person shall, on being summarily convicted thereof, forfeit and pay," &c. The facts found proved by the Sheriff, and stated by him in the case, were that on the day libelled a band of men, of whom the accused were some, and who were accompanied by dogs, were observed standing on the banks or sitting on the rails which formed the fences between the road and the fields in which the dogs, urged on by the men, were hunting. That a hare was started and pursued by the dogs, but escaped; that a second hare was started in one of the fields and pursued by the dogs across the road into one of the fields specified in the complaint, where it was killed by the dogs, whereupon one of the band of men entered the field, picked up the hare, and carrying it with him rejoined his companions on the road, and that it was not proved which of the men thus entered the field. That, except as before stated, it was not proved that any one of the said band or company of men entered personally on any part of the said land; that a hare was on the same day seen in the possession of the accused Little, tied up in a handkerchief under his coat; that these proceedings took place without the leave of the proprietrix of the land. On these facts the Sheriff-Substitute found the charge proven and fined each of the accused £2.

The accused took a case for appeal.

The question stated in the case was—Whether the facts hereinbefore set forth imply a contravention by the appellants of the section of the statute recited in the complaint?

Argued for the appellants—The question was that already decided in *Colquhoun's* case in the negative, viz.—Whether a conviction as "art and part" is competent under the Day Trespass Act. Sitting on a rail watching the operations in the field was the *modus* in this case. In that case it was running along the road to prevent the escape of a hare. This Act was to be construed strictly. There was a Special Act, 7 and 8 Vict. cap. 29, to prevent poaching on roads.

Counsel for respondents were not called upon.

At advising—

Lord Justice-Clerk—My Lords, the case of *Colquhoun* was certainly a difficult case, and gave rise to a difference of opinion, though I am not prepared to withdraw my opinion I delivered in that case nor any of the grounds of it; but the distinction between *Colquhoun's* case and the present case is too clear to require to be pointed out at any length. There we had two men who were certainly of the party, but who never were in the field at all, and the question arose whether the crime libelled could be committed by persons who were never in the field in which the offences were alleged to have been committed. We held there that only the persons who were in the field could be convicted, and sustained the acquittal of the others. I need not go further into the details of the case or the grounds of decision. Lord Young differed, and beyond doubt there was some difficulty. But no case of that kind can arise here, because what is here alleged is that those men stood outside and sent their dogs in to course. The men who thus sent their dogs are as clearly guilty as if they went in. It is not a case of individuals acting separately. It is a case of a man using machinery to attain the result desired.

Lord Young and Lord Adam concurred.

The appeal was therefore dismissed.

Counsel for Appellant—R. V. Campbell. Agent—James Riddick, Solicitor.

Counsel for Respondent—H. J. Moncreiff. Agent—Party.

COURT OF SESSION.

Wednesday, June 9.

SECOND DIVISION.

[Sheriff of Dumbartonsh re.

GALT *v.* MACRAE.

Bankruptcy—Review of Sheriff's Interlocutor in Proceedings Preliminary to the Appointment of a Trustee—Bankruptcy Act 1856 (19 and 20 *Vict. c.* 79), *secs.* 71 and 170.

Appeal against an interlocutory judgment of a Sheriff pronounced in a competition for the office of trustee in bankruptcy *dismissed.*

Observed that the exclusion of review under sec. 71 of the Bankruptcy Act of 1856, which makes the Sheriff's interlocutor confirming the election of a trustee final, applies also to all interlocutors pronounced by the Sheriff in questions preliminary and incidental to that decision

Observations (per Lord Justice-Clerk and Lord Young) on *Tennent* v. *Crawford*, Jan. 12, 1878, 5 R. 433.

The estates of Mrs Jane Gillespie, keeper of a Temperance Hotel at Kilcreggan, having been sequestrated by decree of the Sheriff of Dumbartonshire, the first meeting of creditors was held on 23d March 1880. Robert Galt junior and John Macrae competed for the office of trustee. There voted for Mr Galt creditors to the value of £127, 1s. 4½d., and for Mr Macrae creditors to the amount of £163, 12s. 5d., leaving an apparent majority for Mr Macrae of £36, 1s. 0½d.

Galt objected to votes given for Macrae to the amount of £91, 15s., the effect of which objections if sustained by the Sheriff would leave him with a majority in value over Macrae. Macrae lodged objections to certain votes given for Galt. One of his objections was to a vote given for Galt by Thomas Anderson Kennedy, accountant, Glasgow, founded on a promissory-note by the bankrupt.

The Sheriff-Substitute (Steele) having heard parties on their objections on 11th May 1880, issued the interlocutor against which this appeal was taken—"The Sheriff-Substitute having resumed consideration of the process, appoints the competitor Mr John Macrae to lodge in process a minute stating whether he undertakes to establish by proof the promissory-note referred to by him, and which forms part of No. 8 of process; and also to state whether the said promissory-note was obtained from the bankrupt upon the understanding by her that it was not to be held as a document of debt; and further, that she never received any value for the said promissory-note:

Assigns for this purpose four days from this date."

The Act 19 and 20 Vict. c. 79 (Bankruptcy (Scotland) Act), enacts by sec. 71 that "the judgment of the Sheriff declaring the person or persons elected to be trustee or trustees in succession shall be given with the least possible delay, and such judgment shall be final, and in no case subject to review in any Court or in any manner whatever." By sec. 170 it is enacted that "it shall be competent to bring under review of the Inner House of the Court of Session, or before the Lord Ordinary in time of vacation, any deliverance of the Sheriff after sequestration has been awarded, except where the same is declared not to be subject to review."

Galt appealed against this interlocutor, and objection having been taken to the competency of an appeal, he argued (1) at common law all interlocutors of inferior Judges can be appealed unless the Legislature has declared them final; (2) the cases settle that in a sequestration it is competent to appeal against the interlocutory judgment of the Sheriff previous to the final judgment declaring who shall be trustee. The case of *Tennent* v. *Crawford*, Jan. 12, 1878, 5 R. 433, was in point and was conclusive, proceeding as it did on the previous cases of *Latta* v. *Dall*, Nov. 28, 1865, 4 Macph. 100; and *Wiseman* v. *Skene*, March 5, 1870, 8 Macph. 661.

Counsel for the respondent were not called on.

At advising—

Lord Justice-Clerk—I do not think it necessary to go into the grounds on which the Sheriff has proceeded. It seems anomalous that where exclusive jurisdiction is given to the Sheriff, which can only be exercised by canvassing and deciding on the merits of the votes tendered—when the Sheriff is bound to do that and when his judgment is final—this Court is to go into a discussion on points which cannot be fully decided or decided to any practical effect. The judgment in the case quoted to us seems to give countenance to the principle that while the judgment of the Sheriff is final when he declares a person to be elected trustee, the interlocutors which may be pronounced in the course of arriving at that decision are subject to review. If that point were open I have the clearest opinion upon it, but it seems not to be open. Here there is no substance at all in the appeal, and the party appealing has not suffered in any way. I am quite clear that we should not entertain this appeal. It is perhaps not incompetent, but it should be refused on the merits.

Lord Gifford—The statute has declared the Sheriff's judgment in declaring who is to be trustee to be final. That implies that all the ordinary steps for getting at that decision are also final. And though technically interlocutory judgments can be got at by this Court, I think that such steps to reaching the judgment which is final ought not to be reviewed. The real origin of this appeal is that the appellant wants us to decide on the validity of a vote given for him. Then he says the votes on the other side are so bad that we should disallow them, and as that would settle the whole competition we should decide it and remit to the Sheriff to carry out our judgment. There is hardly a case where under colour of appealing from an interlocutory judgment the whole matter might not be gone into if this were sustained.

Lord Young—To assume the competency of this appeal for the present, there is no substance in it—nothing to support it on the merits.

I agree with your Lordships that this Court cannot interfere with the incidental orders of the Sheriff in matters within his exclusive jurisdiction. This Court is always slow to interfere with the incidental orders of an inferior Judge towards the explication of this jurisdiction. I cannot avoid saying that in my opinion, irrespective of the authorities, this appeal is incompetent. It relates to the election of a trustee in a sequestration. Prior to 1856 the question of the election of a trustee going before the Sheriff at first came up here very frequently, and first in the Outer House and then in the Inner House there was a scrutiny of the votes for the election of a trustee, the result of which depends on the number and value of the votes. It was a great hardship that the Judges of this Court should have to decide on the question which of two respectable men should be trustee. It is no doubt often a question of importance, but it is a fair matter for the local Judge, and it was a pernicious wasting of the time of the parties to delay a matter so important to the ingathering and distribution of the estate. Therefore this statute was passed to prevent that evil, and sec. 71 enacts that "the judgment of the Sheriff declaring the person or persons elected to be trustee or trustees in succession shall be given with the least possible delay; and such judgment shall be final and in no case subject to review in any Court or in any manner whatever." It was thought that this enactment would cure the evil, and the words would seem fitted to do so. This view, however, seems to have been taken, that although the result could only be obtained by the Sheriff examining and deciding upon the votes, his judgment on these matters, on the determination of which the ultimate determination necessarily follows, are all subject to the review of this Court, with the result that the whole difficulty remains. I cannot assent to that view. It is just declaring that the remedial statute is to be construed so as to defeat the remedy and leave the mischief as great as ever, and indeed I think with some aggravation. We have all great respect for authority. But this is a matter of procedure, and an error of procedure may be corrected after three such decisions as have been quoted. It is not a matter to which the maxim *stare decisis* applies. And so if it were necessary to determine the competency I should give my voice against the competency of this appeal.

Lord Justice-Clerk—I entirely concur in the observations of Lord Young, though I did not think it necessary to state my opinion on the point. It is a strange result that when there is final jurisdiction on the substance the Judge should not also be final in the means of explicating that jurisdiction.

Lord Ormidale was absent.

Appeal dismissed.

Counsel for Appellant—R. V. Campbell. Agent—John Gill, S.S.C.

Counsel for Respondent—Lang. Agents—Paterson, Cameron, & Co., S.S.C.