

November 1898, reserving as to expenses *quoad ultra*: Allows an account thereof to be lodged, and remits the account to the Auditor for taxation and report; and grants leave to reclaim, and that subject to the said variation, the said interlocutor of the said Lord Ordinary be, and the same is hereby, restored; And it is further ordered that the cause be, and the same is hereby, remitted back to the Second Division of the Court of Session in Scotland to do therein as shall be just and consistent with this declaration and judgment: And it is further ordered, that the appellants do pay, or cause to be paid, to the respondents, the expenses incurred by them in the Court of Session and in this House, in terms of the 119th section of the Lands Clauses Consolidation (Scotland) Act 1845, with this declaration, that the Auditor of the Court of Session, subject to the review of the said Court of Session, and the Clerk of the Parliaments respectively, shall determine and certify what expenses in the action in the Court of Session and of the appeal to this House properly fall within the said 119th section, such expenses to be taxed as between agent and client; and it is further ordered, that the said respondents do repay, or cause to be repaid, to the said appellants the principal sum of £4148, 13s. 6d., specified in the said interlocutor of the 13th day of January 1900, hereby reversed, together with the interest thereon from the 13th day of April 1897 to the 26th day of April 1900, amounting to £631, 19s. 1d., already paid by the said appellants to the said respondents, and do also repay, or cause to be repaid to the said appellants the pursuers' expenses in the Court of Session, amounting to £649, 15s. 8d., together with interest thereon to the said 26th day of April 1900, amounting to £3, 18s. 4d., and the Court dues of extract, amounting to £2, 4s., already paid by the said appellants to the said respondents; and it is further ordered, that the said respondents do pay, or cause to be paid, to the said appellants the expenses incurred by them in the Court of Session and in this House, other than those falling within the said 119th section, the amount of the said expenses of the appeal to this House to be certified by the Clerk of the Parliaments."

Counsel for Davidson's Trustees (Pursuers and Respondents)—Solicitor-General for Scotland (Dickson, K.C.)—J. D. Fitzgerald, K.C. Agents—Brown, Mair, Gemmill, & Hislop, Glasgow—Campbell & Smith, S.S.C., Edinburgh—John Kennedy, W.S., Westminster.

Counsel for the Caledonian Railway Company (Defenders and Appellants)—Lord Advocate (Graham Murray, K.C.)—Haldane, K.C. Agents—H. B. Neave, Glasgow—Hope, Todd, & Kirk, W.S., Edinburgh—Grahames, Currey, & Spens, Westminster.

COURT OF SESSION.

Tuesday, October 14.

BILL CHAMBER.

YOUNGER & SON, LIMITED,
PETITIONERS.

*Bankruptcy—Sequestration—Awarding—
—Death of Debtor after Petition for
Sequestration Presented—Award of
Sequestration of Estate of Deceased
Debtor—Process.*

The Bankruptcy Act 1856 (19 and 20 Vict. c. 79), sec. 34, enacts— . . . "If the debtor shall die after the petition for sequestration has been presented, the proceedings shall notwithstanding be followed out in terms of this Act, so far as circumstances will permit."

A creditor presented a petition in the Bill Chamber for the sequestration of a debtor's estate. On September 30th an order for service was pronounced and commission granted to recover evidence of the debtor's notour bankruptcy. On October 1st the debtor was duly cited to appear and show cause why sequestration of his estates should not be awarded. On October 4th the debtor died.

The Lord Ordinary on the Bills (Trayner) on October 14th, without ordering citation of the representatives of the deceased debtor, *found* that the debtor was notour bankrupt at the date of his death, and awarded sequestration of his estates *de plano*.

On September 30th, 1902, Younger & Son, Limited, as creditors of Thomas Hall, publican, Bonchester Bridge, near Hawick, presented to the Lord Ordinary on the Bills a petition craving for an order to cite Hall to compare within the statutory period and show cause why sequestration of his estates should not be awarded. On the same date service and intimation in the *Gazette* were ordered, and commission was granted to recover evidence of notour bankruptcy and other facts necessary to be established. On 1st October Hall was duly cited to appear and show cause why sequestration of his estates should not be awarded. He died within three days thereafter, viz., on 4th October.

Thereafter the petitioners executed their commission, recovered evidence of notour bankruptcy, and lodged in the Bill Chamber a minute craving an award of sequestration of the estate of the deceased, and also an order on his representatives to cede possession of any portion thereof to which they had made up a title to any trustee to be elected thereon.

Argued for the petitioners—This motion was founded on section 34 of the Bankruptcy (Scotland) Act of 1856 (quoted in the rubric). The report of commission showed that the bankrupt was at the date of his death notour bankrupt, and

all the requisites of the statute had also been complied with. It was unnecessary to search for and cite the representatives of the deceased for their interest, a course which if ordered by the Court might in some instances be found to be an impossible task. An immediate award should therefore be made. In this case the matter was urgent, in view of the near approach of the Licensing Court, where the trustee to be elected would become an applicant for a transfer of the licence.

The Lord Ordinary officiating on the Bills (TRAYNER) awarded sequestration *de plano*.

The following was the interlocutor:—

“The Lord Ordinary having resumed consideration of the petition with the writs produced, together with a minute now given in for the petitioners, execution of intimation, copy of the *Edinburgh Gazette*, and other productions made therewith, and heard counsel for the petitioners, Finds that the respondent Thomas Hall died after the presentation and service of this petition, and (as appears from the Report of Commission No. 10 of process and execution of charge No. 6 of process) was notour bankrupt at the date of his death on 4th October 1902: Sequestrates the estates and effects of the said Thomas Hall, publican, Bonchester Bridge, near Hawick, now deceased, in terms of the Bankruptcy (Scotland) Act 1856, and Acts explaining and amending the same, and declares the same to belong to his creditors for the purposes of said Acts: Ordains any successor who has made up a title to or is in possession of the estate of the said deceased Thomas Hall to transfer the same, so far as liable for the debts of the deceased, to the trustee to be elected by his creditors: Appoints the creditors to hold a meeting at the time and place mentioned in the said minute, viz., on Friday, the 24th day of October 1902, at 12:30 o'clock afternoon, within the Tower Hotel, Hawick, to elect a trustee or trustees in succession and commissioners as directed by the statute, and remits to the Sheriff of the counties of Roxburgh, Berwick, and Selkirk at Jedburgh to proceed in manner mentioned in the said statutes.

Counsel for the Petitioners—T. B. Morison. Agents—P. Morison & Son, S.S.C.

Thursday, November 6.

FIRST DIVISION.
DOUGLAS'S TRUSTEES v.
COCHRANE.

*Succession—Trust—Liferent and Fee—Gift
One of Liferent or of Fee—Liferent with
Power of Disposal—Protected Liferent.*

In order that the gift of a liferent of the income of a fund, coupled with a power of disposing of the capital, may amount to a gift of the fee, both the liferent and the power of disposal must be given in unqualified terms.

A trustor directed his trustees to invest in their own names the sum of £1000 for behoof of his daughter A, and to “pay the interest for her maintenance and support during her life.” Then followed a clause excluding the creditors of her husband in the event of her marrying, and the following direction:—“Should my said daughter be married said sum of £1000 shall on her death be paid to her heirs or assignees.” A married but became a widow. In a special case brought in her lifetime, held that the gift to her was a liferent and not a fee.

This was a special case, the parties to which were (1) the trustees of the late Alexander Douglas, draper, Stranraer, and (2) Mrs Helen Morton Douglas or Cochrane, daughter of the said Alexander Douglas.

The question at issue was the interpretation of the following clause in the trust-disposition and settlement of the said Alexander Douglas:—“That my said trustees shall out of my means and estate invest and secure in their own names in good heritable or personal security the sum of £1000 sterling for behoof of my daughter Helen Morton Douglas, the interest of which they shall apply towards her board and education, and until completed, when they shall pay the said interest to her for her maintenance and support during her life, declaring that in the event of my said daughter marrying the interest of the said sum of £1000 shall not be liable for the debts or attachable by the creditors of any husband or husbands she may marry, the *jus mariti* of whom are expressly excluded; and that a simple receipt by my said daughter shall be a sufficient discharge to my trustees; and should my said daughter die unmarried said principal sum of £1000 is to form part of the residue of my estate, and be equally divided between my two sons as aftermentioned; but should my said daughter be married said sum of £1000 shall on her death be paid to her heirs or assignees.”

The case set forth that the second party was married on 14th January 1891 to Dr Hugh Cochrane; that he died on 26th May 1897, and that there was no issue of the marriage.

The contentions of the respective parties were set forth in the case as follows:—

“The first parties maintain that the provi-