voked, by any expression in the trust-deed, or on any fair construction thereof. It was admitted at the bar, contrary to what rather appears on the statement, that at the time of his death Mr Thomson held at least two policies other than the one now in question, and this will quite explain the expression in the words of conveyance in the the trust-deed "policies of assurance" belonging to me. In order therefore to embrace the policy now in question in the testamentary conveyance it must be shown that Mr Thomson had in some form or other revoked the donation in favour of his wife, for only by such revocation could the policy now in question have become his property. But as this revocation has not been instructed, the policy stands excluded from the testamentary conveyance.

Even if in a loose sense the policy in question were held to be Mr Thomson's property, he having a certain power over it, and it being liable in certain circumstances for his debts had he been sequestrated or had he died bankrupt, I think the case would be governed by the principle that a special settlement of a particular subject is not derogated from by a general settlement of the testator's whole estate, unless this can be shown to have been the testator's real intention. This principle is fixed by a large class of cases, a recent example of which will be found in *Glendonwyn* v. *Gordon*, May 19, 1873, 11 Macph. H.L. 33, where there is a full citation of previous cases. The present case, however, is an *a fortiori* one to cases like that of *Glendonwyn*, for until the husband had in some competent way revoked the donation of the policy it could not be regarded as part of his general estate. There is no evidence whatever, either in the terms of Mr Thomson's general disposition and settlement or elsewhere, that he intended the policy in question not to go to his wife but to his general testamentary executors; and holding as I do that it had been validly gifted to the wife, I think she is entitled to be preferred thereto. There is no room for making any distinction between the sum in the policy itself and the bonus additions thereto.

The Court therefore made answer that the policy and bonus additions belonged to the party of the second part.

Counsel for First Parties—J. P. B. Robertson —Moody Stuart. Agents—Duncan & Black, W.S.

Counsel for Second Parties—Asher—Murray. Agents—Tods, Murray, & Jamieson, W.S.

Friday, July 11.

FIRST DIVISION.

[Lord Adam, Ordinary.

HENDRIE *v.* LINDSAY (C. & A. CHRISTIE'S TRUSTEE).

Process—Bankruptcy—Reponing a Creditor against Interlocutor granting Trustee's Discharge—Intimation to Creditors — Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. c.* 79), *sec.* 152.

A trustee in bankruptcy applied with the concurrence of all the creditors except one for his discharge. The usual remit was made to the Accountant of Court, who in his report left it for the consideration of the Lord Ordinary whether there should not be special intimation to the dissenting creditor of the application for discharge. The matter was not brought under the notice of the Court, and an interlocutor was pronounced granting discharge. On this coming to the knowledge of the creditor he presented a reclaiming note, but after the expiry of the reclaiming days, asking to be reponed. *Held* (following the case of *Milne* v. *Maccallum*, Jan. 22, 1878, 5 R. 546) that notice not having been given to the dissenting creditor of the application for discharge, he was entitled to be reponed, and case remitted to the Lord Ordinary to inquire into the merits.

The estates of C. & A. Christie, coal and iron masters, Gladsmuir, were sequestrated on April 5, 1871, and Mr T. S. Lindsay was appointed trustee in the sequestration. The realisation of the estates were then proceeded with, and a final division of the funds made.

The trustee, in terms of section 152 of the Bankruptcy (Scotland) Act 1856, then duly called a meeting of the creditors, with a view to an application for discharge. Prior to this meeting, however, Mr Hendrie, a creditor, ranked on the estate for the sum of £49, 17s. 8d., had presented a complaint to the Accountant in Bankruptcy, proceeding on the grounds that the trustee's commission, as fixed by the commissioners, and the law expenses, were excessive. To this complaint the trustee lodged answers, and the matter was discussed before the Accountant in Bankruptcy. This note of complaint, the answers thereto, and the deliverance of the Accountant in Bankruptcy thereon, were, along with the sederunt book, accounts, &c., laid before the above-mentioned meeting of creditors which was held on February 20, 1879.

The meeting resolved that there were no grounds for the complaint in question, and authorised the trustee to proceed with an application for discharge—Mr Hendrie for himself, and as mandatory for Mr M'Culloch, their claim amounting *in cumulo* to £80, 12s. 8d., dissenting.

The trustee accordingly presented the usual petition for discharge, and the Lord Ordinary on the Bills on 1st May 1879 remitted to the Accountant in Bankruptcy to report. On 4th June 1879 the Accountant made his report, which, *inter alia*, contained the following observation with reference to Hendrie's dissent: — "The Accountant begs to refer to his acknowledgment of the sederunt book, in which he points out the objection which has been taken by Mr James Hendrie, a creditor, to the trustee's management. It may be for the Lord Ordinary's consideration whether any special intimation of the trustee's application for discharge should be made to Mr Hendrie before answer."

That observation was not brought under the notice of the Lord Ordinary (ADAM), and without any special intimation having been made to Mr Hendrie (who remained unaware that the trustee was obtaining his discharge) he on 11th June 1879 granted the prayer of the petition and discharged the trustee.

Mr Hendrie, when he was informed of what

had been done, presented a reclaiming note, but subsequently to the expiry of the reclaiming days, asking to be reponed against that interlocutor.

Authority—*Milne* v. *Maccallum*, Jan. 22, 1878, 5 R. 546.

At advising—

LORD PRESIDENT—On looking into this case I have no doubt as to the competency of this proceeding, dealing with it as a reponing note. It is a proceeding in the absence of a creditor, and though there is no provision in the Bankruptcy Statute as to reponing in such circumstances, we are entitled to treat reclaiming notes in bankruptcy questions as we should a reclaiming note in ordinary actions. By the provisions of the Act of Sederunt of 11th July 1828 a note to repone may be presented, and though that Act does not say that such a note may be presented after the reclaiming days are past, yet that is a matter of decision in the leading case of *The Scottish Union Insurance Company* v. *Calderwood*, July 8, 1836, 14 S. 1114. It would be very inconvenient and very unjust if we could not apply the principle of the Act of Sederunt, and the cases which followed on it, to reclaiming notes in bankruptcy cases as well as to others. This is clearly a reponing note, for the interlocutor was pronounced in absence, and though there is no statutory provision ordaining intimation to a dissenting creditor of the presentation of a petition for a trustee's discharge, still it has been adjudged by the Court that such intimation ought to be given wherever it appears that any creditor dissented from the resolution of the body of the creditors allowing the trustee to apply for his discharge. The complaint here is that no notice was given to the dissenting creditor, and therefore I think that we are in a position to repone. The Court in *Milne's* case dealt with the application as a reponing note, and did not enter into the merits, but remitted to the Lord Ordinary to hear the reclaimer's objection to the trustee's discharge; and I propose that we should follow that course here.

LORD DEAS, LORD MURE, and LORD SHAND concurred.

The Court therefore recalled the interlocutor, and remitted to the Lord Ordinary to hear the reclaimer's objections to the trustee's discharge.

Counsel for Hendrie—Shaw. Agents—

Counsel for Trustee (Respondent)—Macfarlane. Agents—Boyd, Macdonald, & Co., S.S.C.

Friday, July 11.

OUTER HOUSE.

[Lord Rutherfurd Clark.

MP.—THE ANGLO-FOREIGN BANKING COMPANY.

Process—Multiplepoinding—Where Decree given, but not extracted, in favour of Claimant who afterwards became Bankrupt—Riding Claim by Creditors.

In a multiplepoinding a riding claim was tendered on behalf of creditors of a claimant who had obtained decree for payment, but had not extracted it. The Lord Ordinary refused to allow the claim to be received, on the ground that he could not give two decrees for the same sum to different claimants, and that to render a riding claim admissible it must be lodged before the original claimant had obtained a decree for payment.

Counsel for Creditors of Claimant—J. C. Smith. Agent—A. Clark, S.S.C.

Counsel for other Claimants—Innes—Thorburn. Agents—Wallace & Foster, S.S.C.—Boyd, Macdonald, & Co., S.S.C.

Friday, July 11.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*BROWNLIE'S CASE*)—BROWNLIE AND OTHERS *v.* BROWNLIE'S TRUSTEES.

Trust—Realisation of Trust Property—Bank Stock—Right of Relief—Duty of Trustee to Realise where Truster's Funds invested in Bank Stock.

In an antenuptial contract of marriage the husband made over to trustees the whole heritable and moveable subjects belonging to him, "the foresaid subjects to be held and administered by the said trustees for the following purposes." These purposes included the payment of an annuity to his wife and provisions to his children, which were payable at certain postponed periods. He predeceased his wife, and on his death his trustees accepted office. The trust-funds consisted, *inter alia*, of 74½ shares of a bank of unlimited liability. The trustees sold the greater part of the shares immediately after the death of the truster in order to pay off advances made to him by the bank, but the balance, consisting of $5\frac{3}{10}$ shares, they continued to hold as part of the trust-estate. Thirteen years after the trustees had accepted office the bank failed with very large liability. The trustees were placed on the list of contributories, and sought to recoup themselves out of the trust-fund for the calls.

In a suspension and interdict by the beneficiaries, *held* (*diss.* Lord Deas) (1) that the retention by the trustees, after a reasonable time had been allowed for realisation, of an investment which they themselves had at