

The LORD JUSTICE-CLERK entirely concurred. Even had the trustee under Mr Kippen's settlement appeared his contention would have been fruitless. The principle underlying the cases of *Gordon* and *Tod's Trustees* was that where there was no conflicting or further interest the beneficiary was entitled to the trust-estate unrestrictedly. The case of *Tod* had no doubt another element in it, but the decision rested on this ground, and in this case the question was raised very fairly.

LORD COWAN wished to say that had the trustee made the daughter's interest purely alimentary the case might have been different.

Agents for Miss Kippen—Dalmahoy & Cowan, W.S.

Agents for Trustees—Ronald & Ritchie, S.S.C.

Saturday, November 25.

BLAIKIE V. PEDDIE.

Bankrupt—Alimentary Fund. A bankrupt who was in the enjoyment of an alimentary provision of about 30s. a-week, held, in the circumstances, not bound to pay any part to his creditors.

Andrew Blaikie was sequestrated, and presented a petition in the Sheriff Court of Edinburgh for discharge. The Sheriff-Substitute (HAMILTON) granted the discharge. The facts of the case, and the contentions of the trustee, Mr Peddie, C.A., sufficiently appear from the following note appended to the interlocutor of the Sheriff-Substitute:—

“*Note.*—The application is not opposed by any of the creditors in the sequestration, but the trustee maintains that as a condition of his discharge the petitioner, who carried on business as a merchant in London, should secure him in one-half of an alimentary provision, which he the petitioner enjoys under the trust-settlement of his father, consisting of rents drawn from the estate of St Helens, near Melrose. The gross amount of these rents is about £140 a-year, but the petitioner states, and the accuracy of the statement is not disputed, that the free proceeds actually paid to him by his father's trustees do not exceed 30s. a-week—a sum which he maintains is not more than sufficient for the maintenance of himself and his wife. Having regard to the position in life of the petitioner, to his age, and to the fact, which is sufficiently instructed by the medical certificate of Dr Anderson, produced with the present proceedings, that he is disabled by a complication of maladies from working for his livelihood, it does not appear to the Sheriff-Substitute that he would be justified in refusing the petitioner his discharge merely because he declines to make over any part of the provision referred to for behoof of his creditors.”

The trustee appealed.

ORR PATERSON for him.

MATR and RHIND for respondent.

At advising—

LORD JUSTICE-CLERK—The appellant has not been able to point out any case in which the Court found that a bankrupt was bound to make payment to his creditors out of an alimentary fund. We must be satisfied that the bankrupt has done all he can for the creditors. In this case I do not think that the course he has taken is at all unreasonable. It is beyond our power to attach the alimentary provision.

LORD COWAN—This is a case for the exercise of

the discretion of the Court. We must refuse or grant a discharge according to the circumstances of the case. Had the alimentary fund been an income of £1000 a-year I cannot say that the Court would not have taken that into consideration in judging whether the discharge ought to be granted. We must consider all the circumstances of the bankrupt. Other sums of money came to the bankrupt from his father besides this alimentary provision of £130 per annum, and these have come into the hands of the trustee. It is not the fault of the bankrupt that these have been taken to meet the claims of creditors whose debts were preferably secured. The report by the trustee is favourable to the bankrupt. We have it certified that he is in a bad state of health. The case now is in a different position from what it was when before the Lord Ordinary in 1870. Time is an important consideration, as we held in the case of *Campbell*. I concur that in the special circumstances of this case we should grant the discharge.

LORD BENHOLME—I concur. No precedent has been given for the course recommended to us. I find no case in which a discharge has been refused because the bankrupt has been in the enjoyment of an alimentary fund. It would require a very strong case to induce us to begin to make such an exception. We have not a strong case here. Bad health is a very important element in the case. I think we should adhere.

LORD NEAVES—I am of the same opinion. A mere declaration that a fund is alimentary will not make it so. We have to consider whether, looking to the rank and circumstances of the bankrupt, this could reasonably be held to be a proper provision. This is by no means an extravagant one. The bankrupt is a married man, and has been accustomed to live as a gentleman. It would have been different if any of his debts had been incurred by his own misconduct, for in such a case he would not be entitled to his discharge. But we cannot make a resolute condition that unless he pays a part of this alimentary fund to his creditors he is not to get his discharge.

Agents for Petitioner—Lawson & Hogg, S.S.C.
Agents for Respondent—J. & A. Peddie, W.S.

Monday, November 27.

FIRST DIVISION.

(Before Seven Judges.)

WATSON & CO. v. SHANKLAND AND OTHERS.

Ship—Charter-Party—Advance by Charterer for Ship's Disbursements—Repetition—Insurance. A ship was chartered to proceed to Calcutta, and there load a cargo from the charterers for the United Kingdom, “the freight to be paid on unloading and right delivery of the cargo.” The charter-party contained the following clause—“Sufficient cash for ship's ordinary disbursements to be advanced the master against freight, subject to interest, insurance, and 2½ per cent. commission.” The ship reached Calcutta, and whilst there money was advanced by the charterers for the ship's disbursements. The ship was lost with her cargo on her homeward voyage.

Held, in an action by the charterers for recovery of their advances from the shipowners