ture would have enured to his successors in the entailed estate. In the same way, when his connection with the estate is ended by the sale, I think the price must go to relieve succeeding heirs in the unsold portion of the entailed estate of one-fourth of the capital of the debt. The rents of the portion of the entailed estate which is unsold and which the petitioner will continue to draw are as liable for his obligations as the rents of the portions sold would have been. These obligations include the reduction of the improvement expenditure debt by one-fourth.

The case of *Pringle*, June 28, 1892, 19 R. 926, 29 S.L.R. 820, was cited as contrary to this view. There it was held that the whole sum remaining unpaid at the date of the execution of the disentail should be deducted from the valuation of the estate in calculating the values of the expectancies of the next heirs. That decision, however, did not turn on a construction of the statutes but on a point of substance. If the heir whose expectancy was being valued succeeded, the value of his succession would be the whole estate minus the whole debt unpaid. Here the question is, What do the statutes authorise the heir in possession to do?

I am of opinion that the petitioner is only entitled to payment of three-fourths of £2075, and that one-fourth should be applied in extinction of debt still remaining unpaid.

LORD KINNEAR and LORD JOHNSTON concurred with the Lord President.

The Court pronounced this interlocutor—

". . . Find that the petitioner is only entitled to payment of three-fourth parts thereof in full of his claims for improvement expenditure and relative costs mentioned in the interlocutor reclaimed against, and recal the said interlocutor reclaimed against in so far as it finds the petitioner entitled to payment of any further or other sum out of the purchase price of Dupplin, Newton of Condie, and others, in respect of said improvement expenditure and relative costs; and with this finding remit the cause back to the Lord Ordinary to proceed as accords. . . ."

Counsel for Petitioner (Respondent)—Sandeman, K.C.—Chree. Agents—Dundas & Wilson, C.S.

Counsel for Respondent (Reclaimer)—Blackburn, K.C.—Maitland. Agents—W. & F. Haldane, W.S.

Monday, July 17.

FIRST DIVISION.

[Lord Skerrington, Ordinary.

SALAMAN (TOD'S TRUSTEE) *v.* TOD AND OTHERS.

Bankruptcy—Foreign—Jurisdiction—Spes successionis — Adjudication of Bankruptcy in England — "Property" of Bankrupt—Bankruptcy Act 1883 (46 *and* 47 *Vict. cap.* 52), *secs.* 44, 54, *and* 168.

An English trustee in bankruptcy brought an action of declarator in Scotland to have it declared that a *spes successionis* which the bankrupt had under a settlement had vested in him as trustee.

Held that the Court had jurisdiction to grant the decree sought—that the *spes successionis* being an interest assignable by the bankrupt was "property" within the meaning of section 168 of the Bankruptcy Act 1883, and that it had vested in the trustee.

The Bankruptcy Act 1883 (46 and 47 Vict. c. 52) enacts—Section 2—"This Act shall not, except so far as is expressly provided, extend to Scotland or Ireland."

Section 44—"The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, . . . shall comprise the following particulars—(1) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and (2) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice."

Section 54—"(1) . . . Immediately on a debtor being adjudged bankrupt the property of the bankrupt shall vest in the trustee. . . . (4) The certificate of appointment of a trustee shall, for all purposes of any law in force in any part of the British dominions requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly."

Section 168—"(1) In this Act, unless the context otherwise requires—. . . 'Property' includes money, goods, things in action, land, and every description of property, whether real or personal, and whether situate in England or elsewhere; also obligations, easements, and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined."

On 26th October 1910 Frederick Seymour Salaman, chartered accountant, London, the trustee in bankruptcy, conform to Order

of the High Court of Justice in England, dated 28th June 1910, of William Tod, of Durrant's Hotel, Manchester Square, London, then residing furth of the United Kingdom, as such trustee, *pursuer*, brought an action of declarator against (1) The said William Tod, and (2) Mrs Jessie Mary Ross, afterwards Tod, now Tattersall, of Littlebrook, Maidenhead, England, formerly widow of David Tod, Kingsburgh, Skye, then wife of Rupert Reeve Tattersall, of Tattersalls, Knightsbridge; and others, the testamentary trustees of the said David Tod, *defenders*. The conclusions in the action were to have it found and declared that "the whole right, title, and interest, present and future, absolute and contingent, of the defender William Tod in and to the estate and succession of his father the said deceased David Tod, under his said trust-disposition and settlement and codicil or otherwise, has been assigned, conveyed, and transferred to, or is otherwise vested in, the pursuer, as trustee aforesaid."

The pursuer pleaded — "(1) In respect that by the law of the country in which the defender William Tod has been rendered bankrupt his contingent right and interest in and to the estate of his deceased father has been transferred to and is vested in the pursuer, decree should be granted as concluded for. (2) The contingent right and interest of the bankrupt in his father's estate having been transferred to and vested in the pursuer as trustee by the Bankruptcy Act 1883, the pursuer is entitled to decree as concluded for. (3) *Separatim*, in respect that by the law of Scotland the contingent right and interest of the bankrupt in his father's estate belongs to his creditors in bankruptcy, the pursuer is entitled to decree as concluded for. (4) The Orders of the High Court of Justice in England founded upon, until the same are reduced or recalled, are binding on the Scottish Courts, and cannot be set aside *ope exceptionis*. (5) *Esto* that the High Court of Justice in England had no jurisdiction to pronounce the Orders founded on, it is *ultra vires* of the Court of Session to deal with the question of the jurisdiction of the said High Court of Justice. (6) In any event, the said Orders are not examinable as regards their merits by the Court of Session. (7) In respect that within three months before the date of presentation of the said petition the defender William Tod (*a*) according to the law of England, had committed an act of bankruptcy in England, and (*b*) according to said law was at the date of presentation of said petition subject to the jurisdiction of the High Court of Justice in England in bankruptcy, the said Court had jurisdiction to pronounce the said Orders, and the same are valid and binding. (8) In any event, the defenders David Tod's trustees not having shown any title or interest to defend, should be found personally liable for the expenses caused by their appearance."

The *facts* are given in the opinion of the Lord Ordinary (SKERRINGTON) who on 6th April 1911 pronounced an interlocutor repelling the first, second, and third pleas-in-law for the pursuer and dismissing the action.

Opinion.—"The pursuer is an accountant in London, and was on 28th June 1910 appointed trustee in the bankruptcy of the defender William Tod by order of the High Court of Justice in England. Mr Tod, who attained majority on 26th February 1910, will, in the event of his attaining the age of twenty-five years, become entitled to a share of the residue of his late father's estate. The remaining defenders are the trustees under the trust-disposition and settlement of Mr Tod's father. Although they have lodged defences, their counsel explained that they did so because they were not aware whether the principal defender Mr Tod would appear and defend. Their counsel took no active part in the discussion, but watched the case on behalf of his clients.

"It is quite clear that the bequest in favour of the defender Mr Tod is so expressed that vesting is postponed until he attains the age of twenty-five. It is not a case of contingent or conditional vesting, or vesting subject to defeasance, but of no vesting at all. Accordingly, he has nothing more than a *spes successionis* or protected right of succession. It is trite law in Scotland that such a right cannot be attached by any form of diligence, and does not pass to a trustee in bankruptcy under the vesting clause of the Bankruptcy (Scotland) Act 1856. The pursuer, however, maintains that as a trustee in an English bankruptcy he is in a better position than a Scotch trustee, and he alleges that according to the law of England the bankrupt's contingent interest in the residue of his father's estate was transferred to and vested in him as trustee for his creditors. The pursuer's counsel argued that, according to the principles of private international law as administered in Scotland, it was settled that the law of the *forum* awarding sequestration is (except in questions relating to real estate) conclusive as to what is included within the judicial transference effected by bankruptcy, and he referred to the leading cases of *Goetz* v. *Aders, &c.*, November 27, 1874, 2 R. 150, 12 S.L.R. 121; *Phosphate Sewage Company* v. *Lawson & Son's Trustee*, July 5, 1878, 5 R. 1125, 15 S.L.R. 666; *Obers* v. *Paton's Trustees*, March 17, 1897, 24 R. 719, 34 S.L.R. 538. I can find nothing in these decisions to justify the contention that the trustee in a foreign bankruptcy ought to be recognised as standing in a more favourable position than a Scottish trustee. On the contrary, the observations of Lord Rutherfurd-Clark in the case of *Reid* v. *Morrison*, March 10, 1893, 20 R. 510, p. 516, 30 S.L.R. 477, suggest that the Scottish rule of law excluding mere expectancies from attachment for debt is founded on perfectly intelligible reasons of public policy, and ought not to be infringed upon in the absence of some express statutory direction. Accordingly I refused the pursuer's motion for a proof as to the law of England, and if the record had not been amended I should

have dismissed the action. Before referring to the amendment, I may mention that the defenders' counsel pleaded that the action was incompetent, in respect that the summons was purely declaratory and did not contain any operative conclusion. He did not, however, argue that the question upon which the pursuer desired to obtain a decision was a speculative one, and I am of opinion that the objection is unfounded. He further asked me to disregard the English bankruptcy altogether, and to hold that the pursuer had no title to sue, in respect that the creditor who presented the bankruptcy petition had wrongfully induced the English Court to adjudge his client a bankrupt, although he was neither domiciled in England nor had resided nor carried on business in that country within a year before the presentation of the petition, as required by section 6, (1) (*d*) of the Bankruptcy Act 1883 (46 and 47 Vict. c. 32). I am of opinion that it is out of the question to ask me to decide whether an English Court has or has not rightly exercised its powers under an English statute. See *Wilkie* v. *Cook and Cathcart*, November 19, 1870, 9 Macph. 168, 8 S.L.R. 349; and *Wotherspoon, &c.* v. *Connolly*, February 10, 1871, 9 Macph. 510, 8 S.L.R. 349.

"The action as originally laid was founded upon the general principles of private international law as administered in Scotland, and it proceeded upon the assumption that in matters of bankruptcy England must be regarded as a foreign country like France or Germany. *Prima facie*, however, the rights of an English trustee in bankruptcy depend upon the terms of an Act of Parliament which, to some extent at least, is binding in Scotland. Accordingly, the pursuer's pleadings were amended so as to found upon certain sections of the Bankruptcy Act 1883 (46 and 47 Vict. c. 32). Section 54 (1) and (2) vests the 'property' of the bankrupt in the trustee, and (4) enacts that '. . . [*quotes, v. sup.*] . . .' Along with this section there must be taken section 168, which defines 'property' as including '. . . [*quotes, v. sup.*] . . .' Section 44 enacts that 'the property of the bankrupt divisible among his creditors, and in this Act referred to as the property of the bankrupt . . . shall comprise the following particulars—(1) '. . . [*quotes, v. sup.*] . . .' By section 2 it is enacted that the statute 'shall not, except so far is expressly provided, extend to Scotland or Ireland.' That does not mean that Scotland must be expressly named, although there are certain sections (117 and 118) in which Scotland is so mentioned - - see *Rattray* v. *White*, March 8, 1842, 4 D. 880; and *Callender, Sykes, & Company* v. *Colonial Secretary of Lagos and Davies*, [1891] A.C. 460. While I see no reason to doubt that the English Bankruptcy Act must receive judicial notice and effect in Scotland, I cannot construe it as vesting in the trustee property which was not vested even contingently in the bankrupt at the date of the bankruptcy, or which was not acquired by him before his discharge. Neither party asked me to invoke the assistance of English lawyers as to the construction of the Act of 1883, and neither party quoted any English decision or text-book which suggested that on this important question there is any difference between the law of the two countries. I accordingly dismiss the action with expenses, but seeing that two sets of defenders appeared, I shall reserve meanwhile the question as to the pursuer's liability for the expense of more than one defence."

The pursuer reclaimed, and argued—The bequest in favour of Mr Tod was a contingent "incident to property" within the meaning of section 168 of the Bankruptcy Act 1883 (46 and 47 Vict. c. 52). The property which vested in an English trustee in bankruptcy was not necessarily so limited as that which vested in a Scotch trustee—*Scottish Provident Institution* v. *Cohen & Company*, November 20, 1888, 16 R. 112, 26 S.L.R. 73. A *spes successionis* was carried to an English trustee—*Galbraith* v. *Grimshaw*, [1910] A.C. 508; *Johnson* v. *Smiley*, May 21, 1853, 17 Beaven 223, *per* Romilly, M.R., at p. 228; *Higden* v. *Williamson*, 1731, 3 Peere Williams, 132; *Davidson* v. *Chalmers*, March 4, 1864, 33 Beaven 653; Robson's Bankruptcy (7th ed.), 479; Williams' Bankruptcy (9th ed.), 215. The Bankruptcy Act 1869 (32 and 33 Vict. c. 71) vested in the trustee property outside England, and section 168 defined property in very general terms, viz., "land, and every description of property whether real or personal"—*Callender, Sykes, & Company* v. *Colonial Secretary of Lagos*, [1891] A.C. 460. The reclaimer also cited *Rattray* v. *White*, March 8, 1842, 4 D. 880, and *Riley* v. *Ellis*, 1910, 1910 S.C. 934, 47 S.L.R. 788.

Argued for the respondent (defender)—*Esto* that by English law a trustee in bankruptcy was vested in a *spes successionis*, nevertheless an English trustee could not make such a claim effective by Scots law. A *spes successionis* was not property within the meaning of the Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79)—*Reid* v. *Morrison*, March 10, 1893, 20 R. 510, 30 S.L.R. 477. Section 2 of the Bankruptcy Act 1883 (46 and 47 Vict. c. 52) provided that that Act should not, except so far as expressly provided, extend to Scotland. It did not vest in the trustee property which would not vest in a Scotch trustee—*Phosphate Sewage Company* v. *Lawson & Son's Trustee*, July 20, 1878, 5 R. 1125, 15 S.L.R. 666, *per* Lord President; *Goetze* v. *Aders, &c.*, November 27, 1874, 2 R. 150, 12 S.L.R. 121; *Reid* v. *Morrison* (*supra*); *Hunter & Company* v. *Palmer & Wilson*, February 25, 1825, 3 S. 586, 402 (N.E.); *Galbraith* v. *Grimshaw* (*supra*); *Stocksley* v. *Parsons*, 45 Ch. D. 51; Baldwin's Bankruptcy (10th ed.), 300.

At advising—

LORD KINNEAR—This is an action at the instance of an English trustee in bankruptcy to have it declared that the whole right and title and interest, present and future, absolute and contingent, of the defender William Tod in and to the estate

and succession of his father the said deceased David Tod, under his said trust-disposition and settlement and codicil or otherwise, has been assigned, conveyed, and transferred to or is otherwise vested in the pursuer as trustee foresaid. The claim therefore is that a *spes successionis* has been carried by statute to an English trustee in bankruptcy. The question is how far or to what effect this Court has jurisdiction which it ought to exercise for the purpose of giving effect to the trustee's alleged right to the interest in dispute. The Lord Ordinary has referred to the general understanding established by the cases which are very well known to your Lordships, under which it is settled law that the Courts of this country will give effect to any universal transference of moveable property to a trustee in bankruptcy appointed by a foreign court, provided that according to the law of that foreign court the *concursus creditorum* ought to be there and not elsewhere. I do not think any question of that kind arises in this case, nor does it appear to me that there is any question of international law involved. The pursuer founds upon an Act of the Imperial Parliament to which we are bound to give effect. It is true that the English Bankruptcy Act of 1883 in general does not apply to Scotland except where it is specially provided by the Act itself; but, on the other hand, the Court is bound to give effect to it so far as its jurisdiction is necessarily involved; and, in the second place, the Act affects property in Scotland, because in terms of the statute itself it affects property wherever situated, and therefore we find that if any property is by the terms of the Act assigned or transferred to the trustee from the bankrupt, for the vindication of which it is necessary for the trustee to take proceedings against persons within our jurisdiction, it is necessary that this Court should give effect to the trustee's claim. It is said that the defender in this case is a domiciled Scotsman, and that the English Court of Bankruptcy had no jurisdiction to pronounce the adjudication by which they have made him bankrupt in England. I agree with the Lord Ordinary that it is out of the question to raise an objection of that kind before this Court. The English Court of Bankruptcy is, in the first instance, judge of its own jurisdiction. The Act of Parliament provides, in the first place, for a review by the Court which pronounces the adjudication in bankruptcy if it should be necessary that it should review its own order, and in the next place for an appeal to the Court of Appeal if the adjudication is by the High Court, and also for an appeal to the House of Lords with the leave of the Court of Appeal. The statute therefore provides ample means for review or appeal against the orders of the Bankruptcy Courts; and it is out of the question to appeal to this Court against the decisions of the Court in England upon this question. This is perfectly well settled by the case of *Wilkie* v. *Cathcart*, November 19, 1870, 9 Macph. 168, 8 S.L.R. 136, to which the Lord Ordinary refers. If the defender had a case for resisting the jurisdiction of the Court of Bankruptcy in England, the course which he ought to have taken is quite clearly pointed out by the Act of Parliament, and we are bound to assume that a judgment pronounced by a competent Court in England declaring a man to be bankrupt is a right judgment unless it is challenged by appeal to the proper court of review in that country.

The question therefore seems to me to be a very short one, whether this particular interest which forms the subject-matter of the action is or is not transferred to the trustee by the Act of 1883. Now as to that I think the Act must be read as transferring to the trustee not only all rights in possession, but all rights which may be the subject of a demand by the bankrupt against the debtor. All these rights are transferred, whether they are actually vested in the bankrupt or whether they are contingent. The "property" of the bankrupt as vested in the trustee is defined by the Act in most comprehensive terms as including "things in action, and every description of property, also obligations, easements and every description of estate, interest and profit, present and future, vested or contingent, arising out of or incident to property as above defined." The question therefore seems to be what is put by Lord Loreburn in *Galbraith* v. *Grimshaw*, [1910] A.C. 508—Is the right and interest in question one which the bankrupt could have assigned to the trustee or anybody else? If the bankrupt could have assigned it, then it is assigned to the trustee by the Act of Parliament. If the bankrupt could not have assigned it, then the trustee is not entitled to it, and accordingly the trustee gets everything which the bankrupt could have given the trustee if he had so chosen. The statute having thus defined what are the kinds of rights which are transferred to the trustee, the question which we have to consider in this action is whether, according to the law of Scotland, the right which the trustee seeks to vindicate is so assignable or not, because the right in question is a right to take a certain portion of the succession of the bankrupt's father which is given to the bankrupt on condition that it shall not vest in him until he attains the age of twenty-five. His right, therefore, is contingent on an event which has not yet occurred, but subject to that contingency it is complete. It is created by a will which has come into operation by the testator's death, and the bankrupt will be able to make it good against the testamentary trustees when the condition upon which it rests has become purified; in the meantime it is a contingent right. The question, then, is whether it is assignable or not, and that question appears to me to be conclusively settled by the authoritative judgment of *Trappes* v. *Meredith* (November 3, 1871, 10 Macph. 38, 9 S.L.R. 29). A right or estate in expectancy or *spes successionis* may be sold or assigned so as to give the purchaser a good title, in a question with the seller,

to the right, estate, or succession when it comes to be vested in the seller. But although it may be so assigned, it is not attachable by the diligence of the creditors of the person in expectancy, and would not be carried to the trustee in his sequestration under the Scottish Bankruptcy Act if such trustee were discharged before the right vested in the debtor. The bankrupt therefore could have sold and assigned, and might now sell and assign, to the trustee in bankruptcy, and that is the criterion for determining whether it has passed to the trustee. The Lord Ordinary has held that notwithstanding the undoubted right of the bankrupt to assign his right if he chose, it is not transferred to the trustee in bankruptcy, because under the Bankruptcy Act of 1856 it would not be transferred to a trustee in a Scotch sequestration; and his Lordship says—"I can find nothing . . . to justify the contention that the trustee in a foreign bankruptcy ought to be recognised as standing in a more favourable position than a Scottish trustee," and he accordingly has held that it has not passed to the trustee, and he says he has done so on the authority of *Reid* v. *Morrison*. Now *Reid* v. *Morrison* certainly did decide that a *spes successionis* was not carried by the vesting clause of the Bankruptcy Act of 1856, but that was decided simply on the ground that under the vesting clauses of that statute the right of the trustee is to be measured by the power of the individual creditor to attach property by diligence. It was held that *Trappes* v. *Meredith* had settled that the right in question could not be attached by diligence of creditors, and therefore could not be carried to the trustee in sequestration. That decision has to my mind no bearing upon the question whether such a right is carried by the English Bankruptcy Act or not. That Act is expressed in totally different terms from, and does not measure the rights of the trustee by the same criterion as, the Act of 1856. As to the question whether it is right or reasonable that the English trustee in bankruptcy should have higher rights or different rights from those of a Scotch trustee in bankruptcy, that appears to me to be a question of policy with which this Court has no concern. It is not for us but for the Legislature to decide which of two conflicting policies ought to prevail in this matter. There is obviously a policy in favour of transferring from a bankrupt for the benefit of his creditors every right which he could himself turn into money. There is a conflicting policy in favour of refusing to dispossess a bankrupt of future contingent interests in order to obtain an immediate distribution of his actual estate. It is for the Legislature to say which of these two policies shall prevail; and if the Legislature has given effect to one policy by the Scotch Act of 1856, and has given effect to the other policy by the English Act of 1883, there is nothing in such conflict between the rules of two different systems of bankruptcy which will enable this Court to choose between them in any other way than by giving a sound construction to the statute which governs the particular case irrespective of its own scope. I am of opinion, therefore, that the case of *Reid* v. *Morrison* does not affect the question. The Bankruptcy Act of 1883 has transferred the bankrupt's right, because the bankrupt himself is in a position to turn it into money if he pleases, and to assign it if he pleases. If he does not choose to assign it, the Act transfers it for him. I am therefore for recalling the Lord Ordinary's interlocutor and giving to the pursuer decree in terms of his first conclusion.

LORD JOHNSTON—I agree with the conclusion at which your Lordship has arrived. On a perusal of the papers there is, to my mind, the very greatest doubt whether this adjudication in bankruptcy was competently awarded in England. I say so, not as suggesting that there was any improper action on the part of the English Court, but simply that they acted *ex parte* upon affidavits, and that the averments on record raise the greatest doubt whether these affidavits conveyed to the Court anything like a true statement of the situation in the matter of domicile, even for bankruptcy purposes. But that is a matter into which we cannot inquire. The bankruptcy has been awarded by a competent Court, and we must accept their adjudication in bankruptcy until it is set aside by proper proceedings taken in the proper place. So accepting and passing to the merits of the case as pleaded before us, I desire to say that I have had the advantage of perusing the opinion about to be delivered by Lord Mackenzie, and in that opinion I entirely concur and desire to adopt it as my own.

LORD MACKENZIE—The pursuer is the trustee in bankruptcy of William Tod, who was adjudged a bankrupt in England on 27th June 1910. The object of the action is to have it declared that a contingent interest which William Tod has in his deceased father's estate has passed to the pursuer as his trustee. David Tod, who is designed as of Kingsburgh, Skye, died in 1892 leaving a trust-disposition and settlement under which the bankrupt is entitled to a share of the residue in the event of his attaining the age of twenty-five years. William Tod attained majority on the 26th of February 1910. The trustees defend the action.

As the Lord Ordinary points out, the right which the bankrupt has to a share of the residue of his father's estate would not pass to a trustee in a Scottish sequestration. This is clear from the decision in the case of *Reid* v. *Morrison* (*supra*). The ground of this decision was that the Bankruptcy (Scotland) Act 1856 vests nothing in the trustee which cannot be attached by legal diligence. It was decided in *Trappes* v. *Meredith* (*supra*) that a right or estate in expectancy or *spes successionis* is not attachable by the diligence of creditors of the person in expectancy or entitled to succeed. It was argued in *Reid* v. *Morrison* that the trus-

tee had a right to call upon the bankrupt under the 81st section of the Act of 1856 to convey to him his *spes successionis*. The construction, however, put upon section 81 was that it was merely ancillary to the vesting clauses, and was not to be construed as giving right to the trustee to bring into the sequestration what did not otherwise fall under it. The reason, therefore, why such a contingent right as we are here dealing with would not pass to the trustee in a Scottish sequestration was in consequence of the express provisions of the Scottish Bankruptcy Statute. It is no doubt true that Lord Rutherfurd Clark in his opinion in *Reid* v. *Morrison* states considerations involving an appeal to a wider principle. His Lordship expressed an opinion adverse to the view that a bankrupt should be bound to grant to a trustee a conveyance to all rights of succession whatever they might be and whensoever they might vest, adding that it would require a very express statutory direction to put any bankrupt in that position.

It is necessary to distinguish between two meanings which may attach to the term *spes successionis*. It may mean that A hopes to benefit by the will of B, who is still alive, or it may mean, as here, that A has a right under the will of B, who is dead, subject to a certain contingency. The argument for the trustee in the present case does not involve that any claim could be made by him to a *spes successionis* of the former class. His argument is that he has a claim to a *spes successionis* of the latter class. The claim he puts forward is founded upon the express provisions of a British statute —The Bankruptcy Act 1883—46 and 47 Vict. cap. 52. If this gives him a title, it is a universal title as regards the moveables of the bankrupt, whether situated in England, Scotland, or elsewhere, and the courts of this country would be bound to give effect to it. There is, in my opinion, no question here of international law, such as was raised in *Goetze* v. *Aders*, November 27, 1874, 2 R. 150, 12 S.L.R. 121, and the other cases referred to by the Lord Ordinary. We are here dealing, as the Lord Justice-Clerk Inglis observed in the case of *Young* v. *Buckell*, May 17, 1864, 2 Macph. 1077, "with the case of a subject of this country brought under the operation of an Act of the Imperial Parliament to which we are bound to give effect." In that case the Court of Session construed the provisions of the Bankruptcy Statute under which the adjudication had been granted in England. We are asked in the present case to construe the provisions of the Bankruptcy Act 1883. There is no doubt an averment in cond. 9 of what the law of England is on the subject, to the effect that the contingent interest of the bankrupt in the residue of his father's estate was transferred to and vested in the pursuer as trustee for behoof of the creditors in terms of the provisions of the 1883 Act. If that Act had contained language of the law of England which required interpretation, it would have been necessary that the meaning of these terms should have been explained. If, however, the statute is expressed in language which does not involve the use of technical terms, it is competent for this Court to do what was done in the case of *Young* v. *Buckell*, and construe the statute for itself.

Section 2, no doubt, enacts that the Act shall not, except in so far as is expressly provided, extend to Scotland or Ireland. There are, however, several references throughout the Act to Scotland. I refer to section 117, which provides for the enforcement of orders in Scotland which have been made by a court having jurisdiction in bankruptcy in England; to section 118, which provides that the courts of England, Scotland, and Ireland shall be auxiliary to each other; and to section 119, which provides for the warrants of bankruptcy courts being enforced in the different countries. Scotland is also mentioned in section 14, which gives the Court power to annul in certain circumstances a receiving order which has been made in England; and section 27, sub-section 6, provides that the court in England may make an order for the examination in Scotland of any person who, if in England, would be liable to be brought before it under that section.

The title of the pursuer depends upon the sections which describe the nature of the bankrupt's property which is to be divisible amongst his creditors. Section 54 is the clause which vests the property of the bankrupt in his trustee. Section 44 describes what the bankrupt's property divisible amongst his creditors is. It provides that "The property of the bankrupt divisible amongst his creditors and in this Act referred to as 'the property of the bankrupt'" shall not comprise certain particulars which are enumerated, but shall comprise "(1) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and (2) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice." It will be observed that the expression in (2) is "property," not "such property," and therefore the provisions of (2) are not limited to property dealt with under (1). It is necessary to go to the definition clause, which is section 168, to find out what property includes. That section provides—"Property includes money, goods, things in action, land, and every description of property, whether real or personal, and whether situate in England or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined."

It was argued that moveables in Scotland

did not fall within the operation of this provision, but this argument appears to me to be untenable. The language used is as wide as possible. It is undoubted that the right which the bankrupt has under his father's trust-disposition and settlement is one which he could convert into money at once. He could sell his contingent right and grant a perfectly good title to the purchaser, who would be vested in the right subject to the contingency. This right appears to me to fall within the definition of property under section 168. It is a contingent interest in the trust estate of the bankrupt's father which the bankrupt could himself have assigned. If he had granted an assignation this would have been an exercise by him of a power which he had in respect of that property. This by virtue of section 44 (2) passes to his trustee in bankruptcy, who in my opinion can sell and assign the contingent right in the same way as the bankrupt could have done.

There was a considerable amount of criticism of the conclusions of the summons, which was said to contain a bare declarator with no operative conclusion. It was argued that it would have been necessary for the pursuer to ask a decree of adjudication, and that this was what a Court in Scotland would not grant. The conclusive answer is that the pursuer comes here asking merely what he says the statute has given him. If, as I think, the statute does give him this right, he is entitled to the declarator that he asks. This will enable him to satisfy any intending purchaser that he can grant a valid assignation of the bankrupt's contingent right.

I am accordingly of opinion that the pursuer is entitled to the decree of declarator that he asks.

The LORD PRESIDENT was absent.

The Court recalled the interlocutor of the Lord Ordinary.

Counsel for Pursuer and Reclaimer—Graham Stewart, K.C.—Hamilton. Agents—Rutherfurd & Turnbull, W.S.

Counsel for Defender and Respondent William Tod — Horne, K.C. — Moncrieff. Agent—Henry Smith, W.S.

Counsel for Defenders and Respondents David Tod's Trustees — C. H. Brown. Agents—Smith & Watt, W.S.

Thursday, July 13.

FIRST DIVISION.

[Lord Cullen, Ordinary.

TODD (LIQUIDATOR OF MILLEN & SOMERVILLE, LIMITED), PETITIONER.

Company — Winding-up — Ranking — Claims—Bonded Property Held by Trustee for Company—Conveyance Taken by Company Exclusive of Personal Obligation under Bond—Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 287—*Companies Act* 1862 (25 *and* 26 *Vict. cap.* 89), *secs.* 133 (1) *and* 158.

A private firm sold its business to a limited company under a minute of agreement by which the company bound itself to take over certain heritable property which was subject to a bond. The company went into liquidation prior to the commencement of the Companies (Consolidation) Act 1908, and the bondholders called on the firm to pay under their personal obligation under the bond. The firm thereupon claimed to be ranked in the liquidation for the amount of the bond, which claim the liquidator refused. The company having subsequently taken a conveyance of the subjects exclusive of the personal obligation, *held* (1) that the claimants were entitled to be ranked in terms of their claim, and (2) that even if they had a security they were not bound to value it.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 287, enacts—"The provisions of this Act with respect to winding-up shall not apply to any company of which the winding-up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and for the purposes of the winding-up, the Act or Acts under which the winding-up commenced shall be deemed to remain in full force."

The Companies Act 1862 (25 and 26 Vict. cap. 89) enacts, sec. 133 (1)—"The property of the company shall be applied in satisfaction of its liabilities *pari passu*. . . ." Section 158—"In the event of any company being wound up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value."

Alfred Alison Todd, C.A., liquidator in the voluntary winding-up of Millen & Somerville, Limited, presented a note seeking approval, *inter alia*, of his deliverances on claims. Messrs Millen & Somerville