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

for apprehending that preferences had been obtained between the date of the first deliverance in the Sheriff Court and the deliverance in the Bill Chamber, that might have been a sufficient reason for the recal. But it was admitted that the petitioner is not in a position to say that such ground exists. The proper course seems to be that taken in *Tennent* v. *Martin*, March 6, 1879, 6 R. 786."

The petitioner reclaimed, and argued that this case was ruled by the cases of *Jarvie* v. *Robertson*, November 25, 1865, 4 Macph. 79; and *Kellock* v. *Anderson, &c.*, December 14, 1875, 3 R. 239, and not by those of *Tennent* v. *Martin & Dunlop*, March 6, 1879, 6 R. 786; and *Simpson* v. *Myles*, November 8, 1881, 9 R. 104.

At advising—

Lord President—I do not consider that in this class of cases it is matter of legal right who shall be the party who obtains sequestration. These two applications have been presented and come before the Court by way of competition, and the real question is, What in the interest of the whole body of creditors is the most convenient and least expensive way of disposing of the estate? Now, here there can be no doubt that proceedings have been taken in the Bill Chamber which if completed will secure the immediate winding up of the sequestration, for there is a deed of arrangement which substantially settles matters, and if it is gone on with there will be no need for further proceedings.

In these circumstances I think it would be inconvenient if this sequestration were recalled. I quite agree with the remark of the Lord Ordinary that if there were the slightest reason for supposing that any preference had been obtained, that would be a most excellent reason for recalling the sequestration, but there is nothing of that kind here. I think therefore that the decision in the case of *Tennent* v. *Martin & Dunlop* is applicable here.

Lords Deas, Mure, and Shand concurred.

The Court adhered.

Counsel for Petitioner—Brand—Macfarlane. Agents—Macrae, Flett, & Rennie, W.S.

Counsel for Respondents — Trayner — Keir. Agent—Alexander Morison, S.S.C.

Monday, April 16.

BILL CHAMBER.

[Lord Shand, Lord Ordinary on the Bills.

STAVELEYS, PETITIONERS.

Process—Vacation — Trust—Petition — Power of Lord Ordinary on the Bills—Trusts (Scotland) Act 1867 (30 *and* 31 *Vict. c.* 97), *sec.* 16.

Held by Lord Shand (Lord Ordinary on the Bills) that a petition under section 16 of the Trusts (Scotland) Act 1867 can be presented to and proceed before the Lord Ordinary officiating on the Bills during vacation.

The Trusts (Scotland) Act 1867 provides by section 16—"Applications to the Court under the authority of this Act shall be by petition addressed to the Court, and shall be brought in the first instance before one of the Lords Ordinary officiating in the Outer House, who may direct such intimation and service thereof, and such investigation or inquiry, as he may think fit, and the power of the Lord Ordinary before whom the petition is enrolled may be exercised by the Lord Ordinary on the Bills during vacation; and all such petitions shall, as respects procedure, disposal, and review, be subject to the same rules and regulations as are enacted with respect to petitions coming before the Junior Lord Ordinary in virtue of the Act 20 and 21 Vict. c. 56." . . .

On 12th April 1883 W. G. A. Pepper Staveley and Miss Pepper Staveley, his daughter, presented a petition under the Trusts (Scotland) Act 1867 for the appointment of new trustees on a lapsed trust in which they were the beneficiaries, and for warrant to complete title in name of the trustees to be appointed. The attention of the Lord Ordinary was directed to a decision of Lord Gifford in 1870 to the effect that such petitions could not proceed in vacation unless they had been first brought before a Lord Ordinary during session and intimation and service ordered by him.

The Lord Ordinary (Lord Shand) officiating on the Bills ordered intimation and service of the petition.

"*Note.*—I think it is too narrow a view of the terms of section 16 of the Trusts (Scotland) Act 1867 (30 and 31 Vict. c. 97) to hold that the Lord Ordinary on the Bills can only deal with applications which have been presented during session, and so cannot even order intimation and service of a petition presented in virtue of that section.

"Such a reading of the Act greatly restricts its usefulness, and for no object that I can discover, and it ought not to be adopted unless the language used compels this. And *prima facie* it would seem to be a remarkable state of matters that the Lord Ordinary on the Bills should have the power to appoint trustees and to authorise them to complete titles or to exercise the other powers which under the statute the Court may confer, and yet should be powerless to give the mere formal order of appointing intimation and service.

"The petition is in all cases addressed to the Court—that is, to the Lords of Council and Session—but although so addressed it is dealt with and disposed of by the Lord Ordinary in session, and by the Lord Ordinary on the Bills in vacation. The 16th section of the statute provides that the petition, though addressed to the Lords of Council and Session, 'shall be brought in the first instance before one of the Lords Ordinary officiating in the Outer House, and . . . the power of the Lord Ordinary before whom the petition is enrolled may be exercised by the Lord Ordinary on the Bills during vacation.' The words 'shall be brought in the first instance before one of the Lords Ordinary officiating in the Outer House' are used to make it clear that the petition is not an Inner House proceeding; and the whole enactment is in terms which show that the power of the Lord Ordinary and of the Lord Ordinary on the Bills is not derived from the Inner House as if on a remit, but is an original jurisdiction directly conferred by the statute.

"It is said the words 'is enrolled' imply that