most comprehensive description. I do not know whether they are exactly the same as in those other cases to which we have been referred, but it is impossible that they could be more comprehensive than the words we have here:—"All and sundry lands and heritages, goods, gear, debts, and sums of money, and in general the whole estate and effects, heritable and moveable, real and personal, of what kind or designation soever, or wheresoever situated, at present belonging, or that shall pertain and belong, to me at the time of my decease." Now, these lands that are more immediately in question, and which had, it is said, been previously destined to others, these present defenders, did belong to Lachlan M'Neill when he made that general deed of conveyance. They belonged to him and were possessed by him, and therefore clearly, in the first place, looking at the case in its *prima facie* aspect, they were necessarily carried by this general deed which he made in 1838. That is the first consideration that presses itself upon my mind. In the second place, it was conceded at the bar, and it could not well but be conceded, on behalf of the reclaimers here, that the case of *Thoms* not only would require to be shaken, but would require to be superseded or disregarded before we could arrive at any other result in the present case than that at which the Lord Ordinary has arrived. Now whatever may be said about the case of *Thoms* elsewhere, it is impossible that we can disregard it, for it is an authority and a precedent of a most weighty description, being a decision not of one Division of the Court or of the other, but of the whole Court. It is quite true that it was only by a majority that it was pronounced, but there it stands, and I take it that we must give effect to it here till it is altered elsewhere.

But then it was said, in the third place, that there are specialties here which did not exist in those cases; and that may be quite true, but it was not asked or desired on the part of the reclaimer that he should be allowed to lead any evidence of extrinsic circumstances—so that is out of the case. All that he relied upon was the specialties arising from the construction of the deeds themselves, and among other specialties there were, I think, only two of any materiality. I think it came to this, that, in the first place, in this general deed of conveyance Lachlan M'Neill dropped his name of Campbell which had been given to him by the destining deed which left him the particular estates in question, and that by his dropping the name of Campbell, which he did not require to use with reference to the other estates, it was the other estates and not the estates in question that he intended to be carried by this general deed. Now that, in a certain view that may be taken of it, is an indication, I was going to say of a very shadowy description, but I will rather more properly call it of a fanciful description. And accordingly Mr Robertson did not follow it up by illustration or otherwise so as to enforce it, but said he mentioned it, and left it there. I turned it in my mind to see whether there is any importance that can legitimately be attached to it, but I find that I cannot apply it to this case in any way, so as to rely upon it as a substantial or material indication of intention that possibly can be given any weight to. The only other material specialty that was relied upon was that in the case of *Gray*, and also in the case of *Thoms*, there were no other special lands that had been previously destined or carried under previous destination, whereas we have here other lands carried under a different deed. That is no doubt a material circumstance, but I am disposed to look upon it very much in the light in which Lord Young has stated it. I cannot think that there is sufficient in it to detract from the universality of the conveyance in the general deed, for notwithstanding that previous title to those particular lands which undoubtedly existed at the time, they nevertheless belonged, just as much as anything else that he had in the world, to the maker of this deed, Lachlan M'Neill. And looking to extrinsic evidence, we have none—and there is no motion made to be allowed to lead any—to show that the circumstance of these other lands being named in another deed giving a different destination makes any specialty in the case. And here we have the testator's intention disclosed to convey the lands in question to his sister rather than to allow them to go to another family, and another clan, the Campbells. I am therefore, along with your Lordships, for adhering to the interlocutor of the Lord Ordinary.

The Court adhered.

Counsel for Pursuer (Respondent)—M'Laren—Mackay. Agents—Lindsay, Howe, Tytler, & Co., W.S.

Counsel for Defender (Reclaimer)—J. P. B. Robertson. Agents — Pearson, Robertson, & Finlay, W.S.

Saturday, January 18.

SECOND DIVISION.

[Sheriff of Mid-Lothian.

BAINBRIDGE *v.* BAINBRIDGE.

Process—Reponing—Decree by Default—Stat. 39 *and* 40 *Vict. c.* 70 (*Sheriff Courts Act* 1876, *sec.* 19) *—Power of Sheriff to Prorogate Time for Lodging Defences.*

The Court will, if they see good reason, upon payment of expenses, repone a defender in an action in the Sheriff Court against whom decree has gone by default on account of defences not being lodged in time.

Observed that a *bona fide* negotiation with a view to a compromise was such a reason as would entitle a defender to be reponed.

Observed that the Sheriff Court Act of 1876, while taking away power to prorogate the time for lodging defences of consent of parties, did not deprive the Sheriff of the power of granting a prorogation which he possessed under previous Acts.

This was an appeal from the Sheriff Court of Edinburgh against an interlocutor of the Sheriff-Substitute and Sheriff giving decree by default against the appellant, who was the defender in the action, in respect that defences had not been lodged in time.

The action was one for aliment at the instance of a wife against her husband, and there were

allegations that the pursuer had been obliged to leave her husband in consequence of his great cruelty to her. It was raised on the 5th September, and decree was pronounced against the defender by the Sheriff-Substitute (HALLARD) "in respect of no defences," on the 6th December. Defences were lodged the same day.

The Sheriff (DAVIDSON) on appeal adhered, adding the following note:—

"*Note.*—The defender entered appearance to defend the action on the 14th of September. If for any good reason a prorogation of the statutory time for lodging defences was desired, application for such a prorogation should have been made to the Court within the time allowed for lodging defences. The Sheriff is not prepared at present to hold, and it is not necessary to determine the point here, that although it is not competent '*of consent of parties*' to prorogate the statutory enactment as to lodging defences, it is incompetent for the Sheriff on sufficient cause shown to grant a prorogation. It may not, however, be so held. In this instance no application was made. Nothing seems to have been done in the case between the 14th September and the 6th December, when the interlocutor appealed against was pronounced. That was an *ex parte* proceeding apparently. The interlocutor seems in the circumstances to have been inevitable; and supposing the Sheriff to have the power to recall it, he has heard no good reason for doing so."

The defender appealed to the Court of Session. It was admitted that the delay had been caused by a proposal to compromise the case, which had been rejected by the defender after being approved by his agent. He had, however, in the meantime offered to take back his wife. The Sheriff ought therefore to have reponed in the circumstances. He had power to do so. The late Sheriff Court Act did not apply, and the procedure was regulated by the Act of 1853.

Argued for respondent—It was admitted that the Sheriff had power to repone in a case of decree in default of defences, and also that the Act of 1853 governed the procedure in regard to that. It was also admitted that the Sheriff had power to prorogate, and the Act of 1876, sec. 19, did not deprive him of that power—(*Observed per cur.* That is undoubted). But in this case this did not arise, for no prorogation was asked. The policy and reason of the Act of 1876 was to put a stop to the dilatoriness and remissness of agents, and the consequent delay in Sheriff Court procedure—Lord President in *M'Gibbon* v. *Thomson*, July 14, 1877, 4 R. 1085. In that case it was held that the Court had no doubt power to repone, but it was also held that the Sheriff was more likely to be conversant with the facts of the case than the Court, and that the Court would not lightly interfere with the Sheriff's decision. It was submitted that the present was a case exactly falling under the rule laid down in the case of *M'Gibbon*, and the Sheriff having found that there were no grounds for reponing, the appeal should be dismissed.

Authorities—Sheriff Court Act 1876 (39 and 40 Vict. c. 70); Sheriff Court Act 1853 (16 and 17 Vict. c. 80); *Robb* v. *Eglin*, May 18, 1867, 14 Scot. Law Rep. 473; *Vickers & Son* v. *Nibloe*, May 19, 1877, 4 R. 729; *Robertson* v. *Barclay*. November 27, 1877, 5 R. 257; *M'Gibbon* v. *Thomson*, *supra*.

At advising—

LORD JUSTICE-CLERK—The object of the Sheriff Court Act of 1876 was to prevent cases hanging on from week to week, and even from year to year, in consequence of the indolence or inattention of those conducting them. But it appears to me that when the parties were *bona fide* engaged in endeavouring to bring about a settlement with a view to stop litigation, it would be too stringent a construction of the Act that one of the parties should have decree given against him by default and be foreclosed from any remedy merely because he was late in lodging his defences. And in point of fact I cannot say that, looking to the facts of the case, the appellant here was not right in refusing to incur the expense of lodging defences till it should be seen what was the result of the negotiations. But there is further this question—When the compromise was broken off, was it right in the circumstances of this case to preclude the husband from all relief by giving decree against him when he had in the meantime offered to take back his wife, the pursuer? I cannot hold this, and therefore I think we should remit the case back to the Sheriff to repone the defender upon payment of such sum of expenses as we may decide on.

LORD ORMIDALE—I concur. I do not want it to be understood, so far as I am concerned, that the Sheriff-Substitute having pronounced a decree in default of defences being lodged, which he was quite entitled to do, could recal it the next day and repone the party in default. But I think the Sheriff on appeal is entitled to do this if he should think fit. I think the action of the Sheriff-Substitute in this and similar cases is a proper check upon the dilatoriness of parties, and the necessity of going to the Sheriff and paying a sum of expenses before they can get redress is another very wholesome check upon people who will not lodge defences in time, or who apply for a prorogation of the time for lodging them.

LORD GIFFORD—I am of the same opinion. I think this is a fair case for reponing the defender. I am to some extent moved by the fact that this is a consistorial action, and that the husband has made an offer to take the wife back.

Appeal sustained, and remit made to the Sheriff to repone the appellant upon payment of £3, 3s. of expenses.

Counsel for Pursuer (Respondent)—D. Robertson. Agent—Alexander Clark, S.S.C.

Counsel for Defender (Appellant)—Kennedy. Agent—John Macpherson, W.S.

Friday, January 24.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION —(*KER'S CASE*) ALAN KER (FYFE'S TRUSTEE) *v.* THE LIQUIDATORS.

Public Company—Winding-up—Circumstances from which Authority to Register inferred.

The name of a trustee under a marriage-contract was by the instructions of the agent to the trust entered along with the names of