action being identical, they could all have been sufficiently represented by, and were therefore only entitled to the expense of, one set of counsel and agent. Argued for one of the parties (defenders)—(1) The objection came too late. It ought to have been taken at the time when expenses were moved for. (2) Charges of fraud had been made against the present defender, who was therefore not bound to trust her defence to other parties. (3) The present defender did not admit that the claims of the other defenders ought to have been admitted; and they might dispute that question again.

At advising—

LORD PRESIDENT—The first question which arises here is, whether or not the objection comes too late. No authority has been given to that effect, and I can see no good ground for holding that it does. At the same time, a question of this kind ought as an ordinary rule to be raised at the time when the finding on the merits is pronounced, because at that time the Court are more fully and practically acquainted with the case. As to the merits of this objection, it seems to me that a distinction must be drawn between the expenses at different stages of the case. The manner in which the pursuer stated his case on record justified the defenders in stating separate defences. The discussion in the procedure roll might have ended very differently to what it did; and though it ended in the Lord Ordinary assoilizing all the defenders, still that was not an inevitable result; and so it is impossible to say that up to that stage all the defenders had only one interest, which could have been represented by one set of counsel and agent. But the Lord Ordinary held that the reasons of reduction were irrelevant, and he came to that conclusion on the pursuer's own statement, so that afterwards one defender would have been sufficient; and I think we can only allow the expense of one set of counsel and agent in the discussion of the reclaiming note.

The other Judges concurred.

The Court pronounced the following interlocutor:—

> "The Lords having heard counsel on the Note of Objections, No. 31 of process, for the pursuers, to the Auditor's reports on the accounts of expenses of the several defenders other than the judicial factor, Find that the defenders, other than the judicial factor, are not entitled to the expenses of separate appearances as respondents in the Reclaiming Note of 28th August 1873, but ought to have all appeared by one set of counsel and agent to defend the interlocutor reclaimed against, and remit to the Auditor to give effect to this finding."

Counsel for Pursuers — Campbell Smith and Reid. Agent—A. Clark, S.S.C.

Counsel for Defenders—Rhind, W. A. Brown, R. V. Campbell, and Asher. Agents—A. K. Morison, S.S.C., A. Morrison, S.S.C., D. Cook, S.S.C., Millar, Allardice, & Robson, W.S., and Leburn, Henderson, & Wilson, S.S.C.

Wednesday, March 18.

FIRST DIVISION.

[Lord Shand, Ordinary.

THE PHOSPHATE SEWAGE CO. *v.* MOLLESON.

Sequestration — Claim — Depending Action—Sist.

A company lodged a claim in a sequestration, and a month thereafter raised a suit against the trustee and various other defenders in the Court of Chancery in England. The company sought to have the process sisted until the issue of the English suit should have been determined, but the trustee refused to rank them as creditors on the estate for their claim—*Held* that no sufficient ground for sisting the process had been alleged, and proof allowed to both parties of their respective averments.

This was an appeal at the instance of the Phosphate Sewage Company (Limited), London, in the sequestration of Peter Lawson & Son, London and Edinburgh, against a deliverance of the respondent, as trustee on the bankrupt estate, refusing to rank the appellants as creditors on the estate for a claim amounting to £70,529, 9s. The appellants asked that the present process should be sisted until the issue of a Chancery suit at their instance against a number of different parties, including the respondent, as trustee on the bankrupt estate, in which suit they seek to have it declared that the defendants to that suit, other than the respondent, and the several members of the firm of Peter Lawson & Son, acted fraudulently as therein stated, and as stated in the present record. In that suit, also, the appellants ask that they "may be at liberty to proceed against the estate of Messrs Peter Lawson & Sons" for the sums here claimed, they (the appellants) "being willing and hereby offering to account in such manner as this Court may direct for the profit (if any) made by them from the working of the Island of Alto Vela since its transfer to the Company;" and the bill of complaint in other branches of its prayer asks for decree for various different sums against the other defendants to the suit. In his answer to that suit the respondent pleads, *inter alia*, that the Court of Chancery has no jurisdiction so far as he is concerned, and that the matters in dispute ought to be settled in the sequestration, and, if necessary, in the Supreme Courts of Scotland. The appellants urged that the sisting of this appeal until the issue of the Chancery suit, in which the case would be presented with greater advantage and less expense against all the defendants, at one time, would save considerable expense. The respondent, however, stated that until the present appeal shall have been disposed of, a sum of about £8000, belonging to the bankrupt estate, must be retained by the trustee to meet the appellants' claim; and the trustee and the general body of creditors, it was further stated, are desirous to have the claim disposed of without any delay that can be avoided, and the proceedings in the sequestration wound up. The respondent contended that an action such as the appellants' suit in the English Court of Chancery would be incompetent in this Court, and that even if the English Court were to sustain its jurisdiction any decree that might be pronounced there would be ineffectual as against him in his administration as trustee of the estate under the Bankruptcy Statute; and that even if this were otherwise the appellants had

shown no good reason for sisting this process, and thereby probably causing considerable delay, in place of having the appeal at once proceeded with and brought to a close in this Court.

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 13th February* 1874.—The Lord Ordinary having considered the cause, Repels the first and second pleas in law for the appellants: Allows the parties a proof of their respective averments, and appoints the proof to be taken before the Lord Ordinary on a day to be afterwards fixed: Finds the appellants liable in expenses since the date of closing the record; Allows an account thereof to be given in, and remits the same when lodged to the auditor to tax and to report.

"*Note.*—The Lord Ordinary understands that until the present appeal shall have been disposed of a sum of about £8000 belonging to the bankrupt estate must be retained to meet the appellants' claim, and the trustee and the general body of creditors are desirous to have the claim disposed of and the proceedings in the sequestration wound up without any delay that can be avoided.

"The appellants ask that the present process should be sisted until the issue of the Chancery suit referred to on the record, and that dividends effeiring to their claim should be laid aside to await the issue of that suit. The Lord Ordinary is of opinion that the appellants have not shown any sufficient reason for this course being taken, and that the respondent, on behalf of the creditors, is entitled to have the question raised by the appeal now disposed of in this process.

"The estates of the bankrupts Peter Lawson & Son were sequestrated on 11th February 1873. On 14th March thereafter the appellants lodged a claim for the sum of £65,000 of principal, and £5529, 9s. of interest, making in all £70,529, 9s. The Chancery proceedings referred to by the appellants were not begun until 19th April thereafter, when the bill in Chancery was filed. On 24th June 1873, immediately before the first period fixed by the Bankrupt Statute for the trustee adjudicating on the claims lodged with him, the appellants withdrew their claim, obviously and admittedly for the purpose of avoiding its being adjudicated on by the trustee; but four days afterwards, viz. on 28 June, the present claim, which was the same in terms with that which had been withdrawn, was lodged. It has been duly adjudicated on by the respondent, who, for the reasons stated in his deliverance, printed in Condescendence 28, has rejected the claim as being unfounded on its merits. He has, however, laid aside dividends corresponding with the amounts claimed, and must continue to lay aside future dividends in the same way.

"The ground on which the appellants asked to have the proceedings under their appeal sisted was that they had adopted proceedings in the English Court directed against a number of different parties, including the respondent as trustee on the bankrupts' estate. The bill of complaint and the respondent's answer are produced; and it appears from these documents that the appellants seek in the Court of Chancery in England to have it declared that the defendants in the English suit, other than the respondent, and that the several members of the firm of Peter Lawson & Son, acted fraudulently as therein stated, and as stated in the present record, and praying that they 'may be at liberty to prove against the estate of Messrs Peter Lawson & Sons,' for the sums claimed in the affidavit lodged with the respondent,—the appellants, as stated in the bill of complaint, 'being willing, and hereby offering, to account in such manner as this Court may direct for the profit (if any) made by them from the working the said Island of Alto Vela since the transfer thereof to the Company.' The bill of complaint, in other branches of its prayer, asks for decree for various different sums against the other defendants to the suit. The respondent in his answer to the bill pleads, *inter alia*, that the Court of Chancery has no jurisdiction so far as he is concerned, and that the matters in dispute ought to be settled in the sequestration, and, if necessary, in the Supreme Courts of Scotland. The state of the proceedings in the Court of Chancery is, that after considerable delay answers have now been filed by the different parties called as respondents. The appellants urge, as a reason for sisting the present proceedings, that the trial of the questions raised in the action will be attended with considerable expense; and that as the other parties implicated in the alleged fraud reside in England, the cause will be tried there not only at less expense, but with greater advantage, as the case will be presented against all the defenders at one time.

"The respondent contends that even if the Court in England were to sustain its jurisdiction, any decree that might be there pronounced would be ineffectual as against him in his administration as trustee of the estate under the Bankruptcy Statute; and that even if this were otherwise the appellants have shown no good reason for sisting this process, and thereby probably causing considerable delay in place of having the appeal at once proceeded with and brought to a close in this Court.

"It is contended by the respondent, under reference to sections 126, 127, and 169 of the Bankrupt Statute, that an action such as the appellants' suit in the Court of Chancery in England would be incompetent in this Court; and that even if the suit should be proceeded with in England any decree pronounced in it could receive no effect, because the respondent in administering the estate under the Bankrupt Statute is bound to adjudicate on the claims of the different creditors lodged with him (as he has done in the present instance), and the only remedy which creditors have under the statute to enable them to obtain a share of the bankrupt estate is an appeal against the trustee's deliverance if the creditor's claim has been rejected.

"Having regard to the provisions of section 50th of the Statute the Lord Ordinary is not prepared to hold that circumstances might not occur in which an action would be sustained as competent against the trustee on a sequestrated estate in order to constitute a claim by a creditor with a view to ranking. He holds it to be clear, however, that very special circumstances alone would justify such a proceeding. If a trustee in disposing of a claim should decline *in hoc statu* to rank, but set apart a dividend expressly in order to give the creditor time for establishing his debt according to law, and should thus invite the creditor to have the question settled by judicial proceedings in the form of an action, or should the trustee arrange with a creditor that the question as to his right to rank should be tried in this form as convenient for both parties, it appears to the Lord Ordinary that in such circumstances an action would be entertained by the Court. Thus, if a claim were made

against the bankrupt estate of a manufacturing or mining company for damages on account of injury sustained in their service, the question might by arrangement be conveniently enough tried in this way, and the Lord Ordinary is not prepared to hold that the Court would refuse to entertain such an action. But unless by arrangement or on the call of the trustee, acceded to by the creditor, the Lord Ordinary is of opinion that an action by a creditor against the trustee to have his claim constituted in order to a ranking, is incompetent and excluded by the provisions of the statute which have directed the mode in which claims are to be made and disposed of. The statutory mode of procedure enjoined is, that the creditor shall lodge his claim, that the trustee shall adjudicate upon it, exercising a *quasi* judicial function in so doing; that his deliverance shall be appealed to the Court if the creditor be dissatisfied with it, and that a record shall if necessary be made up, and a trial take place under the appeal. Under the Statute the trustee is bound to divide the funds amongst the creditors who have lodged claims, and if a creditor of the bankrupt seeks to rank on the funds he must lodge his claim. If a claim be lodged, the trustee is bound to dispose of it, and his deliverance is final if not appealed against within fourteen days. If appealed against the appeal is the proper process for the determination of the question; and in practice it has been found that the proceedings under the Statute are convenient and suitable, and admit of being carried out expeditiously, and often with a saving of expense. In the view which he takes of the Statute, it appears to the Lord Ordinary that a separate action, not entered into by arrangement with the trustee, or rendered necessary or sanctioned by special deliverance issued by him, is incompetent. It is evidently the policy of the Statute, and it is of importance that it should receive effect, that the estate should not be involved in legal proceedings in the form of separate actions at the instance of different creditors to establish their claims to rank on the funds.

"On these grounds, the Lord Ordinary has come to the conclusion that the English suit at the appellants' instance would have been incompetent in this Court, and that any decree therefore which might be pronounced in that suit would not receive effect under the bankrupt statute. The respondent's deliverance on the appellants' claim must be disposed of under the present appeal. If this Court, from any peculiarity in the case, as that the matter in question raised a point of purely English law, should be induced to refer the question at issue to the determination of the Court in England, the reference would still be a proceeding in the appeal. This is not however what is proposed, and there are no sufficient grounds for suggesting that such a course should be adopted in this case. What the appellants propose is, that because a separate and independent action in England at their instance, of a kind which according to the view of the Lord Ordinary would be incompetent in this Court, and which cannot result in a decree to receive effect in the sequestration, should form the ground of sisting the present competent and proper process, and (as it appears to the Lord Ordinary) the only proper and competent process under the Statute for determining the question which has arisen—viz., the right of the appellants to share in the bankrupt estate.

"The Lord Ordinary is not aware of any express decision as to the effect of the clauses of the bankrupt statute above mentioned as absolutely excluding all action at the creditor's instance, but he has formed the opinion that such action is excluded, except in such special circumstances as have been already referred to. The appellants referred to the case of *Rutherford* v. *Dawson*, 1844, 7 D. 162; and to the cases of *Roy* v. *Campbell*, 12 D. 1028; and *Roy* v. *Kirkland*, 16 D. 51; but although it may be argued from these cases that an action of constitution against a sequestrated bankrupt may in special circumstances be competent, they give no countenance to the argument that an action against the trustee on a sequestrated estate for the purpose of securing a ranking is a competent proceeding, if objected to by the trustee. Indeed, notwithstanding what was said in these cases, the Lord Ordinary has great difficulty in seeing any good reason for an action of constitution even against a bankrupt after his estates have been sequestrated. The case of *Roy* is not one showing the utility of such a proceeding when regard is had to what occured at the second stage of it.

"Apart from the ground now stated, the Lord Ordinary is further of opinion that no sufficient reason exists for sisting the present proceedings. The appellants must show strong grounds in order to induce this Court to stop the process prescribed by the statute for having the claims of the creditors disposed of and the sequestration rapidly brought to a close; and it is not in the opinion of the Lord Ordinary enough to say that it will be more convenient and less expensive for the creditor to have the case determined in England. The appellants' claim was lodged in the sequestration a month before the English suit commenced. The fact that their proceedings were thus first begun in this country appears to be a good reason for declining to stop them because of legal proceedings afterwards adopted in England; and it is a circumstance not to be lost sight of that the respondent has stated a plea against the jurisdiction of the English Courts which is not said to have been stated otherwise than *in bona fide*. This circumstance, taken with the fact that there are a number of other defendants in the suit, and that a more complicated injury must be entered into in England in reference to the different branches of the appellants' claim against the different defendants than may be necessary in the present appeal, leads to the reasonable inference that delay might occur in the English proceedings which need not take place here; and this is a further reason against adopting the course of sisting the present proceedings."

The appellants reclaimed, and pleaded:—

"(1) The present proceedings should be sisted until the issue of the Chancery suit referred to, as in the said suit the same questions are raised as in this process, and will fall to be determined in a case in which the present respondent is a compearing party. (2) The amount of the foresaid first dividend, and of any subsequent dividends effeiring to the appellants' claim, ought to be set aside to meet the issue of the said suit in Chancery, and an order should be pronounced upon the respondent to that effect. (3) The deliverance complained of ought to be recalled, and the trustee should be ordained to allow the appellants proof of their claim, or at least the said proof should be allowed them in this process. (4) The sale of the concession in question having been fraudulently made to the appellants' Company by

the said firm of Peter Lawson & Son, and individual partners thereof, for the purpose and in the circumstances condescended on, and the same having been annulled, the appellants are entitled to be reimbursed the sum paid therefor, with interest, all as contained in the appellants' claim; and the respondent should be ordained to admit the said claim accordingly. (5) The said concession having, to the knowledge of the said Peter Lawson & Son, and individual partners, been at the date of the said sale liable to be forfeited, and having been subsequently declared void in respect of what had occurred prior to the said sale, the appellants are entitled to have repetition of the purchase price paid by them, and they ought to be admitted as creditors accordingly for the same on the estates of the said Peter Lawson & Son, and individual partners. (6) The claim of the appellants against the sequestrated estates of Messrs Lawson, and the individual partners thereof, being well founded in fact and law, the deliverance complained of should be recalled, and the respondent be ordained to rank the appellants in terms of their claim, and be found liable in expenses."

The respondent pleaded:—

"(1) The averments of the appellants are irrelevant and insufficient to support their claim. (2) The averments of the appellants being unfounded in fact, their claim has been properly rejected. (3) The Court of Chancery having no jurisdiction in the matter of the present claim; and *separatim*, the appellants having claimed in the sequestration prior to the commencement of the Chancery suit, the question raised falls to be decided in the sequestration, and the present appeal should be allowed to proceed in common form."

Authorities for appellants—*Cathcart* v. *Wilkie*, Nov. 19, 1870, 9 Macph., 168; Bankrupt Act, 19 and 20 Vict., cap. 79, §§ 49, 50, 126, 127; *A. B.* v. *Tunnock's Trustees*, Nov. 25, 1865, 4 Macph. 83; Bell's Comm. (M'Laren), ii. 324; *Stuart* v. *Crichton's Trustees*, March 31, 1866, 4 Macph., 689; *Rutherford* v. *Dawson*, Nov. 28, 1844, 7 D., 162; *Roy* v. *Campbell*, June 14, 1850, 12 D., 1028; *Roy* v. *Kirkland*, Nov. 16, 1853, 16 D., 51; 2 Will. IV., cap. 33; 4 and 5 Will. IV., cap. 82.

The respondents were not called upon.

At advising—

LORD PRESIDENT—The interlocutor of the Lord Ordinary reclaimed against was pronounced on an appeal taken from the deliverance of the trustee on the sequestrated estate of Peter Lawson & Son. The entire estate of Peter Lawson & Son are within that sequestration. It is obvious therefore that the *concursus creditorum* is necessarily here, and that no creditor can obtain a dividend without a deliverance of the trustee or of the Court on appeal.

The process of sequestration adopted in this country is at once the most economical and expeditious system of bankruptcy procedure that has ever existed. It is most important that in the administration of this system we should be very careful to throw no unnecessary obstacles in the way of its working. Now, what is proposed by the appellants here is, that the sequestration be interrupted for an indefinite period, in order to enable them to follow out a certain suit in Chancery begun a year ago, and still, as we are informed, in its initial stages. That is a course which, in certain circumstances, it might be expedient and desirable for us to follow, but as a general rule we should allow nothing to interfere with the ordinary course of procedure.

The nature of the case renders it abundantly clear that no grounds can be made out for our following the proposed course in the present instance. The case for the appellants is, that the Phosphate Sewage Company (Limited) came into existence by the instrumentality of the Lawsons, and was created for the purpose of taking over the property in a certain 'concession' by a foreign Government, in which they were mainly interested. They say that there was fraud at the bottom of the whole scheme for establishing the company, and that they were induced by the fraud of the Lawsons to pay a sum of £65,000 for the property supposed to be acquired from them. And they have accordingly lodged a claim in the sequestration to be ranked for this sum, with interest, in name of damages. Of course they cannot rank for a dividend in a sequestration without first proving their debt. But they can have an opportunity of proving their debt in the sequestration just as easily as in any other process of law.

It has been the invariable practice since the Act of 1814 to constitute a debt by a proceeding in the sequestration; and I am not aware of any inconvenience that has arisen in consequence. No doubt there are some cases in which the trustee may have considerable difficulty in coming to a clear conclusion as to whether or not the debt is made out. But in such cases, even where matters of fact are disputed, the trustee is armed with very ample powers to aid him in the investigation, and to enable him to satisfy himself. Under the 126th section of the Act of 1856, "the trustee shall . . . . . examine the oaths and grounds of debt, and in writing reject or admit them, or require further evidence in support thereof; for which purpose he may examine the bankrupt, creditor, or any other party on oath relative thereto." I admit that the proceedings of the trustee are not, strictly speaking, judicial, but are rather for the purpose of satisfying himself on any question that may arise on a claim. Yet it is extremely expedient that these powers should be conferred on the trustee, as following out the scheme of the Act, harmonising the procedure, and aiding to produce economy and despatch.

Accordingly the trustee is expected to take all reasonable means of obtaining satisfactory information, and to exercise the powers conferred on him so far as necessary. If he is satisfied that the debt claimed is due, he is entitled to admit it, and rank the creditor accordingly. If not satisfied, it is his duty to reject the claim, and refuse to rank the claimant. It may be that a claim is rejected, not because it is not a good claim, and may not turn out such on full investigation, but because the trustee may not have succeeded, even with the powers conferred upon him, in obtaining sufficient information, or may have formed from it an erroneous opinion. It is not an uncommon thing that on appeal to this Court proof is ordered and the whole matter thoroughly investigated before we either affirm or alter the judgment of the trustee. That seems to me to be very much the case that we have here. The appellants have laid before the trustee a very imperfect case as regards the evidence of their claim. It is hardly to be supposed that they could do otherwise, or that the trustee himself could, even under the 126th section,

make such an investigation as would satisfy him regarding a claim of this peculiar nature. That is beyond what is to be expected of him. It was plainly in the circumstances much better that the trustee should take the course of rejecting the claim, and so allow the appellants at once to bring it here and have it determined in the ordinary course. And why it should be supposed that an investigation here would be less satisfactory than one in the Court of Chancery I am at a loss to understand. I think I can take it upon me to say that the procedure here will be as expeditious and satisfactory as that in any other Court in the country. But whether that be so or not, we are not going to demit our undoubted jurisdiction because the appellants have chosen to institute proceedings in the Court of Chancery. I think it would be a dereliction of our duty were we to allow the proceedings in this sequestration to be obstructed on such an allegation. I say nothing about anything that may be done in the Court of Chancery upon the appellants' bill. I take it for granted that that Court has jurisdiction against all the defendants; but I entertain great doubt whether any decree of that Court could affect the proceedings in this sequestration. Even if that were otherwise, it is no reason for not allowing the sequestration to go on in common form, and the appellants to prove their claim as in any other case.

The other Judges concurred.

The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Appellants—Watson and Kinnear. Agents—Davidson & Syme, W.S.

Counsel for Respondents—Dean of Faculty (Clark) Q.C., and Mackintosh. Agents—Stuart & Cheyne, W.S.

Thursday, March 19.

SECOND DIVISION.

BARSTOW (MALTMAN'S FACTOR) *v.* COOK AND OTHERS.

(*Ante*, vol. iv. p. 207.)

Succession—Presumption of Death—Next of Kin.

A person died intestate, leaving heritable and other property. His only brother had not been heard of for twenty years; if alive, he would be in his 82d year, and all inquiry during many years had failed either to discover him or prove his death. *Held* that these facts were sufficient to justify an order on the judicial factor to divide the estate among the next of kin other than this brother.

This was an action of multiplepoinding and exoneration instituted in 1859 at the instance of Mr C. M. Barstow, C.A., judicial factor on the estate of the late William Maltman, of the East India Company's service, who died at Elie, in the county of Fife, in March 1854, leaving heritable and personal property to the value of £10,000 or thereby. Mr Maltman had several brothers and sisters, all of whom predeceased him with the exception of Gavin Maltman. Gavin Maltman was born in November 1792, and left this country in the year 1814. Inquiries which were set on foot elicited the fact that he had in the course of his life wandered over a considerable portion of the West Indian Islands and North America, and had last been heard of at Shediac, New Brunswick, in July 1854. Rumours of his death on several occasions reached this country, and in consequence of them a commission was twice sent to Canada by the Court to inquire into the truthfulness of these reports, but they turned out to be unfounded.

Application was now again made to the Court by the heirs-at-law and next of kin of William Maltman, seeking for an order upon the judicial factor to divide the estate among them.

At advising—

LORD JUSTICE-CLERK—My Lords, I am of opinion that this estate should now be divided, and that the judicial factor should be ordained to carry out the division. This conclusion I am led to by a consideration of the great age at which Gavin Maltman must now have arrived if he yet survives—he must be in his 82d year. Further than that, he has been now for 60 years away from this country, and during the last 20 years has been advertised for far and wide. No inquiry has been spared, and the best course now would appear to be that the estate should be divided among those persons, other than Gavin Maltman, entitled to claim it. If Gavin be still alive he has had a most ample opportunity of putting in an appearance and of claiming the succession of his brother.

The other Judges concurred.

The Court pronounced the following interlocutor:—

"The Lords having resumed consideration of the reclaiming note and the claims of the parties, and having heard counsel thereon, Find that the parties held entitled to certain expenses by the interlocutors of twenty-eighth January eighteen hundred and sixty-five, seventh February eighteen hundred and sixty-five, fifth June eighteen hundred and sixty-nine, and twelfth January eighteen hundred and seventy-one, have agreed to pass from all claim for said expenses except as regards the sums of five guineas and four guineas mentioned in said interlocutor of twenty-eighth January eighteen hundred and sixty-five: Find that the funds *in medio* fall to be distributed and paid in accordance with the following scheme of division, that is to say (1) the claimant James Cook, Berwick-on-Tweed, shall receive one-half share *pro indiviso* of the heritable subjects, with entry as at the term of Martinmas 1873, together with one hundred and fifty pounds sterling as his proportional share of the rents, and the claimants Ann Barclay or Burnside and Margaret Barclay or Scott shall each receive one-fourth share *pro indiviso* of the heritable subjects, with entry as at the said term of Martinmas 1873, together with seventy-five pounds sterling as a proportional share of the rents; (2) The raiser Charles Murray Barstow, as raiser and as factor *loco absentis* to Gavin Maltman, shall be entitled to expenses to be paid out of the funds *in medio*; (3) David Curror, solicitor, Supreme Courts of Scotland, as agent disburser shall receive out of the funds *in medio* the sum of four hundred pounds sterling on account of the expenses incurred by the parties whose adjusted revised condescendence and claims