been a sale, but not enough for conversion if the power or authority to sell has not been exercised.

II. As regards the second point, it is incumbent on the third parties to show that the sale of the heritage was necessary for the fulfilment of purposes which were obligatory on the trustees. In saying this I make use of the words which in his statement of the law upon this subject were used by Lord Chancellor Westbury in moving the judgment of the House of Lords in *Buchanan* v. *Angus*. Now, what he required to be made out has, I think, not been established. There are two things which are referred to for the purpose of showing that the sale of the heritage was necessary for fulfilling the purposes of the trust, the first of which is the power given to the trustees to advance monies to beneficiaries on the credit or on account of their shares; but this power never was exercised, and consequently conversion for this purpose never became necessary in the administration of the trust. What might have been the result had money been advanced need not be determined. The fact that an event which might have resulted in conversion never occurred leaves the case where it would have been if a discretionary power to advance had not been committed to the trustees. The second of the things referred to is that the residue was to be divided in equal shares; but for this conversion was not required, as this could be effected by a disposition *pro indiviso* in favour of the beneficiaries—*Auld* v. *Anderson*, 4 R. 211; *Duncan's Trs.*, 9 R. 731; and *Aitken* v. *Munro*, 10 R. 1097, are authorities upon this point. These decisions are in the wake of the judgment of Lord Westbury in *Buchanan* v. *Angus*, who says that a division to be made betwixt beneficiaries "share and share alike" are words clearly applicable to a disposition of the property when given to persons as tenants in common, that is to say, using our own law language, to a disposition of property *pro indiviso*.

III. On the third of the points which I have specified I am as clear as upon the others. There is no ground whatever for the inference that while a sale of heritage might not be necessary for fulfilment of trust purposes, the will of the truster, as that is to be gathered from the trust-deed, was that there should be conversion. The opposite conclusion appears to me to be the true reading of the deed. (1) That which is to be divided among the beneficiaries of the fee is the residue which was to be liferented by the widow, and that was intended to be, and in fact was, partly heritage and partly moveable property. The words of direction are that the trustees should dispone, convey, and make over for her liferent "all and sundry the residue of my means and estate, heritable and moveable, above mentioned," and what was to be liferented is the thing of which the fee was to be divided among the destined beneficiaries—at least such is my inference, for there is no direction, nor indeed anything, which suggests that between the death of the widow and the fulfilment of the direction to divide and convey the fee, the *corpus* of the estate was to be changed or anything whatever was to be done by which the character of that estate was to be affected. On the contrary, the direction was that if the beneficiaries had reached the age of 21 the trustees were after the death of the widow to divide and convey "with the least possible delay." (2) There was to be, or at any rate there might be, a "disposition" in the distribution of the truster's estate, the words of direction being that the trustees shall divide "the whole residue of my means and estate, and dispone, convey, and make over" what is to be the subject of division. Thus heritage as well as moveables is or may be included in the division according to the contemplation of the truster. And (3) those who are to take after the death of a child or the issue of a child predeceasing the truster, are the heirs and representatives of the predeceaser. This shews that there might be a division of a child's succession into two parts, one of heritage, which would go to the heir, the other of moveables which would pass to the next-of-kin.

These considerations seem to me to exclude the inference that whether it was or was not required for fulfilment of the purposes of the trust, or whether the power to sell was or was not exercised, the intention of the testator was that his estates should be divided as if there had been conversion.

Lord Rutherfurd Clark and Lord Adam concurred with the Lord President.

The Lords of the Second Division thereafter pronounced an interlocutor answering the first question in the negative and the second in the affirmative.

Counsel for Parties of the First and Second Parts—J. P. B. Robertson—Dickson. Agents—Traquair, Dickson, & M'Laren, W.S.

Counsel for Parties of the Third Part—Solicitor-General Asher, Q.C.—Rhind. Agent—William Officer, S.S.C.

Saturday, July 4.

FIRST DIVISION.

ROBERTSON *v.* WILSON.

Bankruptcy—Bankruptcy (Scotland) Act 1856, *sec.* 48—*Gazette Notice—Personal Bar.*

Sequestration was awarded in the Court of Session upon a petition presented by the bankrupt with concurrence of one of his creditors. The bankrupt failed to comply with the provisions of section 48 of the Bankruptcy (Scotland) Act 1856, in respect he did not insert the statutory notice of sequestration in the *London Gazette* until one day after the six days prescribed by that section. All the other provisions of section 48 were duly complied with. A meeting of creditors was held, a trustee was elected, caution was found, and the trustee's appointment was confirmed. The bankrupt thereafter presented a petition in which the Court were prayed to recal the whole proceedings at and following on the meeting. This petition was founded on the failure to record the statutory notice in the *London Gazette* in due time. Petition *refused.*

Andrew Ross Robertson, residing at 1 Marchmont Street, Edinburgh, with concurrence of a creditor of the amount required by the Bankruptcy Act, presented a petition for sequestration to the Lord

Ordinary on the Bills on 2d June 1885, and sequestration was awarded on that date.

On 12th June 1885 a meeting of creditors was held, when Mr D. H. Wilson, S.S.C., was duly elected trustee. Wilson having lodged the necessary bond of caution, was duly confirmed trustee on 23d June 1885.

This was a petition presented by the bankrupt without the consent of any creditor, in which he asked the Court to "supersede and recal the whole proceedings at and following upon the said meeting of creditors . . . and to appoint a new meeting of the creditors . . . to elect a trustee or trustees in succession upon the sequestrated estates of the said Andrew Ross Robertson, and do the other acts provided by the said statutes."

The petition was founded upon an averment that the statutory notice of the sequestration, and of the first meeting of creditors was not published in the *London Gazette* within the period fixed by section 48 of the Bankruptcy (Scotland) Act 1856. The notice appeared in the *London Gazette* seven days after the sequestration, whereas the period prescribed by sec. 48 is six days. All the other provisions of sec. 48 were complied with.

Answers were lodged for Mr D. H. Wilson, the trustee. The petitioner appeared in person, and referred to the case of *Garden and Others*, July 18, 1848, 10 D. 1509.

Argued for the respondent—It was admitted that the notice had been inserted in the *London Gazette* one day too late. That, however, was owing to a failure on the part of the bankrupt which he was not entitled to found upon—2 Bell's Com. (7th ed.) 297, (5th ed. 285); *Lang* v. *Glasgow Court-House Commissioners*, May 26, 1871, 9 Macph. 768; *Gray*, February 2, 1844, 6 D. 569; *Allan*, June 6, 1861, 23 D. 972. There had been no prejudice to any of the creditors of the bankrupt. Section 71, which provided that the judgment of the Sheriff declaring the election of the trustee should be final, accounted for the absence of any cases directly bearing on the point.

At advising—

Lord President—In this case sequestration of the petitioner's estates was awarded on 2nd June 1885, upon a petition by the bankrupt himself, with concurrence of a creditor of the required amount.

The first meeting of creditors was held on the 12th of June, and it is not disputed that the proceedings at that meeting were conducted in all respects in accordance with the provisions of the 67th section, and that it was held at the time prescribed by that section. The purpose of the present application is to set aside all that was done at that meeting, and all that has followed thereon—that is to say, the election of a trustee, the finding of caution, and the confirmation of the trustee's appointment.

The ground of the application is that there has been a failure to follow the provisions of section 48 with regard to the insertion of the statutory notice of sequestration in the *London Gazette*. The main provisions of section 48 in regard to the registration of the sequestration in the various registers have been here strictly complied with, but the last clause is in these terms—"the party applying for sequestration shall, within four days from the date of the deliverance awarding the sequestration (if awarded in the Court of Session), or if it is awarded by the Sheriff, within four days after a copy of the said deliverance could be received in course of post in Edinburgh, insert a notice, in the form of Schedule B hereunto annexed, in the *Gazette*, and also one notice in the same terms within six days from the said date in the *London Gazette*."

It is admitted that the insertion of the notice in the *London Gazette* was one day beyond the six prescribed by the Act.

The petition now before us is presented by the bankrupt alone, without the concurrence of any of his creditors. Now, if an error of this kind were complained of by one of the creditors of the bankrupt, and if it were possible for him to show that he had in any way been prejudiced by the mistake, I should not be prepared to say that we could not entertain such a complaint. But I am very clear that we cannot entertain a petition by the bankrupt founding on his own neglect and omission.

Lord Mure, Lord Shand, and Lord Adam concurred.

The Court refused the petition.

Counsel for Petitioner—Party.

Counsel for Respondent—Lang. Agent—R. Broatch, L.A.

Saturday, July 4.

SECOND DIVISION.

[Lord M'Laren, Ordinary.

FERGUSON AND OTHERS *v.* PAUL.

Lease—Landlord and Tenant—Fixtures—Greenhouses and Conservatories—Implied Agreement.

Circumstances in which a tenant of a house and garden was allowed to remove at the ish of his lease valuable greenhouses and conservatories erected by him of substantial nature, and bedded on stone and brick foundations.

The proprietrix of a house and garden let them for five years, at a rent of £45 a-year, to a tenant who was taken bound under the lease, *inter alia*, "not to remove away any of the fruit trees and others in the garden, except to replace the same by others of equal quality and value." The lease was subsequently renewed for two periods of five years. The tenant, who was a great lover of flowers, on entering on the subjects removed some trees in the garden, and built in their place greenhouses and conservatories, bedded on stone and brick foundations at a cost of between £800 and £900. He used to compete successfully for prizes at flower shows, given for tulips, hyacinths, and orchids, selling the bulbs to florists, and he kept three gardeners at a cost of over £150 a-year. At the ish of the lease he removed the greenhouses, &c. In an action at the instance of the successors of the