railway company in shunting the trolley on which the mill was placed failed to explain to the pursuer that it was no part of his duty to assist in that operation.

I do not think that the Sheriff had any concern with what verdict the jury meant to find—that is to say, what result in law the jury meant him to deduce from their answers in fact, or any right to regret that he could not give effect to their intention. I think that his business was to treat their answers as so much information, and to apply that information in reaching the conclusion whether in law the pursuer or the defender was entitled to a judgment. So dealing with the case, I can have no doubt that the Sheriff came to the sound conclusion that though the jury thought pursuer was in the employment of, performing work for, and acting under the instructions of, the defender, at the time of the accident, he was really only in his employment, and was, as a volunteer, assisting along with the defender in work which properly fell to be done by the railway company, and that as it was in law no fault or negligence on the part of the defender, involving liability for damages, that he did not tell the pursuer that it was no part of his duty to him so to assist, the result of the information which the jury have afforded to the Sheriff was that the defender was entitled to his judgment.

It cannot be said that the questions are altogether appropriately framed, as I have no doubt they would have been had the Sheriff been left, by the framers of the Act, with a free hand to put them after the facts were brought out at the trial. Of this I am certain, that if Sheriffs were left to put the questions at the trial instead of being compelled to evolve them before trial the questions would be much fewer and simpler than Sheriffs at present seem to think necessary, in order I suppose that they may try to meet every possible or conceivable turn of the evidence at the trial, to the great benefit of all concerned. But any defect in the questions here is more the fault of the Act than of the Sheriff.

I think, therefore, that the Sheriff has properly proceeded under the Act, and has correctly performed the not very easy task of applying this, at first sight inconsistent, so-called verdict.

LORD SKERRINGTON—I concur.

LORD JUSTICE-CLERK—I am of the same opinion as that which has been expressed by your Lordships. Stated in a word, an essential part of the verdict—the finding as to fault—is not a finding for the pursuer, and therefore the verdict giving damages to the pursuer has no basis in the findings of fact contained in the answers of the jury.

The only question remaining is whether the Sheriff-Substitute was right in holding the verdict of the jury to be a verdict for the defender. The findings found nothing that could in law be held to be a fault on the part of the defender. Therefore they could not justify the giving of damages to the pursuer. That being so, I am of opinion that the verdict must be held to be a verdict for the defender.

I am grateful for and concur entirely in the comments made by the Lord President upon the form of procedure under the Act in question.

As regards the question whether the adjustment made of the questions by the Sheriff-Substitute can be reviewed if leave is given to appeal, I join with my brethren of the Second Division in desiring to reserve my opinion.

LORD KINNEAR, who was absent at the rehearing, gave no opinion.

LORD M'LAREN was absent.

The Court refused the appeal, and found the appellant liable in expenses since 22nd March, the date of the Sheriff-Substitute's interlocutor appealed against.

Counsel for the Pursuer—Blackburn, K.C.—Boase. Agent—Robert Gray, S.S.C.

Counsel for the Defender—MacRobert. Agents—Bonar, Hunter, & Johnston, W.S.

Friday, March 18.

FIRST DIVISION.

(Before Seven Judges.)

STEWART *v.* CROOKSTON.
GALBRAITH *v.* STEWART.

Bankruptcy — Sequestration — Realisation of Estate—Private Sale by Trustee of Book Debts within Twelve Months of Sequestration—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *secs.* 82, 96, *and* 136.

A trustee in bankruptcy, with consent of the commissioners and creditors, sold privately within twelve months of the sequestration the book debts belonging to the sequestrated estate. *Held* that the sale was ineffectual.

Crichton v. *Bell* (1833), 11 S. 781, and *Robertson* v. *Adam* (1857), 19 D. 502, *followed* and *approved.*

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79), enacts—Sec. 82—"The trustee shall manage, realise, and recover the estate belonging to the bankrupt, wherever situated, and convert the same into money, according to the directions given by the creditors at any meeting, and if no such directions are given he shall do so with the advice of the commissioners. . . ." Sec. 96—. . . "The creditors assembled at such meeting" [*i.e., the meeting after the bankrupt's examination*] "may receive an offer of composition as hereinafter provided and may, either at this or any other meeting, give directions for the recovery, management, and disposal of the estate; and when any part of the estate consists of land or other heritable property, it shall be optional to the creditors to determine whether the trustee is to bring such property to judicial sale or to dispose thereof by voluntary public sale

or by private sale, as hereinafter provided." Sec. 136—"If on the lapse of twelve months from the date of the deliverance actually awarding sequestration it shall appear to the trustee and commissioners expedient to sell the heritable or moveable estates not disposed of, and any interest which the creditors have in the outstanding debts and consigned dividends, they shall fix a day for holding a meeting of the creditors to take the same into consideration, . . . and if three-fourths in value of the creditors assembled at the meeting shall decide in favour of a sale in whole or in lots, the trustee shall cause the estates, debts, and dividends to be sold by auction, after notice thereof published at least one month previous to the sale, once in the *Gazette* and in such other newspapers as the creditors at the meeting shall appoint."

These were two actions arising out of a private sale by James Davidson, C.A., Glasgow, trustee on the sequestrated estates of Yorston & Hogarth, writers, Glasgow, and Robert Yorston, the only surviving partner, of the book debts of the firm to Robert Stewart, accountant, Glasgow. In the first action the assignee Stewart sued James Crookston junior, coalmaster, Glasgow, the acceptor of a bill of exchange for £150, dated 29th June 1907 at three months date, of which the firm of Yorston & Hogarth were indorsees and onerous holders, for payment thereof. The defender pleaded—"(1) No title to sue."

In the second action William Brodie Galbraith, C.A., Glasgow, trustee on the sequestrated estates of the late John Hogarth, writer, Glasgow, a partner of the said firm of Yorston & Hogarth, sued the assignee Stewart for delivery of an I O U for £160 dated 3rd January 1907 granted by William Forbes in favour of the said John Hogarth, which Stewart had obtained possession of under his assignation of the book debts of Yorston & Hogarth.

The defender pleaded—"(5) The said I O U and sum therein contained being part of the property of the firm of Yorston & Hogarth, and the defender having acquired right thereto in virtue of the said assignation, he is entitled to absolvitor with expenses. (7) The sale by the trustee and commissioners on Yorston & Hogarth's estate to the defender, authorised by the creditors, having been regular and proper, and acquiesced in by the pursuer, and *separatim*, the pursuer having no title or interest to impugn it, his contentions should be repelled, with expenses."

The pursuer pleaded—"(1) The defence is irrelevant. (4) The said sale to the defender having been a private one, made contrary to the provisions of the Bankruptcy Statutes, the assignation in his favour founded upon by him is invalid, and the defender has no title to said I O U or the sum due thereunder."

In the action at the instance of Stewart against Crookston the Sheriff-Substitute (WELSH) on 6th April 1909, after a proof, found in fact—"(4) That the sale of said outstanding book debts and cash balances was a private sale, and, on the assumption that said acceptance was included in said assignation, that the provisions of the Bankruptcy (Scotland) Act 1856, and more particularly those of section 136 of said Act, were not observed in connection with said sale: Finds in law that the pursuer has not validly acquired the alleged debt which is the subject of the present action, and that he has no title to pursue the defender therefor: Therefore sustains the first plea-in-law stated for the defender."

Note.—" . . . On the facts disclosed at the proof I cannot distinguish this case from that of *Robertson* v. *Adam*, 1857, 19 D. 502, which decided that a purchase by private sale from the trustee and commissioners, of a debt forming part of a sequestrated estate does not give a good title to sue the debtor. By the Bankruptcy (Scotland) Act 1856, section 82, it is provided that the trustee shall manage, realise, and recover the estate belonging to the bankrupt, and by section 136 of that Act provision is made for the sale of outstanding debts by auction after certain formalities have been observed. The following sentences from the opinion of Lord Neaves, Lord Ordinary in the case of *Robertson* v. *Adam*, put the matter tersely:—'Under both of these Acts' (*i.e.*, the former Bankruptcy Act and the Act of 1856) 'it must, it is thought, be held that the statutory direction given to the trustee to recover and realise the moveable estate does not authorise him to dispose of outstanding debts at his own hand, or with the mere aid of the commissioners. The disposal of outstanding debts by way of sale seems, under both of the statutes, to be guarded by special provisions requiring first that a certain time shall elapse, and next that the sale shall be by auction—the only safe way, perhaps, by which the value of such a subject can be ascertained.' Admittedly the sale in the present case was a private sale, and I do not think the fact that it was authorised at the second meeting of creditors can strengthen the pursuer's case on title, it having been held (in the case of *Crichton* v. *Bell*, 1833, 11 S. 781) that a private sale of an outstanding debt—though afterwards approved of by the creditors—is not effectual to convey the right thereto. The statutory formalities were not observed in the present case, and accordingly, in my view, the sale of the book debts and cash balances by the trustee in favour of the pursuer not having been validly carried through, the assignation conferred upon the pursuer no title to sue the debtor. I may add that it does not seem to me to affect the principle to be applied that, on the one hand, a price of a fair value, or, on the other hand, an under value, was paid for the outstanding debts. The result is that I sustain the defender's plea of 'No title to sue,' and dismiss the action with expenses."

The pursuer appealed to the Sheriff (MILLAR) who, on 28th July 1909, adhered to his substitute's interlocutor.

Note.—"The pursuer's agent, during the debate on the appeal, maintained that

section 136 of the Bankruptcy Act of 1856 did not apply to a private sale previous to twelve months after the date of sequestration. By section 82 of the Bankruptcy Act it is provided . . . [*quotes, ut supra*] . . . Section 96 also provides that at the meeting after the election of the trustee, when the trustee submits his report and estimate of the estate . . . [*quotes, ut supra*] . . . The appellant founded on these sections as giving the trustee power to sell the estate by private bargain, if authorised to do so by the creditors. As it may often be in the interest of the creditors to have such power, I should have felt inclined to have taken this view. But then there are two cases—*Crichton* v. *Bell*, 11 S. 761, and *Robertson* v. *Adam*, 19 D. 502, which lay down that such a course would be incompetent. There is no doubt that Lord Neaves in the latter case is dealing with the previous Bankruptcy Statute, but the terms of the corresponding sections in the Act of 1856 are almost precisely similar, and that case is therefore a direct authority upon this question. It is to be noted that Mr Goudy, in his book upon the Law of Bankruptcy, quotes these two cases as being his authority for the proposition that a private sale of such property as book debts has been held incompetent. He goes on to say that it is somewhat doubtful whether a distinction would be admitted in regard to such property as furniture or stock-in-trade, so as to sanction a sale of the latter by private bargain. These cases, then, being decisions of the Supreme Court directly upon the question at issue, are binding upon this Court until they are altered. Accordingly, I think the learned Sheriff-Substitute has come to a right decision."

In the action by Galbraith against Stewart, the Sheriff-Substitute (BOYD) on 29th March 1909 pronounced the following interlocutor:—"Sustains the first plea-in-law for the pursuer: Repels the defences, and decerns and ordains the defender to deliver as craved in the petition," &c.

The defender appealed to the Sheriff, (MILLAR) who, on 28th July 1909, adhered.

Note.—". . . . In any event it seems to me difficult for the present defender to retain possession of the document, because by the decision in another case it has been determined that the assignation to him was not competently granted to him in terms of the Bankruptcy Act. He is, therefore, not entitled to hold the document as against Hogarth's trustee. In the whole circumstances I think the view of the learned Sheriff-Substitute is right, and should be affirmed."

The assignee, Stewart, appealed in both cases to the Court of Session.

The appeals were heard together by the First Division on 13th and 14th January 1910, and on 15th January the Court appointed both causes to be argued before seven judges "on the question whether in the circumstances the assignation founded upon . . . is valid."

Argued for appellant—The words "realise, recover, and convert into money" in section 82 of the Bankruptcy (Scotland) Act 1856 gave the trustee power to sell moveables by private sale within the year. If the power of the trustee was so restricted that he could not so sell within twelve months it was difficult to see where he got power to sell at all. The scheme of the Act was that under section 82 the trustee was given complete power to realise the estate in any way he saw fit. If he selected a method not the best, he would be liable to account when the time came. He took the risk that he had realised the estate in the best way. Section 86 supported this argument, because it made the trustee amenable to the Lord Ordinary and the Sheriff. This section gave protection to the bankrupt and the creditors against the trustee. Following section 82 came section 96, by which power was given to the trustee to sell heritage by private bargain. This meant that the trustee was put in a position to adopt this method whether it was the best method or not, and neither creditors nor bankrupt could subsequently challenge the sale. Then came section 136 by which the trustee was given power to sell the whole estate by auction. The purpose of this section was to save him from subsequent challenge on the ground that he had not adopted the most lucrative method. Again section 176 gave the trustee power to compound debts. But if he had this power, why should he not also have power to sell? If "realise" excluded private sale, why should it include public sale, or any sale? It was in the interest of the bankrupt and his creditors that the trustee should have such power. In *Noble* v. *Campbell*, November 4, 1876, 4 R. 77, 14 S.L.R. 42, the view taken by the Court was that it was *intra vires* of the trustee to sell a decree for payment belonging to the bankrupt estate—Bell's Com. (M'Laren), vol. ii, 344.

Argued for respondents — The whole procedure was statutory. The question was whether the statute either expressly or by implication authorised the sale of the debts. The only express provision was in section 136. Section 82 was a perfectly general one, and the only proper mode of realising book debts was to recover them from the debtor. Book debts were a special class of assets—not visible and tangible. They were speculative claims the precise value of which was not known. The value of corporeal assets was known and could be realised by auction. So with shares and stocks. The policy of the Act was to prevent underhand dealing and to prevent the trustee disposing of these assets at an inadequate price. If regard was had to the circumstances in which private sale was authorised it would be found that it was in each case safeguarded. "Recover" in section 82 was plainly appropriate to debts, &c., vested in the bankrupt at the time of sequestration. This was really the sale of a title to sue. In other cases the creditors could see what the assets were worth, but not in the case of a book debt. In this connection the association of outstanding debts and

consigned dividends was important, because it indicated that in the view of the Legislature these, being speculative assets, were to be either litigated or enforced; though, after twelve months, it being presumed that the trustee had been diligent, he was to be entitled to resort to a more drastic method and dispose of them by auction. Section 136 had already been construed by the Court in this way—*Crichton* v. *Bell*, June 25, 1833, 11 S. 781, better reported 5 Scot. Jur. 468; and *Robertson* v. *Adam*, February 20, 1857, 19 D. 502. Further, the English Bankruptcy Statute of 1883, section 56 (1) gave a trustee explicit power to sell book debts by private sale, and if such a power had been contemplated in Scotland it would have been expressly conferred.

At advising—

LORD PRESIDENT—These cases were sent to a Court of Seven Judges because the question as to the power of a trustee in bankruptcy to sell by private treaty book debts of the bankrupt was a practical question of some importance, and because from inquiries we had made from the Accountant in Bankruptcy at the time the case was heard in the First Division it seemed that the actual practice was not uniform.

The learned Sheriffs in the case of *Stewart* v. *Crookston* held, as I think was inevitable, that they were bound by the decisions of the Court in *Crichton* v. *Bell* and *Robertson* v. *Adam*. These judgments are before this Court of Seven Judges for reconsideration. I am, however, of opinion that they were rightly decided. They were decided on earlier Bankruptcy Statutes than the one that now rules. But the phraseology of the section now dealt with is practically identical, and consequently the reasoning of the learned Judges applies to this case.

The leading section in the present statute (the Act of 1856) which deals with the powers of a trustee is the 82nd—"The trustee shall manage, realise, and recover the estate belonging to the bankrupt, wherever situated, and convert the same into money, according to the directions given by the creditors at any meeting, and if no such directions are given he shall do so with the advice of the commissioners." It is, I think, quite certain that the word "recover" is the word appropriate to the ingathering of debts due to the bankrupt. Now the natural way of recovering a debt is to get it paid, voluntarily if possible, if not then by process, and the very act of recovery converts it into money. To sell a debt to another person is not only not a usual process, but is one which almost postulates a loss, because no one is going to buy debts at the full face value, simply because there would be no profit in such a transaction. I think therefore that, taking this section by itself, its natural construction would not lead to the power asserted.

But the matter is, I think, made quite clear by section 136. This deals with the winding-up of an estate. The policy is obvious—not to allow sequestration to be indefinitely protracted simply because the assets of the bankrupt are hard to sell. It, of course, assumes that the ordinary course of realisation has been going on during the twelve months immediately after the bankruptcy. Then, when it comes to speak of the estates of the bankrupt, it enumerates them as "the heritable or moveable estates not disposed of and any interest which the creditors have in the outstanding debts and consigned dividends," and then provides for the sale of all these things by auction if the creditors so desire.

Now it seems to me that the specific mention here of "outstanding debts"—as a thing for which power is, under certain conditions, being given to sell—goes far to show that the construction I have put on the earlier section is correct. For if it were not so I can see no reason for their specific mention. The phrase "heritable or moveable estate still undisposed of" would be amply sufficient. Upon the whole matter therefore I am of opinion that the interlocutor of the Sheriff is right.

In *Galbraith* v. *Stewart*, while expressing no opinion on the judgment as it stands, the proper interlocutor in the First Division will be to recal the judgment, sustain the fourth plea-in-law for the pursuer (that is, instead of the first), and of new repel the defences and ordain the defender to deliver.

LORD ARDWALL—There are several questions raised in this and the other action, *Galbraith* v. *Stewart*, but the only question submitted at the hearing before Seven Judges was whether it was competent for the trustee in a sequestration to sell and assign book debts due to the bankrupt otherwise than in terms of the 136th section of the Bankruptcy (Scotland) Act 1856, proceedings under which can only be taken on the lapse of twelve months from the date of the deliverance awarding sequestration.

In the present case the estates of Yorston & Hogarth, writers, Glasgow, were sequestrated on 23rd March 1908, and the debt which is now sued for was sold and conveyed by assignation dated 4th, 6th, and 11th August 1908 by the trustee James Davidson to the pursuer.

I am of opinion that it was not competent for the trustee to sell the said debt, and that the interlocutors of the Sheriff-Substitute and Sheriff in *Stewart* v. *Crookston* ought to be adhered to. The interlocutors in the other action may require some adjustment.

This question seems to have been raised and decided in two cases—first, *Crichton* v. *Bell*, 25th June 1833, 11 S. 781, where the trustee and commissioners, with the subsequent sanction of the creditors, sold privately a debt due to the estate. The assignee raised an action for payment and was met with the objection that a private sale was not authorised by the Act 54 Geo. III, cap. 137, section 56. The assignee's

title was held by the Court to be bad, on the ground that the sale was illegal.

Again, in the case of *Robertson* v. *Adamson*, 20th February 1857, 19 D. 502, the sale of a debt was carried through privately by the trustee with the consent of the commissioners. The Bankruptcy Statute in force when this case occurred was 2 and 3 Vict. cap. 41, but that statute is on this point substantially the same as the Act of 1856. In that case also the sale was held to be illegal.

It was, however, argued that these decisions were not well founded, and that under section 82 of the Act of 1856 the trustee has power to sell debts due to the estate in respect of the first clause in that section, which is in these words—[*His Lordship read the section quoted supra*].

With regard to heritable estate, provisions are made by sections 96, 105, 113, and 115 for the sale of it, and three modes of sale are pointed out by these sections, namely, judicial sale, sale by auction, and private sale, and the conditions under which these different modes of sale are to be carried out are specifically laid down in the statute. There are no special provisions for the sale of book debts, apart from those contained in section 136, and in my opinion the direction given to the trustee to "realise and recover the estate belonging to the bankrupt" does not authorise the sale of the debts of the estate. On the contrary, as I read that section, the direction to realise is applicable to the ordinary moveable assets of an estate which it is the trustee's duty to realise and convert into money, such as furniture, stocks, shares, stock-in-trade, and so on, while the word "recover" is applicable to debts, and imposes on the trustee a duty to recover debts and other moneys belonging to the bankrupt, or it may be moveables belonging to him in the hands of other persons. I think that this is in accordance with the general scheme of the Bankruptcy Statutes. I think that these statutes, and particularly the Act of 1856, contemplated that the trustee should be the person, and the only person, who should recover debts due to the bankrupt estate. Indeed, one important part of the scheme of the Bankruptcy Statutes is that instead of individual creditors seeking by arrestment or otherwise to attach and recover debts due to the bankrupt, the whole power of recovering such debts should be vested in one person, namely, the trustee, and in order to enable him to do so, and to protect him against the diligence of other persons, including individual creditors, we have, in addition to the vesting clauses contained in section 102 of the statute, the provisions of section 108, whereby the sequestration operates as an arrestment and decree of furthcoming and an executed or completed poinding. Accordingly, as I read the Bankruptcy Act, it is one of the most imperative duties of a trustee to recover debts due to the bankrupt estate, and it is laid on him to consider how that can best be done and in what cases it is necessary or expedient to proceed to recover such debts by way of action or otherwise. He is the official entrusted with these duties by Act of Parliament, and he is responsible to the Court of the sequestration for the proper performance of them. It appears to me that it would be contrary to the spirit of the Bankruptcy Statutes, and in the majority of cases it would be contrary to the true interests of the general body of creditors, and of the bankrupt as holding the reversionary interest, to allow the trustee to sell debts due to the estate either singly or in lots or as a whole. If such sales were allowed I am afraid that questions would constantly arise as to whether they were sales for a fair price or whether they were not sales at such prices as to enable the purchasers to speculate as to the amount of debts likely to be recovered. In this way many debts might be sold for less than their value, because a possible risk existed as to their recovery, and creditors would have no certainty that everything had been done which was right and proper with a view to the recovery of the debts for the benefit of the general estate.

But I think all doubt on the question under discussion is set at rest by a consideration of the terms of the 136th section of the Act of 1856, for that section does contain power to the trustee and commissioners to sell outstanding debts with consent of three-fourths in value of a meeting of creditors called by due advertisement, and with such permission the sale may be in whole or in lots. The sale is to be by auction, and after a month's notice previous to the date of the sale. I think it appears conclusively from this section, which is the only one in the whole Act which mentions the sale of outstanding debts, that such sale can only be carried out in terms of its provisions and in no other way.

We were referred to the latest English Bankruptcy Statute, from which it appears that sales of the debts of a business are allowed to be made. I can only say that this may be of some convenience in certain cases, but in my view the rule of the Scotch Bankruptcy Statute is a much better one in the interests of the honest management of the estate and of the expeditious and efficient recovery of debts due to the bankrupt.

For the reason I have stated I am of opinion that Mr Stewart has no valid title to the debt in question.

LORD DUNDAS—I am of the same opinion. I think we ought to follow the decisions of the Court in *Crichton* v. *Bell* (1833, 11 Sh. 781; also reported in 8 F.C. 8vo 465, and 5 Sc. Jur. 468) and *Robertson* v. *Adam* (1857, 19 D. 502), not only because they have regulated the law for so many years, but also as having been rightly decided.

It is significant to observe, as affecting the proper construction of section 136 of the Act of 1856 and the corresponding sections of the earlier Acts of 1814 and 1839, that "outstanding debts" and "consigned

dividends" are associated with one another apparently as forms of assets of a more or less speculative value requiring special treatment as contrasted with the general "estate" of the bankrupt. The policy of the matter has also to be kept in view, and this was present to the minds of the learned Judges, as may be gathered from their opinions, particularly that of the Lord Justice-Clerk in *Crichton's* case, who (as reported in the Sc. Jurist) observed that "he was quite convinced of the expediency of the statutory provisions as to the sale of debts in preventing all underhand transactions." The normal and proper mode of dealing with debts is surely to collect, and not to sell or assign them.

LORD JOHNSTON—The estates of Yorston & Hogarth, writers, Glasgow, and of Robert Yorston, the only surviving partner, were sequestrated on 8th April 1908.

By assignation dated 4th, 6th, and 11th August 1908, the trustee in the sequestration, with consent of the commissioners, assigned to Robert Stewart, accountant, Glasgow, "the whole book debts and cash balances," with a certain exception, "appearing in the books of the said firm of Yorston & Hogarth, and to which they or the said Robert Yorston as an individual can lay claim, and now vested in me as trustee foresaid."

The sale was a private sale, and took place just four months after the date of the sequestration, and it was alleged to have been entered into by virtue of a resolution of the second general meeting of creditors, which "authorised a sale of the book debts to the bankrupt or his friends at the price of £400, provided the term of payment and security are approved by the commissioners." The question which has been remitted to the consulted judges is whether the assignation is valid, that is, whether there was a legal and effectual sale. The Sheriff-Substitute and the Sheriff have both pronounced against the validity, and I think that their judgments are sound.

By section 82 of the Bankruptcy Act 1856 "the trustee is directed to manage, realise, and recover the estate belonging to the bankrupt wherever situated, and convert the same into money according to the directions given by the creditors at any meeting; and if no such directions are given, he shall do so with the advice of the commissioners." These words "manage, realise, and recover" are, I think, to be interpreted and applied *secundum subjectam materiem*. The trustee is to "manage" where management is required, "realise" where realisation is appropriate, and "recover" where recovery is possible. And, clearly, recovery is at least *primo loco* possible of book debts and cash balances.

By section 96 it is provided that the creditors at the meeting to receive the trustee's first report, or at any other meeting, may "give directions for the recovery, management, and disposal of the estate," thus using substantially the same words in a different order. These words each convey a separate meaning, and again, I think, are to be interpreted *secundum subjectam materiem*.

Lastly, section 136 provides that on the lapse of twelve months, and then only if "it shall appear to the trustee and comissioners expedient to sell the heritable or moveable estates not disposed of, and any interest which the creditors have in the outstanding debts and consigned dividends, they shall fix a day for holding a meeting of creditors to take the same into consideration," and the sale, if resolved on, is to be in whole or in lots by auction. The term "outstanding debts" implies, I think, that in the ordinary course of administration all debts recoverable have been recovered, and that it is only the outstanding residue which is to be so treated. And farther, their separate mention in contradiction to heritable or moveable estates "not disposed of" clearly indicates that they are not estates which it was intended that the trustee up to this point should "dispose" of, but should recover. This then confirms the view which I have expressed on the interpretation of the 82nd and 96th sections.

This is in accordance with the decisions in *Crichton* v. *Bell* (11 S. 781) and *Robertson* v. *Adam* (19 D. 502), which it was desired should be reconsidered. But I humbly think that the grounds of judgment in *Crichton's* case (on which *Robertson's* case followed), and which are only to be found in the report in 5 Scot. Jur. 468, are perfectly sound and apposite, though the decision was given with reference to the analogous but not quite identical provisions of one of the prior Bankruptcy Acts. I would venture to add here that there are indications in the circumstances of the present case that it may prove an illustration, to quote the words of Lord Justice-Clerk Boyle in *Crichton's* case, "of the expediency of the statutory provisions as to the sale of debts in preventing all underhand transactions."

The LORD JUSTICE-CLERK, LORD SKERRINGTON, and LORD LOW concurred.

In *Stewart* v. *Crookston* the Court affirmed the interlocutors of the Sheriff and Sheriff-Substitute dated 28th July and 6th April 1909 respectively, repeated the findings in fact and in law contained in the interlocutor last mentioned, and dismissed the appeal.

In *Galbraith* v. *Stewart* the Court recalled the interlocutors of the Sheriff and Sheriff-Substitute dated 28th July and 29th March 1909 respectively, sustained the fourth plea-in-law for the pursuer, of new repelled the defences, and ordained the defender to deliver the I O U referred to in the initial writ.

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Counsel for Respondent (Galbraith)—Macmillan—MacRobert. Agent—Campbell Faill, S.S.C.