tionable. We have a report here which gives a very satisfactory account of Mrs Macdonald, to whom the defender proposes that the child should be sent. Mr Gunn does not dispute that. Therefore whatever views one may entertain as to the motives of this defence, I think that we have no alternative but to sustain the defender's proposal.

LORD YOUNG was absent.

The Court sustained the appeal, recalled the interlocutors appealed against, found "that the defender has intimated that he is prepared to provide for the child's future maintenance, and that the provision he has made for doing so is satisfactory;" decerned for aliment from 24th August 1899 to 3rd July 1900, and *quoad ultra* assoilzied the defender.

Counsel for the Pursuer—Gunn—Adamson. Agents—Mackay & Young, W.S.

Counsel for the Defender—Blair. Agent—L. M'Intosh, S.S.C.

Saturday, June 30.

SECOND DIVISION.

BRODIE'S JUDICIAL FACTOR *v.* BRODIE.

Succession — Marriage - Contract — Provisions to Children—Reserved Power of Apportionment — Implied Exercise of Power by General Settlement.

A husband in his marriage-contract bound himself to provide a certain fund, to be held by the trustees for his wife in liferent and the children of the marriage and their issue in fee. It was declared that the issue of children predeceasing the period of payment should be entitled to their parents' share. Power was reserved to the husband to divide and proportion the said provision among the children, and in the event of his death without making such division, the wife, if she survived him, was to have the same power. The husband predeceased his wife, leaving a settlement whereby he directed his trustees to set aside the fund provided by the marriage-contract to be invested for behoof of his wife and children in the terms and for the purposes therein specified. By the last purpose of his settlement he directed his trustees to "divide, pay, and make over the whole residue and remainder of my said means and estate, after satisfying the purposes hereinbefore written, equally among my said children and the survivors of them, on their respectively attaining twenty-one years of age." The wife, after her husband's death, executed a deed of apportionment, whereby she directed the trustees to divide the fund among her then surviving daughters equally.

Held that the husband had not by his settlement validly exercised the power of apportionment reserved to him, and that the deed of apportionment executed by the wife must receive effect.

By antenuptial contract of marriage dated 3rd and 4th February 1852 the late Kenneth Sutherland Brodie bound and obliged himself, within the period of four years from and after the solemnisation of his then intended marriage, and at the sight and to the satisfaction of the trustees nominated and appointed by the said contract of marriage, to lay out and secure the sum of £6000 sterling upon good and sufficient bonds or mortgages either in Scotland or in India, in his own option, or in the other securities and investments mentioned in the said contract, and to take the rights and securities thereof to him the said Kenneth Sutherland Brodie and the said Isabella Waters Smith (his wife) 'and the survivor of them, in conjunct fee and liferent, but for her the said Isabella Waters Smith's liferent use only, and to the child or children of the said intended marriage, and the issue of the bodies of such child or children as representing their parent in manner after mentioned, whom failing to the said Kenneth Sutherland Brodie's own heirs and assignees whomsoever in fee.'

The marriage-contract further provided —"And it is further hereby declared that if there shall be more than one child of the said intended marriage it shall be lawful to and in the power of the said Kenneth Sutherland Brodie at any time of his life, and even on deathbed, to divide and proportion as he shall think proper amongst the said children the aforesaid provision in their favour; and in the case of his death without making such division, the said Isabella Waters Smith, if she shall survive, shall have the same power, and failing of such division the said principal sum shall belong to and be divided amongst the said children equally and share and share alike: Declaring always that if any child or children of the said marriage shall die before the said sum provided to him, her, or them under these presents and the exercise of the said power of division shall be paid and become payable, leaving lawful issue of his, her, or their bodies, the said issue shall have right to the share of such deceased child or children in the same manner as if such parent had received payment, or the same had become payable during the parent's lifetime."

By his trust-disposition and settlement dated 4th May 1863 Mr Brodie directed his trustees therein named, after payment of all his just and lawful debts, sickbed, and funeral expenses—"*In the second place,* to set aside the sum of £6000 provided by the contract of marriage between me and Isabella Waters Smith or Brodie, my wife, to be invested for behoof of her and the children of our marriage, and to invest the same in the terms and for the purposes specified in the said contract of marriage, and whatever sum shall be necessary in addition to the interest or produce of the

said sum of £6000 to make up the sum of £400 sterling per annum, I direct and appoint my said trustees to pay to the said Isabella Waters Smith or Brodie from my other means during her life, and so long as she shall continue my widow."

By purposes third to tenth of said settlement the truster left specific provisions for each of the eight children of the marriage born at the date of the settlement, and also bequeathed various legacies. The last purpose of his settlement was in these terms—"*And lastly*, To divide, pay, and make over the whole residue and remainder of my means and estate, after satisfying the purposes hereinbefore written, equally among my said children and the survivors of them on their respectively attaining twenty-one years of age: But declaring, as it is hereby provided and declared, that in the event of there being more children of the said marriage than those above-mentioned, such children shall be entitled to share in my said means and estate along with my children before named—that is, children, if daughters, shall each receive a sum corresponding to the special provisions hereinbefore conceived in favour of each of my daughters above named, and if sons shall each receive a proportion corresponding to the special provisions hereinbefore conceived in favour of each of my sons before named, and shall all participate equally in the residue of my said means and estate with my said other children, all of whose special provisions and shares of residue shall accordingly in that event suffer a proportional abatement."

Mr Brodie died on 1st May 1868, survived by his wife and the following ten children—(1) Arthur James Brodie, who died on 25th April 1888, leaving issue; (2) William Alexander George Brodie, who was mentally incapacitated, and whose *curator bonis* was Francis Adam Bringloe, C.A.; (3) Alexander Kenneth Brodie, who died on 1st March 1898, unmarried; (4) Mrs Margaret Alice Brodie or Coullie, who died on 31st December 1895, leaving issue; (5) Miss Flora Jane Brodie; (6) Miss Isabella Brodie, who died on 26th November 1873, unmarried and intestate; (7) Miss Edith Brodie; (8) Miss Ethel Brodie; (9) Mrs Annie Sutherland Brodie, now Livingstone; and (10) Miss Barbara Innes Brodie, who died on 8th June 1881, unmarried and intestate.

On 26th December 1890 Mrs Brodie, the truster's widow, executed a deed of apportionment, in which, after reciting the contract of marriage, and also the provisions of her husband's said trust-disposition and settlement, she directed and appointed the trustees acting under her husband's trust-disposition and settlement upon her death to pay over and convey the said sum of £6000 to and amongst her daughters the said Mrs Margaret Alice Brodie or Coullie, Flora Jane Brodie, Edith Brodie, Ethel Brodie, and Annie Sutherland Brodie, afterwards Mrs Livingstone, and that equally, share and share alike. But it was thereby declared that if any of her said daughters should die before her share of the said sum of £6000 should be paid or become payable to her, leaving lawful issue of her body, the said issue should have right to the share which their deceased mother would have taken if she had received payment, or the same had become payable during her lifetime.

Mrs Brodie died on 18th May 1897.

The said sum of £6000 was not specially set aside or separately invested by the trustees at the death of Mr Brodie in terms of the said directions, but was left immixed with the testator's other funds during the life of Mrs Brodie. It was, however, invested along with these other funds in the names and under the control of the testamentary trustees, and certain investments were specially earmarked by them as representing the said sum of £6000. William Home Cook, C.A., was appointed judicial factor on the trust estate on 11th July 1899.

Questions having arisen as to the division of the said sum or fund of £6000, this Special Case was presented for the opinion and judgment of the Court. The parties to the special case were—First, the judicial factor, who was the holder of the fund. Second, Mrs Brodie's surviving daughters, and the children of Mrs Coullie. Third, the children of Arthur James Brodie. Fourth, the *curator bonis* of William Alexander George Brodie. Fifth, the trustee of Alexander Kenneth Brodie, representatives of three of the next-of-kin of Isabella Brodie and Barbara Innes Brodie, and Mrs Coullie's marriage-contract trustees. Sixth, the judicial factor on the estate of Arthur James Brodie.

The second and fifth parties maintained that the deed of apportionment before narrated was a valid exercise by Mrs Brodie as the survivor of the spouses of the power of appointment conferred by the said contract of marriage, in the absence of any prior exercise of said power by her husband, and as such ought to receive effect, and further, that the said deed operated to divide the said sum of £6000 into five equal shares or portions, payable to and amongst the daughters of the marriage named therein, and the issue of Mrs Coullie, who survived the date of the execution of the said deed of apportionment, but predeceased Mrs Brodie.

The third, fourth, and sixth parties maintained that on a just construction of Mr Kenneth Sutherland Brodie's trust-disposition and settlement he thereby validly exercised the power of apportionment reserved to him in the marriage-contract, and apportioned the said sum of £6000 equally among his children. Accordingly, they contended that the professed exercise of the power of apportionment by Mrs Brodie was incompetent and invalid.

The questions of law for the opinion and judgment of the Court were—"(1) Did Kenneth Sutherland Brodie, by his trust-disposition and settlement, validly exercise the power of apportionment of the said sum of £6000, reserved to him in his marriage-contract and apportion the said fund equally among the children of his marriage?

(2) In the event of the first question being answered in the negative, had Mrs Isabella Waters Smith or Brodie at the date of granting the said deed of appointment power to apportion the whole of the said sum of £6000 among her five then surviving daughters and their issue? and is the said deed of apportionment a valid exercise of that power?"

Certain other contentions and questions of law were stated by the parties, which the Court found it unnecessary to consider.

Argued for the third, fourth, and sixth parties—On a just construction of Mr Brodie's settlement it was clear that he intended to apportion the £6000 in directing his trustees to divide the residue of his estate among his children equally. The reference to the fund provided under the marriage-contract showed its terms were present to his mind. The direction in the second purpose to "set aside" the £6000 merely meant to set aside in the trustees' hands, but did not separate it from the residue. The words "after satisfying the purposes hereinbefore mentioned" referred to the provision of the widow's liferent out of the £6000, and thereafter the whole residue, including that sum, was to be divided equally—*Moir's Trustees*, June 17, 1871, 3 Macph. 848; *Mackie* v. *Mackie's Trustees*, July 4, 1885, 12 R. 1230; *Clark's Trustees* v. *Clark's Executors*, February 16, 1894, 21 R. 546; *Dalgleish's Trustees* v. *Young*, June 29, 1893, 20 R. 904.

Argued for the second and fifth parties—Mr Brodie had not exercised the power of apportionment by his settlement. The direction regarding the distribution of residue clearly excluded the £6000, which he had already disposed of. Amongst the purposes "hereinbefore written" was that regulating the disposal of the sum in question. The fact that the testator had the terms of the marriage-contract before him made it unlikely that he should not expressly exercise the power if he meant to do so. If he intended to cut off his wife's right to apportion he would have done so unequivocally. But all doubt was removed by the introduction of the survivorship clause, which was a condition not within the testator's power to adject. His power was merely to divide "amongst the said children," and under the marriage-contract the issue of children predeceasing the period of payment took their parents' share. In *Bowie's Trustees* v. *Paterson*, July 16, 1889, 16 R. 983, in circumstances similar to the present the testator was held not to have exercised a power of apportionment. See also *Whyte* v. *Murray*, November 16, 1888, 16 R. 95. Mr Brodie having made no apportionment, the deed executed by his wife must receive effect.

At advising—

LORD JUSTICE-CLERK—The late Mr Brodie by his antenuptial contract of marriage bound himself to bring £6000 into trust, the rights to which were to be taken to him and his wife in conjunct fee and liferent, but for the wife's liferent use only, and to the children of the marriage and the issue of children as representing a deceasing parent, whom failing to his own heirs and assignees whomsoever in fee. He reserved to himself power to apportion among children, and in the event of his not apportioning the power was reserved to his widow to apportion. These are all the provisions of the marriage-contract which require to be referred to in considering this special case.

By Mr Brodie's settlement he directed his trustees to set aside the £6000, and to invest that sum in the terms and for the purposes specified in the marriage-contract. He then made a number of provisions in favour of his wife and children, leaving heritable estates to his sons and sums of money to his daughters, and made sundry other provisions; and as regarded the residue he directed his trustees "to divide, pay, and make over the whole residue and remainder of my said means and estate, after satisfying the provisions hereinbefore written, equally among my said children and the survivors of them," adding a declaration that if any more children should be born they should share in the estate in like proportions as those then alive, and in the residue.

The first question is, whether Mr Brodie exercised his power of apportionment over the £6000. I am of opinion that he did not. The only plausible ground for maintaining that he did is that his disposal of his residue includes a disposal of the £6000. That would certainly be a very indirect and unlikely way to be adopted, to apportion a specific sum of £6000 by slumping it with the residue of his estate and then dividing the residue. The leaving of residue at all was by no means certain. If, as he contemplated was possible, his family had increased, the provisions he made might have exhausted his whole estate. And in my view the amount of that estate at his death was necessarily an uncertain quantity. Could it be said that if he left no other the £6000 formed a residue. I cannot think so. The intention of the testator seems to be tolerably clear that the £6000 which he had to provide was to be set aside, and his obligation in regard to that sum fulfilled, that these certain portions carved out of his estate should be paid or made over to the beneficiaries as he directed, and that when these two things had been done the residue not required to fulfil these intentions should be divided in a particular way. I should have been inclined to hold that the £6000 was not dealt with in the way of apportionment by the residue clause, even if the residue clause had been expressed in terms exactly corresponding to the reserved power stipulated for in the marriage-contract. That was to "divide and proportion" the £6000 among the children as he should think proper, issue of predeceasing children taking the share apportioned to their parent. But the terms of the bequest of residue are not the equivalent of this reserved power. For the testator in disposing of the residue directs it is to go equally among "his chil-

dren and the survivors of them on their attaining twenty-one years of age." This, therefore, is something different from what is contained in the reserved power, and tends to indicate that it was not the intention of the testator in this clause to exercise that reserved power as regards the £6000. For as regards that sum he had a limited power, as expressed in the marriage-contract, and could not do anything inconsistent with it.

The testator's widow seems to have been advised that her husband had not exercised the power, and accordingly she executed a deed of apportionment. In that deed she repeated the declaration of the marriage-contract that the issue of any donee of a share should—in the event of the donee predeceasing the time when the share should be paid or become payable—the issue of the donee should succeed to the share. In my opinion the widow had the right to apportion as she did in terms of the contract, her husband not having made any apportionment.

I would move your Lordships to answer the first question in the negative, and the second question in the affirmative. The remaining questions do not require to be answered.

LORD TRAYNER—The first and most important question we have here to decide is, Whether Mr Brodie exercised the power of apportionment conferred on him by his marriage-contract in reference to the £6000 which he has there obliged himself to provide for his wife and children? This power was not exercised by Mr Brodie unless he did so by his trust-settlement. He executed no other deed of apportionment. By his trust-settlement Mr Brodie conveyed to certain trustees his whole estate, and this included the £6000 in question. The purposes of his settlement, so far as we are here immediately concerned with them, are those set out in the second and last place. By the second purpose his trustees were directed to set aside the sum of £6000 provided by the marriage-contract to be invested for behoof of Mrs Brodie and the children of the marriage, "and to invest the same in the terms and for the purposes specified in the said contract of marriage." This clause or purpose of the settlement certainly contains nothing of the nature of an apportionment. It is a simple and unambiguous direction to the trustees to set aside £6000 of the truster's estate, and to invest it in the terms and for the purposes specified in the marriage-contract—the terms in which the investment was directed to be made expressing also the purposes for which it was made, namely, to secure the liferent of the invested money to Mrs Brodie, and the fee thereof to the children of the marriage, or the issue of such children. The fee was by the marriage-contract destined equally to the children, share and share alike, failing any apportionment thereof. The settlement then proceeds to make special provisions in favour of each of the truster's two sons and six daughters, and to bequeath certain legacies, and provides lastly that his trustees should divide and pay "the whole residue and remainder of my said means and estate after satisfying the purposes hereinbefore written," equally among his children and the survivor of them. It is maintained on behalf of the third and sixth parties to this case that the residuary clause from which I have just quoted is in intention and effect an exercise by Mr Brodie of the power of apportionment conferred on him by the marriage-contract. I am of opinion that it cannot be so regarded. In dealing with the "residue" of his estate, I think it plain that Mr Brodie was dealing only with that part of his estate of which he had not disposed, or given any direction as to the disposal, in the earlier part of the settlement. What was to be divided as residue was only that which remained "after satisfying the purposes hereinbefore written." Now, one of the preceding purposes was the second, under which, as I have already noticed, the trustees were directed to set aside out of the truster's estate £6000, and to invest it in a certain manner for certain purposes. The residue therefore with which the testator was dealing was what remained after that £6000 had been taken out of his estate, set aside, and invested as directed. I can no more regard that £6000 as part of the residue than I can the provisions specially made in favour of his family, or the legacies specially bequeathed to others. They are all equally the subject of "purposes hereinbefore written," and all equally excluded from the residue. The residue was only that which remained when the purposes had been satisfied. It was said that Mr Brodie probably intended the residuary clause to be his apportionment of the £6000, because he had fully before him the terms of his marriage-contract, as appears from the reference to it in the second purpose of the trust settlement. I cannot see why any such probable intention should be inferred from the terms of the second purpose. That purpose shows no doubt that Mr Brodie had the contract of marriage and its terms present to his mind. But what were its terms? That he should provide £6000 for his wife in liferent and his children in fee; that he should have power to apportion the fee as he pleased, but failing apportionment by him (or his wife if she survived him) the fee should be divided equally. Why should he by the residuary clause in his trust-settlement be supposed to be apportioning or intending to apportion the fee of the £6000 equally among his children? That did not need to be done; it was done already (so far as Mr Brodie was concerned) by the marriage-contract, unless he pleased to make a different apportionment. It appears to be quite as likely that Mr Brodie (1) either meant the £6000 to go equally among the children without any apportionment on his part, or (2) that he knew he could subsequently apportion the £6000 if he came to be of opinion that that was necessary or proper, and accordingly left

that over for subsequent consideration, or (3) that he meant to leave the apportionment to his wife if she survived him. Any of these suppositions is as probable, I think more probable, than the one that Mr Brodie intended the residue clause of his settlement to operate as a deed of apportionment. But the view that Mr Brodie did not intend his residuary clause to operate as an exercise of the power of apportionment is strengthened by the consideration that the residue was directed to be paid to the truster's children "and the survivors of them." This, of course, it was quite within Mr Brodie's power to direct while dealing with that part of his estate regarding which he had the unlimited power of disposal. But as regarded the £6000, his power of disposal was limited. He could apportion it among the children of the marriage, but with this declaration, that the issue of any child predeceasing the period when the share allotted to him was paid or payable should take the share allotted to the parent. Now, if the residue clause in Mr Brodie's settlement was an apportionment of an equal share of the £6000 to each child of the marriage, he could not validly apportion the share of a predeceasing child to the surviving children. I am satisfied that the residuary clause was not intended to be, and was not in fact, an exercise of the power of appointment conferred on Mr Brodie by his marriage-contract.

If Mr Brodie did not exercise the power, then it was open to Mrs Brodie to do so after his decease. I have heard nothing to suggest that Mrs Brodie's deed of appointment was not in all respects a valid exercise of the power she had. That deed must, in my opinion, receive full effect.

I agree that the questions should be answered as your Lordship has proposed.

LORD MONCREIFF—On the first question I have felt some difficulty, and although I do not differ from the result at which your Lordships have arrived, I shall state shortly the view which I take of the question,

The part of the settlement of the late Mr Brodie in which he is said to have executed the power of apportionment is the residue clause, which directs his trustees "to divide, pay, and make over the whole residue and remainder of my said means and estate, after satisfying the purposes hereinbefore written, equally among my said children and the survivors of them on their respectively attaining 21 years of age."

Now, it is undoubted that the power of apportionment being by reservation and not constitution, and the £6000, the fund to be apportioned, being part of the general estate of Mr Brodie, it was competent for him to execute the power in his settlement, although he did not recite the power or distinguish the fund apportioned from the rest of his estate.

But it is always permissible to show from the terms of the will that the testator did not intend his will to operate as an execution of the power. Accordingly, here it is said that in his trust-disposition and settlement Mr Brodie has evinced his intention not to apportion the £6000 by that deed, and has ear-marked it and distinguished it from the rest of his estate. In the second purpose of the trust he directs his trustees to set aside the sum of £6000, and "to invest the same in the terms and for the purposes specified in his contract of marriage" (I note in passing that he further directs his trustees to provide out of his other means such sum as together with the interest or produce of the £6000 shall be necessary to make up a sum of £400 per annum for his widow). The argument is that under this direction the sum of £6000 is carved out of the estate; that the directions in the deed which follow, and in particular the residue clause, do not apply to it; and that therefore the power of apportionment was not exercised by Mr Brodie in his settlement, and still remained to be executed either by himself or by his widow.

I feel the force of this view of the deed, but taken by itself I do not think that it would be sufficient. In the purposes 3 to 10 the truster makes a variety of provisions for the benefit of his wife, children, and others, which undoubtedly were intended to come out of the rest of his estate, and not to await the termination of the widow's liferent of the £6000. Then in the residue clause the trustees are directed "to divide, pay, and make over the whole residue and remainder of my said means and estate, after satisfying the purposes hereinbefore written, equally among my said children and the survivors of them on their respectively attaining 21 years of age." Now, the purposes "hereinbefore written" no doubt include purposes 3 to 10, but they might equally include the payment of the interest or produce of the sum of £6000 to the widow under the second purpose, and after that purpose was satisfied by the expiry of the widow's liferent, the capital of the £6000 might, without doing violence to the second purpose which primarily provides for the widow's annuity, fall to be treated just as so much of the residue of the truster's estate to be dealt with under the residue clause. There is no doubt that the capital sum, which the trustees set apart to furnish the interest required to bring up the widow's annuity to £400 in terms of the second purpose on the termination of the liferent simply fell to be disposed of as residue, and the capital sum of £6000 which was invested for the purpose of making up the remainder of that annuity might quite consistently with the second purpose be treated in the same way, but for one consideration — the residue is directed to be divided "equally among my children *and the survivors of them.*"

Now, these words which I have italicised are appropriate to the division of a fund over which the testator has an absolute right of disposal, but they are scarcely consistent with the exercise of a power of apportionment among the objects of a limited power of apportionment. I apprehend that the fee of the £6000 vested in the children of the marriage as a class on birth,

and while it was in Mr Brodie's power in apportioning the fund to exclude some or indeed all but one of his children, he could not exclude them all, or the issue of all predeceasing children.

It might perhaps be argued, on the authority of certain decisions, that there being no ulterior destination, the testator's intention was that the residue of his estate should vest absolutely in the last survivor of the residuary legatees, although all of them should predecease him. It may be doubted whether this principle applies to a case like the present in which the bulk of the residue fell to be paid to the residuary legatees immediately on the death of the testator, and where vesting would in general be dependent on survivance of the testator. But in any view, the terms in which the survivorship clause is expressed are not those in which I should have expected a power of apportionment such as that in question to be executed.

I am therefore of opinion that this expression in the residue clause indicates (especially when taken in combination with the terms of the second purpose) that Mr Brodie did not intend to execute the power of apportionment in his settlement. I therefore agree that the first question should be answered in the negative.

I also agree that as Mr Brodie did not exercise the power of apportionment, Mrs Brodie was entitled to do so, and that she did so effectually.

LORD YOUNG was absent.

The Court answered the first question in the negative and the second question in the affirmative.

Counsel for the First and Fourth Parties—Grainger Stewart. Agents—Dundas & Wilson, C.S.

Counsel for the Second and Fifth Parties—Dundas, Q.C.—Blackburn. Agents—Russell & Dunlop, W.S.

Counsel for the Third and Sixth Parties—Rankine, Q.C.—M'Lennan. Agents—Morton, Smart, & Macdonald, W.S.

Saturday, June 30.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

BREMNER, PETITIONER.

Bankruptcy—Sequestration—Discharge of Bankrupt—Failure to Pay Five Shillings in the Pound—Failure to Pay not Due to Circumstances for which Bankrupt Responsible—Evidence Required—Trustee's Report not Necessarily Conclusive—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. c.* 79), *sec.* 146—*Bankruptcy and Cessio (Scotland) Act* 1881 (44 *and* 45 *Vict. c.* 22), *sec.* 6, *sub-sec.* (1).

Where a bankrupt, who has been sequestrated for a period of two years, but has not paid a dividend of 5s. in the £, presents an application for his discharge along with a favourable report by his trustee, and the application is not opposed by his creditors, he is not entitled *de plano* to his discharge, but must satisfy the Court that his failure to pay 5s. in the £ has arisen from circumstances for which he cannot justly be held responsible, and the trustee's report is not necessarily conclusive evidence to that effect.

On such an application for discharge being made by a bankrupt cycle manufacturer, out of whose estate no dividend had been paid, the trustee, and on a remit by the Sheriff-Substitute the Accountant of Court, both reported that the bankrupt had not fraudulently concealed any part of his estate or effects, and that he had not wilfully failed to comply with any provision of the Bankruptcy Statutes, and from proof adduced by the bankrupt it appeared that his failure to pay a dividend had been occasioned by reason of depression in the cycle trade, and consequent depression of the bankrupt's assets. The Court (*rev.* the judgment of the Sheriff Substitute) *granted* the application for discharge.

On 15th November 1897 the estates of John M'Gregor Bremner, cycle agent, Aberdeen, were sequestrated by the Lord Ordinary on the Bills. The sequestration was remitted to the Sheriff of Lanarkshire, and William Brodie Galbraith was appointed trustee on the bankrupt's estate.

In February 1900 the bankrupt, whose estate had not realised sufficient to pay any dividend to the creditors, presented a petition in the Sheriff Court at Glasgow for his discharge in terms of the 146th section of the Bankruptcy Act 1856.

A report by the trustee dated 5th December 1839 was produced. In it the trustee stated that after the bankrupt's estates were sequestrated "the bankrupt gave up a state of his affairs which showed—Liabilities, £2392, 11s. 5d.; assets, £1621, 15s., showing a deficiency of £770, 16s. 5d. after deducting preferable claims. In the month of June 1897 the bankrupt converted his business into a limited company, the terms of sale being that he was to receive £3079—£2079 in cash, and the balance of £1000 by an allotment of shares. He received the purchase price in the manner indicated, but he paid away the whole cash received in liquidating his liabilities, and the 1000 shares allotted to the bankrupt as part of the purchase price have realised nothing. Under these circumstances, therefore, the bankrupt's estate has not realised sufficient to meet the expenses of sequestration and the trustee's fee. The trustee has further to report that the bankrupt has attended the diets of examination, and complied with all the provisions of the statute; that he has made a satisfactory discovery and surrender of his estates; that he has not been guilty of any collusion, and that the bankruptcy has arisen from innocent misfortunes or losses in business, and not from culpable or undue conduct.