to six months' imprisonment. The charge against him was "the wicked, fraudulent, and felonious concealment, or clandestinely putting away or carrying off, and sale or disposal, by a person being in bankrupt or insolvent circumstances, of property or stock belonging to him or his creditors, for the purpose of defrauding his creditors." He now suspended this conviction on the following grounds:—viz. (1), the Sheriff had no jurisdiction to try such a charge; (2) the charge was irrelevantly libelled; and (3) evidence was admitted which ought to have been excluded.

The first ground was given up on its being pointed out that the competency of the Sheriff to try such a charge had been already affirmed in the recent case of Dawson (4 Irvine, 357). The second ground was that what was charged was not a completed offence, but only a purpose or intention to commit one; and the evidence which was said to have been improperly admitted consisted of statements made by the panel to his law-agents some years ago, by means of which his insolvency was proved, and which were said to have been confidential. It was also urged that the Sheriff had allowed the contents of a written document to be proved by parole evidence.

After hearing Mr C. SMITH for the suspender, the COURT refused the bill. The case was entirely different from that of Inglis (4 Irv., 387 and 418), which had been founded on, because here the charge mentioned three different things which had been done for a felonious purpose. In regard to the confidentiality, the Court were of opinion that the rule of law did not apply here. The statements were made some years ago, and not in regard to the present matter at all. Statements to a law-agent are only protected if made to him as such—for professional purposes—and in regard to a matter of proper professional consultation. The only other point was the admission of parole evidence; but the thing which had been proved by it was quite immaterial to the case. It would never do to review every case tried by a Sheriff because some incompetent evidence on an utterly unimportant point had been admitted—if, for instance, as Lord Neaves remarked, a man had sworn that a certain day was rainy, and it appeared that he had not been out, but had been told so by his wife.

COURT OF SESSION.

Tuesday, Jan. 30.

FIRST DIVISION.

PRINGLE *v.* BREMNER AND STIRLING (*ante*, p. 84).

Reparation — Relevancy. Circumstances in which an action of damages against police officers for searching a person's repositories and apprehending him without a warrant dismissed as irrelevant.

Counsel for Pursuer—Mr Watson and Mr MacLean. Agent—Mr William Miller, S.S.C.

Counsel for Defender—The Lord Advocate and Mr Moncrieff. Agents—Messrs Murray & Beith, W.S.

This is an action of damages for wrongful apprehension and illegal search by police officers, which was before the Court some weeks ago, when the pursuer was allowed to give in a minute explaining more particularly his grounds of action. The following additional statement was accordingly made by him:—

"On the occasion when the defenders came to the pursuer's house, as aforesaid, the pursuer, who had been from home, arrived at his house just as the defenders had driven up. The pursuer's dwelling-house was situated on the side of a public road, and his workshop is separate, and at a short distance from it. The defenders informed the pursuer, immediately on his arrival, that they had a warrant against him; but they did not at this or any other time explain the nature of said warrant to the pursuer. At the time when the defenders informed the pursuer they had a warrant against him, they were all outside the house, and it was so dark that the pursuer could not have read the warrant. The pursuer did not after this demand exhibition of the warrant, because he did not doubt the statement by the defenders that they had a warrant of some kind; and he assumed that they would not exceed the limits of the warrant. After this the pursuer opened his dwelling-house, which the defenders entered, and a light was then procured. The defenders thereafter proceeded at once, and without farther ado, to search the pursuer's writing-desk and the drawers which it contained. The defenders spent between one and two hours in ransacking the said writing-desk and drawers, and in reading and examining the MSS., books, letters, and papers which they found therein. The whole search made by them in the pursuer's dwelling-house consisted of the reading and examination of the pursuer's said books, letters, and papers. The pursuer is not aware whether the defenders ever made a search in his workshop."

The Court were of opinion that the pursuer's statements, even as amended, did not afford relevant grounds for an issue, and accordingly dismissed the action with expenses.

Wednesday, Jan. 31.

FIRST DIVISION.

MACKENZIE *v.* ANDERSTON FOUNDRY CO.

Reparation—Issue. Issue in an action for breach of a contract said to be constituted by an offer followed by homologation and *rei interventus*.

Counsel for Pursuer—The Solicitor-General and Mr Birnie. Agents — Messrs Webster & Sprott, S.S.C.

Counsel for Defenders—Mr Clark and Mr Moncrieff. Agents—Messrs Wilson, Burn, & Gloag, W.S.

The pursuer, as trustee on the sequestrated estate of Peter Hamilton junior, sole partner of the St Rollox Malleable Iron Company, sued the defenders for £5000 of damages for breach of contract. The pursuer averred that "on or about 14th January 1864 a contract was entered into whereby" the said iron company "sold to the defenders" 2200 tons of iron, to be delivered in the option of the defenders either as iron cut to dead lengths at £8, 5s. per ton, or as tie bars at £8, 12s. 6d. per ton, "conform to letter," which was dated 14th January 1864. He also averred that the said contract had been followed by *rei interventus*, and had been homologated, but in March 1864, after the sequestration of Hamilton, had been repudiated by the defenders. The defence was that the offer had not been accepted, and that no damage had been suffered.

The pursuer proposed an issue which did not set forth the date of the contract. The defender objected on the ground that as in the record the pursuer had averred a contract entered into on a particular date he was bound to put that date in issue.

The Court held that although a contract was averred, it was said to be constituted by a letter only, which did not make a contract. The defenders themselves called it on record "a proposal." They thought the pursuer was entitled to prove not only the offer but also his averments as to subsequent acts, and they therefore put in the issue as the date of the contract, the words "betwixt the 12th of January and 20th of February 1864." In other respects the issue was approved of.

JACK *v.* SCOTT.

New Trial. Motion for a new trial refused in a case of conflicting evidence.

Counsel for Pursuer—Mr Moncrieff. Agents—Messrs Patrick, M'Ewen & Carment, W.S.

Counsel for Defender—Mr J. R. Davidson. Agents—Messrs Hill, Reid, & Drummond, W.S.

In this case a jury returned a verdict for the pursuer. The question involved was whether the defender Scott had signed a bill, or whether his name which appeared on the bill was a forgery. The defender moved for a new trial on the ground that the verdict was contrary to evidence. After hearing Mr Davidson in support of the motion for a rule, the Court refused the motion, because although there was undoubtedly conflicting evidence, it did not appear that any advantage would be gained by disturbing the verdict.

SECOND DIVISION.

APPEAL—DAVID M'KAY.

Bankruptcy—Abandonment of Estate by Creditors—Offer to Purchase Trustee's Interest. A majority of creditors having resolved to abandon their claim to a bankrupt estate, and a creditor having thereupon offered to purchase the trustee's right for a sum of £15, the Sheriff ordained the trustee to assign on receiving payment of the sum offered. The bankrupt having appealed and offered a larger sum, the Court recalled the resolution of the creditors, and appointed the trustee to call a new meeting, in order to consider the offers and any other offer that may be made.

Counsel for the Appellant—Mr Campbell Smith. Agents—Messrs Ferguson & Junner, W.S.

Counsel for the Respondent—Mr Trayner. Agents—Messrs Campbell & Smith, S.S.C.

This is an appeal brought under the 170th section of the Bankruptcy Act by David M'Kay, merchant, Glasgow, against an interlocutor pronounced by the Sheriff-Substitute of Lanarkshire in a process depending before him of sequestration of the appellant's estate. It is brought in the following circumstances:—On the 26th of July last a meeting of creditors in the sequestration was called by the trustee, for the purpose "of instructing the trustee regarding the estate generally;" and at this meeting the following resolution was adopted by a large majority of the creditors:—"That the trustee and creditors abandon and give up all claim to the bankrupt estate, and that the trustee take no further steps towards recovery of the same, with the exception of the claim lodged for him in the multiplepoinding, presently depending in the Sheriff Ordinary Court at Glasgow, between Randolph, Elder, & Co. and the trustee, and the common debtor, John Nicholson." At this meeting, Mr Martin M'Kay, writer in Glasgow, mandatory for Mr Brownlee, a creditor, protested against this resolution, and offered to pay the trustee the sum of £15 for an assignation of the trustee's right and title to the estate of the bankrupt, and of his right and title to recover the same to the extent to which the said estate was proposed by the resolution to be abandoned, he (the creditor) always finding security to relieve and indemnify the trustee and the trust estate of all expense and damage which may be incurred by granting said assignation, and in prosecuting for the recovery of the estate proposed to be renounced. He also offered to hand over any surplus that might remain after satisfying his own debt. The motion made on behalf of Brownlee having been refused, he appealed to the Sheriff, praying that the trustee should be instructed to grant the assignation demanded on condition of his being paid £15. The Sheriff-Substitute (Bell) found that where a majority of creditors give instructions to the trustee to abandon the estate, it is open to the minority or an individual creditor to demand an assignation to the abandoned claims, on condition of a sum being paid for such assignation, and of security being found to relieve the trustee and the other creditors of all expense and damage incurred through the granting thereof, or through the prosecuting for the renounced portion of the estate; and also in the event of a greater sum being recovered than will pay the assignee 20s. per pound of the debt claimed by him in the sequestration, to hand over the said surplus to the trustee for behoof of the other creditors. No appearance was made before the Sheriff on behalf of the creditors who carried the resolution complained against; and although one of the abandoned claims was a debt due by the appellant Brownlee himself, the Sheriff-Substitute sustained the appeal, recalled the resolution in so far as it was an absolute abandonment of the claims by all the creditors, and in consideration of the appellant's offer found the trustee bound to grant, *unico contextu* with the said offer being duly obtempered, the assignation demanded by the appellant. This appeal from the Sheriff's judgment is brought by the bankrupt, who was respondent in the Court below, and who contended that a bankrupt estate which has been abandoned by the creditors reverts to and belongs to the bankrupt. At the bar to-day he offered £25 for the estate.

The LORD JUSTICE-CLERK said he had some difficulty in adhering to the whole of the Sheriff-Substitute's interlocutor. This was not a proceeding under any particular clause of the Bankrupt Act, but was a question to be decided by common law and the principles of equity, which was the common law of bankruptcy. If the motion for the abandonment of the estate had been adopted without objection the trustee would properly have proceeded on it. But another creditor proposed that the estate should not be abandoned, and proposed to give a sum of money on a portion of the estate being assigned to him. This proposal being before the creditors, it was not consistent with the rules of bankruptcy proceedings that the first resolution should be carried. That resolution would not stand in the face of Martin M'Kay's tender, and therefore it has been properly recalled. But the Sheriff-Substitute has gone too far in saying that on payment of £15 the trustee was bound to grant an assignation to the whole estate proposed to be abandoned. His Lordship doubted whether the creditors were tied up by the offer made by Martin M'Kay. He thought there should be a remit made to the creditors to reconsider the tender made by M'Kay, and any other tender that might be made, either by him, or by any other creditor or by the bankrupt. It was not unimportant to consider the authorities. The principle was laid down in "Bell's Commentaries," II. 415. Bell gave no authority for his opinion, and there were no authorities bearing directly on the point. But the case of Sprot and Others *v.* Paul, 5th July 1828 (6 S. 1083), evolved the principle enunciated by Mr Bell. One important lesson to be derived from that case is, that while a minority of creditors may protest against a majority abandoning a part of the estate, and may make proposals to recover or to buy that part, it is always a question of circumstances in what condition he was entitled to do so. It appeared that at the meeting of creditors the first thing only had been done. It was not probable that the offer made by M'Kay was one which the majority of the creditors would accede to; but whether or not, there was still much to be done in arranging the conditions of transference. He was of opinion that the case should be sent back to the creditors.

The Court recalled the interlocutor of the Sheriff-Substitute, of new recalled the resolution of the 26th of July, and appointed the trustee to call a meeting of the creditors to reconsider the offer made by Brownlee or any other offer to be made by him, or by any other creditor, or by the bankrupt.