excluding review by implication—*Marr* v. *Lindsay, cit.* The distinction was clear between cases where the Sheriff's jurisdiction was merely statutory and appeal incompetent, and the present case, where the Court had originally jurisdiction prior to the Bankruptcy Acts—*Latta* v. *Bell*, July 4, 1862, 24 D. 1247; *Dixon* v. *Greenock Distillery Company*, July 13, 1867, 5 Macph. 1033; *Tennent* v. *Crawford*, January 12, 1878, 5 R. 433; *North of Scotland Banking Company* v. *Ireland*, November 20, 1880, 8 R. 117; *Ex parte Kearsley* (1886), 18 Q.B.D. 168. In no case had appeal been held incompetent unless where the Act expressly so declared.

An argument was also submitted by the parties on the merits of the deed of arrangement.

At advising—

LORD JUSTICE-CLERK—There is a preliminary question raised as to the jurisdiction of the Court to entertain this appeal. On that question, after considering the clauses of the Act of Parliament, I have formed a clear opinion. I am unable to find anything from which it can be implied that the jurisdiction of this Court, which is conferred upon it in section 170 of that Act, is excluded to prevent an appeal on such a deliverance as has been pronounced by the Sheriff.

[*After dealing with the merits, his Lordship proceeded*]—I would move your Lordships to sustain the appeal and to sanction the agreement.

LORD YOUNG—I substantially concur, and think it sufficient to say that I am of opinion that the deed of arrangement was regularly made and that it is reasonable, and further, that as a Court of Appeal we have jurisdiction to approve of it, although the Sheriff disapproved of it because he thought it unreasonable.

LORD TRAYNER—I think there is a great deal to be said in support of the view maintained by the respondents that under the 38th section of the Bankruptcy Act 1856, it is reserved to the Lord Ordinary or the Sheriff to decide whether the deed of arrangement is reasonable, and to decide that matter finally. The language of the section, if read alone, would, I think, support that view. But section 170 of the same statute provides that any deliverance by the Lord Ordinary or Sheriff pronounced after sequestration has been awarded shall be subject to review "except where the same is declared not to be subject to review." Now, the interlocutor of the Sheriff here appealed against is a deliverance by him after the sequestration had been awarded, and it is nowhere "declared" not subject to review. I think therefore we must hold the present appeal competent. That being done, I have no doubt that the deed of arrangement is reasonable, and ought to be approved.

LORD MONCREIFF—I am of opinion that the appeal is competent. The question is not free from difficulty, because if the 38th section alone is looked at the reasonableness of the deed of arrangement is a matter of discretion and sound judgment, and under the 38th section the person who is to be satisfied is the Sheriff. The statute does not prescribe what inquiry the Sheriff is to make, and no provision is made for taking or recording evidence. Therefore there are here some of the elements which in other cases have led the Court to hold that the decision of the Judge of first instance was final.

But the Bankruptcy Act of 1856 is so framed that I think it is impossible to hold that this deliverance of the Sheriff is not subject to review. In all cases in which it is intended that the judgment of the Sheriff shall be final this is expressly stated; and section 170 provides that it shall be competent to bring under review of the Inner House "any deliverance of the Sheriff after sequestration has been awarded, except where the same is declared not to be subject to review."

The practice under the English Bankruptcy Act 1883 appears to be the same, viz., that the decision of the Registrar (who in these matters occupies the same position as the Sheriff does in this country) as to the reasonableness of an offer of composition or deed of arrangement is subject to the review of the Court of Appeal—*Ex parte Kearsley*, L.R., 18 Q.B.D. 186.

The Court recalled the interlocutor of the Sheriff-Substitute, found that the deed of arrangement had been duly entered into and executed and was reasonable, approved of the same, and declared the sequestration at an end.

Counsel for the Appellants—Salvesen, Q.C.—Clyde—Hunter—H. Young. Agents—Charles George, S.S.C.—Dundas & Wilson, C.S.

Counsel for the Respondents—Cook—C. D. Murray. Agents—Dove, Lockhart, & Smart, S.S.C.—J. S. & J. W. Fraser-Tytler, W.S.—Nisbet & Mathison, S.S.C.

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*Thursday, June* 21.

## FIRST DIVISION.

## BALLANTYNE, PETITIONER.

*Bankruptcy — Sequestration — Petition to Declare Sequestration at an End.*

The estates of a bankrupt were sequestrated in 1896 on a petition presented by himself, with consent of his son, who was a creditor. An abbreviate of the deliverance awarding sequestration was recorded, but no further procedure was taken. The bankrupt died in 1897, and in 1900 a petition was presented to the Court by his son, with consent and concurrence of the only other known creditor on the estate, in which the petitioner averred that he and the concurring creditor had agreed to the division of

the estate without incurring the expenses of bankruptcy administration, and craved the Court to declare the sequestration at an end, and to declare the petitioner entitled to complete his title as heir-at-law to the heritable estate of his father, and to grant warrant for recording the deliverance so to be pronounced in the Register of Sequestrations and in the Register of Inhibitions.

The Court appointed a meeting of creditors for the election of a trustee on the estate, and thereafter, no creditor having attended the meeting, *granted* the prayer of the petition.

*Anderson*, March 13, 1864, 4 Macph. 577, *followed*.

On 7th March 1896 the estates of William Ballantyne were sequestrated by the Sheriff of Lanarkshire on a petition presented by himself with consent of James Ballantyne, his son, who was a creditor of the said William Ballantyne to the extent required by the statute. An abbreviate of the deliverance was recorded in the General Register of Inhibitions on 9th March 1896. The sequestration was not advertised in the *Gazette*, and no further procedure was taken in the sequestration.

William Ballantyne died intestate on 20th September 1897. His heir-at-law was his son James Ballantyne, and John Logan, a creditor, was decerned executor-dative *qua* creditor.

On June 6th 1900 a petition was presented by James Ballantyne, with the consent and concurrence of John Logan, in which the petitioner craved the Court to declare the sequestration of William Ballantyne at an end, and for all obstacles which it otherwise might have offered, to declare the petitioner entitled to complete his title as heir-at-law to the heritable estate of his father,

The petitioner, after narrating the facts set out above, averred—"That the petitioner James Ballantyne and the said John Logan are, so far as known, the only creditors of the said William Ballantyne, and have agreed as to the division of the deceased's estates without incurring the expense of bankruptcy administration. The said estates, so far as known to the petitioner and the said John Logan, consist of the deceased William Ballantyne's share or interest in certain leasehold subjects in Biggar, and certain funds which were paid to the petitioner James Ballantyne before his father's death."

The Court on June 7th 1900 pronounced an interlocutor whereby before answer as to the competency of the petition otherwise, they ordered intimation in common form, and appointed the deliverance pronounced by the Sheriff of Lanarkshire on March 7th 1896, and the present deliverance of the Court, to be advertised in the *Edinburgh* and *London Gazettes* of 12th June 1900, and appointed a meeting of the creditors of William Ballantyne to be held for the election of a trustee on his estates.

No creditor attended the meeting, and a certified minute to that effect under the hand of the petitioner's agent was lodged in process. The petitioner founded on the case of *Anderson*, March 13, 1864, 4 Macph. 577.

The Court pronounced this interlocutor:—

"The Lords having resumed consideration of the petition, with copies of the *Edinburgh* and *London Gazettes*, of date 12th June 1900, and the certified minute, and heard counsel for the petitioner, and in respect of the decision of the Court in the case of Peter Anderson, petitioner, 13th March 1866, reported in 4 Macph. p. 577: Declare the sequestration of the estates of the deceased William Ballantyne, mentioned in the petition, awarded by the Sheriff of Lanarkshire on 7th March 1896, at an end, and for all obstacles which it otherwise might have offered, declare the petitioner now entitled to complete his title as heir-at-law of the said deceased William Ballantyne *omni habili modo* to the heritable estate of the said deceased William Ballantyne, and grant warrant for recording this deliverance in the Register of Sequestrations and in the Register of Inhibitions, and decern."

Counsel for Petitioner—Guy. Agent—George A. Munro, S.S.C.

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*Thursday, June 21.*

## FIRST DIVISION.

[Court of Exchequer.

## HARRIS *v.* CORPORATION OF IRVINE.

*Revenue — Income-Tax — Profits on Corporation Water-works—Sums Paid for Water by other Burghs—Sinking Fund.*

The Corporation of Irvine acquired certain waterworks under a local Act, whereby they obtained power to enter into arrangements with other local authorities for the supply of water to them. Under this power they supplied water to the burgh of Saltcoats and the parish of Stevenston, receiving from the local authorities of these places an annual sum, which was raised by them by compulsory assessment within their own areas. The arrangement provided that the sum payable each year should be arrived at by calculating the amount to be produced (less 10 per cent, for deduction and relief) by a rate on the whole assessable subjects within those areas at the same rate as that charged for water in Irvine in that year. For the financial year 1898-1899 the Irvine waterworks produced a surplus over expenditure, which was partly carried forward and partly applied to a sinking fund for the redemption of the debt on the waterworks. *Held* (1) that the portion of that surplus attributable to the payments made from Saltcoats and Stevenston was profit made by the