

By the same marriage-contract the wife conveyed to trustees her interest under her father's trust-settlement, and also her estate then belonging or to belong to her. The purposes are that the trustees shall hold the trust-estate for the liferent of the truster, and for her children in fee, but under the reservation and declaration that she shall have the full power of disposing of the trust-estate by any *mortis causa* deed which she may execute. It is clear that a full fee is not reserved to the truster, and that the children of the marriage will take the fee if she does not exercise the reserved power.

If there had been children alive at the date of the trust, it is, I think, plain that the trust could not have been revoked. The difficulty arises from the fact that at that date there were no persons in existence for whose benefit the trustees could hold the eventual fee, and it is possible that no such persons may ever exist. There is room therefore for the plea that the truster has not been denuded of her estate, inasmuch as the fee was not devolved even conditionally on any other person.

The nearest case to the present is that of *Murison*, 16 D. 529, where it was held that a trust by which a lady conveyed her whole estate for the issue of a contemplated marriage, into which she afterwards entered, might be revoked by her. The Lord Ordinary decided the case on the ground that there were no beneficiaries, and therefore that the truster was not denuded of her estate. Whether his view was adopted by the Court is not certain. It would seem that some of the Judges were of opinion that it was not a deliberate deed, and that it was revocable on that ground.

We are, however, here dealing with a deed of a different class—not with a unilateral deed—but with a marriage-contract. If it had been antenuptial, there could be no doubt that it could not have been revoked. But though postnuptial, it is not the less a contract intended to subserve the interests of the spouses and the children of an existing marriage. In a question with creditors a postnuptial marriage-contract may not have the same power as an antenuptial marriage-contract. But *intra familiam*, I think that it has. This, as I think, was the opinion of Lord Ormidale and Lord Gifford in the case of *Low*. Marriage-contracts, whether antenuptial or postnuptial, are entered into for the same purposes and ends, and should, I think, have the same legal effect when the interest of third parties is not involved.

The contract with which we are dealing was entered into on the part of the wife for the purposes of securing her own estate to herself and her children. The provisions of it are natural and reasonable, It was thereby intended to protect the wife against herself, and to ensure that her estate, if she so willed it, should descend to her children. If she had remained absolute fiar of her estate, the case might have fallen under the rule of *Ramsay*, 10 R. 120, on the ground that a fiar cannot be controlled in the use or possession of what is absolutely her own. But it has been seen that in this case the wife has not a fee, but only a reserved power of testamentary disposition. She cannot, I am inclined to think, revoke a marriage-contract into which she entered for her own protection. But even if she could, she can-

not withdraw the benefit which she thereby conferred on the children of the marriage if any should be born. It is true there are none at present in existence. But however important this consideration may be as applicable to a unilateral deed, I think, for the reasons which I have already assigned, that it is not material in the case of a contract of marriage even though post-nuptial. And in so holding, I am only following the authority of the case of *Low*.

The LORD JUSTICE-CLERK and LORD YOUNG concurred.

The Court found that the husband and wife could not validly revoke the post-nuptial marriage-contract, and that the trustees were not entitled to reconvey the trust-estate in their hands absolutely to the wife.

Counsel for the First and Second Parties—Kennedy. Agents—Macpherson & Mackay, W.S.

Counsel for the Third Parties—Wilson, Agents—Macpherson & Mackay, W.S.

Thursday, January 22.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

BARNETT *v.* GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Reparation—Culpa—Railway near Docks—Reasonable Precaution for Safety of Public—Contributory Negligence—New Trial.

A seaman who had been run over by a train when he was crossing some lines laid down on a quay in order to reach his ship, brought an action of damages against the railway company. It appeared that there were a number of lines laid down at the side of the quay, and that shunting was constantly going on. The pursuer led evidence to the effect that the defenders had omitted a precaution in use at other places of the kind, in not having a boy preceding every train to give warning of its approach, and no evidence was led by the defenders to show that such a precaution was unsuited to the nature of the traffic carried on at this place. The evidence of the way in which the accident occurred was contradictory, but in the result it appeared that the pursuer must either have stepped from behind some stationary waggons on to the line, where he was run over, without first looking about him, or must have stood on the rails for more than half-a-minute without looking round. The jury returned a verdict for the pursuer.

The defenders having applied for a new trial, the Court *held* (1) that if there had been no evidence of contributory negligence, there was a case for the jury on the fault of the defenders, but (2) that whichever of the two accounts of the accident was the true one, the pursuer had by his negligence materially contributed to the accident, and therefore *granted* a new trial.

Contiguous to the docks at the harbour of Ardrossan there was a goods and mineral station belonging to the Glasgow and South-Western Railway Company, and from this station lines of rail ran to the quays of the various docks. The *solum* of the harbour was the property of a harbour company, but the railway company had acquired rights from the predecessors of the harbour company to lay down lines along the side of the quay in connection with the harbour traffic. These lines of rail intervened between the docks and the public road leading to the town of Ardrossan, so that it was necessary for a person going from the docks to the road to cross the rails, and members of the public had a right to do so.

On 30th April 1890, Robert Barnett, a fireman on the s.s. "Blonde," then lying in the harbour, when crossing these rails on his way to his ship, was knocked down by a train and severely injured, and he subsequently raised the present action against the railway company for payment of £1000 as damages on account of the injuries sustained by him.

The pursuer averred that the accident had been caused by the negligence of the defenders in failing to warn him of the approach of the train.

The defenders averred that the accident had been due to the pursuer's own fault, in the first place, because he had not crossed the line at the level-crossings provided by them, and in the second place, because he had not used due care in crossing the lines, and denied that there had been any fault on their part.

The issue was the usual one of fault.

The trial took place before Lord Wellwood and a jury on 4th and 5th December 1890, and the jury returned a verdict for the pursuer, assessing the damages at £800.

The defenders applied for a rule, on the ground, *inter alia*, that the verdict was contrary to evidence. The rule was granted, and the pursuer was called upon to show cause why the verdict should not be set aside.

The result of the evidence appears from the opinion of Lord Wellwood.

Argued for the pursuer—The place where the pursuer met with his accident was a public place. The defenders were accordingly bound in such a place to take every precaution for the safety of the public who traversed their lines. They had failed in their duty, as they had omitted the very usual precuation of having a boy with a red cap or flag in front of each train to warn people of its approach. No explanation of the absence of this precaution was given by the company. With regard to the question of contributory negligence, the *onus* of proof lay on the defenders, and they had