motive of the tenant was in erecting the fence is perhaps of little consequence, but it appears to me that the tenant intended the wire fence to be of permanent advantage in the management of the farm. The separation of the sheep stock which might be affected by it was a substantial convenience, and I do not think that it was erected for merely the purpose of a temporary experiment. It is said by some of the witnesses that the existence of this fence was rather injurious than otherwise. I cannot understand how that can be. I mention this merely in reference to a suggestion that has been made, that after all the only object of the tenant in erecting this fence was to enable him to make a temporary experiment. I have no doubt his intention was materially to facilitate the advantageous occupation of the farm, and in the first instance to accomodate himself. This, however, is not sufficient to ascertain the rights of the tenant, because what has been spontaneously put up by him the general principle of law entitles him to remove. I think it would have been the wisdom of the landlord or his factor to have offered a price for the fence to the representatives of thedeceasing tenant, for the expense of erecting it must have been considerable, and greater than the value of the fence when removed.

Then it is said that the leases here control the principle of common law. These two leases were drawn up after a general and, as it were, a stereotyped form. These leases are just like the other leases of the farms in this district, and have no application to such a peculiar fence as this. When the first lease was entered into there was no such wire fence as this, and I do not think that the repetition in the second lease of the same words can be said to have any effect upon the property of this fence.

Upon the whole matter I think that the Sheriff has come to a just and proper conclusion.

Lord Neaves concurred.

The Court affirmed the Sheriff's judgment.

Agent for Appellant—John Gibson Junior, W.S.

Agents for Respondent—Paterson & Romanes, W.S.

Wednesday, July 19.

FIRST DIVISION.

DISHINGTON & CO. *v.* GIFFORD & CO.

Ship—Charter-Party—Bar-Harbour. Where a ship was chartered "to load a full and complete cargo of barley, in bulk not exceeding what she can reasonably stow and carry; and being so loaded, therewith to proceed, &c." And it being in the view of both parties to the charter-party that the port of shipment was a bar-harbour: And farther, it being understood, on the one hand, that the charterers' object was to bring home a cargo of 1800 quarters of barley, which they had lying at the port; and, on the other, that the vessel was capable of loading that amount, and more. *Held* that the true obligation of the owner was to take as much cargo as the ship could carry with safety over the bar at the highest tide, but no more. And that, having started four days before the highest tide with a short cargo, they had committed a breach of contract.

This was an appeal in two conjoined actions, before the Sheriff of Edinburgh, sitting at Leith, the first, at the instance of the owners, for balance of freight of the steamer 'Andalusia,' from Caen to Leith; the second, at the instance of the charterers, for damages for breach of charter-party, and consequent loss of market. The second action was brought by the defenders in the first as a counter claim or set off.

The pursuers in the first action, William Gifford & Co., and William Gifford, the sole partner of that company, were ship brokers in Leith, and the defenders corn merchants there. The said William Gifford was the registered owner of the screw steamer 'Andalusia' of Leith. The pursuers entered into a charter-party with the defenders, who had a cargo of barley lying ready for shipment, under which the defenders chartered the said steamer for a voyage from Caen to Leith, with a full and complete cargo of barley, not over what she could reasonably stow and carry, and the defenders agreed to pay the pursuers the sum of £160 as a slump sum of freight for said steamer for said voyage, with £2, 2s. as the captain's gratuity. The terms of the charter-party, dated 12th October 1869, were as follows:—"That the said ship, being tight, staunch, strong, and every way fitted for the voyage, shall with all convenient speed sail and proceed to Caen, after discharging her present cargo and loading outwards for Caen, and there load a full and complete cargo of barley, in bulk not exceeding what she can reasonably stow and carry; and being so loaded shall therewith proceed to Leith. Four working days are to be allowed merchants for loading and discharging said cargo, to be reckoned from the date of the ship being ready to load and discharge. Mats, if necessary, to be furnished by merchants, and (the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever during the said voyage, always excepted) deliver the same to the affreighters or to their assigns, on being paid freight at the rate of £160 (say one hundred and sixty pounds sterling in slump sum, with two guineas gratuity to the captain)."

The amount of the defenders' barley lying at Caen was 1800 quarters, and this was known to the pursuers, and it was understood by them that it was the defenders' object to bring this cargo over to Leith. On the other hand, the defenders were given to understand by the pursuers that their vessel was capable of carrying that amount of cargo, and rather more. It was also in the view of both parties that Caen was a bar-harbour.

The 'Andalusia' accordingly proceeded to Caen, taking out a cargo of coals for behoof of the owners, and arrived there on 8th November 1869. On the 10th she was ready to take in her cargo of barley. On the 10th and 11th she took on board barley to the amount of 1175 quarters, whereupon the master refused to take on board the remainder of the defenders' cargo, or any part thereof, but dropped down the river, and crossed the bar upon 16th November.

When the vessel arrived on the 8th there was nearly 14 feet of water on the bar; on the 12th, when she dropped down the river, there was only 9½; on the 16th, when she set sail, there was 12·3; and upon the 20th there was over 14. The vessel drew 13½ feet with a full cargo.

The defenders, on the ground that there had been a breach of contract on the part of the pursuers in sailing without a full cargo, paid £80 to

account, and declined to pay anything farther. The pursuers accordingly, holding that they had sailed with as full a cargo as they could reasonably carry, raised action for the balance of freight as per charter-party, amounting to £82, 2s.

On the other hand, as a counter claim, the defenders in the first action, Messrs Dishington & Co., raised an action of damages against the pursuers, Messrs Gifford & Co., in which they sued—(1) For the sum of £55, 16s. 5d., being the amount of extra freight paid by them to bring home the balance of their cargo of barley lying at Caen; and (2) for £84 as market loss on the said barley at 3s. per quarter, consequent upon a fall in the market during the delay,

These two actions were conjoined. The true question between the parties was whether the 'Andalusia,' in order to fulfil the contract contained in the charter-party, was bound to wait for the highest tide, and load as much as she was able safely to carry over the bar upon that day.

The following parts of the evidence are important:—Mr Gifford, of Messrs Gifford & Co., said on cross-examination—"I am shown letter from me to Mr Galway (his agent in France), dated 12th October 1869, copied in No. 75 of process, in which there occurs,—'We have fixed the "Andalusia" for Caen at the rate of 8s. per ton for barley.' I arrived at that rate by assuming that the 'Andalusia' would carry as a cargo of barley from 340 to 350 tons. I did not take quarters into account, or consider how many were to be allowed for the ton. At the time we were negotiating, I told Messrs Dishington that the 'Andalusia' could carry 1800 quarters of barley. I may have said that she could carry 2000 quarters. Messrs Dishington informed me that they had about 1800 quarters lying at Caen for shipment. Before Mr Traill left Leith it was agreed between him and me that if the ship could not take a full cargo of barley, she was to be filled up with light goods, so as to save detention at the bar. I do not remember whether ryegrass was mentioned. We talked about this matter both before and after the charter was concluded. . . . The depth of water at the Oesterham bar is from 9 to 14 feet. I consider that the 'Andalusia' was bound under this charter to take as much cargo as she could with safety carry over the bar at the highest tide. I think she might have so carried from 250 to 280 tons. Being referred to my letter to Mr Galway, of 8th November 1869, copied in No. 75 of process, when I speak of 'getting over the bugbear of the bar in chartering' I had in my mind the introducing into the charter a clause that the ship should not be loaded beyond a certain depth,—say 11 to 12 feet. On 8th November I telegraphed to Mr Galway 'to load for the bar.' I meant that he was not to load so deep as to cause a long detention. I meant that the captain was to take as much cargo as he could cross with at the highest tide with safety. I knew that to wait for the highest tide might cause detention for some days."

Thomas Dishington, senior partner of Messrs Dishington & Co., deponed—"In October last our firm purchased 1800 quarters of barley in Caen, and negotiated to charter a vessel to bring it across. I was present at the interview with Mr Gifford, at which the charter-party was concluded. Mr Gifford was made aware on that occasion that the cargo he was intended to bring was 1800 quarters of barley. He never hinted that his vessel could not bring that quantity. On the contrary, he said he believed she could carry 2000 quarters. He suggested that any vacant space after taking in the barley might be filled up with light goods, such as grass seeds, it being desirable to keep the vessel light, as there was a bar at Caen. We said we were willing to take the light goods over and above the 1800 quarters of barley. There was nothing said about any part of the barley being left behind. I never contemplated any such thing."

The Sheriff-Substitute (HAMILTON) pronounced the following interlocutor in the conjoined actions:—

"*Leith, 16th January* 1871.—Finds, in point of fact, that by the charter-party in question Messrs William Gifford & Co., the pursuers of the action for freight, undertook that the 'Andalusia' steamship (of which William Gifford, the sole partner of said firm, is the registered owner) should proceed to Caen, and there load a full and complete cargo of barley in bulk, not exceeding what she could reasonably stow and carry, and should deliver the same at Leith to Messrs Thomas Dishington & Co., the defenders in said action, upon payment of a slump freight of £160, with £2, 2s. of gratuity to the captain; finds that Caen is a bar-harbour, and that this was known to the parties at the time of entering into the said charter-party; finds that before the vessel sailed for Caen, an arrangement was made between Mr Gifford and Mr Traill, one of the partners of the said Thomas Dishington & Co., by which the latter (who was himself going to Caen) agreed not to load the vessel so deep as to risk her detention at the bar, but, after she should have taken in as much barley as she could safely carry, to fill her up with grass seeds or other light goods; finds that the loading of the vessel at Caen took place at sight and under the superintendence of Mr Traill, as representing the said Thomas Dishington & Co., and of Mr Galway the ship's agent; finds that the 50 bales of ryegrass mentioned in the bill of lading No. 10 of process were shipped by request of Mr Traill after the master had declared that the barley then on board was as much as his vessel could safely carry, and that they were so shipped under the arrangement with Mr Gifford above referred to; finds it not proved that Mr Trail objected that the amount of barley shipped was not a full cargo in terms of the charter-party; finds, on the contrary, that so soon as the ryegrass above mentioned had been taken on board, he accepted the bill of lading from the captain, and allowed the vessel to leave Caen without intimation that he would hold the said William Gifford & Co. liable in damages for breach of contract; and finds that no such intimation was made to the said William Gifford & Co. until after the cargo had been delivered and a payment made to account of the freight; finds, in these circumstances, in point of law, that the said Thomas Dishington & Co. are barred from now objecting to the amount of cargo carried under said charter-party, and consequently, that the claim of damages, which is their only defence to the action for freight, is untenable; therefore, in the action for freight, decerns in terms of the libel; and in the action of damages, sustains the defences, assoilzies the defenders the said William Gifford & Co. from the conclusions of the action, and decerns; finds the said William Gifford & Co. entitled to expenses in both actions; allows an account thereof to be lodged, and remits the same to the Auditor of Court at Leith to tax and report.

"*Note*.—A careful perusal of the proof has

satisfied the Sheriff-Substitute that the claim of damages put forward in answer to the action for freight was merely an after-thought, and had no foundation in anything that took place at Caen. The truth seems to be that Messrs Dishington & Co. were as anxious as Mr Gifford that the vessel should not be detained at the bar, and, with a view to obviate such detention, consented to a modification of the charter-party, to the extent of agreeing not to load a full cargo of barley, but to fill up the vessel with light goods. When, therefore, Mr Traill roquested the master to take on board the ryegrass mentioned in the bill of lading, he virtually declared that he was satisfied with the amount of barley shipped. His subsequent conduct, and that of his partner Mr Dishington, fully bears out this view.

"The Sheriff-Substitute has not thought it necessary to make any reference to the evidence led with reference to the carrying capacity of the 'Andalusia' and the depth of water on the Caen bar. Even as regards this part of the proof, however, he considers that Messrs Gifford & Co. have been successful in showing that the 'Andalusia' took as much cargo as she could reasonably be expected to carry with safety over the bar."

The Sheriff (DAVIDSON) adhered on appeal.

The defenders Messrs Dishington (pursuers in the counter action) appealed to the First Division of the Court of Session.

Solicitor-General (CLARK) and ASHER for them.

SCOTT and TRAYNER for the respondents.

At advising—

LORD PRESIDENT—Messrs Dishington & Co., the appellants in these conjoined actions, chartered the ship "Andalusia," belonging to the respondents Messrs Gifford & Co., in terms of a charter-party, of date 12th September 1869. By this charter-party it was agreed that the said ship should sail and proceed with all convenient speed to Caen, and there load a full and complete cargo of barley, in bulk not exceeding what she can reasonably stow and carry, and being so loaded therewith proceed to Leith. The charter-party, therefore, gives no information as to the liability of the shipowner, except as to his obligation to send the vessel to Caen, and there load a full and sufficient cargo, such as he can conveniently stow and carry. But it is by no means incompetent, and indeed it is necessary, to attend to the circumstances in which the contract was made. The charterers had 1800 quarters of barley lying at Caen—and their object was to send out a vessel and bring them home. This was distinctly stated in the communings between the parties, and was known to both of them. The charterer was given to understand that the vessel was fitted in carrying capacity to load that quantity. I do not say that the obligation upon the shipowner was to bring home the whole cargo whether the vessel could carry it or not; but merely that it was known to the shipower that the object was to bring home that quantity, and that it was understood that the vessel could carry that, and more. On the other hand, however, there is very little doubt that there were possible difficulties in the way, which were known to both parties. They knew that Caen was a bar-harbour, and that the carrying power of the vessel in entering and clearing from that harbour was not the same as in the open sea. But this difficulty, though present to the minds of both parties, was not considered, even by the shipowners, a considerable one; for on 12th October they wrote to Mr Galway, their agent at Bruges—"We have fixed 'Andalusia' for Caen, at the rate of 8s. per ton, for barley from Caen to Leith, and will load her out with coals on our account." Now, if the slump freight charged was calculated by them at 8s. a-ton, the result is that £160 would represent about 2000 quarters, reckoning four quarters to the ton. They must, therefore, have been under the impression themselves that they could and were under the obligation to bring home this cargo of 1800 quarters lying at Caen.

Now, in point of fact, all that the vessel did bring home was 1175 quarters, leaving 600 and more at Caen to be brought home in some other way. All, therefore, that the appellants got under the charter, and in return for their £160, was the carriage of 1175 quarters instead of 1800. To this they objected, and refused to pay the full freight. The shipowners thereupon raised action in the Sheriff-court for the full amount of the freight, under deduction of a sum paid to account; and in consequence the charterers raised a counter action of damages, in which they maintained that those in charge of the "Andalusia" had failed to implement the obligations under the charter-party, and consequently committed a breach of contract, and they therefore ask damages, though substantially as a set off against the action for the freight.

Now, in these circumstances, I have not much doubt as to what the obligation of the respondents was. Firstly, they were not bound to load to such an extent that they could not safely pass the bar. But, secondly, they were bound to load to such an extent as would carry as much as possible, consistently with passing the bar at the highest tide they could safely avail themselves of. That obligation, I think, they have failed to fulfil.

That this was the obligation incumbent on them it will not do for Messrs Gifford now to deny. For Mr William Gifford says in his evidence—"I consider that the 'Andalusia' was bound under this charter to take as much cargo as she could with safety carry over the bar at the highest tide." The state of the tide upon the different days when the vessel was lying at Caen is distinctly made out by the harbour-master. The vessel arrived on the 8th November, and passed the bar with 14 feet. If she had loaded in two days, she would have been ready to sail on the 10th or 11th; but she could not have done so, the tide was too low. It was inevitable that there should be detention; and the question comes to be, How long was she bound to wait? Was she entitled to sail on the 16th with such cargo as she could then carry over the bar with less than 12½ feet of water, or was she bound to wait longer? If she had waited till the 20th, she would have had over 14, and, according to the evidence, might have taken a full cargo. Whether that be so or not, it is plain she could have brought out a great deal more than she actually did. That again brings up the question, Why did she sail upon the 16th without waiting for a higher tide? There appears from the correspondence a sufficient reason for that, though I should be very far from saying that there was any intentional dereliction of duty on the part of the owners in so sailing. The object was to save the ship's time, and allow her as soon as possible to set out on another voyage for which she had been chartered. But then Mr Gifford has admitted, "we were bound to carry out what we could at the highest tide," which of course means the highest spring tide. That she certainly did not do; and I do not think

that it is any sufficient reason for her not doing so that she would have had to wait four days longer at Caen. My opinion is that, under the circumstances of this contract, the master was bound to watch his opportunity of getting out, and take it at the highest tide. In not doing so there was, accordingly, a failure on the part of the master and owners.

Both the Sheriff and the Sheriff-Substitute, whose decision I propose to reverse, put their judgment upon a ground which I am quite unable to understand. They go on the footing that the difficulty of the bar-harbour was known to the parties, and that to obviate detention they consented to a modification of the contract, to the extent of agreeing not to load a full cargo of barley, but to fill up the vessel with light goods, such as rye-grass, which actually to some extent was done. I think this is a misreading of the agreement between the parties. What was meant by this so called modification was that if there was room after loading all the barley she could safely carry over the bar, she might he filled up with such light goods as would not increase the draught. But it was not in the intention of parties that these light goods were to be shipped instead of barley, so as to enable her to start earlier than she otherwise would have done.

Holding the views that I do, I have some little difficulty in giving practical effect to them in these counter actions. On the one hand, we have a claim on the part of the owners for the balance of freight. On the other, a claim on the part of the charterers for damages. Of course, if damages are given, the freight must be paid. But as to this claim of damages, it is made up of two parts, one consisting of freight paid for bringing home the balance of the barley in another vessel, and the other of estimated loss consequent on a fall in the market. The former is put at £55, the latter at £84—making £139 in all. But then we must not forget that if the "Andalusia" had waited and brought home the whole barley, or as much as she could carry, she would not have arrived so early. On the whole, therefore, I am disposed to make a sort of slump allowance for his loss of market; and I think that about £30 would adequately represent that head of damage. £30, with the £55 paid for extra freight, make £85 in all, and the claim of the shipowners is for a balance of freight amounting to £82 odds, there results therefore a balance of two or three pounds only to be paid by them to the appellants.

LORDS DEAS and ARDMILLAN concurred.

LORD KINLOCH—By the charter-party between the pursuers and the defenders, the ship "Andalusia" was chartered to the defenders for a voyage to Caen, "and there to load a full and complete cargo of barley in bulk, not exceeding what she can reasonably stow and carry; and, being so loaded, shall therewith proceed to Leith." The freight was to be a lump sum of £160. The question is, whether the pursuers, the shipowners, took on board a sufficient cargo, or whether they improperly refused cargo, and are hence liable in damages.

I would decide this question exclusively by the terms of the charter-party, taken in connection with the admitted circumstances of the case. It is admitted that Caen is a bar-harbour, and that this was known to both parties when entering into the charter-party. What the vessel could "reasonably stow and carry" therefore necessarily implied what she could safely carry so as to get over the bar. This, I think, is unsusceptible of dispute. But I think it can as little be disputed that, in order to accomplish this object, the vessel was bound to take advantage of the best time and highest tide within her power; and to wait for such occurring—at all events, for a reasonable period. I consider it to be the unquestionable duty of the master of a ship to wait for the wind or tide necessary for accomplishing his voyage—at all events, if this does not imply a period of extraordinary endurance. It is the just application of this principle, that if the voyage implies the crossing of a bar, with or without a cargo, he shall wait for the tide which shall enable him successfully to do so. This principle has been frequently enforced. The owners of vessels have been found liable in damages where, in coming towards a bar harbour to load, they have abandoned the voyage without waiting for the time or tide necessary to enable them to cross the bar. They must be equally liable in damages if they leave the port of loading with a short shipment in consequence of their not waiting for the tide which would enable them to cross the bar with the stipulated cargo.

In the present case I think the "Andalusia" left the harbour of Caen with less than her proper cargo, in consequence of her not waiting for the tide which would assuredly have enabled her to cross the bar with a much larger quantity of barley. She arrived at Caen on 8th November 1869. She shipped less than 1200 quarters of barley, and left the port on the 12th, which was the time of neap or lowest tide, when there was not 9½ feet of water in the bar. In consequence, she could not cross the bar when she reached it, and had to remain off the bar till the 16th, when she crossed safely, there being then 12½ feet of water on the bar. But if she had remained in harbour till the 19th, she would have found upwards of 13½ feet of water on the bar, which, according to the evidence, would have enabled her to cross with 1800 quarters on board, the quantity which the charterers say she should at the least have brought away. The same, and still greater, sufficiency of water was to be found on the 20th, 21st, and 22d, although on the 20th the state of the weather might have prevented her crossing. I think the master acted improperly by leaving on the 12th, the day of the very lowest tide, with less than 1200 quarters on board. I think it fairly to be presumed that by waiting for the proper tide (of which there was no difficulty of his informing himself) he could have safely stowed and carried 1800 quarters of barley. I am of opinion that he should have so waited; and that the charterers are entitled to claim damages for his not having brought this quantity, which is proved to have been offered for his acceptance.

It has been pleaded that the master's proceedings were sanctioned by Mr Traill, one of the partners of the charterers' house then at Caen. I cannot hold this proved. Mr Traill distinctly objected to the vessel leaving without her full cargo. He did not indeed take a formal protest before a notary; and, after stating his objections, seems to have made the best he could of the situation. But I cannot hold that anything happened having the effect of cutting off the claim of damages for short-shipment.

The practical result is, that the pursuers, Messrs Gifford & Co., are only entitled to claim the lump freight, under deduction of the damages sustained

by the short shipment; comprised partly of the expense of sending the balance of the cargo by another vessel, and partly of loss of market through the delay in its arrival. I consider the amount of damages rightly estimated by your Lordship.

Agents for Appellants—Murdoch, Boyd & Co., S.S.C.

Agent for Respondents—D. M. & J. Latta, S.S.C.

Wednesday, July 19.

RANKINE *v.* DOUGLAS.

Process—Suspension—Bankruptcy Act, 1856, §§ 71, 72, 170. Where the meeting of creditors to elect a trustee had fixed the amount of caution to be found, but omitted to approve the sufficiency of that offered in terms of the 72d section of the Act, and the Sheriff in a competition for the office of trustee had found one of the candidates duly elected, but ordered him to call another meeting to have the caution offered opproved of. *Held* (1) that review of this judgment was not excluded by the finality clause of the 71st section of the Act; and (2) that appeal under the 170th section was the proper mode of review, and suspension incompetent.

Opinion, that suspension would be competent where the judgment was complained of as incompetent by reason of excess or defect of jurisdiction.

This was a note of suspension presented against George Douglas, trustee on the sequestrated estate of George Stiven, bleacher at Murton Mill, Forfar, by James Rankine, merchant in Dundee, an unsuccessful competitor for the trusteeship. The note set forth—"That the complainer is threatened to be charged, at the instance of the said George Douglas, to make payment of the sums decerned for in a judgment by the Sheriff-Substitute of Forfarshire at Forfar, dated 1st June 1871, by which 'the Sheriff-Substitute having heard parties' procurators on the notes of objections lodged to the appointment of George Douglas and James Rankine to the office of trustee on the sequestrated estate of George Stiven, and having made avizandum with the affidavits, minute of meeting of creditors, and whole process, sustains the objections to the appointment of the said James Rankine, repels the objections to the appointment of George Douglas, and declares him to have been duly elected trustee; but, before confirmation, appoints him, at his own expense, to call another meeting of the creditors for the purpose of deciding on the sufficiency of the caution to be offered by him, as required by the Act; finds the unsuccessful competitor, James Rankine, liable in expenses, of which allows an account to be lodged and taxed, and decerns:' most wrongously and unjustly, as will appear to your Lordships from the annexed statement of facts and note of pleas in law."

The minutes of the meeting called for the purpose of electing a trustee showed that four creditors, to the amount of £146, voted for Mr Douglas, and two creditors, to the amount of £432, for Mr Rankine; that objection was taken to the election of Mr Rankine by Mr Douglas and those who voted for him, on the ground that his debt consisted of a large illiquid claim of damages against the bankrupt. "The meeting fixed that the trustee to be confirmed should find caution for his intromissions and the performance of his duties to the extent of £100 sterling; and Henry Nicol, one of the creditors, being proposed as cautioner for the said James Rankine, the meeting declared themselves satisfied with the sufficiency of the cautioner. The meeting thereafter proceeded to the election of three commissioners, and nominated and appointed the said James Young, George Douglas, and James Scott, to be commissioners, with all the powers conferred by the statute." It will thus be seen that though the amount of caution to be found by the trustee was fixed at the meeting, no cautioner was proposed by Mr Douglas, or approved of by the meeting.

The proceedings at this meeting were brought before the Sheriff on a competition for the office of trustee, in which process he pronounced the interlocutor sought to be suspended. The following note was appended:—"Two creditors only vote for James Rankine. It is true their claims are so large that they constitute a majority in value. But the Sheriff-Substitute thinks there are circumstances connected with their votes and claims that make it desirable not to appoint their candidate to the office of trustee." (*The Sheriff-Substitute here detailed the circumstances which led him to reject Mr Rankine*). "He therefore selects Mr Douglas as trustee; the objections to him are more technical than essential, and can be got over by his resigning his commissionership and supplying an omission at the meeting of creditors, where he did not nominate a cautioner. This can be done to the satisfaction of the creditors before confirmation."

The complainer pleaded, *inter alia*:—"1. The judgment complained of ought to be suspended as incompetent and *ultra vires*, in respect—(1) It declares the respondent to have been duly elected trustee, who had not complied with the statutory requirement of offering caution, and having its sufficiency decided on at the meeting for the election of trustee. (2) It declares the respondent, who had been elected commissioner, and accepted and holds that office, to have been duly elected trustee. (3) It sustains the objection to the appointment of the complainer, who had in all respects complied with the statute, and had been duly elected trustee in terms thereof. (4) It appoints the respondent to call a meeting of creditors for the purpose of deciding on the sufficiency of the caution to be offered by him, a meeting not authorised by the Act."

The respondent pleaded, *inter alia*:—"1. The interlocutor of the Sheriff-Substitute is final."

The Lord Ordinary on the Bills (Mackenzie) refused the note of suspension, and added the following note to his interlocutor:—"The note of suspension is presented against the deliverance of the Sheriff-Substitute of Forfar, declaring the respondent to be duly elected as trustee in the sequestration of George Stiven. Besides various alleged irregularities in the proceedings, the complainer avers that the respondent did not offer caution at the meeting for the election of a trustee, so as to enable the creditors to decide at that meeting on the sufficiency of that caution, in terms of section 72 of the Bankruptcy (Scotland) Act, 1856; and he pleads that this was fatal to the election of the respondent as trustee.

"The Lord Ordinary is of opinion that he is not