

LORD MURE was absent.

The Court pronounced the following interlocutor:—

“Recal the Lord Ordinary's finding ‘that the income derived therefrom till the death of the said Robert Jack is payable to the claimant John Marshall;’ and in place thereof find that ‘the income derived therefrom till the death of the said Robert Jack’ is payable to those of the beneficiaries under the settlement whose interest will be prejudiced by the said Robert Jack claiming and receiving his legitim: *Quoad ultra* adhere to the interlocutor reclaimed against, and refuse the reclaiming note.”

Counsel for (Pursuers) Respondents—Kinnear—Keir. Agent—Thomas Carmichael, S.S.C.

Counsel for (Defender) Reclaimers—M'Laren—Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Saturday, February 8.

## FIRST DIVISION.

[Sheriff-Substitute of  
Lanarkshire.

BARR V. TOSH (MARTIN & DUNLOP'S  
TRUSTEE).

*Bankruptcy—Public Examination of Bankrupt—19  
and 20 Vict. cap. 79 (Bankruptcy Act 1856), sec.  
91.*

At the public examination of a bankrupt by the trustee in bankruptcy the bankrupt may be asked any competent question at the instance of the agent of any of the creditors after the trustee has concluded his examination.

This was an appeal at the instance of James Barr, a creditor on the sequestrated estate of Messrs Martin & Dunlop, civil engineers, Glasgow, against Robert Tosh, the trustee in the sequestration. It appeared that during the examination (but whether before or after the trustee had concluded his examination was not clearly stated) the following question was put to him by Mr Gavin Hamilton as procurator for Mr Barr—“Did you do business for Messrs Cook & Company, Kilbirnie, and did you get payment of any money for that work within the last three years?” The question was objected to, on the ground that the examination must be conducted by the trustee as the statutory representative of the creditors, and that the bankrupt, being bound to disclose the estate to the trustee, such questions were unnecessary and incompetent, and the objection was sustained by the Sheriff-Substitute (CAMFION).

Barr appealed, and argued—The bankrupt was bound under the 91st section of the Bankruptcy Statute 1856 to “answer all lawful questions relating to” his affairs, and the proper object of his examination being to ascertain what his estate consisted of, where it was, and what he had done with it, the question objected to was a legitimate one. It was the universal custom for creditors

(themselves or by mandatory) to put questions to the bankrupt after the trustee had concluded his examination.

Authorities—*Delvoille & Co. v. Baillie's Trustee*, 16th Nov. 1877, 5 Rettie 143; *Barstow v. Hutcheson*, 21st Feb. 1849, 11 D. 687; *Smyth v. McClelland*, 23d Dec. 1843, 6 D. 331.

It was answered for the trustee that the question objected to was the first of a written list proposed on behalf of the appellant, and disallowed after inspection by the Sheriff-Substitute, and that the Sheriff's sanction was necessary for any question to be put to the bankrupt by a creditor under section 93 of the 1856 Act.

At advising—

LORD PRESIDENT—I think there is not much difficulty in this case. It appears to me that Mr Hamilton may quite competently put his question provided he does not do so prematurely. The object of the question was to ascertain whether a certain sum of money had come into the bankrupt's hands, and if so what he had done with it, and it is therefore quite a legitimate one. I think we should recal the deliverance of the Sheriff-Substitute, and remit to him to allow Mr Hamilton's question to be put as soon as the trustee has concluded his part of the examination.

Counsel for Appellant—Rhind. Agent—William Officer, S.S.C.

Counsel for Respondent—J. A. Reid. Agents—Ronald & Ritchie, S.S.C.

Saturday, February 8.

## SECOND DIVISION.

[Lord Adam, Ordinary.

NORTH BRITISH RAILWAY COMPANY V.  
MOON'S TRUSTEES.

*Railway—“Superfluous Lands”—8 Vict. c. 19  
(Lands Clauses Consolidation Act 1845) sec. 120.*

A railway company under their compulsory powers acquired in 1845 a piece of land, most of which they used for the purposes of their undertaking, which was to be completed in July 1850. In 1854 they sold to M part of the remaining land, being the whole unused except .212 of an acre which was in the immediate vicinity of a station on the line. The latter portion was occupied by M and his successors along with what he had bought for agricultural purposes until 1877, no rent being paid for it. In answer to a claim by the railway company in that year for possession of the .212 of an acre, which they stated was required by them for the purposes of their line, M's trustees maintained, *inter alia*, that under the 120th section of the Lands Clauses Act 1845 the ground had fallen to them as “superfluous lands,” they being adjoining proprietors.

In deciding in favour of the pursuers, the Court held (1) that the onus of proving the lands to be “superfluous” lay upon the defenders; (2) that to make out lands to be superfluous it was not sufficient to prove that