be to act as a Court of Review; but the proper Court of Review to inquire into the sufficiency of the grounds of suspension is the Court of Exchequer, which is declared by statute to be the proper Court of Review in such cases. Taking this view of the jurisdiction of the Court of Exchequer, I cannot see how we can interfere as a Court of Common Law to entertain this suspension; and, although I adhere to the views expressed by myself and other judges in *Young* v. *Townshend*, I do not think that there is here anything to justify our interposition.

Lord Neaves—I concur. If in a criminal case an information were presented to us to the effect that a party was in prison on proceedings *funditus* null and void, as where the procedure had been contrary to all law, I reserve power to liberate that man. But we have nothing of that kind here. The jurisdiction of the Justices of Peace is not disputed. The objection is that the information is not specific enough in its terms, and is wanting in some particulars said to be essential. But that cannot destroy the jurisdiction of the judge. On the contrary, his jurisdiction comes into play by his finding the complaint relevant, if the writ itself be lawfully presented in the proper court, and the other formalities that make the process are duly observed.

Lord Justice-Clerk concurred.

Agent for Suspender—J. Thomson, S.S.C.
Agent for Respondent—W. H. Sands, W.S.

COURT OF SESSION.

Saturday, November 16.

SECOND DIVISION.

ADAM AND FORSYTH *v.* FORSYTH'S TRS.

Trust-Settlement—Childrens' Provisions—Fee and Liferent — Vesting — Discretionary Power of Trustees—Expenses. Circumstances in which *held* that a power conferred by the truster on his trustees to declare any child's share of the trust-estate alimentary and inalienable had not been exercised *tempestivè*. Trustees held personally liable in expenses.

The late Mr Robert Forsyth, advocate, by his trust-disposition and settlement, dated 25th January 1832, conveyed his whole estates, heritable and moveable, to his wife, and their children Agnes, Mary, Henry, Harriet, and Charles, and to such other persons as they might assume, and the heirs of the survivor, and to such other persons as they might assume, and the heirs of the survivor, with powers of public and private sale, and of borrowing money on the security of the trust-estate, "my wife having a negative on all transactions." The purposes of the trust were, after payment of the truster's debts, declared to be as follows:—"*Secondly*, To hold the residue of my means and estate for behoof of my said wife in liferent during her widowhood allenarly, under the burden of maintaining our unmarried daughters and minor sons in family with herself: *Thirdly*, At the termination of the said liferent, my whole funds to be divided among our surviving children equally, and if any predecease leaving lawful issue, such issue to have their parents' share; but deducting from Henry's share £385, expended in making him an apprentice to a writer to the signet, and from any other child such sum as I may certify,—these provisions to exclude the legal claims of terce, *jus relictæ*, and *legitim*. Farther, the trustees may allow any child to withdraw his or her share on finding security for the widow's liferent effeiring thereto: Also, the trustees shall have power to settle any daughter's share on herself in liferent allenarly and her children in fee, or to convert such share into an alimentary provision in her favour, reserving to my daughters the power of testing on their provisions."

On 19th September 1839 the truster added this codicil:—"Intending that my children shall succeed equally, I recal the declaration that £385 is to be deducted from Henry's share; but declare that he and Charles shall be bound to renounce their liferents of parts of the lands of Redhouse, if required by the other disponees, in order to a sale or the borrowing of money: Also, the trustees shall have a discretionary power to render any child's share alimentary and unalienable."

The truster died in September 1845, survived by his wife and his children named in the settlement, who all accepted of the trust and acted as trustees. The truster's daughter Agnes died in May 1847, and the son Charles in August 1849, both unmarried. The truster's daughter Mary was married in 1847 to the Rev. George Scott, and the other daughter Harriet to Mr Webster in 1849.

The truster's son Henry, in 1856, assigned to Alexander Forsyth Adam, W.S., and John Kirk, W.S., as trustees in succession for behoof of his creditors, "his whole right and interest or *spes successionis*" in his father's trust-estate. This assignation was intimated to and intimation acknowledged by the trustees in June 1856.

The trust-estate ultimately consisted of a house in Royal Circus, Edinburgh, which was sold in 1858 to pay off the debt upon it; and of the estate of Redhouse, in Linlithgowshire. In 1856 the trustees entered into an agreement with a Mr Walker to grant a mineral lease of Redhouse for a term of years, the trust assignees of Mr Henry Forsyth being parties to this agreement, which contained a stipulation that they should receive one-fourth of the rent payable under the lease, the other three-fourths being payable to the truster's widow, the liferenter of the trust-estate, who died in 1858.

In 1859 Adam, as Henry Forsyth's trust-assignee, raised a multiplepoinding in name of Mr Robert Forsyth's trustees, calling himself and the beneficiaries in that trust as defenders, for division and payment of the estate to the beneficiaries. After the usual interlocutor finding the trustees liable in once and single payment of the fund *in medio*, the trustees, under the same interlocutor, gave in a condescendence of the fund, which was stated to be the lands of Redhouse, and to be held by them subject to the trust purposes and powers contained in Mr Forsyth's trust-settlement, which were referred to. Mr Adam, as in right of Henry Forsyth, claimed his fifth of the trust-estate, and also other two-fifths as falling to him as the heir in heritage of his deceased brother and sister Charles and Agnes. The other beneficiaries claimed each one-fifth in their own right, and, as next of kin along with their brother Henry, an equal share in the shares of Charles and Agnes.

A record having been made up and closed, the Lord Ordinary (Kinloch), on 1st February 1860,

pronounced the following interlocutor:—"The Lord Ordinary having heard parties' procurators, and made avizandum, and considered the closed record, and whole process, Finds that the interest in the trust-estate of the late Robert Forsyth, advocate, arising to his children under his trust-disposition and settlement libelled, was a moveable and not an heritable right, and that whatever right in the said trust-estate belonged to the deceased Charles and Agnes Forsyth passed on their deaths to the claimants, Mrs Mary Forsyth or Scott, and Mrs Harriet Forsyth or Webster, and their brother, Henry Forsyth, in equal proportions; Sustains the claims of the said Mrs Mary Forsyth or Scott, and Mrs Harriet Forsyth or Webster, to one-third part of the fund *in medio* respectively: Sustains the claim for Alexander Forsyth Adam, as assignee of the said Henry Forsyth, to the remaining one-third part of the said fund, and repels the said claim to any further extent: Finds the said Alexander Forsyth Adam liable to the said Mrs Mary Forsyth or Scott and Mrs Harriet Forsyth or Webster in the expenses of process: Allows accounts to be lodged, and remits to the auditor to tax the same, and to report."

This interlocutor was allowed to become final, and no further steps were taken in the case.

In October 1860 the then surviving trustees, viz., Henry Forsyth, Mrs Scott, and Mrs Webster, assumed Mr Scott and Mr Webster as additional trustees "for executing the purposes of the foresaid settlement and codicil, in so far as the same are still unfulfilled; declaring that their powers and privileges shall be as extensive, and their acts and deeds, in regard to the said trust-estate and effects, as valid and effectual as if their names had been originally inserted in the said settlement, and conjoined with those of the other trustees therein named." Then follows a conveyance of the trust-estate by the original trustees in favour of themselves and the assumed trustees.

On 23d October 1860, a few days after the execution of that deed, a meeting of the trustees was held, the whole trustees being present, when, in consequence of Walker having given up his mineral lease, the following resolution was adopted:—"The meeting having taken into consideration and fully discussed the mode to be followed in dividing the trust-estate and closing the trust, are unanimously of opinion that the lands of Redhouse, and minerals therein, should be exposed to public sale, and with that view instruct Mr Phin to obtain a valuation from Mr Dickson of Saughton Mains, and to consult him as to the best mode for exposing for sale, and the upset price that should be fixed; and they farther instruct Mr Phin to consult the trustees on receiving Mr Dickson's report, with a view to ulterior proceedings." Another meeting was held on 7th November 1861, at which Mr Adam was present, for appointing an agent for the trust, who should be instructed to apply to the former agent for the trust papers, and "enter immediately on the active management of the trust." An agent was shortly afterwards appointed and conducted the trust business.

At another meeting held on 27th January 1862, at which Mr Kirk was present, Mr Dickson's report on the value of Redhouse was considered, when the following resolution was adopted.—"The meeting, considering that the lands of Redhouse are situated in a district full of minerals of various kinds, resolve that it would be imprudent to bring the lands to sale without having them previously minutely inspected by a mining engineer; and if he recommends that trial bores should be made, the meeting authorise their agent to supply funds for making the bore or bores to an extent not exceeding £200 in all." Two mining engineers were accordingly appointed to make the trial bores and to report. The minute of meeting, besides various other trust matters, contains the following entry, "The trustees, on considering the claim by Mr Adam for a portion of the coal rent due at Mrs Forsyth's death, delay consideration thereof until their agent has considered the point, and reported his views thereon to them."

Meetings of the trustees were subsequently held on 28th October and 15th December 1862, at which Mr Kirk was present, to consider various offers for a mineral lease of the lands, when an offer by Mr Addie was accepted, and the terms of the lease to be granted to him were adjusted.

At a meeting of the trustees held on 10th May 1864, at which Mr Adam was present, Mr Addie's renunciation of his lease was accepted, and Mr Webster, one of the trustees, moved that he should be authorised to advertise for offers for a new mineral lease. Mr Adam, on the other hand, moved that, as the trial of the minerals had proved unsuccessful, the estate should be advertised for sale. Mr Webster's motion was carried, Mr Adam protesting against any further delay in selling the estate. Thereafter, on the motion of Mr Webster, the trustees, with special reference to the discretionary power conferred upon them by the late Mr Forsyth's settlement, and in exercise of that power, adopted a resolution "that the discretionary power be exercised so far as Mr Henry Forsyth is concerned, and that the share of the late Mr Forsyth's estate falling to Mr Henry Forsyth be declared, and that the meeting do hereby declare it, to be alimentary and unalienable." The reason assigned for the resolution was the involved condition of Mr Henry Forsyth's pecuniary affairs, which, in the opinion of the trustees, was such an occurrence as was contemplated by the truster in giving this discretionary power. The only trustees present at the meeting were Mr and Mrs Webster, Mr Webster holding a delegation from Mrs Scott to act for her as trustee. Mr Adam protested against the resolution, 1st, because it was in excess of the powers even of the whole trustees; 2d, because it was not adopted by a quorum of the trustees; 3d, because it was incompetent for Mr Webster to represent Mrs Scott as a trustee; and 4th, because, after intimation of the assignation by Mr Henry Forsyth in 1856, the trustees were precluded from now exercising this discretionary power. The trustees directed their resolution to be intimated to Mr Henry Forsyth.

In consequence of Mr Adam's objection to the constitution of the previous meeting, another meeting was held, on 20th April 1865, at which the whole trustees (except Mr Henry Forsyth) were present, when a resolution was again adopted to exercise their discretionary power, and they accordingly again declared Mr Henry Forsyth's share in the trust-estate "alimentary and unalienable." Mr Adam was not present at this meeting, and Mr H. Forsyth, although invited, declined to attend.

In these circumstances, the present action was on 2d March 1866, raised by Mr Adam as Mr H. Forsyth's trust-assignee, and by Mr M. Forsyth, against the trustees, concluding for reduction of the minutes of meetings of 10th May 1864 and

20th April 1865, so far as regards the trustees' resolutions and declarations affecting Mr H. Forsyth's share in the trust-estate; and the resolutions and declarations themselves whereby the trustees pretended to render and declare that share alimentary and inalienable. The summons also concluded for declarator that "at the said meetings held on the 10th day of May 1864 and on the 20th April 1865, or either of them, the said trustees did not possess and could not exercise any discretionary power to render and declare the share of the said Henry Forsyth alimentary and inalienable, and that the said share was not rendered alimentary and inalienable." The summons further concluded for declarator, that Henry Forsyth's share in his father's trust-estate belonged to and was vested in the pursuer Mr Adam, as trust-disponee and assignee foresaid, and for decree of division of the trust-funds among him and the other persons having right thereto. There was also a conclusion for expenses against the defenders as individuals, or otherwise as trustees.

The pursuers, in their condescendence, made the following averment:—"Mr Henry Forsyth has been married for many years, and has no children. Mrs Scott and Mrs Webster are his next of kin, and their object in endeavouring to render his share of his father's estate alimentary and inalienable is, that they may in this way appropriate it to themselves and their children," an averment which was denied by the defenders so far as regards the purpose and effect of their exercise of the discretionary power conferred on them by the truster's settlement.

For the trustees it was averred, that when they exercised their discretionary power Mr Henry Forsyth was insolvent, or at least in embarrassed circumstances; and also, which was admitted by the pursuers, that he had, since the action was raised, taken refuge in the sanctuary to avoid the diligence of his creditors.

For the pursuers it was pleaded—(1) that the power could only have been exercised during the lifetime of the widow, who had a *veto* on all actings of the trustees; (2) that the trustees were barred from exercising the power even during her lifetime, after the intimation of Mr Henry Forsyth's assignation, which was recognised by the trustees; (3) that the power was vacated by the death of the widow, when the trust-estate was divisible, or at all events by *res judicata* in the multiplepoinding.

For the defenders it was pleaded that the trustees could competently exercise the power so long as the trust subsisted, and the trustees were not denuded of the trust-estate; and that the power, in these circumstances, was validly exercised.

The Lord Ordinary, on 16th January 1867, pronounced the following interlocutor:—

"*Edinburgh, 16th January* 1867.—The Lord Ordinary having heard counsel, and made avizandum, and considered the record, productions, and whole process,—Finds that, under the terms of the trust-disposition and settlement, and codicil thereto, executed by the deceased Robert Forsyth, advocate, the share of the whole trust-funds which, as thereby provided, were to be divided among the children of the truster, were to be so divided at the termination of the liferent of the residue of the means and estate of the truster, as provided to his widow during her widowhood: Finds that the truster's widow died on or about the 8th November 1858, previous to which date the pursuer Henry Forsyth had, in terms of the trust-disposition and conveyance, referred to in the 8th head of the condescendence, assigned to the pursuer Mr Adam his right and interest under the trust-disposition of his father the said Mr Robert Forsyth: Finds that the exercise of the discretionary power, conferred under the terms of Mr Forsyth's trust-deed above-mentioned, "to render any child's share alimentary and inalienable," was limited to the period prior to the termination of the liferent of the truster's widow, when, as the deed provides, 'my whole funds' are to be divided 'among our surviving children equally; and if any predecease leaving lawful issue, such issue to have their parent's share:' Finds that the right and interest of Mr Henry Forsyth in his father's means and estate was vested in him at and from the termination of the said liferent, and that the resolutions adopted at the meetings of trustees, of date the 10th May 1864 and 20th April 1865, referred to in the 16th and 17th heads of the condescendence, and to which the conclusions of the summons relate, which purport to declare the share of the late Mr Forsyth's estate falling to the pursuer Mr Henry Forsyth alimentary and inalienable, were *ultra vires* of the parties thereto; and, with reference to the foregoing findings, Repels the defences, and reduces, decerns, and declares in terms of the conclusions of the summons: Finds the defenders liable as individuals to the pursuers in the expenses of process, of which allows an account to be lodged; and remits the same to the Auditor to tax, and to report.

(Signed) "CHARLES BAILLIE.

"*Note.*—It has appeared to the Lord Ordinary, after consideration of the full debate which took place before him in this case, that the defences proponed against this action cannot be sustained.

"It is clear that, under the terms of Mr Forsyth's brief trust-deed, his primary object was to preserve the liferent of the residue of his estate for behoof of his widow. At the termination of that liferent, the trust-funds were to be divided among the children of his marriage, the lawful issue of a predeceasing child taking their parent's share.

"It is now attempted on the part of the defenders here to maintain the right of the trustees to exercise the discretionary power provided by the codicil of 19th September 1839, at a date long subsequent to the period of division as fixed by the terms of the original deed.

"But the Lord Ordinary is of opinion that he must deal with that deed on the footing contemplated by the truster, which undoubtedly was that the division of the funds was to take place at the termination of his widow's liferent. The Lord Ordinary is of opinion that Mr Henry Forsyth held a vested and assignable right, which became effectual on the death of his mother, and that the trustees were not, *after that event, entitled to exercise the discretionary power provided by the truster, as they now attempt.*

"The case of *Weller* v. *Ker*, House of Lords, March 2, 1866, which was founded on here by the defenders, appears to the Lord Ordinary to support rather than to run counter to the view on which he is here proceeding, in so far as it was there held that the discretionary power vested in the trustees was to exist until the arrival of the period at which these parties were directed to convey. Here, as the Lord Ordinary holds, the defenders, Mr Forsyth's trustees, were bound to have conveyed—and the case must be determined on the footing as if they had conveyed—the shares of the trust-estate 'at the termination of the liferent.'

(Intd.) "C. B."

The defenders reclaimed, and argued: The ground of judgment adopted by the Lord Ordinary, to the effect that the trustee's discretionary power could only be exercised during the lifetime of the truster's widow, was untenable, because the shares of the children did not vest until after her death; and it would have been superfluous to have declared alimentary any such share, which might have lapsed by the predecease of the child. The true period for exercising the power was after the death of the liferenter, when the shares vested, a vesting, however, which was qualified by the power of the trustees to render the vested interest at any time alimentary and inalienable. If the liferenter had predeceased the truster, then, according to the view of the Lord Ordinary, the trustees could never have exercised the power, because, on the death of the truster, the children would have been entitled to demand their shares absolutely, a view which would practically have revoked the power in question, and have plainly defeated the intention of the truster. If, therefore, the proper time for exercising this power was after the death of the liferenter, the trustees could not have been interpelled from exercising it by an immediate demand of the children for a division of the trust funds, because, otherwise, such a demand would have made the power nugatory, by depriving the trustees of any opportunity of exercising it. Even if the shares had vested *a morte testatoris*, the exercise of the power during the widow's lifetime, although competent, might have been premature, and against the interests of the child on whose behalf the power was to be exercised. Suppose it had been so exercised because of the misconduct or improvidence of any of the truster's sons, it would not have been in the power of the trustees afterwards to undo this, when the son's conduct and circumstances might have become satisfactory, and such as to have made it desirable that the power had not been exercised. The power was inherent in the trust, and necessarily subsisted so long as the trustees remained vested with the trust-estate. It was a paternal power delegated by the father to his trustees, in the interests of his children. Its exercise could only, therefore, be understood as being for the advantage of the child. From the nature of the power, the truster put his trustees in the same position as himself had he been in life, having power at his discretion to regulate the interests of his children in his succession. Looking, therefore, to its nature and purpose, it was a power which could be exercised up to the last moment that the trustees remained *domini* of the trust-estate. The children might compel the trustees to distribute the estate, but in the very act of doing so the trustees might limit the share of any child to an alimentary interest; in which case the trustees would be entitled to retain that child's share, subject to his alimentary interest, for behoof of the parties in right of the fee of such share. The trustees could could not divest themselves of this power except by its actual exercise. The multiplepoinding could not vacate the power, because the judgment there merely defined the extent but not the quality of the interests of the surviving children in the trust-estate, a judgment which must be taken as qualified by the trustee's power to declare such interests alimentary. No demand was made under that judgment for a division of the estate, but, on the contrary, the trust went on as formerly, and still subsists. Even if the children had in the multiplepoinding obtained decree for division and payment of the estate, the trustees might even then have exercised their power. As to the widow's *veto*, that had reference only to transactions of borrowing and selling by the trustees, but, even if it applied to the power in question, there was nothing in the trust-settlement to indicate that the power should cease on her death. In support of the argument the followiug cases were relied on: *Cowan* v. *Crawford*, Jan. 20, 1837, 15 Sh., 398; *Muir* v. *Pollock*, Dec. 9, 1851, 14 Dun., 152; *Weller* v. *Ker*, March 2, 1866 (House of Lords), 4 M'Ph., 8.

Argued for the pursuers:—The cases relied on were not analogous, and the case of *Weller* v. *Ker* was rather an authority against the defenders' contention. The widow's *veto* was of importance, because, as the discretionary power was truly given to children (who were the trustees) over each other, the truster plainly intended that his widow should have a control over its exercise. The power therefore must have fallen by her death. The pursuers do not dispute that the children's shares only vested on the death of their mother, and do not contend that the power could not have been exercised after that event, or that it should have been exercised immediately on the occurrence of that event. But there must be some limit to the period within which its exercise would be effectual. A demand for division of the trust-estate would put the trustees, upon their election, either to exercise the power or not. Delay after such a demand would vacate the power. The raising of the multiplepoinding was a judicial demand, which *a fortiori* put the trustees upon their election, and having allowed judgment to pass upon the competing claims of the beneficiaries without judicially claiming the right to exercise their power, they were precluded from afterwards doing so. The continuance of the trust afterwards was by voluntary arrangement for the purpose of realising the trust-estate to the best advantage for the purpose of distribution among the beneficiaries. The judicial demand under the multiplepoinding put the pursuer's case within the principle expressed by some of the judges in the case of *Cowan* v. *Crawford*.

At advising—

Lord Neaves—The question seems quite clear. The discretionary power might have been validly exercised after the death of the liferenter, because it was only then that the shares vested; but it must be exercised *tempestivè*. Mere delay would not vacate the power, but some things might be done to exclude its exercise. Division or payment would of course have that effect. A resolution of trustees to do a certain thing may have the same effect as if the thing had been actually done, a principle which was exemplified in the case of *Leighton* v. *Leighton*, 6th March 1867. The continuance of the trust in the present case was merely accidental. Action at the instance of the beneficiaries after the shares vested would have given them a completed right, if the power were not immediately exercised, and consequently the trustees would then have been bound to exercise their power. The assignation by Mr Henry Forsyth would not have prejudiced the power. The multiplepoinding was a demand for payment and division of the estate. The trustees might perhaps even then have exercised their power, but then that should have been done at once. On the contrary, they put in a condescendence of the fund *in medio*, and acquiesce in an interlocutor by which the claim of Mr Adam, as in Mr Henry Forsyth's right, to certain shares of the fee of the estate is

sustained as a valid claim upon the estate. The demand of the assignee, and the allowing of his claim to be so sustained without objection, were inconsistent with the exercise of the power afterwards. Besides, the right of the assignee to a share of the estate was recognised for a series of years afterwards, and the trustees could not then turn round and repudiate their dealings with the assignee on the footing that he had a completed absolute right. I think, therefore, that, in these circumstances, the trustees have not *tempestivè* exercised their power, and that the pursuers are entitled to decree in terms of their summons. The Lord Ordinary's interlocutor, however, will fall to be recalled, as it is put on the erroneous ground that the trustees' power could only be exercised during the widow's lifetime.

Lords Benholme and Cowan concurred, the Lord Justice-Clerk not being present.

On the pursuers' motion for expenses, the defenders objected to the trustees being found personally liable. The real question which was discussed and decided between the parties in the Outer-House was, whether the power could be exercised after the death of the widow; and, accordingly, that was the only question which was decided by the Lord Ordinary. The defenders have been successful on that question before the Court, and as it was a question which arose upon the construction of the truster's settlement, the trustees were, according to the settled rule, justified in trying the question at the expense of the trust-estate. The judgment of the Court is now put on a ground which only came to have prominence and importance in the present discussion, and as the defenders had been successful upon what was previously regarded as the true question between the parties, they submitted that they should not have personal liability for expenses imposed upon them.

The Court pronounced an interlocutor recalling that of the Lord Ordinary, and finding that the trustees' power had not been exercised *tempestivè* after the death of the liferenter, and finding the trustees personally liable in expenses.

Counsel for the Pursuers—The Solicitor-General, Mr Young, and Mr Adam. Agents—Messrs Adam, Kirk, & Robertson, W.S.

Counsel for the Defenders—The Dean of Faculty and Mr Nevay. Agents—Messrs Scott, Moncreiff, & Dalgetty, W.S.

Tuesday, November 19.

FIRST DIVISION.

EDMOND *v.* ROBERTSON.

(*Ante*, vol. ii, p. 31.)

Bankruptcy—Partnership—Implied Mandate—Company Business—Accommodation Bill—bona fides. G, partner of a firm, and manager of all its cash transactions, applied to R for an advance of money, alleging that it was to be applied towards a purchase by the firm in the line of its business. R advanced the money, and got a bill signed by the firm. The firm shortly after became bankrupt. R claimed to rank on the estate in respect of the bill. *Held*, on a proof, (the trustee rejecting the claim on the ground that the advance was not a company transaction but solely for behoof of G) that the trustee had failed in his proof, and that the creditor was entitled to rank.

This was an appeal by James Edmond, trustee on the sequestrated estates of Grant & Donald, druggists in Aberdeen, against an interlocutor of the Sheriff-substitute of Aberdeenshire. Alexander Robertson claimed to be ranked as a creditor on the bankrupt's estate in respect of a bill for £368, drawn by him upon and accepted by them shortly before their bankruptcy. The trustee rejected the claim, and Robertson appealed to the Sheriff. Minutes were lodged by the parties in terms of the Act. The trustee averred that Grant & Donald received no value for the bill, and that it was not a company transaction, but simply concerned Grant, one of the partners. Robertson denied this, and a proof was allowed by the Sheriff-substitute. Disputes arose in the course of the proof, and the case came before the Court on appeal against interlocutors of the Sheriff-substitute. The Court recalled the interlocutors, and remitted to the Sheriff to allow the books of the bankrupt to be produced, and to allow additional proof to both parties. Proof was led, and thereafter the Sheriff-substitute (J. Comrie Thomson), recalling a deliverance of the trustee, pronounced this interlocutor:—

"Having resumed consideration of this cause, Finds it admitted that the bill, in respect of which the appellant claims, was accepted by a partner of the firm of Grant & Donald, subscribing the Company name thereto: Finds it proved that the said partner who so accepted the bill—viz., John Smith Grant—acted as cashier of the firm, and managed their bill and other money transactions: Finds that the letter No. 14 of Process refers to a previous bill, of which the bill on which the appellant now claims is a renewal: Finds that the respondent has failed to prove the fifth statement in his revised minute, of which he was allowed a proof: Therefore sustains the appeal: Recals the deliverance appealed against; and remits to the trustee to rank the claimant on the estates of the firm of Grant & Donald, and the individual partners of that firm, in terms of his claim: Finds the appellant entitled to expenses; but in respect of the judgment of the Lords of the First Division of the Court of Session, of date 25th May 1866, Finds that the expenses fall to be modified: Allows," &c.

"*Note.*—The appellant's position in this matter is not free from suspicion; and the Sheriff-substitute is of opinion that the trustee, in the performance of his duty to the other creditors, was justified in making very full inquiry before sustaining the claim.

"But no evidence has been led to show conclusively why the appellant should have been willing to accommodate one partner only, or that he was aware that the firm had no interest in the transaction. It is certainly not enough to defeat such a claim as the present that one of the partners should depone, as Donald does here, that the firm had not, to his knowledge, any transactions with the appellant; because it is abundantly proved that Grant took charge of *all* their cash dealings; while, even if it were proved that Grant had improperly concealed from his partner the fact of the advance made to him by the appellant, yet, if the respondent fails to show that there was not a *bona fide* belief on the appellant's part that the transaction was for behoof of the company, the Sheriff-substitute is of opinion, in point of law, that the company's estate would be liable.