I do not think that that can be said to be the case, because the fact that the testator did not alter his will during all these years is as likely to have been the result of procrastination as of deliberate intention to abide by the will. No doubt the lapse of time may be a very important circumstance. If the time between the birth of the child and the death of the testator is very short, so that the testator had not a reasonable time to consider what testamentary arrangements he should make in view of the birth of a child, it would obviously require very clear indications otherwise of his intention that the will should stand in order to rebut the presumption. On the other hand, if, as here, the testator lives many years after the birth of the child, less pregnant circumstances would suffice. But in this case there is nothing but the long lapse of time. If the question had now arisen for the first time it would have necessitated very careful consideration whether the lapse of time alone would be sufficient to rebut the presumption in favour of revocation. Upon principle, however, and apart from authority altogether, I should answer that question in the negative, for the reason which I have already indicated, namely, that the mere fact that the testator has allowed years to elapse without altering his will is not a sufficiently sure indication of a matured intention not to alter it. But there is ample authority for that view. There is first the opinion of Lord Rutherfurd Clark in *Dobie's Trustee* v. *Pritchard* (1887, 15 R. 2). Then there are the opinions of Lord Adam and Lord M'Laren in *M'Kie's Tutor* v. *M'Kie* (1897, 24 R. 526), and the opinion of the present Lord Justice-Clerk in *Rankin* v. *Rankin's Tutor* (1902, 4 F. 979). Lastly, there is the opinion of the present Lord President in *Knox's Trustees* v. *Knox* (1907 S.C. 1123), and that is the most important of all in view of the circumstances of the case in which it was expressed. The Lord President said—"I do not think it is possible to use Lord Watson's dictum" (that the question was always one of circumstances) "in the case of *Hughes* (1892, 19 R. (H.L.) 33) as subversive of the idea that there is a legal presumption. I do not find that there are circumstances in this case to rebut the presumption, because truly I think there is no circumstance tending in that direction except the mere efflux of time." Now in that case the will was executed in 1896, a child was born in 1897, and the testator did not die until 1905. The seven or eight years which elapsed in that case afforded the testator just as adequate an opportunity of making a new will as the ten years we have to deal with here. I am therefore of opinion that the first question should be answered in the negative and the second in the affirmative.

LORD DUNDAS—I quite agree. I think Mr Mackay was justified in submitting that the Court in deciding each case of this nature may have regard to all relevant facts and circumstances attending it; but, none the less, at the back of all there remains the presumption of revocation which arises from the fact of the birth of a child after the date of a settlement. Considering the facts here, which I need not repeat, I cannot find any such combination of circumstances as has in former cases been held sufficient to rebut the presumption. Mr Mackay relied almost entirely upon the bare fact that this testator survived the birth of the child by ten years and allowed the settlement to stand during that period. I think the cases establish that that consideration is not enough to rebut the presumption. We should therefore, in my opinion, answer the questions in that sense; and I do not think it necessary to discuss the more general topics which were mooted during the argument.

LORD CULLEN—I concur. I am unable to see sufficient grounds for holding that the presumption of revocation on which the second party relies is rebutted by the circumstance that during the interval which elapsed between the birth of his child and his own death the deceased did no positive act significant of his intentions concerning the regulation of his succession, but merely remained inactive in regard thereto, for reasons which we do not know.

The LORD JUSTICE-CLERK was presiding at a trial in the Court of Justiciary.

LORD ARDWALL was presiding at a jury trial.

The Court answered the first question in the negative and the second in the affirmative.

Counsel for the First and Second Parties—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Third Parties — A. M. Mackay. Agents — Guild & Guild, W.S.

Tuesday, November 9.

OUTER HOUSE.

[Lord Skerrington.

ROBERTSON-DURHAM AND ANOTHER (LIQUIDATORS OF BRUCE PEEBLES & COMPANY, LIMITED) v. STERN AND WATT.

Process — Mandatary — Liquidation — Foreign Claimants — Liquidator's Deliverances Contested.

Persons resident abroad lodged claims in a liquidation, and their claims having been rejected by the liquidator they lodged answers in support of their claims. *Held* (*per* Lord Skerrington, Ordinary) that as there were no reasons which would make it inequitable to require the claimants to sist mandataries, they must do so.

Robertson - Durham, C.A., and another, liquidators of Bruce Peebles & Company,

Limited, in the motion roll moved the Lord Ordinary in the liquidation to ordain Julius Stern and Alexander Watt, claimants in the liquidation, to sist mandataries. Stern and Watt were both resident in Russia and had lodged claims for sums said to be due in respect of obtaining contracts for the company. These claims had been rejected by the liquidators, and the claimants had lodged answers in support of their claims, to which the liquidators had lodged replies.

The following authorities were cited on behalf of the liquidators—*Ford* v. *King*, June 18, 1844, 6 D. 1163; *Howe Machine Co.* (*Fontaine's* case), L.R., 1889, 41 Ch. Div. 118, *per* North, J., at p. 120; *Pretoria Pietersburg Railway Company*, [1904] 2 Ch. 359, *per* Buckley, J., at p. 362.

For the claimants the following authorities were referred to—*Argo* v. *Pauline*, March 4, 1905, 7 F. 541, 42 S.L.R. 401; *Gordon's Trustees* v. *Forbes*, February 27, 1904, 6 F. 455, 41 S.L.R. 346; *Town and County Bank, Limited* v. *Lilienfield*, October 27, 1900, 8 S.L.T. 227; *North British Railway Company* v. *White*, November 4, 1881, 9 R. 97, 19 S.L.R. 59; *Stow's Trustees* v. *Silvester*, November 27, 1900, 8 S.L.T. 253; *Vanderhaege*, L.R., 1887, 20 Q.B.D. 146; *Percy & Kelly Nichel, &c. Mining Company*, L.R., 1876, 2 Ch. Div. 531.

LORD SKERRINGTON—"The question is whether two claimants resident in Russia, whose claims have been rejected by the liquidators, ought to be ordered to sist a mandatary. Counsel for the liquidators maintained that these claimants were substantially in the position of pursuers, and accordingly fell under the general rule applicable to pursuers. Counsel for the claimants, on the other hand, maintained that the rule that a foreign pursuer must in the absence of some special reason sist a mandatary, has no application, and had not in fact been applied to claimants in a liquidation. No decision exactly in point was quoted one way or the other, the nearest being the case of *Ford* (1844, 6 D. 1163), where a claimant in a Scotch sequestration, domiciled in England, was held bound to sist a mandatary. Reference was also made to decisions in actions of multiplepoinding, which show that the Court is ready to treat claimants in such actions with indulgence—*Elmslie* v. *Pauline*, 1905, 7 F. 541; *Gordon's Trustees* v. *Forbes*, 1904, 6. F. 455.

"A person who merely lodges a claim in a liquidation, sequestration, multiplepoinding, or other process of distribution, does not thereby put himself in the position of a pursuer, or even of a litigant. Assuming, however, that his claim has been rejected or opposed, and that the claimant desires to obtain the decision of the Court upon it, he becomes a litigant, and he is either a pursuer or a defender according to circumstances. Thus a claimant who founds upon a probative writing which his opponent impugns on extrinsic ground is, I think, in the position of a defender. On the other hand, claimants who, as in the present case, are attempting to constitute an illiquid claim, are in the position of pursuers. Although pursuers, however, they are not in precisely the same position as ordinary pursuers, who, as a rule, are entitled to choose their own time and their own tribunal for making good their claim. They may be described as involuntary pursuers, and this consideration, in my opinion, entitles the Court to exercise a wide discretion in the way of dispensing with the necessity for a mandatary. In the present case, however, no special reasons were stated which would make it inequitable or hard to require the claimants to sist a mandatary, whereas the hardship upon the liquidator and creditors is obvious if they have to sue in Russia for recovery of their expenses. Looking to the nature of the claims and to the whole circumstances, I am of opinion that the liquidator's motion should be granted in each of the two cases."

The Court ordained the claimants to sist mandataries.

Counsel for the Liquidator—Sandeman, K.C.—F. C. Thomson. Agents—Davidson & Syme, W.S.

Counsel for the Claimants—Macmillan—Kirkland. Agents—Norman M. Macpherson, S.S.C., and Boyd, Jameson, & Young, W.S.

Thursday, November 25.

SECOND DIVISION.

[Lord Guthrie, Ordinary.

YOUNG *v.* PATON AND OTHERS.

Writ—Attestation—Evidence—Onus—Discharge—Witnesses who could not have Seen Granter Sign or Heard him Acknowledge Signature, but who Maintained that they never Signed a Deed without Party's Signature or Acknowledgment in their Presence.

In a reduction of a bond and disposition in security which bore to be signed at G. on a certain date in presence of two parties as witnesses, it was proved that the deed had been signed on that date at T., and that the granter was not at G., and neither of the instrumentary witnesses at T. on that date. The instrumentary witnesses deponed that though they did not remember signing the bond in question, they were certain that they never signed a deed as witnesses without first seeing the parties subscribe or hearing them acknowledge their signatures.

Held that on the evidence the *onus* on the pursuer had been discharged, and that the bond was not duly and validly executed.

Mrs Lillias Ballantyne Garroway or Young, with the consent and concurrence of her husband James Young, Braehead, Thorn-