hart, for Tods, Murray, & Jamieson, W.S.

Counsel for the Respondents—Sir Richard Webster, Att.-Gen. — D.-F. Balfour, Q.C. — Tindal — Atkinson. Agents — Murray, Hutchins, & Sterling, for Mackenzie, Innes, & Logan, W.S.

Tuesday, June 16.

(Before the Earl of Selborne, and Lords Watson, Bramwell, and Morris.)

WHYTE *v.* NORTHERN HERITABLE SECURITIES INVESTMENT COMPANY AND OTHERS.

(*Ante*, vol. xxvi. p. 91, and 16 R. 100.)

Bankruptcy—Nobile Officium — Discharge of Trustee and Bankrupt—Appointment of New Trustee.

A bankrupt was discharged without composition, and his trustee was also discharged. Certain creditors presented a petition for a remit to the Lord Ordinary on the Bills to order a meeting of creditors for the election of a new trustee, as certain assets had not been ingathered, and the petitioners' debts had not been paid in full. The bankrupt objected that the trustee had abandoned all claim to these assets.

The First Division repelled the objection and granted the petition, and the House of Lords *affirmed* this decision and dismissed the appeal.

This case is reported *ante*, vol. xxvi. p. 91, and 16 R. 100.

George Whyte appealed.

Counsel for the respondents were not called upon.

At delivering judgment—

EARL OF SELBORNE—This appears to be an extremely clear case, so far as the question of the competency of the Court of Session was concerned, to make an order in a sequestration for the appointment of a new trustee. For the last thirty years there has been such a practice in the case of funds which have not been got in or distributed at the time of the discharge of the trustee in bankruptcy. No doubt a practice which has continued so long may be wrong, but it is needless to say the presumption is the other way. The case rests upon this proposition, that when a trustee has been discharged, all funds not at that time distributed vest by law in the bankrupt for his own benefit, although the creditors have not been paid 20s. in the pound. I confess I had great difficulty in following that argument, having regard to the express provisions of the Act, as well as for the general purpose for which it was passed. The general purpose was to enable a debtor who could not pay his way to get his discharge upon the footing of giving up the whole of his property for the benefit of the creditors. From the beginning to the end of the Act there is nothing to cut down the right given to the creditors, in accordance with the general purposes of the Act, to have all the funds which vested in the trustees divided among them. But it was argued that the trustee in this case having been discharged, a fund which ought to have gone to the creditors reverted to the bankrupt. I cannot accept that proposition. For my part I look upon the reappointment of a trustee as a mere machinery for giving effect to the rights given by the Act, and I would go the length of saying it was necessarily implied in the Act. It would be very difficult to imagine a clearer case than this, and I move that the appeal be dismissed, but without costs, as the appellant sued *in forma pauperis*.

LORD WATSON, LORD BRAMWELL, and LORD MORRIS concurred.

Their Lordships dismissed the appeal.

Counsel for the Appellant—Haldane, Q.C. — Kemp—A. S. D. Thomson. Agents—Savidge & Southern, for Andrew Urquhart, S.S.C.

Counsel for the Respondents — Graham Murray — Le Breton. Agent — Andrew Beveridge, for Alex. Morison, S.S.C.

Monday, July 27.

(Before the Earl of Selborne, and Lords Watson, Macnaghten, and Morris.)

CLARKE *v.* CARFIN COAL COMPANY.

Reparation—Parent and Child—Action for Damages for Death of Illegitimate Child—Title to Sue.

A woman sued a company for damages for the loss, by the fault of the defenders, of her illegitimate son, who was fourteen years of age. The respondents, founding on the illegitimacy of the son, pleaded no title to sue.

Held (*aff.* the decision of the Second Division) that the pursuer had no title to sue.

The appellant in this case, Mrs Susan Clarke, was the pursuer of an action of damages raised in the Sheriff Court of Lanarkshire, in which she claimed from the respondents £500 in respect of her son's death through their fault. The son, fourteen years of age, was illegitimate, and the respondents (who did not otherwise dispute the relevancy of her case) pleaded that she had no title to sue. This plea was sustained by the Sheriff-Substitute, and his judgment was on appeal adhered to by the Second Division of the Court of Session. Their Lordships gave no opinions, as the point had previously been decided by them in the case of *Weir* v. *The Coltness Iron Company, Limited*, March 16, 1889, 16 R. 614.

The pursuer appealed.

The question before their Lordships was simply this—Is a mother entitled (by the