which was made in the agreement between the parties, but nothing of that kind was done. Now, I do not mean to say that the defenders are bound to take cars which are defective in their construction or made of bad material, but by delaying to take objection to the condition of these cars during the continuance of the contract they are deprived of the right of taking any advantage of the clause of reference.

The cars have been built, delivery has been taken, and the price is now payable, unless the defenders can give some satisfactory explanation why payment is to be withheld.

The words of the clause of reference to which our attention was specially directed, viz., "as regards the implementing or carrying into effect of the provisions herein contained," clearly refer to "the provisions" as to the construction of the cars. I can see therefore nothing in this case to take it out of the ordinary rules, and am for adhering to the Lord Ordinary's interlocutor.

LORDS DEAS, MURE, and SHAND concurred.

The Court adhered.

Counsel for Pursuers—W. C. Smith. Agents—Hope, Mann, & Kirk, W.S.

Counsel for Defenders — Trayner — Lang. Agents—Paterson, Cameron, & Co., S.S.C.

Tuesday, March 20.

FIRST DIVISION.

CARMONT, PETITIONER.

Trustee—Removal—Judicial Factor.

Circumstances in which in a petition by a person interested in a charitable trust, for removal of the trustees thereon, the Court *sequestrated* the estate and appointed a judicial factor *ad interim*.

This was a petition presented by the Rev. John Carmont, sometime Roman Catholic clergyman at Blairgowrie, for the removal of the Most Rev. John Strain, Roman Catholic Archbishop of St Andrews and Edinburgh, the Most Rev. Charles Eyre, Roman Catholic Archbishop of Glasgow, and the Right Rev. John M'Donald, Roman Catholic Bishop of Aberdeen, from the office of trustees under a trust known as the Mitchell Trust, and for the appointment of a judicial factor on the trust.

The Mitchell Trust was constituted by Captain Mitchell of Baldovie, Forfarshire, who died in 1865, by a deed of directions forming part of his settlement, which deed was in the following terms:—"To the Bishops of the Roman Catholic Church exercising their functions in Scotland, and including all of their order, whether or not designated as Bishops-Coadjutors, I bequeath in trust for the purpose after-mentioned" 200 out of 300 shares into which he appointed the residue of his estate to be divided, "that sum being destined to the special object of establishing and endowing an asylum for clergymen of the Roman Catholic religion officiating in Scotland who may be incapacitated by age or infirmity for the discharge of their sacred duties." The amount of the trust-funds at the date of presenting the petition was about £50,000.

The petitioner stated that he was fifty-six years of age, and incapacitated from duty on account of infirm health, and therefore had a material interest in the administration of the trust.

The averments on which the petition was founded were—(1) That loans of trust-monies had been made to churches without any bond or other security writ being granted therefor, and that interest had not been exacted on many of these loans; and (2) that the funds which should have been managed by the whole body of trustees acting together had been divided, so that the bishop of each of the three districts into which Scotland was at the time of such division divided by the Roman Catholic Church should manage one part of it, with the result that instead of one trust there were separate trusts, each placed for management in the hands of one trustee, and that the beneficiaries were thus relieved, not from the whole fund as directed by the testator, but from a restricted portion of it set apart to each particular district.

The petitioner averred that he considered this mode of administration illegal, and fraught with danger to those entitled to benefit by the trust, and, *inter alios*, to himself.

The trustees lodged answers, in which they admitted that the bequest had been divided into three separate funds. They stated that they had acted in *bona fide* in their administration of the trust, and that they were anxious to lose no time in restoring the trust to what they had now been advised was its proper and legal condition, as a single fund administered by a body of trustees. They stated that such of the money as had been invested on security was advanced on good security, but admitted that a part had been advanced to various churches in their dioceses without security. The major part of this, however, they had now replaced, and they were willing to replace the remainder. They averred that in each year they had expended on the purposes of the trust moneys equal to the full income of the trust-fund. They submitted that the trust was one which could not from its nature be managed by a judicial factor, and the appointment of such an officer would embarrass, if not defeat, the intention of the truster, who had selected his trustees on account of their official position, and given them large discretionary powers.

The petitioner, at the bar, added to the prayer of the petition an alternative craving the Court in the meantime, whether the trustees should be removed or not, to sequestrate the estate and appoint a judicial factor—*Morris* v. *Bain*, February 27, 1858, 20 D. 716.

At advising—

LORD PRESIDENT—The allegations of the petitioner here are of a serious character, involving grave imputations on the management of the trust, and his averments are practically admitted to a great extent. But the removal of these trustees from their office is a step which I am not prepared to take without more inquiry into the matter, so that the respondents may have an opportunity of making further explanations; and therefore I am of opinion that we should adopt

the alternative course suggested by the petitioner. The estate will be sequestrated for the present, and a judicial factor appointed to investigate into the condition of the trust-funds, to bring them together, and if necessary to call for an accounting of the administration of the estate as regards the income. When that has been done, and when we have a report from the judicial factor explaining the position and history of the trust, we shall then be in a better position to form an opinion on the merits. The sequestration of the estate and the appointment of a judicial factor are merely temporary measures, and whatever arrangements are made for the future with regard to the trust will depend in a great measure on the nature of the information that we obtain from the officer of Court.

Lords Deas, Mure, and Shand concurred.

The Court pronounced this interlocutor:—

"The Lords having resumed consideration of the petition as now amended, with the answers for John Strain, Charles Eyre, and John M'Donald, and heard counsel on the whole cause, sequestrate the trust-estate mentioned in the petition, and appoint Mr J. A. Molleson, C.A., to be judicial factor on the same, with the usual powers, he finding caution before extract, and decern *ad interim*."

Counsel for Petitioner—Jameson. Agents—J. & J. Milligan, W.S.

Counsel for Respondents—W. Campbell. Agents—Tods, Murray, & Jamieson, W.S.

Tuesday, March 20.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

FLETCHER, PETITIONER.

Bankruptcy—Sequestration—Recal.

A creditor presented a petition in a Sheriff Court for sequestration of his debtor, and warrant to cite the debtor was granted. Before the *inducia* on this citation expired, the debtor, with concurrence of another creditor, presented in the Bill Chamber a petition for sequestration, and sequestration was granted, and a meeting of creditors appointed, at which it was resolved that the estate should be wound up under a deed of arrangement. In a petition for recal of this sequestration by the creditor who had presented the petition in the Sheriff Court, *held* that, in the absence of any averment that any preference had been obtained between the date of the first deliverance in the Sheriff Court and the deliverance in the Bill Chamber, it was expedient, in the interest of the whole creditors, that the sequestration should not be recalled, and petition therefore *refused* (following *Tennent* v. *Martin*, March 6, 1879, 6 R. 786).

William Fletcher, Ottershaw, Chertsey, a creditor to the extent of £58, 17s. 6d. of James Anderson, nurseryman, Uddingstone, near Glasgow, on 9th February 1883 presented a petition to the Sheriff of Lanarkshire at Hamilton praying for sequestration of the estates of James Anderson. On the same date the usual deliverance on such a petition was pronounced by the Sheriff-Substitute granting warrant to cite the debtor; a caveat was also lodged in the Sheriff Court at Hamilton by the petitioner craving to be heard should any application for sequestration be made by the debtor. The petition and deliverance were served on the debtor on 10th February, and on the same date the petitioner lodged a caveat in the Bill Chamber craving to be heard in the event of any application being made for the sequestration of Anderson's estate. On 16th February Anderson presented an application in the Bill Chamber for sequestration of his estates, with the concurrence of Messrs T. S. Cunningham and Turner, stockbrokers, Glasgow, creditors to the extent required by law, and the usual deliverance was pronounced awarding sequestration, and the sequestration was remitted to the Sheriff of Lanarkshire at Hamilton, and a meeting of the creditors appointed to be held there on 3d March.

This petition was presented on 24th February by Fletcher for the recal of the sequestration, on the ground that the second petition was incompetent, in respect that at the date of its presentation there was a pending process of sequestration which still remained undisposed of. The petitioner submitted that if the second sequestration were to stand, the date of sequestration would be altered, and in consequence preference might be acquired. He did not aver that any preference had been acquired.

Answers were lodged for Anderson and for Cunningham and Turner on 8th March, in which it was stated that the meeting appointed had taken place on 3d March, when a state of the affairs was produced, showing the total liabilities to be £3233, 8s. 11d., that at the meeting it had been unanimously resolved by the creditors represented at the meeting, whose debts amounted to £2420 17s. 4d., that the estate ought to be wound up under a deed of arrangement, and that an application should be presented to sist procedure for two months, in terms of sec. 53 of the Bankruptcy (Scotland) Act 1856, that no appearance was made at the meeting for the petitioner, that the resolution had been duly reported, and the sequestration sisted for two months. Further, the respondents averred that there was no question as to preferences, but only as to expenses.

The Lord Ordinary on the Bills (Kinnear) refused the petition.

"*Note.*—The application for sequestration in the Bill Chamber seems to have been unnecessary, and had nothing been done in the sequestration which has been awarded, it might have been reasonable that it should be recalled in order that the process for sequestration in the Sheriff Court might proceed; but the sequestration was competently awarded on the 16th of February, and after publication of the usual notices in the *Gazette* the creditors have met and resolved upon a particular mode of winding up the estate. In these circumstances a recal of the sequestration would occasion inconvenience to which creditors ought not to be exposed without good reason. If there were reasonable ground