by a majority of members if it was a company of this kind, unless there was any provision in the contract which would over-ride the judgment of the majority. It appears to me that it might be a question in the absence of such provision in the contract whether the excess of earnings in any year might not be divided as profits although some portion of the capital might have been lost. That might possibly be; there is no rule of law so far as I know which would prevent a copartnery so treating their accounts. But then the difficulty arises where according to the constitution of the company the shareholders are divided into two classes having adverse interests; and in such a case it would be impossible to hold that the shareholders having a preference, or being subject to postponement as the case might be, were necessarily to be bound by the judgment of the whole shareholders having a different interest from theirs merely because the one body was larger than the other. It therefore appears to me that the question which is raised in the statement of fact which is put before us might be one of some delicacy.

It is said that there had been a loss upon the ordinary revenue account of the company, resulting in a debit balance at 30th April 1886, and that it so remained until 30th April 1889, and that during that year profits had been made to the amount of £6909, 8s. 7d., and these net profits were applied by the company in wiping out the debit balance on the profit and loss account of previous years. Now, I must say that if I were required to determine whether that was a proper mode of treating the account or not, I would require some further information. But then I do not think that is a question which is raised for our determination at all, not only because there is nothing set forth in the special case to challenge the method in which the accounts were stated, but because upon the face of the special case the parties are agreed that that was a proper mode of treating the account. When parties are agreed to present a special case to the Court, and ask for their opinion and judgment upon any questions arising out of it, then they are bound by the judicial contract between them; all the statements of facts, or statements of mixed law and fact, which the special case contains are conclusive and binding, and not only so, but are exhaustive of all the facts which are necessary to enable the Court to give judgment upon the questions arising. Now, that being so, I take it that the parties are agreed that in consequence of the existence of this debit balance there was no sum available for division among the shareholders by way of dividend. If that mode of dealing with the account were right, then of course there was no profit which could be allocated to the preference shareholders; if it were wrong, then it follows equally of course that the dividend which ought to have been paid to the preference shareholders was wrongly applied in wiping out the debit upon the account. Therefore it appears to me that when the second party in this case claims to have a dividend which might have been payable to him in that year made good out of the larger profits of the subsequent year, he is merely in a position to maintain that he is entitled to recover from the company—that is, from the other shareholders — moneys which have been improperly applied. That is the meaning—and the only meaning — which can be put upon the argument which was addressed to us in support of the special case. If the thing was rightly done, there was no dividend; if it was wrongly done, then money was improperly applied which ought to have gone to preference shareholders; and when the question is put in that way, it becomes quite obvious that the second party cannot maintain that position, because it is a statement of fact upon which he has agreed, and which is binding upon him and upon the other party, that there was no part available for division in the year in which this sum of £6909, 11s. 7d. was applied to wipe out the debit balance. Therefore it appears to me to be quite clear upon the statements in the case that there was a deficiency of dividend in the sense of the memorandum of association in that year which he is not entitled to have made good out of the profits of the present year.

The LORD PRESIDENT was absent.

The Court answered the first question in the negative and the second question in the affirmative.

Counsel for the First Parties—Salvesen. Agents—Drummond & Reid, W.S.

Counsel for the Second Party—Clyde. Agents—Stuart & Stuart, W.S.

Friday, December 19, 1890.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

JAMES BROWN & COMPANY *v.* M'CALLUM AND OTHERS.

Bankruptcy—Reduction—Illegal Preference —Title to Sue—Act 1696, *c.* 5—*Bankruptcy Act* 1856 (19 *and* 20 *Vict. c.* 79), *secs.* 10, 11.

The right of an individual creditor to reduce an illegal preference granted by his debtor in contravention of the Act of 1696, c. 5, is not excluded upon the sequestration of the debtor in respect of the right to reduce "for behoof of the whole body of creditors" conferred upon the trustee by the 11th section of the Bankruptcy (Scotland) Act 1856.

This was an action at the instance of James Brown & Company, venetian blind manufacturers, Glasgow, against John M'Callum and Robert Bowie, for the reduction of a disposition in their favour dated 16th and recorded 17th March 1888. The defenders were cautioners in a cash-credit bond granted to the Clydesdale Bank

by Archibald Bowie, a partner of the firm of Archibald Bowie & Sons, builders in Glasgow, and the disposition in question, which was qualified by a back-letter, had been granted by Archibald Bowie to the defenders for their security. At the date of the disposition Archibald Bowie was subject to a charge for payment of a certain debt due to James D. Thomson, and as the days of charge expired upon 19th March 1888 without payment of the debt, it was matter of admission in the case that Archibald Bowie was notour bankrupt within sixty days after registration of the disposition. Thereafter upon 21st June 1888 the estates of Archibald Bowie and Archibald Bowie & Sons were sequestrated, and Robert Reid, C.A., Glasgow, was appointed trustee. Sometime after entering upon the duties of his office the trustee was advised that the disposition of 16th March was reducible; but no step was taken by him with a view to reduction as he was unwilling to incur expense until he ascertained whether the property would realise anything over and above the heritable debt for which it was burdened. In the meantime, with the concurrence of all parties interested, the surplus rents were consigned in bank to await the settlement of all questions of right.

The pursuers of this action, James Brown & Co., were at and prior to the date of the disposition tenants of the firm of Archibald Bowie & Sons in the subjects disponed; and at the term of Martinmas 1888 they refused payment of the rent then due in respect that they had a counter-claim against Archibald Bowie & Sons and Archibald Bowie, and that it had been arranged between them that they were to retain the rent in satisfaction of the debt due to them. An action of sequestration and sale was thereupon brought against Brown & Company in the Debts Recovery Court of Renfrewshire at the instance of John M'Callum & Robert Bowie, the disponees vested in the property. To this Brown & Company pleaded that the real owners of the property were Archibald Bowie & Sons, and that as against them they were entitled to retain the rent in respect of the counter-claim.

The Sheriff-Substitute repelled the defences and granted decree, the Sheriff on appeal adhered to his Substitute's judgment, and a further appeal was taken to the Court of Session.

Before the appeal was heard in the Court of Session, Brown & Company raised the present action to reduce the title of M'Callum and Bowie on the ground that it was a voluntary deed granted to the defenders by Archibald Bowie within sixty days of his bankruptcy, and was therefore granted in contravention of the Act of 1696, c. 5. The effect of this action if successful would be to validate the counter-claim of Brown & Company in the appeal. Before the record was closed, however, on 22nd January 1890, the trustee, with consent of the commissioners on the sequestrated estates, exposed for sale by public roup, after due public notice and advertisement, at the upset price of £600, the whole unrealised assets of the said sequestrated estates, including, *inter alia*, his whole right and interest in the property conveyed by the said disposition, and including all right and title competent to him as trustee to challenge or impugn the validity, *inter alia*, of the disposition. The subjects were bought by Mr Colledge, writer in Glasgow, at the price of £955. and thereafter upon 1st February 1890 the trustee was, upon his own motion, sisted as a defender.

The pursuers pleaded—"(1) The defender Reid has no title or interest to defend the present action. (2) In the circumstances condescended on, the disposition libelled is reducible under the Act 1696, cap. 5, and at common law, and the pursuers are entitled to decree as concluded for, with expenses. (3) The defences are irrelevant. (4) The pretended assignation by the defender Reid to Mr Colledge cannot be pleaded in bar of this action, in respect, 1st, that it was made after matters had become litigious, and constitutes in the circumstances contempt of Court on the part of an officer of Court; 2nd, that it was made in defraud of the legal rights of the pursuers and other creditors; 3rd, that the right of a trustee in bankruptcy to challenge a deed is personal to him *qua* trustee, and intransmissible; and 4th, that the said assignation cannot divest the pursuers of their right of challenge, or confer on any third person a title to object to their exercising such right. (5) The defender Reid ought to be found personally liable in expenses."

The defenders pleaded—"(1) The pursuers' statements being irrelevant, and insufficient to support the conclusions of the summons, the action ought to be dismissed, with expenses. (2) The pursuers having no interest to maintain the present action, it ought to be dismissed, with expenses. (3) The defender Robert Reid, as trustee foresaid, having, with consent of the commissioners on the said sequestrated estates, legally sold and disposed of the whole unrealised assets of the said sequestrated estates, and the pursuers' right to pursue the present action being thereby barred, the action ought to be dismissed, with expenses. (4) The pursuers having no interest in respect of set-off or compensation, or otherwise to ask decree in the present action, it ought to be dismissed, with expenses. (5) The pursuers' statements being, so far as essential, unfounded in fact, the defenders ought to be assoilzied, with expenses. (6) In any event, the pursuers are not entitled to decree of reduction without making *restitutio in integrum* to the defenders John M'Callum and Robert Bowie, and relieving them of outlays and expenses incurred in virtue of said disposition."

On 20th May 1890 Lord Kinnear reported the action of reduction to the First Division with the statement appended:—"The Lord Ordinary thinks it proper to report this case, because the process of reduction is incidental to another process at present depending before the First Division.

"The latter process is an action of sequestration and sale instituted by the defenders

in this action, Messrs M'Callum & Bowie, against the present pursuers, in the Sheriff Court of Paisley, to enforce payment of the rent of certain premises forming part of the subjects conveyed in the disposition now under reduction. The pursuers pleaded in defence that Messrs M'Callum & Bowie were not the true owners of the property, that the premises occupied by them formed part of the sequestrated estate of Archibald Bowie & Sons, and that in a question with the true owners they were entitled to set off the claim for rent against a debt due to them before the date of the disposition in question. Judgment was given against them in the Sheriff Court. They appealed to the First Division, and proceedings in the appeal have been sisted until the present action should be disposed of or brought before the Court.

"It is not disputed that the disposition in question is reducible at the instance of a prior creditor, under the Act 1696, cap. 5. But it is said that it is not for the interest of the general creditors that it should be set aside, and that the pursuers have no separate interest to insist in the reduction. The trustee in the sequestration, who had declined to be a party to the summons of reduction, has now been sisted on his own motion as a defender, and adopts the defences stated for the original defenders M'Callum & Bowie.

"If the plea of compensation is otherwise well founded, it would appear to the Lord Ordinary that the pursuers have a good title and sufficient interest to reduce the conveyance, so far at least as they are concerned, and so as to enable them to maintain that it must be treated as invalid for the purposes of the other action. The main question in controversy in the present case therefore depends upon the merits of the pursuers' case in the appeal before the First Division.

"The trustee alleges that, with the consent of the commissioners, he has sold his whole right and interest in the property in question, including all right and title competent to him to challenge or impugn the validity of the disposition, and it is argued that the pursuers' right to maintain the present action has been excluded by the sale. But the sale was admittedly carried through after the action had been intimated to the trustee. The latter avers upon record that the general creditors have no interest in the reduction. The interest which he has undertaken to sell, therefore, is that of the pursuers; and the argument is that during the dependence of a litigation the defender may destroy the pursuers' title by selling the subject-matter of the suit to a third person. It appears to the Lord Ordinary that the pursuers' right cannot be in any way affected by such a transaction."

On 4th July 1890 the First Division, after considering a note for the trustee and Mr Colledge, allowed the former to withdraw from the process, and having sisted Mr Colledge, then remitted to the Lord Ordinary to allow the parties a proof.

On 22nd July 1890 the Lord Ordinary, after a proof, of new reported the case to the First Division.

Argued for the pursuers—The question was whether there was compensation between the rent due by Brown & Company and their claim as creditors against the bankrupt estate. The date when the debt was contracted, not when it was payable, was the important matter, and so the rent, though not payable till Martinmas 1888, was a proper set-off—Bell's Comm. (M'Laren's ed.), 119, 122, 124, 132, and 139; Goudy on Bankruptcy, 545; *Fraser* v. *Robertson*, 8 R. 347. The pursuers had an obvious interest to reduce the disposition to clear the way for their plea of compensation in the appeal, but they also had a good title to reduce. Under the Act 1696, cap. 5, the pursuers had a title, and there was nothing in the Bankruptcy Act 1856 to take that away. [LORD PRESIDENT—Can you find any case of a person, after sequestration, taking steps to reduce under the Act of 1696 for his own benefit, and not in the interest of the general creditors?] There was no case precisely of that kind, but *Wright* v. *Walder*, 1 D. 641, was near it in point of principle. Here, since the sale of the unrealised assets for £955, there was a conflict of interest only between the heritable creditors and another creditor, whose title to reduce was anterior to the trustee's, and independent of it; but even if the question were with the general creditors, it would require some express enactment to take away the individual creditor's right, and there was none—Bankruptcy Act 1856, secs. 10 and 11. For this reason, too—apart from its being a conveyance *pendente lite*—the conveyance by the trustee to Colledge could not include the pursuers' right to reduce, and Colledge had no title to defend as against the pursuers. The cases of *Mann* v. *Reid*, 1704, M. 1183, and *Barclay* v. *Lennox*, 1783, M. 1151, were also referred to.

Argued for the defenders—There was no compensation as at the date of the sequestration in June, for the rent was not due till Martinmas, and when due it must be paid to those then entitled, viz., the trustee in this case. It had been said there was an "arrangement" by which the rent was to be retained in compensation of the account due to the pursuers. The alleged arrangement was not proved; but if it had been, the case of *Thomson* v. *Jamieson*, 9 S. 168, showed that only rent already due could be retained against the trustee. In *Elmslie* v. *Grant*, 9 S. 200, too, a person possessing under an agreement that the rent was to be applied in liquidation of debt was held entitled to prior rents only against heritable creditors who raised an action of mails and duties. [LORD PRESIDENT—These are indirect authorities; is there no direct authority?] No; but it would be absurd if the trustee should have to recognise a set-off of rent not yet due if a heritable creditor might afterwards carry off the debt so recognised. In fact, there was at date of sequestration no *concursus debiti et crediti*, which was essential—

Bell's Prin. sec. 573; *Martin* v. *Marshall*, 12 D. 1172. But these creditors had no title to sue in the reduction. No case could be quoted since 1856—*Henderson* v. *Robb*, 16 R. 341—in which a single creditor had sued a reduction under the Act of 1696 after sequestration, and the Bankruptcy Act, sec. 11, gave that right to the trustee. [LORD PRESIDENT—But has he a right to exclude an individual creditor—has he not at most only a concurrent right?] In any case, since sale of the unrealised assets he had no interest. The sale was carried through in the discretion of the trustee after consultation with the commissioners, and at a public sale. No action now could operate as an interdict, and any benefit gained by the pursuers would accrue to Colledge. Further, the evidence of notour bankruptcy was not sufficient—*Macrae* v. *Sutherland*, 16 R. 476.

At advising—

LORD KINNEAR—There are two actions to be disposed of between the same parties. The first is an action of sequestration and sale in the Debts Recovery Sheriff Court of Renfrewshire at the instance of John M'Callum and Robert Bowie, as proprietors of certain subjects in the parish of Govan in that county, against James Brown & Company as tenants of these subjects, in respect of their failure to pay the rent due at Martinmas 1888. Brown & Company pleaded in defence that the pursuers were not the proprietors of the subjects in question, that the true proprietors were Archibald Bowie & Sons, whose estates had been sequestrated, and that they (the defenders) were entitled to retain the rents to compensate a counter claim at their instance against the sequestrated estate. The Sheriff repelled the defences, and if the question were to be determined according to the state of the title as it stood when the action was brought, that was probably a sound judgment. But the case was appealed to this Court, and before the appeal had been heard an action of reduction was raised by Brown & Company for the purpose of setting aside the title of M'Callum and Bowie. Proceedings in the appeal were sisted until the reduction should be disposed of, and we have therefore to consider the merits of this second action before we can dispose of the appeal.

The title on which the action of sequestration is based is a conveyance *ex facie* absolute by Archibald Bowie in favour of John M'Callum and Robert Bowie. But it is admitted that this absolute conveyance is qualified by a back-bond whereby the disponees acknowledge that it was in reality granted in security for repayment of whatever sum they might be required to pay as the granter's cautioners under a cash-credit bond for moneys advanced to him by the Clydesdale Bank. The conveyance is therefore a mere security, and the ground on which it is challenged is that it creates an illegal preference under the Act 1696, cap. 5, as a voluntary conveyance granted within sixty days of bankruptcy in further security of a prior debt to the prejudice of the other creditors of the granter. I do not think it doubtful that this objection is well founded, and that the conveyance is reducible under the statute, and indeed I do not see that this is seriously disputed by the defenders. By a minute of admission they admit, among other things, statements contained in the 3rd article of the condescendence. Now, that statement is that "the said Archibald Bowie was at the date of the said disposition within sixty days of the registration thereof, and he still is, in a state of notour bankruptcy, having been on 13th March 1888 charged under an extract registered protest at the instance of James D. Thomson, timber merchant, Grangemouth, dated 9th March 1888, and recorded in the Sheriff Court books of Renfrewshire 12th March 1888, and which charge expired on 19th March 1888 without payment of the debt, and was followed by sequestration of the said Archibald Bowie's estates under the Bankruptcy Statutes on 21st June 1888."

It is only necessary to add that the guarantee by the defenders to the bank had been granted many years ago, that there was a large balance due to the bank when the conveyance under reduction was granted, that the debtor's insolvency was perfectly well known both to himself and to his agents, and that the conveyance was granted for no other purpose but to give the cautioners a security for their claim of relief. That the conveyance was granted voluntarily there can be no question. The evidence shows that it was prepared by the bankrupt's agent Mr Jackson without any demand from the defenders, and even without any previous communication with them. They appear to have known nothing about the matter until they were presented by Mr Jackson with a security for which they had never asked. I have not been able to find in the evidence any satisfactory explanation of the reasons for granting this conveyance, and certainly I can find no ground in law upon which it can be supported.

But then the trustee in the sequestration, for reasons to which I shall advert immediately, has not attempted to reduce this security as an illegal preference, and it is said that if he thinks fit to leave it standing, the pursuers as individual creditors have no interest and no title to set it aside. Their interest as creditors is clear enough, because the effect of an action of this kind is to enlarge the estate for distribution. But besides this interest which they have in common with the other creditors, they have a special interest of their own to set aside a conveyance which, if it stands, will exclude their plea of retention, or, in other words, will defeat a security which they claim to possess over part of the sequestrated estate. We cannot now determine the validity of their alleged right to retain, because there may be other interests involved which are not represented in this process. But the grounds on which they maintain their right are perfectly intelligible, and will probably be found to be

valid, if the effect of the reduction should be to bring back the property over which the illegal preference extends into the sequestrated estate so as to make the trustee, by virtue of the vesting clauses of the statute, the proper creditor in the claim for rents. Whether that will be so or not I do not say at present, for the reason I have stated. But it is enough for the purpose of this action that the pursuers have a good interest to set aside an illegal preference, if it be illegal, in order that they may be enabled to maintain their security in the sequestration, even although we cannot now determine, as against the other creditors, that that security will be effectual.

If they have a sufficient interest, it can hardly, I think, be disputed that they have a good title under the Act of 1696, because it is admitted that they are prior creditors, and because the right of reduction conferred by the statute is not given to the general body, but to those prior creditors whose interests are prejudiced. But then it is said, that although an individual creditor might have reduced under the Act of 1696, that right has now been transferred by the Bankruptcy Act of 1856 to the trustee in the sequestration, so that since that statute the trustee alone has a title to reduce, to the exclusion of the title of individual creditors in any circumstances. I think this an untenable construction of the statute. The 11th section enables the trustee to set aside any deed or alienation which is voidable by statute or at common law for behoof of the whole body of creditors, although such deed or alienation could not previously have been set aside except for behoof of a limited class of creditors. But there is nothing in that enactment to deprive a particular creditor of any right which he may have possessed either at common law or by statute independently of the Act of 1856. It may very well be that a single creditor, by reason of a security which he holds over part of the bankrupt's estate, may have an interest either adverse to the general body of creditors, or in which they do not participate, and in such a case the trustee may have no interest, and therefore no title to reduce for behoof of the general body, but then the trustee takes the estate for behoof of the general body, subject always to the securities which existed at the date of the sequestration, and it seems to me to follow that the creditors who hold such securities cannot be deprived of their right to make them effectual by setting aside any fraudulent or illegal preference which may stand in the way of their legal operation, merely because the statute has extended to the whole body of creditors the benefit of certain challenges which were previously available only to a particular class. The pursuers' position is that they held a good legal security over a part of the bankrupts' estate, but they cannot make their security effectual because it is apparently excluded by a conveyance which they allege to be a fraudulent alienation to their prejudice. If the trustee had thought fit to reduce such a conveyance he would have recovered the property, which has been wrongfully alienated, for the benefit of the whole body of creditors, but subject always to their preferable security. For a right of retention is a security in the sense of the statute, and the estate in the trustees' hands is subject to the security created by that right, just as clearly as it is subject to a preferable security created by disposition and infeftment. It follows that if the trustee does not think fit to take action the pursuers may reduce for their own benefit an illegal preference which stands in the way of their legal right.

But it is said that the trustee has resolved not to challenge the defenders' conveyance not merely because the general creditors have no interest, but because it would be against their interest to set it aside. And the argument is that the pursuers ought not to be allowed to reduce to the prejudice of the general body of creditors. Now, in the first place, I do not see that there is any party to this process who has any title to maintain the interest of the creditors. The trustee was sisted as a defender, but on his own motion he was allowed to withdraw on the ground that in the course of the process he had sold the whole assets of the bankrupt estate to Mr Colledge, and had therefore no longer any interest in the matter, and on that statement Mr Colledge was sisted in his room. The position of the trustee therefore is that the creditors have no interest in the result of this action, and will not be affected by it in any way; and I do not see how Mr Colledge can be heard to contradict that position, and so displace the ground upon which he was allowed to appear as a defender.

But then it is argued, as I understand the defenders' case, that the validity of the pursuers' title must be determined with reference to the circumstances in which they brought this action, and that at that date the trustee opposed them, because he thought the proceedings which they instituted would be prejudicial to the creditors. It is true that the trustee appeared in the process and adopted the defences of the disponees M'Callum and Bowie. It appears to me that in doing so he placed himself in a somewhat singular position, because he was endeavouring to maintain an illegal preference, and I am unable to find any satisfactory explanation of his reason for taking that course. It is possible that the heritable creditors might have an interest in resisting the reduction, because it is possible that they may lose some part of the rents by the exercise of the pursuers' alleged right of retention, and, on the other hand, they can gain nothing by the reduction, because their securities are preferable both to the defenders and to the trustee. But if it was in their interest that the trustee appeared as defender, he was going altogether beyond the scope of his duty. It was no part of his duty to maintain an illegal preference, merely because certain security-holders have an indirect interest in keeping it up, in order to defeat another security which *ex hypothesi* is perfectly

just. The supposed interest of the heritable creditors must therefore, in my opinion, be disregarded. And there is nothing in the evidence to show that the unsecured creditors will be prejudiced. The only difference which this action can make in the sequestration proceedings is, that the subjects will be freed from the burden of an illegal security for the benefit of all the creditors according to their several interests, and the only difference which, on that being done, the pursuers' claim will make is, that they may obtain full payment of a part of their debt by the exercise of a right of retention instead of merely ranking for a dividend. If the unsecured creditors have such an interest in the rents as to make this of any importance to them, it would seem to follow that they must have a corresponding interest in the subject which produces the rents, and in that case they would gain more by the recovery of the subject itself than they would lose by the retention of the rents. But we have no such statement as to the position of the estate as would be required in order to ascertain exactly the manner in which creditors may be affected by this action. And it does not appear to me to be necessary that we should inquire further. It is sufficient that the pursuers' claim to retain, if it receives effect in the sequestration, is preferable to the claims of unsecured creditors. It follows that if they should lose anything by the claim being sustained, that is a loss to which they must submit. They cannot defeat a legal preference by setting up against it a preference which the law disallows.

For the same reason the only other ground on which the defence is maintained appears to me to be equally unfounded. It is said that the trustee has sold the whole assets of the estate, together with his title to reduce the conveyance in question, to the defender Mr Colledge, and that the sale must receive effect under the provisions of the Bankruptcy Act. It is not explained how the reduction of a security will prejudice the purchaser. But it is unnecessary to consider whether the purchaser will be prejudiced. His position is, that by virtue of his purchase he has acquired a right from the trustee to support the conveyance against the pursuers' challenge, and this position is untenable for two reasons. In the first place, assuming that the trustee might assign his own title to reduce for the benefit of the general body of creditors, it is manifest that he could not assign the preferable right of an individual creditor. In the second place, if he could have sold to the pursuers' prejudice before the litigation began, he certainly could not do so after the action had been raised. Now, the process was intimated to the trustee in obedience to an interlocutor of the 17th of December, the sale was carried through on the 22nd of January, and the trustee was sisted as a defender on the 1st of January for the purpose apparently of maintaining that he had defeated the pursuers' title by selling the right which formed the subject of litigation during the course of the process. I remain of the opinion which I expressed in reporting the case, that the pursuers' title cannot be affected by such a transaction.

The result is that in my opinion the pursuers are entitled to decree in the action of reduction to the effect of enabling them to maintain their plea of retention in the sequestration. The reduction destroys the title of Messrs M'Callum and Bowie to maintain the action in the Sheriff Court; and the Sheriff's interlocutor must therefore be recalled, and that action must be dismissed.

The LORD PRESIDENT, LORD ADAM, and LORD M'LAREN concurred.

The disposition was reduced, and the appeal thereafter sustained.

Counsel for the Pursuers—Jameson—Shaw. Agent—R. Ainslie Brown, S.S.C.

Counsel for the Defenders—M'Kechnie—Guy. Agent—MacAndrew, Wright, & Murray, W.S.

Tuesday, March 10, 1891.

FIRST DIVISION.

[Sheriff of Ross, Cromarty, and Sutherland.

SCHOOL BOARD OF BARVAS AND OTHERS *v.* MACGREGOR.

School—Board School—Dismissal of Teacher — Public Teachers (Scotland) Act 1882 (45 *and* 46 *Vict. cap.* 18), *section* 3, *sub-section* (2).

Section 3, sub-section (2), of the Public Teachers Act 1882 provides that a certificated teacher can only be dismissed by resolution agreed to by a majority of the whole school board.

Held (1) that this provision made it illegal for a school board to delegate the power of dismissing a teacher to managers appointed by it, and (2) that the resolution of a school board dismissing a teacher, which was agreed to by a majority of the whole board, was not rendered invalid by the presence of Her Majesty's Inspector of Schools for the district at the meeting at which the resolution was adopted.

On 10th June 1885 Donald Macgregor, certified teacher, was appointed by the School Board of Barvas teacher of the Lionel Public School in the parish of Barvas. The terms of his appointment were that he should have a salary of £40, school-fees, free house and garden, and one-half of the annual Government grant, and that three months' notice should be given by either party of the termination of the engagement.

On 21st December 1888 the Committee of Council on Education in Scotland resolved to give assistance to certain parishes in the Highlands on, *inter alia*, the following con-