pair. I am of opinion that they cannot. They have built the manse, they are ready to repair it; the repairs required are of a trifling description, and may be completed at a small cost, and I can find no obligation on the heritors to do more. The cases on this subject are reviewed, and their import, as it appears to me, accurately given in the note appended by Lord Jerviswoode to his judgment in the case *The Heritors of Kingoldrum* v. *Haldane*, 1 Macph., p. 325. In the present case it is unnecessary, as it appears to me, to enter into any examination of them. I hold that this manse, built in 1840, and then and for many years occupied without objection as the manse, must be held to have met the requirements then thought sufficient. And, as this manse is capable, by slight repair, of being made perfectly sound and suitable, there is no claim maintainable for additions in order to make the accommodation suitable to what we may now think proper for a manse in that parish. If the manse were in such a condition of disrepair as to involve structural renovation—if there were serious defects in the building—it may be the claim might fairly come under consideration. It is not so here, and consequently the obligation, in my view, does not subsist.

As to the garden wall, I hold that, in offering to repair the walls of the proper manse garden, the heritors have made a sufficient offer in law. I was, in the course of the discussion, disposed to have held that the heritors, by getting the site of manse changed, may be held to have impliedly changed the site of the garden. But, upon consideration, I do not think that the one change implies the other. The manse garden certainly, in so far as regards vegetables and fruit, does not require to be immediately adjacent to the manse; and as to a flower garden or plots for flowers, a wall is not required or desirable.

The other Judges concurred.

Agents for the Heritors—Maconochie & Hare, W.S.

Agent for the Minister—D. J. Macbrair, S.S.C.

Saturday, July 13.

FIRST DIVISION.

DIXON AND OTHERS, APPELLANTS.

Bankruptcy—Bankruptcy Act 1856, § 35–38—*Bankruptcy Amendment Act* 1860, ℣ 5—*Deed of Arrangement—Composition.* At a meeting of creditors a resolution was carried by a majority in number and four-fifths in value "that the estate should be wound up under a deed of arrangement to realise the estate and divide it among the creditors." Held that that resolution was *ultra vires* of the meeting, which could resolve on a deed of arrangement but could not fix the nature of the deed, that power resting with four-fifths of the creditors in number and value claiming on the estate.

This was an appeal against an interlocutor of the Sheriff-Substitute of Lanarkshire in the sequestration of William Weir, Brothers, & Co., wholesale wine and spirit merchants in Glasgow. At a meeting of creditors held on 20th May it was resolved, by a majority in number and four-fifths in value of those present, (1) that the estate be wound up under a deed of arrangement to realise the estate and divide it among the creditors; and (2) that Mr Dixon be appointed by the meeting to report the foregoing proceeding and resolution to the Sheriff, and to apply for a sist of the sequestration for a period not exceeding one month. Mr Dixon accordingly presented a petition to the Sheriff, craving that the first resolution should be declared duly carried, and craving sist. To this petition it was objected on the part of certain creditors, (1) that under the powers conferred upon creditors by the 35th section of the Bankruptcy Act (1856), 19 and 20 Vict., c. 79, it was not competent for them to do more at said meeting than to resolve that the estate should be wound up by a deed of arrangement, leaving the nature and character of said deed to be subsequently determined when it came to be prepared in terms of section 38, and that the said first resolution was incompetent in respect it prematurely restricted the deed of arrangement to one under which the estate shall be realised and divided among the creditors, thereby excluding an arrangement by way of composition, or otherwise, as declared to be competent by the Bankruptcy Amendment Act (1860), 23 and 24 Vict., c. 33, ℣ 5. (2) Another objection was taken on the ground that the deed of arrangement proposed was not reasonable. The Sheriff-Substitute found that the first objection was well-founded, for the reasons stated, and because it was *ultra vires* of the creditors assembled at the preliminary meeting, provided for by ℣ 35, to resolve that the estate should be wound up by a deed of arrangement only on the condition that said deed should be of a particular character, and so prejudging what the general body of creditors have a right to fix as to the terms of the deed after a sist is obtained. He sustained the second objection also. He therefore refused the petition; found that the resolutions were not duly carried, and that the application for a sist was not reasonable; and appointed the sequestration to proceed.

Dixon presented a note of appeal.

A. Moncrieff (Scott with him) for appellant.

Dean of Faculty (Moncrieff) and J. Burnet for respondents were not called on.

The Court unanimously dismissed the appeal.

Lord President—These proceedings on the part of the creditors might have been defended as competent under the former Act, because the sort of arrangement that was contemplated by the 35th and subsequent sections of the Act 1856 was a deed of arrangement for winding up, and therefore the creditors at the meeting on 20th May 1867 might not have been going beyond their power in resolving to wind up under a deed of arrangement and divide the estate among the creditors. But the Act of 1860, which was passed after the decision of this Court in the case of *Douglas* v. *Hunter* (21 D., 1302), makes it optional to the creditors, when adopting a deed of arrangement, to make it either for winding up and dividing the estate, or a deed of arrangement by way of composition. Now the right of adjusting a deed of arrangement does not rest with the body of creditors empowered to resolve on winding up by such a deed, for it requires the concurrence of four-fifths of the whole creditors both in number and value actually claiming on the estate; and so the effect of this resolution is to tie up the creditors to make a deed of arrangement for winding up and dividing only. It seems to me that that resolution was *ultra vires* of that meeting; and therefore the whole proceeding is null, and the interlocutor of the Sheriff is right.

The other Judges concurred.

Agent for Appellants—A. K. Morison, S.S.C.

Agent for Respondent—W. Mason, S.S.C.

Tuesday, July 16.

BROWN'S TUTORS, PETITIONERS.

Tutor-Nominate—Lease—Advertisement—Valuation. Tutors-nominate authorised to grant a new nineteen years' lease to the tenant presently in occupation, at the rent offered by him, after judicial remit to ascertain the sufficiency of the tenant's offer, but without advertisement of the farm for public competition.

This was a petition at the instance of tutors-nominate for authority to grant a lease.

The pupil succeeded to an entailed estate in Berwickshire on the death of his grandfather, Major Brown, in 1866. The estate had been leased by Major Brown, along with some unentailed land belonging to him, to Mr James Weatherley, who held a lease of the whole lands, entailed and unentailed, as one farm, for a period of nineteen years from Whitsunday and separation of crop of 1848, at a rent of £400 per annum, the tenant also paying certain rent charges payable to Government in respect of money spent on drainage and improvement.

The unentailed lands are now held by Major Brown's trustees.

Weatherley's lease expiring on Whitsunday and separation of crop of 1867, Major Brown's trustees and the petitioners obtained a valuation of the lands from Mr Dickson, Saughton Mains. Mr Dickson estimated the rent to be got for the whole lands at £522, £442 being for the entailed lands. This valuation proceeded on the footing of a nineteen years' lease being granted, and certain necessary repairs executed on the farm-house and offices, the proprietor paying the remainder of the rent charges, which expire in a few years.

The tutors-nominate of the pupil now presented a petition to the Court, stating the facts above set forth, and that Major Brown had, shortly before his death, been in treaty with the present tenant, Mr Weatherley, for a renewal of the lease; that Mr Weatherley had made an offer to retake the whole land at an advance of rent slightly above the estimate of Mr Dickson, the effect of this offer being an immediate increase of rent of £37, 5s. for the entailed lands, rising gradually as the rent charges fall in, to £89, 5s., or upwards of twenty per cent. upon the present rent; and craving authority to let the entailed lands to Mr Weatherley at the rent offered by him, or otherwise to let them at such rent as might be obtained.

The Court made the usual remit to the Junior Lord Ordinary, who remitted to Mr Kermack, W.S., to report whether it would be for the interests of the pupil and succeeding heirs of entail that the authority craved by the petitioners should be granted. Mr Kermack, after obtaining another report from Mr Dickson as to certain matters in the petition, reported in favour of the petition. The entailed and the unentailed lands were proposed to be included in separate leases.

The Lord Ordinary then reported the case to the Inner House. The Court thought there were two peculiarities in the case—(1) That there had been no advertisement of the lands, so as to secure competition; and (2) that the valuation founded on in the petition was obtained *ex parte*. They inclined to hold that if it was the practice in such cases to dispense with advertisement, as was indicated by the Lord Ordinary, it would be necessary to make a judicial remit for a valuation of the lands.

The Lord Ordinary accordingly remitted to Mr Low, Berrywell, who gave in a report agreeing substantially with that given by Mr Dickson, and recommending that the petitioners should be authorised to let the lands to Mr Weatherley at the rent offered by him. Mr Low reported against the expediency of advertising the farm for competition.

The Lord Ordinary again reported the case.

The Lord President thought that the question was a delicate one, and that it was indispensable to look at the circumstances of the case. As to the power of the Court there was no doubt. That question was fairly raised in the case of *Morison*, 20th February 1857, 19 D., 493. The matter came again before the Court in another case relating to the same parties in 1861 (*Morison*, 19th July 1868, 23 D., 1313), and there the Court thought it right to consult the Judges of the Second Division. The Lord President in that case stated, in his judgment, the result of that consultation, which was in favour of granting the prayer of the petition. In the circumstances of this case it was very expedient to grant the power craved. In some cases it was quite right to test the value of an offer by public advertisement, but this case differed. There was here a good tenant in occupation, whom it was desirable to retain, and who was not likely to demand such a large expenditure by the proprietor in the way of meliorations as a new tenant would require. The power should therefore be granted.

The other Judges concurred.

The petitioners were accordingly authorised to let the lands to the present tenant on a nineteen years' lease, at the rent offered by him, the details of the lease to be arranged by the tutors at their discretion.

Counsel for Petitioners—C. G. Spittal.
Agents—Paterson & Romanes, S.S.C.

Tuesday, July 16.

MORRIS *v.* RIDDICK.

Donatio mortis causa—*Mode of Proof—Legacy.* A person *intuitu mortis* gave to another a sum of £300, on condition that if he recovered the money was to be returned to him. The donor died in three days thereafter. In an action at the instance of his executor, for repetition of the money, held that the gift was a *donatio mortis causa*, and not a legacy; and that it could be, and had been, proved by parole evidence.

The pursuer of this action was the executor-dative of the late Hugh Morris, wine and spirit merchant in Greenock, who died on 3d November 1862. The pursuer averred, that on 31st October 1864 the defender had uplifted from bank the contents of a deposit-receipt for £300 belonging to his late brother, and that, instead of paying over the amount to the deceased, that he had retained it, and still retains it in his own possession. The defender averred that the deceased had, on the occasion specified, given to him the said deposit-receipt blank indorsed, and another paper bearing to be an order for payment of its contents; that the indorsation and delivery of the said deposit-receipt were, with the object and for the purpose, as was stated at the time, of making a gift of the contents of the receipt; the sole condition of the gift being, that in the event of Hugh Morris recovering