

subject to a liferent, but there is nothing to prevent it vesting immediately.

With respect to the British Linen Company stock, the term "failing" means by death of the legatee either before me or before liferentrix. I think it must be held to mean death before the testator. I think it indicates personal favour towards John, and it was he who was to be favoured if possible.

LORD ARDMILLAN—On the first of the questions which we are called on to answer I have no difficulty.

The bequest of the Commercial Bank shares is very clearly and simply expressed; and there is no room for doubt. Subject to the widow's liferent, the fee of five shares of the bank stock are bequeathed to five persons, the sons of Henry Sanderson,—“one to each.” These five persons are all named in the will. There is no clause of survivorship, and no destination over. The bequest is not to a class, but to individuals named. I know of no authority, and am unable to perceive any principle, to support the plea that vesting is postponed under these circumstances. I am of opinion that this bequest of Commercial Bank stock vested in each of the sons of Mr and Mrs Henry Sanderson at the date of the truster's death.

I am also of opinion, on the second question, that the bequest of shares of the British Linen Company's stock vested in John Thom Sanderson at the date of the truster's death. This is a direct bequest of shares of bank stock, taken out from the estate, and separated from the residue; and it is given to John T. Sanderson, M.D.—one reason for the bequest being, that the testator approved of, and was gratified by the legatee's kind conduct to his brother Henry. "Failing him" (John T. Sanderson) "by death," the bequest is to his brothers, Alexander and Henry.

I am of opinion that the time of vesting of this bequest is also the date of the truster's death. Postponement of the vesting of this bequest can only be supported by an unnatural and unreasonable construction. The widow's liferent is of course not affected. This, like the other bequest, is subject to that liferent.

In the last place, I am of opinion that the residue mentioned in the third question did not vest till the death of the liferentrix.

LORD JERVISWOODE concurred.

Counsel for First Parties—The Solicitor-General (Clark) and Balfour. Agents—J. W. & J. Mackenzie, W.S.

Counsel for Second Parties—J. M. Laren. Agents—Horne, Horne, & Lyell, W.S.

Friday, October 31.

FIRST DIVISION.

FERGUSON v. LESLIE.

Appeal—Bankrupt—Expenses.

A Sheriff-Substitute granted interdict against a party, and his interlocutor was recalled by the Sheriff-Depute. The complainer appealed to the Court of Session, and pending the appeal, the respondent became bankrupt.

Intimation was made to the trustee in the sequestration, but he did not sist himself, or appear in the action. The appellants craved that the appeal be sustained, or the respondent ordained to find caution for the expenses. *Held* that he could not be called on to find caution, as he had been brought into Court at the instance of the appellants, and was bound to defend himself.

Counsel for Appellants—J. G. Maitland. Agents—H. & A. Inglis, W.S.

Counsel for Respondent—J. A. Reid. Agents—Philip, Laing, & Munro, W.S.

Friday, October 31.

SECOND DIVISION.

[Lord Shand, Ordinary

GARRIOCK v. WALKER.

Affreightment—Shipmaster—Recompense—Demurrage.

Where the master of a vessel laden with whale blubber and heads, going from Shetland to Peterhead, was detained at an intermediate port by stress of weather, and, from the nature of the cargo, was obliged to incur expense in landing, preparing, and reshipping it at that port, after communication with the owner of the cargo, who refused to take any responsibility; and where the voyage was ultimately successfully prosecuted, and the cargo landed, and sold at the port of delivery;

Held, that the shipmaster exercised a sound discretion for the purpose of preserving the cargo, and that the shipowners were entitled in the circumstances to (1) the freight; (2) repayment of the expenses incurred on the cargo at the port of detention; and (3) a sum in respect of the detention.

These were cross-suits at the instance of the owners of the smack "Petrel" of Lerwick against the owner of the cargo, and *vice versa*. The cargo which consisted of whale blubber and heads, was shipped in bulk at Shetland to be conveyed to Peterhead at a slump freight. The voyage was unusually prolonged owing to stress of weather, and the captain landed the cargo at Lerwick, where it was washed and cleaned, and taken on board in casks, and so the whole cargo was conveyed to Peterhead, with the exception of a portion which was sent on by another conveyance, owing to want of room.

The shipowners sued for (1) freight of £50; (2) a sum of £113 disbursed at Lerwick; (3) £50 in respect of detention of the vessel during the operations on the cargo. The owner of the cargo claimed damages in respect of the operations performed on the cargo, and opposed the claims of the shipowners, except for freight.

The facts of the cases are fully set forth in the following interlocutor of the Lord Ordinary:—

"Edinburgh, 10th April 1873.—The Lord Ordinary having considered the conjoined causes (1st) in the action at the instance of the pursuers, Peter Garriock and Others; Finds, that while the pursuers' vessel the 'Petrel,' in the course of the voyage between Uyea Sound and Peterhead, in the fulfillment of the charter-party entered into between the pursuers and the defender on 23d December 1871, was