argument for the employers in the present case is founded upon the words which immediately follow, viz.—"If such information is not furnished or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer, upon proving that the disease was not contracted whilst the workman was in his employment, shall not be liable to pay compensation." It is not said that the workman did not furnish such information as he possessed, but it is said that such information is not sufficient to enable the employers to take proceedings, and that therefore they are free from liability if they prove that the disease was not contracted whilst the workman was in their employment. The reason why the information is not sufficient in the present case is because in point of fact there was no such employment with another employer within the preceding twelve months. I do not think that the proper construction of the sub-section is one which would, in that state of the facts, deprive the workman of compensation if the last employers proved that the disease was not contracted whilst the workman was in their employment. The purpose of enacting that the workman shall furnish information is to enable the employer to operate any relief which the circumstances permit against another employer or employers, if such there are. The event upon which, under sub-section (*c*) (i), the workman may forfeit the right to compensation vested in him is if he fails in the positive duty laid upon him. There is no positive duty imposed on the workman to furnish information sufficient to enable the employer to take proceedings, but only an obligation to furnish such information as he may possess. I read the words which follow—"if such information is not furnished, or is not sufficient to enable that employer to take proceedings"—as only imposing a duty upon the workman to do what he can to make available to the employer any right of relief the circumstances may permit of under the Act. This duty the workman has discharged; and therefore the condition upon which alone is the employers' right to be free on proving that the disease was not contracted in their employment does not arise. In this view no question arises in the case under sub-section (*c*) (iii).

LORD SKERRINGTON—I agree with your Lordships. I desire merely to add that I reserve my opinion upon a question which does not require to be decided, namely, whether the time limit of twelve months ought to be applied and read into section 8 (1) (*c*) proviso (ii) of the Workmen's Compensation Act 1906.

The Court answered the question of law in the affirmative.

Counsel for the Appellants—Sandeman, K.C.—Gentles. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—Chisholm, K.C.—Inglis. Agent—E. Rolland M'Nab, S.S.C.

Saturday, December 8.

FIRST DIVISION.

[Lord Ormidale Ordinary.

CRAIG *v.* EDINBURGH PARISH COUNCIL.

Bankruptcy — Process — Reduction — Competency — Sheriff — Bankruptcy (Scotland) Act 1913 (3 and 4 Geo. V, cap. 20), secs. 82 and 166 — Reduction of Decree of Sheriff in Action by Preferential Creditors against Trustee in Bankruptcy.

The Bankruptcy Act 1913 enacts—Section 82—"The judicial factor, the trustee, and commissioners shall be amenable to the Lord Ordinary and to the sheriff, although resident beyond the territory of the sheriff, at the instance of any party interested, to account for their intromissions and management, by petition served on them. . . ." Section 166—"It shall be competent to bring under review of the Inner House of the Court of Session, or before the Lord Ordinary in time of vacation, any deliverance of the sheriff after sequestration has been awarded (except where the same is declared not to be subject to review), provided a note of appeal be lodged with and marked by the sheriff-clerk within eight days from the date of such deliverance, failing which the same shall be final. . . ."

Preferential creditors of a sequestrated bankrupt brought an action in the Sheriff Court concluding for an accounting by the trustee in the sequestration of his whole intromissions with the bankrupt's estate and for a payment of certain sums alleged to be due to them preferably. They stated a plea founding on section 82 of the Bankruptcy Act 1913, and alleged that the trustee had been guilty of malversation in paying the debts due to other creditors. The trustee averred that the whole estate had been properly paid away before the preferential creditors lodged their claims, upon which he refused to make any adjudication. He stated no plea to the competency of the action. The Sheriff-Substitute ordered accounts, and these having been lodged, granted decree against the trustee for the sums sued for. The trustee appealed to the Sheriff, who refused the appeal as incompetent. The trustee then brought an action concluding for reduction of the decrees of the Sheriffs and the extract following thereon. *Held* that the action must be dismissed, *per* the Lord President, on the ground that the parties having joined issue in the Sheriff Court upon the construction of section 82 of the Bankruptcy Act 1913, the only competent mode of appeal was

that prescribed by section 166, which had not been adopted by the trustee; *per* Lord Mackenzie and Lord Skerrington, on the ground that the proceedings in the Sheriff Court were not so *funditus* null as to entitle the trustee to proceed to reduce them.

Robert Archibald Craig, C.A., as trustee on the sequestrated estates of David James Tough, painter and decorator, 21 North St Andrew Street, Edinburgh, and carrying on business as the Wholesale and Retail Wallpaper Company at 32 Cockburn Street there, and as an individual, *pursuer*, brought an action against the Parish Council of Edinburgh and others, *defenders*, concluding for decree of reduction of interlocutors pronounced in the Sheriff Court at Edinburgh dated 1st December 1916 and 21st December 1916, and an extract thereupon, in an action by the defenders against the pursuer.

The parties *averred*—"(Cond. 1) The pursuer . . . was duly elected, and on 24th May 1915 confirmed, trustee on the sequestrated estates of the said David James Tough and the Wholesale and Retail Wallpaper Company. As such trustee the pursuer complied with all provisions of the Bankruptcy (Scotland) Act 1913 so far as incumbent on him in connection with the management of the said sequestrated estates. (*Ans.* 1) The pursuer's election and confirmation as trustee are admitted. *Quoad ultra* denied. (Cond. 2) On or about day of June 1916 the defenders presented an initial writ to the Sheriff of the Lothians and Peebles at Edinburgh against the pursuer in which the conclusions were—'To ordain the defender to produce an account of his whole intromissions with the funds and estate of the said sequestrated estates of the said David James Tough and as The Wholesale and Retail Wallpaper Company covering the period from the date of the sequestration, 9th April 1915, to the date hereof; to find and declare that the defender was and is bound to pay to the pursuers the sum of £6, 16s. 5d., being the poor and school rates and the lunacy assessment due to the pursuers by the said David James Tough, and also as The Wholesale and Retail Wallpaper Company for the year from Whitsunday 1914 to Whitsunday 1915, and unpaid and resting-owing at the date of the sequestration; to decern and ordain the defender to pay the said sum to the pursuers, or such other sum as may be found due and payable by him to them in the accounting to follow hereon; and failing the defender accounting as required, to decern against him for payment to the pursuers for the said sum of £6, 16s. 5d., with interest from the date of the decree to follow hereon; and to find the defender liable in expenses, and to decern therefor.' (Cond. 3) In said initial writ the defenders averred that at the date of the said sequestration and for the year from Whitsunday 1914 to Whitsunday 1915 the poor and school rates and lunacy assessment were due and payable to the defenders by the bankrupt, namely:—

	£	s.	d.
In respect of occupancy of 32 Cockburn Street, Edinburgh . . .	£2	17	8½
In respect of property at 21 North St Andrew Street, Edinburgh	1	16	10
In respect of occupancy of said property	1	18	6
In respect of occupancy of 19 North St Andrew Street, Edinburgh .	0	3	4½
	£6	16	5

Further averred that the defenders duly lodged with pursuer as trustee foresaid a claim on the said sequestrated estate for said rates and assessment, and claiming a preference in terms of the Bankruptcy (Scotland) Act 1913, section 118. Further averred (Cond. 4) that on 11th August 1915 the defenders' agents called upon the pursuer to pay said rates in terms of the claim, and if he declined to recognise the claim, calling upon him to issue a deliverance thereon. Further averred (Cond. 7) that the pursuer was bound out of said sequestrated estates to pay or provide for payment of said rates due to the defenders preferably to the rent of 32 Cockburn Street, and *pari passu* with the property tax and wages paid by the pursuer, and that he had in breach of his duty as trustee paid said rent, property tax and wages, and declined to pay defenders' rates, and also declined to adjudicate on the defenders' claim or pronounce a deliverance. The pursuer admitted that the rates and assessments were due to the defenders, and explained that he had not in any way interfered with the moveable goods and effects in the subjects Nos. 19 and 21 St Andrew Street, which were attached by a heritable creditor in an action of poinding of the ground, which action it is believed was afterwards abandoned by the poinding creditor in respect the articles poinded were claimed by and were the property of third parties, and that the items Second, Third, and Fourth detailed in said claim respectively, £1, 16s. 10d., £1, 18s. 6d., and 3s. 4½d., were charges applicable to 19 and 21 St Andrew Street, Edinburgh. The pursuer further produced an account of charge and discharge of his intromissions ending 9th August 1915, bringing out a balance of £34, 4s. 10d. in his hands, which was subject to the following charges, namely:—

	£	s.	d.
1. Balance due on account incurred to the law agent in the sequestration proceedings	£27	16	8
2. The trustee's commission .	21	0	0
3. 'Gazette' notice and circulars .	1	1	3
4. Expense of trustee's discharge	5	5	0
	£55	2	11

showing a deficiency of £20, 18s. 1d. The pursuer has since paid said balance of account to the law agent, and is thus left without any funds in the sequestrated estates to meet the defenders' claims or even his own commission as trustee fixed as above by the commissioners, and the defenders made no averment against the pursuer in the Sheriff Court proceedings to entitle or warrant his being found liable as an individual for the defenders' debt.

Explained further that the pursuer paid the rent of premises belonging to the bankrupt in the sequestration amounting to £30, in respect of which the landlord claimed the stock-in-trade as falling within his hypothec. This stock-in-trade formed practically the whole assets of the bankrupt estate, and in order to save expense of separate proceedings at the instance of the landlord to secure his hypothec, the pursuer entered into an agreement with the landlord in order to release said stock-in-trade, to pay him his rent, which he did as before mentioned. As there are other preferable claimants in the sequestration, even assuming the defenders had been ranked and preferred, there were no funds out of which to pay even a dividend. The defenders were informed of the state of matters, and have had every facility to examine, and had fully examined, the accounts of the pursuer as trustee foresaid. The pursuer on 4th October 1915 sent the defenders' agents a copy of his account to date. The pursuer further averred and avers that in the circumstances he did not require to adjudicate upon claims as there were no funds in his hands wherewith to pay a dividend. The pursuer, defender in said action, stated the following pleas-in-law:—'The action is irrelevant, and should be dismissed. The defender having complied with the whole proceedings of the Bankruptcy (Scotland) Act 1913, so far as incumbent on him as trustee on said sequestrated estate, and having duly accounted for his intromissions and management therewith, is entitled to decree of absolvitor with expenses. The defender never having either as trustee on the said sequestrated estate or as an individual intromitted with the subjects at 19 and 21 North St Andrew Street, Edinburgh, nor with the moveable goods and effects therein, should be assoilzied *quoad* the three sums stated in condescendence 2 as applicable to said subjects. There being no funds in the hands of the defender from which payment of the sum sued for, or of a dividend to the creditors on said sequestrated estates, can be demanded, and it being unnecessary for the defender to adjudicate on claims in said sequestration, he should be assoilzied with expenses. *Separatim*—In any event the sum claimed by the pursuers being under £20, and thus recoverable in the Small Debt Court, they should, if successful, only be found entitled to expenses on the scale allowed in the Small Debt Court.' (Cond. 4) On 10th November 1916 the Sheriff-Substitute after hearing parties repelled the first plea-in-law for the present pursuer, the defender therein, and appointed pursuer to lodge in process an account of his intromissions. In the note to his interlocutor he pointed out that pursuer had no plea to the competency of the action, that the pursuer only pleaded that the action was irrelevant, and that he, the Sheriff-Substitute, thought it perfectly relevant. The pursuer duly lodged accounts as ordered by the said interlocutor of 10th November, and on 1st December 1916 the Sheriff-Substitute pronounced the following interlocutor:—'The Sheriff-Substitute having resumed consideration of the cause, together with the accounts lodged by the defender in obedience to the interlocutor of 10th November 1916, sustains the first three pleas-in-law for the pursuers and repels the defences: Finds and declares and grants decree against the defender for payment of the sum of £6, 16s. 5d., all in terms of the crave of the initial writ: Finds the defender liable to the pursuers in expenses, and remits to the Auditor of the Court to tax the same and to report.—JOHN C. GUY.' In a note to his judgment the Sheriff-Substitute explained that he thought that the pursuer ought not to have paid away rent without retaining enough in his hands to pay rates sued for, and that in the circumstances the only course open to the defenders was to bring an action under section 82 of the Bankruptcy (Scotland) Act 1913. He then dealt with the pursuer's contention that he was entitled to enter into an arrangement with the creditor entitled to the rent with a view to a realisation of the hypothecated effects of the bankrupt, and expressed the opinion that he was wrong in that contention. On appeal the Sheriff-Principal on 21st December 1916 found in law an appeal was incompetent and dismissed the same. In the note appended to his judgment the Sheriff-Principal stated that he had come to the conclusion that the appeal taken by the present pursuer against the interlocutor of the Sheriff-Substitute was incompetent in respect the Sheriff-Substitute's interlocutor was a deliverance issued after the sequestration had been awarded, and dealing with a question of administration arising out of the sequestration, and that the proper form was an appeal to the Court of Session, and that it was not competent for him to consider the question as to the competency and relevancy of the petition. A copy of the record in said action and of the interlocutors pronounced therein are produced and founded upon. The first explanation in answer is denied. *Quoad ultra* the pleadings and proceedings in the Sheriff Court action are referred to for their terms. (*Ans.* 2 to 4) The pleadings and proceedings in the Sheriff Court action are referred to for their terms. *Quoad ultra* denied. In particular the alleged agreement with the landlord is denied and the pursuer is called upon to produce the same, or failing production to condescend specifically upon the particulars thereof. Explained that it appeared and was admitted by the present pursuer in the said action that he had intromitted with estate belonging to the bankrupt, and had paid debts of a private nature owing by the bankrupt to an extent in excess of the poor and school rates and lunacy assessment sued for in said action without first paying or providing for the said rates and assessment. Such payment was in violation of the present defenders' rights under and in virtue of section 88 of the Poor Law (Scotland) Amendment Act 1845 and section 118 of the Bankruptcy (Scotland) Act 1913. Explained further that in said Sheriff Court action the present defenders, the pursuers therein, pleaded, *inter alia*—'1. The defender being

bound to account to pursuers for his intromissions with and management of said sequestrated estates decree should be granted as craved. 2. The defender being bound to pay the said rates and assessments levied by the pursuers in terms of section 118 of the Bankruptcy (Scotland) Act 1913, and having ingathered proceeds from said estate more than sufficient to pay said rates, decree should be pronounced as craved with interest and expenses. The defender having been guilty of a specific act of malversation or omission in failing to pay or provide for payment of said rates, he is, by section 82 of the Bankruptcy (Scotland) 1913, amenable to the Sheriff, and liable to account for his intromissions and management at the instance of the pursuers as parties interested therein and wronged by his conduct in using the funds and proceeds of said sequestrated estate in paying said rent, property tax, and wages without first providing for the preference due to the pursuers in respect of said rates and assessment.' The Sheriff-Substitute by his interlocutor of 1st December 1916 sustained the three pleas-in-law above quoted."

The pursuer *pleaded*—"1. The decree, interlocutors, and extract specified in the summons being inconsistent with the pursuer's rights as trustee foresaid and as an individual, the pursuer is entitled to decree of reduction as concluded for with expenses. 2. In any event the pursuer is entitled in the circumstances condescended on to decree of reduction of said decree, interlocutors, and extract specified in the summons in so far as they are decernitures against him as an individual for the defenders' said debt."

The defenders pleaded, *inter alia*—"1. The action being incompetent should be dismissed. 2. The pursuer having failed to avail himself of the statutory procedure for bringing under review the interlocutor of the Sheriff-Substitute now sought to be reduced, is not entitled to insist in the present action."

On 13th June 1917 the Lord Ordinary (ORMIDALE) sustained the second plea-in-law for the defenders and dismissed the action.

Opinion.—"The proceedings in the Sheriff Court in which the interlocutors now sought to be reduced were pronounced must be taken to have been a petition under section 82 of the Bankruptcy (Scotland) Act 1913. Section 82 was directly invoked in the third plea-in-law for the pursuers—*Henderson*, 10 R. 188, 20 S.L.R. 145—and the action was, without a plea as to its competency being stated, dealt with by the parties and by the Sheriffs as raising a question under that section and nothing else.

"The ground on which the Sheriff-Substitute's decree of 1st December 1916 is now sought to be reduced is that it is inconsistent with the pursuer's rights as trustee and as an individual, and that it is to his prejudice and hurt. I assume that that is so, and, indeed, although in the view I take it is not necessary to decide the question, the Sheriff-Substitute was in my opinion wrong in pronouncing the decree he did. There is no warrant, it seems to me, under section 82 for an order passing against the trustee out of his own pocket to satisfy the claim of any particular creditor—*M'Adam*, 1884, 12 R. 358, 22 S.L.R. 235; *Duke* v. *More*, 1903, 6 F. 190, 41 S.L.R. 156; *Donaldson* v. *White*, 1871, 9 S.L.R. 65.

"But be that as it may, the very question now raised by the pursuer in this reduction might have been presented to the Court of Session in the Inner House by way of appeal. The present pursuer, however, mistook his remedy and appealed to the Sheriff. The Sheriff, in my judgment rightly, refused to entertain the appeal, and I may say in passing that I do not understand on what ground I am asked, as I am, to set aside his interlocutor. By the time he had disposed of the case the period within which an appeal might have been taken to the Court of Session had expired.

"The enactment in section 166 of the Bankruptcy (Scotland) Act 1913 is that 'it shall be competent to bring under the review of the Inner House of the Court of Session or before the Lord Ordinary in time of vacation any deliverance of the sheriff' (*i.e.*, sheriff or sheriff-substitute) 'after the sequestration has been awarded (except where the same is declared not to be subject to review), provided a note of appeal be lodged with and marked by the sheriff-clerk within eight days from the date of such deliverance, failing which the same shall be final. . . .'

"That is a special code giving a restricted and conditional right to have a deliverance of the Sheriff-Substitute reviewed, and in my opinion infers the exclusion of review in any other way—*cf. Earl of Camperdown*, 1902, 5 F. 61, 40 S.L.R. 45; *Stirling*, 1873, 11 Macph. 480, 10 S.L.R. 296. Having thus a right to obtain a judgment of the Inner House of the Court of Session it seems to me an ill-founded proposition to say that a party having that right can by ignoring it or failing to exercise it bring the decree complained of, on grounds that would have been open to the Inner House, under review in the first place by the Outer House by way of reduction. I say nothing about the competency of a suspension, but the contention of the pursuer founded on the cases of *Lamb*, 1901, 4 F. 88, 39 S.L.R. 80, and *Macleod* v. *Collie*, 1869, 42 S.J. 62, 7 S.L.R. 64, that where suspension is competent a reduction is necessarily and always also competent is much too broadly stated.

"Although the circumstances were entirely different the principle underlying the decision and judicial dicta in *Watt Brothers & Company*, 1879, 7 R. 126, 17 S.L.R. 54, appear to me applicable to the present case.

"I shall sustain the second plea-in-law for the defenders and dismiss the action."

The pursuer reclaimed, and argued—The action in the Sheriff Court was an ordinary petitory action concluding for payment of money to a creditor by the trustee not only as such but also as an individual. Such an action was incompetent under the Bankruptcy (Scotland) Act 1913 (3 and 4 Geo. V, cap. 20), section 82. The object of the corresponding section in the Bankruptcy (Scot-

land) Act 1856 (19 and 20 Vict. cap. 79), section 86, was to deal with questions of malversation by the trustee, &c.—*M'Adam* v. *Martin's Trustees*, 1884, 12 R. 358, 22 S.L.R. 235. That section did not authorise as a remedy the payment of money to a creditor, but merely the restoration to the bankrupt estate of misapplied funds whereby the estate available for distribution amongst all the creditors was increased—*Duke* v. *More*, 1903, 6 F. 190, *per* Lord M'Laren at p. 194, 41 S.L.R. 156. The proper course for a creditor desiring payment of his debt was by lodging a claim and getting an adjudication thereon—*Donaldson* v. *White*, 1871, 9 S.L.R. 65. If the action in the Sheriff Court was incompetent, the present action was competent. Suspension of a final decree in the Sheriff Court was competent—*Lamb* v. *Thomson*, 1901, 4 F. 88, 39 S.L.R. 80. *Watt Brothers & Company* v. *Foyn*, 1879, 7 R. 126, 17 S.L.R. 54, was distinguished for the action in the Sheriff Court in that case was quite competent. An extracted Sheriff Court decree might be reduced—*Taylor's Trustees* v. *M'Gavigan*, 1896, 23 R. 945, 33 S.L.R. 707. A reduction such as the present was competent—*Matthewson* v. *Yeaman*, 1900, 2 F. 873, 37 S.L.R. 681. The Lord Ordinary's interlocutor should be recalled.

Argued for the defenders (respondents)—The question of the competency of the action in the Sheriff Court was never raised by the pursuer, and the pleadings in the present case did not raise that point but merely set out a case for review of the Sheriffs' judgments. *Donaldson's*, *M'Adam's*, and *Duke's* cases were distinguished, for in them a creditor was seeking to use section 86 of the Act of 1856 to obtain a review of an adjudication on the claim he had lodged. The action in the Sheriff Court was competent, and was an application under section 82 of the 1913 Act, for it proceeded on the footing that the trustee had improperly paid away funds and had refused to adjudicate upon the claim of those parties—*Henderson* v. *Henderson's Trustees*, 1882, 10 R. 188, 20 S.L.R. 145. The Sheriff Court action was not rendered incompetent because of the crave for payment, for there was only one creditor other than those parties, and his claim was postponed to theirs, so that payment would necessarily have had to be made to the defenders. If not, the pursuer would have had to aver in his defences to the Sheriff Court action that there were other creditors. The judgment of the Sheriffs was on the construction of section 82, and if so, it was final and could not be reduced. Further, the defenders could only proceed under section 82, since there had been no adjudication upon their claim, for it was only when there had been an adjudication that the other modes of appeal were available. If so, then the pursuer was limited to the statutory mode of appeal of which he had not availed himself, and the present action was incompetent—*Earl of Camperdown* v. *Presbytery of Auchterarder*, 1902, 5 F. 61, 40 S.L.R. 45; *Stirling & Sons* v. *Holm*, 1873, 11 Macph. 480, 10 S.L.R. 296.

LORD PRESIDENT—I share the Lord Ordinary's view that the decision of the Sheriff-Substitute was probably wrong, because, having in view the authorities that were quoted both in the learned Sheriff's opinion and in that of the Lord Ordinary, it seems quite clear that, on a just construction of the 82nd section of the Bankruptcy Act of 1913, this application in this form is not proper. When I say in this form I do not mean in the form of an initial writ, because it has been decided—and rightly decided as I think—that an initial writ is a perfectly competent form in which to present such an application. What I mean is that, although a demand for an accounting may be warranted by the 82nd section, it affords no good ground for a decree of payment at the instance of a creditor against a trustee. But that being so, the pursuer is no further forward in his claim that the decree should be reduced, because it appears quite clearly that both parties joined issue before the Sheriff-Substitute upon the question of what was the just construction of the 82nd section of the Bankruptcy Act. No plea to the competency of the action was taken in the defence. As the learned Sheriff-Substitute points out in his note—"The defender argued that under this section he might be made to account, but that no decree could be pronounced against him, and that the action was therefore incompetent." I agree in the view there taken on the argument there presented. But that being so, it appears quite clearly that the parties were really at issue upon the proper construction of the 82nd section; and if, instead of concluding with a decree for payment against the trustee, the initial writ had concluded with, after the prayer for an accounting, a demand that the money should be placed in the estate—it thereupon being for the creditors to make their claims, he among the rest—all would have been well.

The view the Sheriff took on appeal to him seems to me to be quite correct. "It is not," he says, "therefore a claim made in an ordinary petitory action, but there is raised on record, in my opinion, a question of the proper management of the estate by the trustee," only that the operative conclusion is one which the statute does not warrant. If, then, the question raised on the record was, as I think it is clearly disclosed to have been, a question as to the just construction and scope of the 82nd section, then it is evident that mode of review prescribed by the 166th section of the Bankruptcy Act ought to have been adopted.

I agree with the reasoning of the Lord Ordinary and in the conclusion at which he has arrived, and I propose to your Lordships that we should adhere to his interlocutor.

LORD MACKENZIE—I concur on this ground, that the proceedings before the Sheriff-Substitute were not so *funditus* null and void as to entitle the pursuer to the only remedy he here seeks.

LORD SKERRINGTON—I concur, but only upon the ground stated by Lord Mackenzie.

The Court adhered.

Counsel for the Pursuer (Reclaimer)—Maclaren. Agent—Malcolm Graham Yooll, S.S.C.

Counsel for the Defenders (Respondents)—Chree, K.C.—Gentles. Agents—R. Addison Smith & Company, W.S.

Wednesday, December 12.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE *v.* LORD LYELL.

Revenue—Estate Duty—Finance Act 1894 (57 *and* 58 *Vict. cap.* 30), *secs.* 2 (1) (*b*) *and* 3 (1)—*Finance Act* 1896 (59 *and* 60 *Vict. cap.* 28), *sec.* 15 (1).

The Finance Act 1894 enacts—Section 2—"(1) Property passing on the death of the deceased shall be deemed to include . . . (*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest. . . ." Section 3—"(1) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bona fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion of any lease for lives, nor in respect of the determination of any annuity for lives where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee."

The Finance Act 1896 enacts—Section 15—"(1) Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then on the death of such person after the commencement of this part of this Act the property shall not be deemed, for the purpose of the principal Act, to pass by reason only of its reverter to the disponer in his lifetime."

A testator bequeathed his heritable estates to certain heirs, and his moveable estate to trustees for certain purposes, which included the payment of an annuity of £1000 to Mrs L. (who in the circumstances which occurred was the mother of the heir to the heritable estates). The residue of the moveable estate, after the trust purposes had been fulfilled, was to go to the person who succeeded to the heritable estates. Shortly after the death of the testator, Mrs L., as the result of an arrangement with her son, granted a discharge to the trustees of their obligation to pay her the annuity of £1000, and *unico contextu* with the deed of discharge her son granted a bond of annuity and disposition in security, whereby he bound himself personally to pay the annuity left by the testator, and disposed in security of that obligation certain of the heritable properties to which he had succeeded. On the death of the annuitant the Crown claimed estate duty on the value of the benefit accruing by the cesser of the annuity. *Held* that the exemptions in section 3 (1) of the Finance Act 1894 and section 15 (1) of the Act of 1896 did not apply—*per* the Lord President, Lord Johnston, and Lord Mackenzie in respect that no fresh annuity had been granted by the defender, but the security for the annuity had merely been altered; *per* Lord Skerrington, in respect that a new annuity had been granted and full consideration given for it, but the full consideration was not in money or money's worth.

The Finance Act 1894 (57 and 58 Vict. cap. 30), sections 2 (1) and 3 (1), and the Finance Act 1896 (59 and 60 Vict. cap. 28), section 15 (1), are quoted *supra in rubric.*

The Lord Advocate, on behalf of the Commissioners of Inland Revenue, *pursuer*, brought an action against Lord Lyell of Kinnordy, Kirriemuir, in the county of Forfar, *defender* concluding for decree, ordaining the defender "to deliver to the Commissioners of Inland Revenue an account of the property which passed, or is deemed to have passed, on the death on 18th February 1915 of Mrs Katharine Murray Horner or Lyell, the defender's mother, for the purpose of ascertaining the estate duty chargeable in respect of the value of the benefit accruing or arising from the cesser of an annuity of £1000 payable to the said Mrs Katharine Murray Horner or Lyell, and secured over the defender's lands and estates of North Tarry and Dickmontlaw by bond of annuity and disposition in security, dated 1st February, and recorded in the Division of the General Register of Sasines applicable to the county of Forfar 6th February, both in the year 1887, granted by the defender in favour of the said Mrs Katharine Murray Horner or Lyell," and whether such account was delivered or not for £1500 as estate duty.

The pursuer *pleaded*—"1. The defender being bound to deliver to the Commissioners of Inland Revenue and verify an account of the property passing on the death of the said Mrs Katherine Murray Horner or Lyell, as condescended on, decree should be pronounced in terms of the conclusions of the