

estate is disposed of altogether before the testatrix comes to give any directions to her trustee. To what then can these directions apply but to the heritable estate? Not only so, but the words used specifically refer to that part of the property which remains—which is the heritable property—and which it is directed shall be sold.

I entirely agree with the view which the Lord Ordinary has taken.

LORD MURE— I am of the same opinion. The clause in the Act of 1868 which rules the present case seems to me to contemplate two broad general questions—1st, Whether the testamentary writing taken as a whole purports to convey heritage; and (2) whether it contains language with reference to lands which if used in a will or testament with reference to moveables would be sufficient to confer a title upon the executor. This will seems to contain both requisites, for I think it purports to be a settlement of everything which this lady possesses. She addresses it to a person who is to be her "executor and trustee." In the direction given to him in regard to her father's grave she is dealing with a heritable subject, and there is afterwards a distinct appointment to her trustee in reference to the disposal of the remainder of her property. I think the Lord Ordinary's interlocutor should be adhered to.

LORD SHAND—I concur. The important, and to my mind the decisive words in this will are "I also direct my trustee to sell the remainder of my property," and "to divide it equally among all my grandnieces." In the case of *Urquhart* the word "estate" was used, where in the present case we have the word "property." I there said "I agree with Lord Mure in holding that where the general term 'estate' occurs in a testamentary writing, in such circumstances as show that it is not used in a limited sense, it ought to be read as meaning heritable as well as moveable estate. The word is broad enough in itself to include heritable as well as moveable property, and must be taken as including both in a settlement where it is not obviously used in a limited sense." Accordingly, taking the word "property" as equivalent to "estate," I am of opinion that unless it can be shown from other provisions of the will that the testatrix meant "property" to be used in a limited sense it must cover heritable estate.

But so far from finding anything in this will to indicate that the word is used in a limited sense, everything appears to me to point to a contrary result. The nomination by the testatrix is not only as executor, but also as trustee; the moveable estate is small, and the legacies more than swallow it up; and in explanation of the conveyance of "the remainder of my property" the words "wherever situated" are added, which seem to me to relate to heritage rather than to moveables. There is indeed nothing in this document which can be said to limit its application or to make it inappropriate to include a conveyance of heritage.

The Court adhered.

Counsel for Pursuer—Mackintosh—Boyd.
Agents—Millar, Robson, & Innes, S.S.C.
Counsel for Defenders—M'Kechnie. Agents—Nisbet & Mathison, S.S.C.

Friday, June 29.

FIRST DIVISION.

FORSYTH, PETITIONER.

Bankruptcy—Sequestration, Failure to Publish Intimation of, in Gazette—Re-advertisement.

Where intimation of a sequestration and of an appointed meeting of creditors was omitted to be published in the gazette, the Court, upon the petition of a creditor more than eight months thereafter, granted authority to re-advertise the sequestration, and appointed it to proceed as if it had been then of new awarded.

On 14th October 1882, Lord Kinnear, Ordinary officiating on the Bills, in a petition at the instance of James Simson & Sons, brewers, St Mary's Brewery, Edinburgh, pronounced an interlocutor sequestrating the estates of James Ritchie & Company, wine and spirit merchants, 48 Nicolson Street, Edinburgh, and of James Ritchie and Thomas Ritchie, both wine and spirit merchants there, the individual partners of that company, as such partners and as individuals, and appointed their creditors to hold a meeting on Tuesday, 24th October 1882, at two o'clock afternoon, within Dowell's Rooms, No. 18 George Street, Edinburgh, to elect a trustee on the estates of the said company and individual partners, or separate trustees or trustees in succession, and commissioners, as directed by the statutes.

In this petition it was stated that intimation of said sequestration and of said meeting of creditors was never published in the *Edinburgh* and *London Gazettes*; and that the said James Simson & Sons having withdrawn from said process of sequestration, and having failed to follow forth the proceedings therein, David Forsyth, solicitor, Supreme Courts, Edinburgh, a creditor, was on June 26, 1883, sisted in their room and place, in terms of the Bankruptcy (Scotland) Act 1856, section 34.

In these circumstances it was necessary to appoint another meeting of creditors to be held for the appointment of a trustee and commissioners, and to have notice of same advertised in the said gazettes.

The Court was accordingly craved to grant authority to advertise and publish the said sequestration in the *Edinburgh* and *London Gazettes*, and of new to appoint the creditors to hold a meeting on Monday the 9th day of July 1883 to elect a trustee on the estates of the firm and individual partners of said firm, or separate trustees or trustees in succession, and commissioners, as directed by the statutes, and to appoint the sequestration to proceed as if it had been now of new awarded.

Authorities—*Fife*, Feb. 17, 1844, 6 D. 686; Bankruptcy Act 1856 (19 and 20 Vict. cap. 79), secs. 125, 128.

The Court granted the prayer of the petition.

Counsel for Petitioner—Rhind. Agent—D. Forsyth, S.S.C.