to the order of intestate succession. As Lord President Inglis said in *Lord Zetland's* case, 4 R. 199, at p. 204 (14 S.L.R. 137 at pp. 140-141), in words expressly adopted by Lord Hatherley in this House—"In short, the will of the entailer when he calls a succession of heirs-male of the body is, that the law shall determine within that class which is the person to take on every occasion on which a death occurs amongst the class causing a devolution of the estate; and from this it seems to follow that on every such occasion the transmission of the estate from the dead to the living is a devolution by law."

But it equally follows that while devolution by law takes place within the class selected under the entail, it does not take place between one class and another class. This appears to me to be in entire accord with Lord Hatherley's language in the *Zetland* case, where he interpreted the leading decision of Lord Saltoun.

It is here that I beg to express my distinct view that the judgment of the Court of Session in the case of the *Lord Advocate* v. *M'Culloch* was a correct decision. That, too, was a case of the exhaustion of the heirs-male of the body and the taking of one of another class, *i.e.*, from the line of heirs-female. Lord President Robertson's words are very clear, and in my humble judgment very sound. "Mrs M'Culloch," said he, "takes, not because she is heir-male, but, on the contrary, because there are no more heirs-male; neither does she claim because it is a legal consequence of the destination to heirs-male that she should now take. On the contrary, she points to the deed of Edward the entailer, which, now that the law has executed his commission to devolve the estate down the line of heirs-male, steps in and starts a fresh line of succession. To my thinking the case is just the same as if the heirs-female now called had been the heirs-female of some stranger, who and whose heirs-male had never yet taken at all."

If that case be sound the answer to the main question presented by the appellant admits of no doubt. I do not think that for taxing purposes the relation between successor and predecessor—that is to say, between the respondent as the first taker of the class of heirs-female with the last of the line of heirs-male—arose by devolution of law. It arose by disposition.

On the rate of duty I have nothing to add to what your Lordships have already declared.

Their Lordships affirmed the interlocutor appealed from and dismissed the appeal with expenses.

Counsel for the Appellant—Macmillan, K.C.—Pitman. Agents—Shaw & Young, Ayr—J. & F. Anderson, W.S., Edinburgh—John Kennedy, W.S., Westminster.

Counsel for the Respondent—Lord Advocate and Dean of Faculty (Clyde, K.C.)—R. C. Henderson. Agents—Sir Philip J. Hamilton Grierson, Edinburgh—H. Bertram Cox, C.B., London.

Friday, July 25.

(Before Viscount Finlay, Viscount Cave, Lord Dunedin, Lord Shaw, and Lord Wrenbury.)

CALDWELL *v.* HAMILTON.

(In the Court of Session, June 1, 1918, 55 S.L.R. 678, and 1918 S.C. 677).

Bankruptcy—Sequestration—Acquirenda—Salary Earned under Contract of Service—Beneficium Competentiæ—Process—Bankruptcy (Scotland) Act 1913 (3 *and* 4 *Geo. V, cap.* 20), *secs.* 2, 28, 97 (1), 98 (1), 1 (2).

A bankrupt whose estates had been sequestrated continued to earn by service a salary. *Held* that it was competent to pronounce an order ordaining him to pay to his trustee out of the income so earned, as and when received, what was held to be in excess of a suitable aliment for him, reserving right to the trustee, the bankrupt, and any other persons interested to apply further to the Court in the event of any change of circumstances.

Opinion of Lord Fraser in *Mitchell* v. *Barron*, 8 R. 933, 18 S.L.R. 668, *overruled.*

This case is reported *ante ut supra.*

Hamilton, the respondent in the petition, appealed to the House of Lords.

At delivering judgement—

VISCOUNT FINLAY—In this case a petition was presented on behalf of the trustee in the bankruptcy of the appellant asking that it should be found that the bankrupt was entitled to a salary at the rate of £500 per annum as an employee of William Beardmore & Company Limited, that the amount was in excess of a suitable aliment to him, and that the amount of such excess should be fixed, and that he should be ordered to pay over to the trustee the amount of such excess when received by him.

The petition came before Lord Sands in the first instance. It was opposed on two grounds, namely—(1) that the personal earnings of the appellant after the date of the sequestration do not pass under the sequestration to the trustee; and (2) that it was not competent to make an order against the bankrupt with reference to any instalments of the salary before they accrued due. Lord Sands refused the prayer of the petition. His decision was reversed by the Second Division of the Inner House, who pronounced the interlocutor now under appeal. By that interlocutor the matter was remitted to the Lord Ordinary to grant the prayer of the petition to the effect of finding that the bankrupt is in receipt of a salary of £500 per annum as an employee of William Beardmore & Company, Limited, and of certain other incomes, and to find that the amount is in excess of a suitable aliment to the bankrupt under his existing circumstances by £150 per annum, and to order and decree the bankrupt to pay over £150 per annum out of the said salary, as and when received by him, to the trustee

until further order and decerniture, with a reservation of the right to appeal.

An appeal from this interlocutor has been brought to your Lordships' House. The case on appeal was based entirely on the first of the two grounds above stated, namely, that the personal earnings of the appellant in the sequestration do not pass to the trustee, but the argument at the Bar of your Lordships' House was put entirely on the second of these two grounds, namely, that it was not competent to make an order against the bankrupt with reference to any instalments of the salary which had not accrued due. It was admitted by the counsel for the appellant that the ground taken in the case on appeal is untenable, and that the personal earnings of the bankrupt would pass to the trustee under section 98 (1) when they accrued, subject to the *beneficium competentiæ*. The only question argued on behalf of the appellant was whether it is competent to make an order such as the present in advance so as to take effect on each instalment as it accrues due. This point we have been informed was fully argued before the Inner House, and this is borne out by the report of the argument to which our attention was called. It follows that this objection was overruled by the Inner House when they pronounced the interlocutor now under appeal, although in the judgments themselves there is little or nothing in terms bearing upon this point.

In my opinion the appeal fails. If the right to the instalments as they fall due vests in the trustee under the Act, subject to the *beneficium competentiæ*, it follows that he must be able to apply to prevent the diversion of the instalments to any other purpose. If when such an instalment was about to fall due there was any ground to suppose that there was danger of its diversion, the trustee could come to the Court to have its payment to him secured. These instalments fall under the head of *acquirenda*, and the title of the trustee rests upon section 98 (1) of the Bankruptcy (Scotland) Act 1913. The property in each instalment would vest in the trustee only if it fell due, and it would fall due only if the bankrupt continued to work for Beardmore & Company, Limited.

The argument for the appellant was that nothing could be done by the Court with reference to such *acquirenda* until the trustee's title had accrued when each instalment of salary had been earned and was payable, and that the trustee should then follow the procedure laid down in section 98 (1) and get an order accordingly. This argument appears to me to overlook the fact that it must be open to the Court to take proceedings to prevent the right of the trustee to each instalment as it falls due being defeated by the bankrupt's receiving and spending the money himself, and that if there be no such power there might be a most inconvenient and unseemly scramble between the trustee and the bankrupt as each instalment fell due. The trustee surely might take steps as any one instalment was about to fall due for the purpose of preventing the bankrupt from defeating his title by receiving and spending it, and if he can do it with regard to each particular instalment there is no principle of law to prevent him from obtaining a general order of this kind for the protection of his title to receive each instalment as it falls due. The multiplication of orders and accumulation of costs would be thus prevented. The Court has complete control of any such order and can withdraw it or modify it at any moment if justice so requires.

I have had the opportunity of reading the judgment which has been prepared by Lord Dunedin, and I agree with what he says as to the object with which there is inserted in section 98 (1) the provision for application to the Lord Ordinary or the Sheriff with regard to *acquirenda* when they become *acquisita*. It is supplementary to the earlier part of the clause, which enacts in effect that the *acquirenda* vest in the trustee as soon as they become *acquisita* and is intended to deal with other claims that may have come into existence with regard to the *acquirenda*.

I also agree with the addition to the order which is suggested by Lord Dunedin, viz.—that reservation should be made of the right to apply in favour of any other persons interested.

The respondent should have the costs of this appeal.

VISCOUNT CAVE—The question for decision in this case is whether the Lord Ordinary on the Bills has power under the Bankruptcy (Scotland) Act 1913 to order an undischarged bankrupt to pay a part of his future personal earnings to the trustee in his bankruptcy for the benefit of his creditors.

The short facts are as follows:—An order of sequestration was made against the appellant John Hamilton on the 3rd November 1913. There have been paid to the creditors out of the sequestrated estate two dividends, amounting together to 5s. 9¼d. in the £ on their debts. The appellant was at the date of the sequestration, and still is, in the employment of Messrs William Beardmore & Company, Limited, at a fixed salary of £500 per annum, such employment being apparently terminable at will. The appellant and his wife are also entitled to an alimentary provision of about £90 per annum and to a further income of about £80 per annum. The bankrupt has not obtained his discharge. In these circumstances the respondent, who is one of the principal creditors in the bankruptcy, presented to the Lord Ordinary a petition praying that it might be found that the appellant was in the enjoyment of the above income and that such income was in excess of a suitable aliment to him, and that the excess might be ascertained and ordered to be paid by the appellant to the trustee in the bankruptcy. The trustee was made a party to the petition. The Lord Ordinary (Lord Sands) dismissed the petition, holding that he had no jurisdiction to make the order, but on appeal to the Second Division of the Court of Session the decision of the

Lord Ordinary was overruled and he was directed to make the order. The Lord Ordinary accordingly on the 18th June 1918 pronounced an interlocutor by which, after finding the above facts as to the salary and income payable to the bankrupt, and that such salary and income were in excess of a suitable aliment to the bankrupt in his existing circumstances by £150 per annum, he ordered that the bankrupt should pay over £150 per annum out of the amount of the salary of £500, as and when received by him, to the trustee, but power was reserved to the petitioner and to the bankrupt to apply further to the Court in the event of any change in circumstances. It is admitted that there is no precedent for such an order, and the question raised by this appeal is whether there was jurisdiction to make it.

The petition for the order in question appeals to the common law of Scotland as well as to the Bankruptcy Acts; but the jurisdiction of the Lord Ordinary in this matter is statutory, and the decision must, I think, depend upon the construction of the Bankruptcy (Scotland) Act 1913, of which the relevant sections are sections 28, 97, and 98, and the definition section (section 2). Section 28 empowers the Lord Ordinary or the Sheriff to issue a deliverance awarding sequestration of the assets "which then belong or shall thereafter belong to the debtor before the date of the discharge." It appears to me that this section merely lays down the procedure for putting the Act into operation, and that the effect of the order of sequestration when made is left to be determined by the subsequent sections of the Act. Section 97 vests in the trustee when appointed the property of the debtor therein described, being property belonging to him at the date of the sequestration, including his moveable estate and effects, so far as attachable for debt. In my opinion the contract for the employment of the bankrupt by Messrs Beardmore, which was a contract for personal services, did not vest in the trustee under this section. It is true that in certain cases decided by the Scottish Courts, of which one of the latest is *Barron* v. *Mitchell* (8 R. 933, 18 S.L.R. 668), certain offices held by a bankrupt *ad vitam aut culpam* have been held to vest in the trustee in bankruptcy of the holder; but whether those decisions can be supported on their own facts or not, I am clearly of opinion that a terminable contract for personal services such as that which is in question in the present case does not so vest. This conclusion is in accordance with the decisions under the English Bankruptcy Act, which in many respects is similar to the Scottish Act—See *Re Shine* L.R., 1892, 1 K.B. 522; *Bailey* v. *Thurston*, L.R., 1903, 1 K.B. 137.

Turning now to section 98 of the Act of 1913, which deals with *acquirenda*, it is clear that the second sub-section of that section is confined to alimentary provision and has no application to the salary of £500. The Act contains no general provision similar to section 51 of the English Bankruptcy Act of 1883, enabling the Court to attach the salary or income of a bankrupt; and the decision of this House in *Hollinshead* v. *Hazleton* (L.R., 1916, 1 A.C. 428) is therefore not in point.

There remains sub-section 1 of section 98, which is in the following terms:—"If any estate, wherever situated, shall after the date of the sequestration, and before the bankrupt has obtained his discharge, be acquired by him, or descend or revert or come to him, the same shall *ipso jure* fall under the sequestration, and the full right and interest accruing thereon to the bankrupt shall be held as transferred to and vested in the trustee as at the date of the acquisition thereof or succession for the purposes of this Act; and the trustee shall, on coming to the knowledge of the fact, present a petition setting forth the circumstance to the Lord Ordinary or the Sheriff, who shall appoint intimation to be made in the Gazette, and require all concerned to appear within a certain time for their interest; and after the expiration of such time, and no cause being shown to the contrary, the Lord Ordinary or the Sheriff shall declare all right and interest in such estate which belongs to the bankrupt to be vested in the trustee as at the date of the acquisition thereof or succession thereto, to the same effect as is hereinbefore enacted in regard to the other estates; and the proceeds thereof when sold shall be divided in terms of this Act; and if the bankrupt do not immediately notify to the trustee that such estate has been acquired or has come to him as aforesaid, he shall forfeit all the benefits of this Act, and it shall be competent to the trustee to examine him as aforesaid in relation thereto; provided always that the rights of the creditors of the person from whom such estate shall come or descend to the bankrupt shall be reserved entire." It will be seen that this sub-section deals with property acquired by a bankrupt after the order of sequestration, and I am satisfied that so long as the bankrupt continues in his present employment and has not obtained his discharge, each instalment of his salary as it becomes due will fall within the sub-section and will be capable of being impounded by an order made under the sub-section, subject only to provision being made (in accordance with the rule established by many decisions) for the maintenance of the bankrupt and his family. This question does not appear to have directly arisen in any Scottish case, but it has arisen on several occasions under the English Bankruptcy Acts, and has been determined in the above sense—See *Re Roberts*, L.R., 1900, 1 Q.B. 122; *Re Hancock*, L.R., 1904, 1 K.B. 585; and *Affleck* v. *Hammond*, 1912, 3 K.B. 162.

I come now to the question whether such an order can be made prospectively, and so as to affect instalments of the salary before they accrue, and this question appears to me to present some difficulty. It was decided by Lord Kinnear in *Grant* v. *Green's Trustee* (1901, 3 F. 1016, 38 S.L.R. 733) that the earlier part of section 103 of the Act of 1856 (which corresponded with section 98 (1) of the present Act) gave to the trustee no more than a personal right to newly acquired property, which to be fully effectual required

to be made real by a vesting declaration under the later part of the section, and accordingly that until such a declaration was made, the property remained open to the diligence of creditors whose debts had been incurred after the sequestration. It appears to me that section 98 (1) does not according to its terms authorise the making of such a declaration until after the property has been acquired and notice has been given inviting persons interested, such as new creditors, to appear and object; and it may well be said that if an order is made in advance, even though after a general notice, the rights of future creditors will be affected. There is also considerable force in the observation of the Lord Ordinary that if such an order as that now under appeal can be made, the trustee can virtually compel the bankrupt (if he works for remuneration at all) to work for him, subject only to receiving the aliment necessary to enable him to live. On the other hand, a decision that a fresh application must be made on each occasion after an instalment of salary falls due would lead to obvious inconveniences; and I am impressed by the fact that the learned Judges who decided the case in the Court of Session, although they did not expressly deal with the question which I am now discussing, evidently saw no sufficient objection to a prospective order being made, and that members of your Lordships' House who are familiar with the Scottish practice are satisfied that the order should be upheld.

In these circumstances I do not dissent from a decision to affirm the interlocutor appealed from subject to the modification proposed. But I must add that if a similar question should arise under the English Bankruptcy Acts, it will be necessary in view of the observations of Lord Lindley in *Re Roberts* (L.R., 1900, 1 Q.B., on p. 129), and the cases there referred to, to consider the matter afresh with special reference to the English law and practice.

LORD DUNEDIN—[*Read by Lord Atkinson*]—The question raised in this appeal is whether the Second Division of the Court of Session were right in directing the Lord Ordinary on the Bills to grant the prayer of the petition presented to him, which he had dismissed as incompetent, to the effect of declaring that the total income of the appellant, derived as it is from a salary of £500 a-year earned by him as an employee of a commercial firm, and certain small provisions in favour of himself and his wife declared alimentary by the submission thereof, amount to more than a subsistence allowance, and ordering the appellant to pay £150 a-year out of the said £500, so often as received by him, to the trustee in his sequestration.

In the Courts below two topics were canvassed. The first was the general question of whether a salary earned after the date of his sequestration by an undischarged bankrupt (which is the position of the appellant) could be reached by diligence, and consequently fall to a trustee under a sequestration. I shall not discuss this matter further, but say that I entirely agree with the opinions of the learned Judges of the Second Division overruling the opinion of Lord Fraser in *Mitchell* v. *Barron* (8 R. 933, 18 S.L.R. 668). The opinion had been subsequently adopted by two Lords Ordinary but had never had the sanction of the Inner House. I take this course the more readily because the point was given up before your Lordships' House. Mr Sandeman, with his usual candour, feeling that the point was untenable, said he would not contend that an undischarged bankrupt's salary could not be made available for creditors. But he confined his whole attack on the judgment to assailing it upon what was the second topic, viz.— whether there was any justification for the order as made. Your Lordships will observe that I have phrased the question thus— First, whether the salary in question can be reached by diligence; and secondly, whether consequently it fell to the trustee in the sequestration.

Now as regards the first question there is no doubt a salary is attachable by diligence, usually by arrestment in the hands of the employer who pays, but it is by law given the nature of an alimentary fund. It is consequently subject to the *beneficium competentiæ*, or, in other words, it is only the excess over a maintenance allowance suitable to the man's station in life which is attachable. This is the position apart from sequestration. What is the position if there is sequestration and the salary in question is earned after the date thereof? Now here there is room for, and there has been, considerable divergence in judicial opinion, and accordingly I do not apologise for troubling your Lordships with some remarks of a general character.

The methods by which a creditor can make available for himself a debtor's means by the law of Scotland are enumerated by Mr Bell in the opening chapter of his Commentaries. They are four in number— 1. Adjudication against heritable estate (the older form of apprising had, by the time Mr Bell wrote, been superseded and was extinct). 2. Poinding of the moveable estate, which was a judicial seizing of corporeal moveables. 3. Arrestment, which was a judicial embargo laid on all moneys or moveable rights payable or prestable to the debtor by third parties, followed by furthcoming, which made the moneys or rights available. And 4. Imprisonment of the debtor. It is worthy of notice because it is in direct contradistinction to the view of the law in England that imprisonment was in no sense a satisfaction of the debt. It was only a compulsitor to make the debtor disclose unadmitted assets, and consequently it proceeded along with and not in substitution of other methods. Its rigour was mitigated under the right of liberation under cessio, and it is now obsolete under statutory provision. But it must be kept in view in taking a comprehensive view of the law of creditor and debtor and the concomitant law of sequestration. So far these remedies were all for the individual creditor, and he who outstripped his fellows in the race for

diligence enjoyed the fruits thereof. The whole principle of sequestration is that it is a process by which the whole property of a bankrupt person is ingathered by a trustee for the purpose of division *pari passu* among the creditors.

I do not propose to refer to the historical developments of this process. They will be found detailed in Bell's Commentaries. I pass at once to the Act of 1856 (19 and 20 Vict. cap. 41), which was really an amended edition of the Act of 1839 (2 and 3 Vict. cap. 41), just as the ruling Act at present, *i.e.*, that of 1913, is an amended edition of the Act of 1856. I need not pause to examine the conditions-precedent to the issuing of a deliverance awarding sequestration. The conditions being fulfilled, a deliverance may be pronounced. This is the 29th section of the Act of 1856, which is repeated *totidem verbis* in the 28th section of the Act of 1913. As to this section there has, I think, been some confusion. It has been appealed to by some, including the respondent in this case, as the section which transfers the property of a bankrupt. In one sense that is so, but it must be observed that the section is purely declaratory and not operative. It declares a state of sequestration and affirms as a general proposition that the property of the bankrupt belongs to his creditors. This really is the counterpart of the common law doctrine that after insolvency a man is truly *quoad* his property a trustee for his creditors—the doctrine which is the root of the cutting down of preferences at common law—a doctrine to which the Statutes of 1621 and 1696 were merely aids. But the creditors as a body have no active title. The next step is to elect a trustee, and that being done and his election signified by act and warrant, sections 102 and 103 of the 1856 Act, sections 97 and 98 of the Act of 1913, are the operative sections, and *ipso jure* transfer the bankrupt's property to his trustee. Now sections 102 and 97 are really tantamount to making the act and warrant under the sequestration equivalent to a congeries of all the diligences competent to creditors at common law, omitting only the compulsitor depending on imprisonment. So far as moveables are concerned, they effect, in the case of moveables attachable for debt, an *ipso jure* transference of all corporeal moveables to the same effect as if delivery had been made on an instrument of transfer, *i.e.*, have the same effect as an executed poinding, and also operate as an assignation intimated of all moveable rights which are capable of assignation—that is to say, have the same effect as an arrestment. Now a salary falls obviously within the latter category. Here I come to the divergence of judicial opinion, Lord Justice-Clerk and Lord Dundas inclining to think that the salary was transferred in virtue of section 97, while Lord Guthrie thought it was dealt with under section 98 (1). Section 98 (1) is the equivalent of section 103 of the 1856 Act, and declares that *acquirenda*, *i.e.*, anything accruing after the date of the sequestration but before the date of discharge, should *ipso facto* vest in the trustee to the same effect as the vesting took place under section 97, and further, gives direction as to what the trustee shall do.

It will be as well to quote this section at length—"If any estate, wherever situated, shall after the date of the sequestration, and before the bankrupt has obtained his discharge, be acquired by him, or descend or revert or come to him, the same shall *ipso jure* fall under the sequestration, and the full right and interest accruing thereon to the bankrupt shall be held as transferred to and vested in the trustee as at the date of the acquisition thereof or succession, for the purposes of this Act; and the trustee shall, on coming to the knowledge of the fact, present a petition setting forth the circumstance to the Lord Ordinary or the Sheriff, who shall appoint intimation to be made in the Gazette, and require all concerned to appear within a certain time for their interest; and after the expiration of such time, and no cause being shown to the contrary, the Lord Ordinary or the Sheriff shall declare all right and interest in such estate which belongs to the bankrupt to be vested in the trustee as at the date of the acquisition thereof or succession thereto, to the same effect as is hereinbefore enacted in regard to the other estates."

I think that the Lord Justice-Clerk and Lord Dundas were very naturally brought to this view by the case of *Barron* v. *Mitchell*, 8 R. 933, 18 S.L.R. 668. In that case a petition was brought by the trustee of an undischarged bankrupt under section 103 of the 1856 Act, praying the Court to attach the salary which the bankrupt earned as a schoolmaster. In the Outer House the petition was dismissed by Lord Fraser upon the ground that a salary as such was not attachable for debt. That ground for the reasons given in the beginning of this opinion cannot be held as good. There ought to have been inquiry as to whether the salary exceeded the *beneficium competentiæ*. In the Inner House the Lord Ordinary's reason of judgment was not accepted—indeed was practically repudiated by Lord President Inglis—but the Inner House Judges unanimously dismissed the petition as incompetent in respect that they held that the salary had already been attached by the operation of section 102. In spite of the deference I always feel for any opinion of Lord President Inglis and of the learned Judges who then formed his colleagues in the First Division, I share with Lord Salvesen the doubts he has expressed in this case as to the soundness of this view. It seems to me to ignore the distinction so clearly pointed out by Mr Bell in his Commentaries in the passage which was quoted by the Lord Justice-Clerk—"Bell (Com., 7th ed., i, 121) defines an office thus—'An office is a right to exercise a public or private employment, and to take the fees and emoluments which belong to it'; and he proceeds —'In considering offices as responsible for debt three questions may be raised—1st, whether the office itself may be attached, or transferred by the operation of legal diligence, or sold for the behoof of creditors? . . . and 3rd, whether the wages, profits, or salary can be taken by the creditors of him who holds the office?' In Scotland there

are offices which may be attached or transferred in the sense and manner aforesaid, but the present bankrupt holds no such office. As to the third of the above questions, Bell says (Com., 5th ed., i, 126, 7th ed., 122)—'The salary of an office stands on a different footing from the office itself. Although the *delectus personæ* which an office implies may effectually prevent the office itself from being exposed to sale, to be purchased perhaps by one who is quite unable to discharge its duties, this principle at least can never stand in the way of creditors proceeding to attach the salary or the accruing perquisites and profits as they arise, and converting them into a fund of payment.'"

It is clear that the office of schoolmaster could not be attached, unlike some offices known to the law of Scotland, *e.g.*, the well-known case of the Heritable Usher. Now the emoluments of the office do not as far as I see vest in any proper sense before they become payable at each term of payment. I think that the test of arrestment shows this. Arrestment can never be of anything but something of which there is a present liability to account. I had occasion when I sat in the Court of Session to examine this subject in some detail in the case of *Riley* v. *Ellis* (1910 S.C. 934, 47 S.L.R. 788, *sub voce General Billposting Company, Limited* v. *Goude*), and I would refer to my opinion in that case. It is true that in that case I was in the minority, but in the first place I think the difference between me and my brethren consisted, not in the view as to the general principles which govern arrestment, but in the application of those principles to the particular case. Further, in that case the Lord Ordinary had taken the same view as I did, and subsequently my judgment on the general principles was particularly approved by Lord Kinnear in the case of *Shankland* v. *Macildowny* (1912 S.C. 857, 49 S.L.R. 564), so that I think I am entitled, sitting in this House, to say that after most careful reconsideration of the opinion delivered I am myself satisfied that Lord Mackenzie, Lord Kinnear, and I were right, and that Lords Skerrington and Johnston, if their opinions can be held as divergent on general principles, were wrong. Even, however, if *Barron* v. *Mitchell* was rightly decided I do not think it would cover this case. It is a possible idea that in the case of an office *ad vitam aut culpam* the office has vested, and the termly payments of salary are, as it is expressed, like the fruits of a tree. Such a view is, I think, impossible in the case of a commercial salary paid in respect of an employment which may at any moment be terminated by the employer.

The result of this is that I have no doubt that the payments of salary as they accrue fall under section 98 (1), and under that alone.

There is another reason, which though of a technical character is quite conclusive, that makes this view a necessity so to speak of the present application. This is a petition directed to the Lord Ordinary on the Bills. There is warrant for that in section 98 (1). But if it were not an application under section 98 (1), but merely an application to the Court in aid, so to speak, of the general scheme of the statute, *i.e.*, to carry out the provision of 97, then it could not be presented to the Lord Ordinary on the Bills, but must have been presented to the Court in virtue of its *nobile officium*, as was done, *e.g.*, under this very Statute of 1856, when the Court in virtue of its *nobile officium* appointed a new trustee when the old trustee had been discharged—a proceeding for which no exact warrant was given in the statute. Mr Sandeman in his very clear and able argument really admitted this position—that is to say, he conceded, first, that the periodical payments of salary as they fell due became vested in the trustee under section 98 (1); second, that from time to time it would be possible for the trustee to make an application under the second part of section 98 (1). But he contended that there was no warrant in section 98 (1) for an order such as has been made here. This reduces the question to the very narrow point of whether it is necessary for the trustee to make a separate application each time that a periodical payment of salary is made, or whether a general order may not be made *ab ante*. I could have wished that the learned Judges of the Second Division had dealt with this point in their judgments. That the point was argued, it is only fairness to counsel to say, appears from the report of the case in the Scottish Law Times. I do not think that the point is without difficulty, but on the whole I am of opinion that the order as made is a competent order. Though each periodical payment is not vested till it becomes due, yet it is known now that such periodical payments will be made from time to time. It would be an almost senseless proceeding that there should have to be a repeated application each time payment became due. At the same time while I think the order can be supported and the appeal must therefore fail, it is absolutely necessary to add a word of caution. Inasmuch as the opening part of section 98 (1) declares that all *acquirenda* as they accrue vest *ipso jure* in the trustee "to the same effect as hereinbefore provided as to the other estate," it is necessary to consider what is the ratio of the second part of the section. Why are the *acquirenda* not allowed to be affected in the manner detailed in the 97th section? The answer is to be found in the case of *Grant* v. *Green's Trustees* (3 F. 1016, 38 S.L.R. 733), where the law is accurately stated by Lord Kinnear. Other interests may arise that have a claim on the *acquirenda*. That is the reason why intimation is ordered to be made. Until decree is given on the petition the trustee's right is only an inchoate right which might be defeated by diligence carried through by a subsequent creditor. It follows that although, as I have said, I think that the order as made is competent, and *de plano* preferentially affects any payment of salary already due, it cannot be held to prejudge all questions which might arise as to instalments in future. There is in the interlocutor as pronounced a reservation to either the trustee or the bankrupt to apply for an

alteration. I think there should be a further reservation made by inserting in the interlocutor as finally pronounced after the words "under reservation to the pursuer and to the bankrupt" the words "or any other persons interested," and with that variation I am of opinion that the interlocutor appealed against should be affirmed.

I have not hitherto mentioned section 98 (2), but as it was mentioned in argument it may be as well to say that it has clearly no application to the matter in hand. The class of provision there spoken to is a provision made by some deed of a third party, and does not refer to the *beneficium competentiæ*.

LORD SHAW—I meant to write fully on this case, but I have had the satisfaction and advantage of reading Lord Dunedin's judgment, and its decision and its exposition so clearly express my own view that I desire to adopt it without any variation or further suggestion of my own. May I, however, specifically add that I accept and entirely agree in my noble and learned friend's view with regard to the case of *Riley* v. *Ellis*, 1910 S.C. 934, 47 S.L.R. 788, and the opinion of Lord Kinnear in *Shanklin* v. *Macildowny*, 1912 S.C. 857, 49 S.L.R. 564.

I concur in the judgment proposed.

LORD WRENBURY—I have had the advantage of reading the opinion of my noble and learned friend Lord Dunedin. I adopt it, and agree that with the variation which he proposes the interlocutor appealed against should be affirmed. I have but little to add.

The operation of the statute is such that at the moment when *acquirenda* become *acquisita* the statute fixes upon them so that *ipso jure* they fall under the sequestration and are to be held as transferred to and vested in the trustee (section 98 (1)). The statute therefore speaks *in futuro*. In other words it deals in the present with the consequence of events to happen in the future. The only question upon this appeal upon which I find it necessary to express an opinion is whether it is competent to the Court to make an order speaking in like manner *in futuro* and affecting the *acquirenda* as and when they become *acquisita*. I can see no reason why such an order should not be competent to the Court. It is common daily practice for the Court to make orders operating in the future if and when defined events happen. Every injunction is an instance of such an order. The present order has an effect similar to that which would result from an order expressed as an injunction to prevent the *acquisita* (when and as they are acquired) from being dissipated or disposed of before the trustee perfects his title to them, and an order vesting them when received in the trustee pursuant to the statute. If this is not the true view it results that to effectuate the statute the trustee must make successive applications *toties quoties* and must run the risk that the *acquisita* may be dissipated before he has time to intervene. This would be not inconvenient only but perilous also; I see no reason why your Lordships should be driven to so mischievous a conclusion.

The order under appeal I think is right, and the appeal should be dismissed with costs. The variation proposed should not affect the incidence of the costs.

Their Lordships inserted after the words "under reservation always to the pursuer and to the bankrupt" the words "or any other persons interested" and with that variation affirmed the interlocutor appealed from, with expenses.

Counsel for the Appellant—Sandeman, K.C.—Gentles—H. G. Robertson. Agents—R. Miller, S.S.C. Edinburgh—Bruce, Millar, & Company, London.

Counsel for the Respondent—The Lord Advocate (Clyde, K.C.)—C. H. Brown. Agents—Macandrew, Wright, & Murray, W.S., Edinburgh—J. Kennedy, W.S., London.

Monday, July 28.

(Before Viscount Finlay, Viscount Cave, Lord Dunedin, Lord Shaw, and Lord Wrenbury.)

MAZURE *v.* STUBBS LIMITED.

(In the Court of Session, July 20, 1918, 55 S.L.R. 765.)

Reparation—Slander—Innuendo—Newspaper—Black List—Relevancy.

A weekly paper with a large trade circulation published weekly the decrees in absence obtained in the small-debt courts. The list was prefaced by an explanatory note that the publication in the paper of the decree in absence did not imply that the party against whom the decree had been pronounced was unable to pay, or anything more than that the entry appeared in the court books. The list on one occasion had in it the name of the pursuer as a person against whom a decree in absence had been pronounced. Admittedly no such decree had been pronounced. The pursuer brought an action of damages for slander; innuendoed the publication as meaning that he "was given to or had begun to refuse or delay to make payment of his debts, and that he was not a person to whom credit should be given;" and averred that it was so understood, and had in that way seriously affected him in business. *Held* (*dis.* Lord Wrenbury) (1) that the case was not covered by *Russell* v. *Stubbs, Limited*, [1913] A.C. 386, 1913 S.C. (H.L.) 14, 50 S.L.R. 676, and (2) that the averments were relevant.

This case is reported *ante ut supra*.

The defenders, Stubbs Limited, appealed to the House of Lords.

At delivering judgment—

VISCOUNT FINLAY—This is an action for libel, and it came before Lord Anderson