existing state of possession as against all the others. It is said that the right claimed by the defenders had begun in a lesser right of use, *i.e.*, of raising goods by means of a block and tackle, which had been unchallenged for so long as to deprive the other feuars of their right of interference. That may be so, but then any right which the defenders acquired was nothing more than a right to put forward a plea of bar against others seeking to interfere with them, and such a plea can never be extended, as I think, beyond the original use. The conversion of this simple expedient into a regular mechanical lift occupying a definite space, and at times blocking up the window, seems to me to be a distinct extension of the use, and it is impossible for them to justify it consistently with the rights of the other owners of the joint servitude over the Court.

LORD KINNEAR concurred.

The pursuers moved for expenses in the Outer and Inner House on the ground that they had been successful, and that the action of reduction had been caused by the defenders having taken extract of the Sheriff's decrees hurriedly so as to prevent the pursuers appealing. It was competent in a reduction to ask for the whole expenses—*Bisset* v. *Anderson*, March 9, 1849, 11 D. 1015. The defenders argued that the pursuers were only entitled to the expenses they would have got if they had appealed—*Tennents* v. *Romanes*, June 22, 1881, 8 R. 824.

The Court recalled the Lord Ordinary's interlocutors of 8th and 25th June and 7th March 1896; reduced, declared, and decerned in terms of the reductive conclusions of the summons; found and declared that neither of the defenders had any right or title to erect a hoist or to erect guide-posts upon the top of the sunk area or upon any part of the back court below the level of the original basement floor of said hoist as it existed prior to the year 1883; and ordained the defenders to remove so much of the said guide-posts and other connections as are contiguous to or *ex adverso* of any part of the pursuers' back wall below the said basement-floor of the hoist; and granted interdict against the renewal of the structure. The Court found the defenders liable in the expenses in the Sheriff Court and Inner House.

Counsel for the Pursuers—Ure—M'Lennan. Agents—Cumming & Duff, S.S.C.

Counsel for the Defenders — Sol.-Gen. Dickson — Younger. Agents — Carmichael & Miller, W.S.

Tuesday, July 7.

FIRST DIVISION.

[Sheriff of Forfarshire.

WATSON (FRASER'S TRUSTEE) *v.* FRASER.

Bankruptcy — Sequestration — Trustees' Power of Recovering Documents—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *sec.* 91.

The trustee on the sequestrated estate of a wine and spirit merchant who was tenant of a public-house, *held* entitled, under the 91st section of the Bankruptcy Act 1856, to production and delivery of the bankrupt's permit book and certificate of licence.

This was an appeal presented by Hugh Hayes Watson, trustee on the sequestrated estate of Mrs Jane Fraser, who carried on business as a wine and spirit merchant in a public-house of which she was tenant, against certain deliverances of the Sheriff-Substitute (SMITH) at Dundee in the statutory examination of the bankrupt.

The deliverances appealed against were as follows—"At Dundee, 24th June 1896, in presence of John Campbell Smith, Esquire, Advocate, Sheriff-Substitute of Forfarshire at Dundee. Present . . . Compeared the bankrupt, Mrs Jane Fraser, who being solemnly sworn and examined, depones, . . . The agent for the trustee moved that the bankrupt be ordained to deliver up the permit book. *Deliverance.*—The Sheriff-Substitute ordained the bankrupt to allow the trustee to have access to the permit book on all occasions desired by him when it was necessary that he should have the use of the permit book in order to obtain information in regard to the estate: *Quoad ultra* refused the motion. . . . (*Q*) Are you willing to give up your certificate of licence to the trustee? *Deliverance*—Question disallowed."

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79), sec. 9, enacts—"The bankrupt and such other persons shall answer all lawful questions relating to the affairs of the bankrupt; and the Sheriff may order such persons to produce for inspection any books of account, papers, deeds, writings, or other documents in their custody relative to the bankrupt's affairs, and cause the same, or copies thereof, to be delivered to the trustee."

Argued for the appellant—(1) The trustee in bankruptcy was entitled to the permit book, for that alone would enable him to check the transactions of the bankrupt, who was still carrying on business. (2) He was also entitled to the bankrupt's certificate of licence, which formed part of the assets of the estate, and which would be transferred under section 19 of the Home Drummond Act (9 George IV. cap. 58) to the purchaser of the business from the trustee—*Clift* v. *Portobello Pier Company*, Feb. 10, 1877, 4 R. 462. The certificate was a mere accessory of the lease and the good-

will—*Selkirk* v. *Coupland*, January 6, 1886, 23 S.L.R, 456; and the trustee was entitled to it under the Bankruptcy Act without raising an action to enforce his right—*Selkirk* v. *Service*) Oct. 22, 1880, 8 R. 29.

Argued for the respondent (the bankrupt) —The appeal was incompetent. The question at stake here was as to the right of property in the certificate, and that could not be raised and determined in the bankrupt's examination. In *Coupland* a minute setting forth the facts was required to be lodged before the Court pronounced a decision. No such material had been put before the Court here. In any event the Sheriff was right. The trustee had been allowed access to the permit book, and he knew the terms of the certificate. The certificate itself was purely personal, analogous to a pilot's licence, and did not vest in the trustee. Authorities cited—*Delvoitte & Co.* v. *Baillie's Trustees*, Nov. 16, 1877, 5 R. 143; *Yuille* v. *Rushbury*, July 4, 1888, 15 R. 828; *Philp's Executor* v. *Philp's Executor*, February 1, 1894, 21 R. 482.

At advising—

LORD PRESIDENT—This appeal is not a very satisfactory proceeding, if the object of parties be to ascertain the ultimate rights of the trustee and the bankrupt respectively to this certificate of licence. But we must consider the matter as it is presented to us, and I think that, *prima facie*, the trustee is entitled to have delivered to him the permit book, as being one of the books of this bankrupt trader, and the licence, as being a document relating to the business of the bankrupt. What right the trustee may have to make use of the certificate of licence, and his power of disposing of it, must depend upon questions which we are not in a position to decide: as thus—if it be the fact that the bankrupt is tenant of these premises, and is using the certificate to carry on the trade, the trustee may or may not be in a position to take the business and get the licence transferred to a purchaser of the business from him; if, on the other hand, the bankrupt can make out some such case as that suggested at the bar, that may lead to another result. On that I do not pronounce.

It seems to me that the question is, In whose hands, in the first instance, shall these documents be? And I answer that by saying, they should be in the hands of the trustee.

As regards procedure, the Sheriff has, in the first place, merely ordained the bankrupt to allow the trustee to have access to the book. That seems an inadequate remedy and an inadequate satisfaction of the trustee's right. And accordingly I think that must be recalled. As regards the question disallowed, that raises the matter of the certificate in a very unsatisfactory way. I must say I do not think the question was necessary at all, except as a matter of mere politeness. The trustee's right to the certificate in no way depended upon the willingness of the bankrupt to give it up. Therefore I think we should go a step further, and save any questions which may arise in the Court below by remitting to the Sheriff to order the licence to be produced and delivered to the trustee.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court recalled the deliverance of the Sheriff as to the permit book, and remitted to the Sheriff to order the licence to be produced and delivered to the trustee.

Counsel for the Appellant — Sol.-Gen. Dickson — H. Johnston. Agent — James Purves, S.S.C.

Counsel for the Respondent—Salvesen—W. L. Mackenzie. Agent—J. A. Pattullo, S.S.C.

Wednesday, July 8.

SECOND DIVISION.

[Sheriff of Dumfriesshire

MURRAY *v.* JOHNSTONE.

Property — Club — Common Property — Alienation of Club Property by Majority of Members.

A curling club having won and become the owners of a cup presented for competition—*held* (*diss.* Lord Young) that the majority of the members at a meeting specially called to consider and determine as to the disposal of the cup, were not entitled, against the wishes of the minority, to present the cup to the skip of their highest winning rink at the competition.

In 1869 Sir Sydney H. Waterlow, sometime M.P. for the County of Dumfries, presented a silver cup, since known as the Waterlow Cup, as a trophy to be played for by the curling clubs of Dumfriesshire. The inscription on the cup was as follows:—"Dumfriesshire Challenge Cup. Presented to the Curling Clubs of the county by Sir Sydney H. Waterlow, M.P., 1869, to be played for annually, and open to all comers resident in the county. The winner three consecutive years to keep the cup."

In 1889 a proposal was brought forward to make at the next annual meeting of the Dumfriesshire curling clubs an alteration in the condition under which the cup was played for. Notice of this proposal was given to Sir Sydney H. Waterlow, who in reply intimated that he would be satisfied with any alterations which met with the approval of the majority of the clubs. Thereafter at a meeting of representatives from all the curling clubs of Dumfriesshire on 9th October 1890 certain regulations for the competition for the Waterlow Cup were adjusted. These regulations, *inter alia*, provided "that each club desirous of competing for the cup must send out not less than one-half of their rinks of four players each, but no club to send less than three rinks. . . . The club which has gained the highest number of shots per rink shall be the winners, and the skip of