residuary clause which meets the present state of things, and that therefore the will makes no provision for this income, so that it must go to the heir in intestacy.

LORD RUTHERFURD CLARK—I am of the same opinion. I understand there is now no question with respect to the claim made as to the interest upon the particular sums, and that the only matter upon which our judgment is sought is in respect of the residuary legatees to have the interest freed by the Act paid to them. Now, as I read the deed, there are at present no residuary legatees and there can be none until after the death of the widow.

LORD TRAYNER — I concur, and have nothing to add.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the parties on the reclaiming-note for the claimants Alexander Ellison Ross and others against Lord Kyllachy's interlocutor of 11th June 1892, Refuse the reclaiming-note and adhere to the interlocutor reclaimed against: Find the claimants Thomas Jardine Elder and John Dunlop Elder entitled to additional expenses as against the claimants the said Alexander Ellison Ross and others," &c.

Counsel for the Free Church Trustees—Guthrie—Ferguson. Agents — Cowan & Dalmahoy, W.S.

Counsel for Elder's Trustees — Hope—Lorimer. Agents—H. & H. Tod, W.S.

Counsel for the Heirs *ab intestato*—Sol.-Gen. Asher, Q.C.—Boyd. Agent—Thomas Dalgleish, S.S.C.

Saturday, October 22.

FIRST DIVISION.

[Sheriff of the Lothians and Peebles.

A. & G. V. MANN AND OTHERS *v.* TAIT.

Sequestration — Meeting of Creditors for Election of Trustee—Preses — Sheriff — Bankruptcy Act 1856 (19 *and* 20 *Vict. cap.* 79), *sec.* 68.

Held that the Sheriff is entitled to attend and preside at the meeting of creditors for the election of the trustee in a sequestration without having received a notice requiring his attendance.

Sequestration — Meeting of Creditors for Election of Trustee—Preses — Honorary Sheriff-Substitute—Bankruptcy Act 1856 (19 *and* 20 *Vict. cap.* 79), *secs.* 4 *and* 68.

Held that the duty of presiding at the meeting of creditors for the election of the trustee in a sequestration may be performed by an Honorary Sheriff-Substitute.

Sequestration — Meeting of Creditors for Election of Trustee — Adjournment — Bankruptcy Act 1856 (19 *and* 20 *Vict. cap.* 79), *sec.* 68.

Held that the adjournment of the meeting of creditors for the election of the trustee in a sequestration to a different place from that originally appointed by the Sheriff is not contrary to the 68th section of the Bankruptcy Act.

Sequestration — Meeting of Creditors — Minute.

Held that the proceedings at a meeting of creditors in a sequestration are not rendered invalid by the preses failing to sign the minute.

By deliverance dated 15th September 1892, Mr Sym, then acting as Honorary Sheriff-Substitute of the Lothians, sequestrated the estates of John Dobbie, and appointed a meeting of creditors to be held in Dowell's Rooms, George Street, Edinburgh, on 27th September for the election of a trustee.

On 26th September a notice signed by two creditors was sent to the Honorary Sheriff-Substitute requiring his attendance at the said meeting, and in conformity with this notice the Honorary Sheriff-Substitute attended and presided. After the creditors present had produced oaths and vouchers, the meeting proceeded to the election of a trustee, when creditors to the amount of £8016, 19s. 4d. voted for Mr John Scott Tait, C.A., and creditors to the amount of £7796, 1s. 7d. for Mr James Craig, C.A. At this stage it was unanimously resolved by the creditors present to adjourn the meeting until the next day, the meeting then to be held within the Sheriff Court-House.

At the adjourned meeting notes of objections to the validity of votes *hinc inde* were made and put in process, and parties were appointed to be heard on a subsequent day.

The minutes of both meetings were initialled on each page by the Honorary Sheriff-Substitute, who also signed at the end of the minute of the adjourned meeting.

On 1st October the Honorary Sheriff-Substitute having heard counsel on the notes of objections, and disallowed votes to a certain amount on both sides, found and declared John Scott Tait to have been duly elected trustee on the sequestrated estates.

Section 68 of the Bankruptcy Act 1856 provides, *inter alia*, as follows—"Creditors or their mandatories, qualified as aforesaid, shall assemble at the time and place fixed for the election of trustee, with power to adjourn for such reasonable time as may seem fit, provided such adjournment do not postpone the meeting for the election of trustee beyond the limit of the period within which that meeting is by this Act appointed to be held; and if two or more creditors shall give notice to the sheriff of the county, such sheriff shall attend the meeting and adjourned meetings and preside; and the sheriff-clerk or his depute shall also attend . . . and write the minutes

in the presence of the meeting, . . . which minutes the presiding sheriff shall sign, . . . and when the sheriff is not present, the creditors shall elect a preses." . . .

Messrs A. & G. V. Mann, S.S.C., and other creditors, appealed, and argued—The Sheriff's deliverance should be recalled and the election declared void, as the provisions of the Bankruptcy Act had not been complied with. (1) The notice requiring the Sheriff's attendance at the meeting of creditors should have been addressed to the Sheriff, and was not therefore in proper form. Notice had not accordingly been given to the Sheriff to attend, and without such notice he was not entitled to attend and preside, the statute contemplating that in such a case the meeting should elect a preses. (2) An Honorary Sheriff-Substitute was not entitled to preside at a meeting of creditors. His position was not the same as a salaried Sheriff-Substitute. The Sheriff was empowered to appoint Substitutes by the Act 20 Geo. II. c. 43, sec. 29. Under that Act no qualification was necessary, but by a subsequent Act a qualification was fixed for all Sheriff-Substitutes—6 Geo. IV. c. 23, sec. 9. This rule was afterwards altered, and the necessity for qualification was limited to salaried Substitutes. By a later Act—1 and 2 Vict. c. 119, sec. 5—it was provided that when the Sheriff granted leave of absence to his Substitute he should either attend personally in his place, or appoint another fit person in his stead; and the Act—40 and 41 Vict. c. 50, secs. 3 and 4—which transferred the appointment of salaried Substitutes to the Crown, made no difference in the position of Honorary Substitutes. An honorary was accordingly to be distinguished from a salaried Sheriff-Substitute. Now, the prior Bankruptcy Act had expressly provided that the duty of presiding at a meeting of creditors could not be performed by an Honorary Sheriff-Substitute without special authority from the Sheriff, and required him to report the proceedings to the Sheriff—2 and 3 Vict. c. 41, secs. 45 and 47. Though that Act had been repealed, the present Act contained no provision to the contrary, and it was a reasonable inference that when section 4 of the present Act provided that "Sheriff" should include "Sheriff-Substitute," the latter term was meant to denote only the salaried Sheriff-Substitute—1 and 2 Vict. c. 119, sec. 5. (3) The adjournment of the meeting to a different place from that fixed by the Sheriff was not in accordance with the provisions of section 68 of the Bankruptcy Act. (4) It was sufficient to invalidate the proceedings that the minutes of the first meeting were not signed by the Sheriff-Substitute, and were therefore not authenticated as required by section 68 of the Bankruptcy Act—*Anderson* v. *Robertson*, December 12, 1827, 6 S. 235.

Counsel for the respondent were not called upon.

At advising—

LORD PRESIDENT—The first question is, whether, under the 68th section of the Bankruptcy Act, a meeting must be held illegal at which the Sheriff has presided without having received a notice requiring his attendance. I confess to thinking that there is nothing in the Act to warrant such a conclusion. The 68th section imposes on the Sheriff the duty of attending and presiding, if notice has been sent him, and if, after such a notice has been sent to the Sheriff, another person were to act as chairman, I suppose that would be illegal, but it appears to me that the normal procedure contemplated by the Act is that the Sheriff should be present, with notice, if such has been sent to him, but it may be without notice. If that is so, it is unnecessary to consider whether or not the requisition sent to the Sheriff-Substitute was or was not in proper form.

The next question is, whether an Honorary Sheriff-Substitute is entitled to attend and preside in the Sheriff's place. The fourth section of the Bankruptcy Act is quite clear, to the effect that the word "Sheriff" is to include Sheriff-Substitute unless the context indicate the contrary. Now, is Mr Sym to be held to be the Sheriff-Substitute in the sense of that section? I think that a distinctly affirmative answer must be given to that question. There is nothing in the series of Acts to which we were referred to lead to an opposite conclusion. Mr M'Lennan's research only resulted in showing us that under the former Bankruptcy Act, which is now repealed, an Honorary Sheriff-Substitute required the special authority of the Sheriff to entitle him to preside at the meeting of creditors, and could not give any decision as to the election of the trustee.

The third objection is that the meeting of creditors was adjourned to a different place. Now, we must take the section of the Act as it stands, and so taking it I am of opinion that it has been complied with, for there is no limitation of the power of adjournment, for which it provides, to the same place as that fixed by the Sheriff for the original meeting. It seems to me, therefore, quite competent for a meeting of creditors, more especially a meeting under the presidency of the Sheriff, to fix an adjourned meeting to be held at a different place from that fixed by the Sheriff for the original meeting.

As to the objection that there is no signature appended to the minutes of the first meeting, that may be a defect, but there is nothing to show that the proceedings are in consequence to be held invalid, and the case of *Anderson* v. *Robertson* cited to us is not an authority for that proposition. In that case the chairman left the meeting before the proceedings concluded, and there was no chairman when the meeting elected the trustee.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

The Court dismissed the appeal.

Counsel for Appellants — M'Lennan. Agents—Miller & Murray, S.S.C.

Counsel for Respondent—C. S. Dickson—Wilson. Agents—Beveridge, Sutherland, & Smith, S.S.C.