About 26th January 1893 the defenders let one of the cottages to their foreman Henry Healy. On that day Healy removed his furniture into the cottage. To allow the lorry upon which the furniture was placed to approach the cottage, the gate, which had somehow had its fastenings removed, was pushed to one side by the pursuer's husband and Healy. After the furniture had been placed in the cottage and the lorry had come out again, the same persons tried to shut the gate, when it fell down and killed the pursuer's husband. The defenders were not aware that the gate had been unfastened.

The issue for the trial of the cause was whether the pursuer's husband was killed "through the fault of the defenders."

The jury returned this verdict—"The jury unanimously find for the defender."

The jury added this rider to their verdict as noted by the Judge presiding at the trial (LORD WELLWOOD)—"The foreman added that he had been asked to state by the jury that while accepting unanimously the law as laid down by your Lordship, we do not think that a due measure of supervision and care over the gate in question had been exercised by the Steel Company."

The verdict was entered for the defenders.

The pursuer applied for a rule to show cause why a new trial should not be granted, and argued—The verdict was contrary to the evidence, as shown by the rider the jury had appended to their verdict. It was admitted that the law laid down by the learned Judge presiding at the trial was right, but the jury had misunderstood it, and showed this by the rider. They thought that the law laid down meant that if the defenders had once fixed the gate no responsibility attached to them ever afterwards, and they indicated that the defenders had been guilty of negligence in not seeing the gate was kept fixed. The meaning of the verdict was that there was fault on the part of the defenders, or at least the verdict and the rider were so inconsistent that a new trial ought to be granted—*Florence* v. *Mann*, December 17, 1890, 18 R. 247.

At advising—

LORD WELLWOOD—In this case there was evidence adduced at the trial that this gate, the fall of which caused the death of the pursuer's husband, was in a defective condition if it was to be used as a gate, but there was also evidence that by the order of the defenders, the Steel Company, the large gate had been nailed up some time before, leaving a wicket gate for the use of the tenants of the cottages. There was evidence for the defenders also that it was the intention of the Steel Company that their tenants should use the wicket-gate only as the means of going to and from their houses, and that the large one should be kept shut and used as a fence, and that if it had been left in that condition it would have been quite safe.

I told the jury that even if they found that the gate when used as a gate on the occasion in question was unsafe, the defenders would not be liable for the accident caused by its unfitness if it was proved that they ordered it to be shut up, that it was as a matter of fact shut up, and that it had not thereafter been opened and used as a gate with their knowledge and consent.

I think the jury quite understood the directions I gave them, and I was not asked to give any other direction, either on matters of fact or on the law.

When the jury returned their verdict, and added the rider to it which has been read to your Lordships, I asked them again if they had understood the directions I gave them. They said they did, and I then entered the verdict as a verdict for the defenders.

My own impression is that what the jury meant to express by the rider to their verdict was this, that although according to the law laid down the defenders were not under any legal obligation to do so, they should, in the opinion of the jury, have kept a closer watch on their tenants, and prevented them from using the gate. Although I cannot say that I agree in this view, there is nothing in the rider inconsistent with the verdict of the jury, which proceeds on this, that no fault inferring legal liability had been proved against the defenders.

I am therefore of opinion that the motion for a rule should be refused.

LORD YOUNG—I see no cause for granting a rule.

LORD RUTHERFURD CLARK, LORD TRAYNER, and the LORD JUSTICE-CLERK concurred.

The Court refused to grant a rule.

Counsel for the Pursuer—Guy. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defenders — Fleming. Agents—Tods, Murray, & Jamieson, W.S.

Tuesday, November 7.

FIRST DIVISION.

[Lord Low, Ordinary.

BLACK *v.* CLAY.

Landlord and Tenant—Lease—Agricultural Holdings (Scotland) Act 1883 (46 *and* 47 *Vict. cap.* 62), *sec.* 7—*Compensation for Unexhausted Improvements — Notice — Determination of Tenancy.*

Section 7 of the Agricultural Holdings (Scotland) Act 1883 provides that a tenant shall not be entitled to compensation under the Act "unless four months at least before the determination of the tenancy" he gives notice in writing to the landlord of his intention to make a claim for compensation under the Act.

The lease of a farm bore to be for nineteen years from and after the

entry of the tenant, which was declared to be to the houses, grass, and fallow land at 26th May 1860, to the arable land in corn crop at the separation of the crop of the same year from the ground, and to the barns, barnyard, and two cot-houses at Whitsunday 1861. The lease was continued by tacit relocation until May 1891, when the landlord obtained decree against the tenant ordaining him to remove from the houses (with the exceptions after mentioned), grass, and fallow land at Whitsunday 1892, from the arable land at the separation of the crop of the same year from the ground, and from the barns, barnyard, and two cot-houses at Whitsunday 1893. On 4th June 1892 the tenant sent the landlord a notice of claim for compensation under the Agricultural Holdings Act.

In a question between the landlord and tenant as to whether the notice of claim had been timeously given, *held* that in regard to such a question an ish at the separation of the crop was equivalent to a Martinmas ish, and that the notice had been given timeously, in respect that it had been given more than four months before Martinmas 1892.

This was an action of suspension and interdict raised by James Richardson Black of Horndean, Berwick, against James Clay, lately his tenant in the farm of Winfield, to prohibit him from proceeding with a petition to the Sheriff for the appointment of a referee under the Agricultural Holdings (Scotland) Act 1883.

The respondent James Clay was tenant of the above farm under a lease which bore to be for nineteen years, "from and after the entry of the said John Clay, which . . . is declared to be to the houses (with the exceptions after mentioned), grass, and fallow land on the 26th day of May 1860, to the arable land in corn crop at the separation of the crop of the same year from the ground, and to the barns and barnyard and two cot-houses at Whitsunday 1861, from these periods respectively, to be possessed by the said John Clay and his foresaids during the space above written."

This lease was extended by tacit relocation until May 1891, when the complainer obtained decree in an action of removing against the respondent. By this decree the respondent was ordained to remove "from the houses (with the exceptions after mentioned), grass and fallow land at the term of Whitsunday 1892, from the arable land in corn crop at the separation of the crop of the same year from the ground, and from the barns and barnyard and two cot-houses at Whitsunday 1893." . . .

On 22nd January 1892 the respondent sent in a notice of claim under the Agricultural Holdings Act, which was declared by the complainer not to be sufficiently specific to comply with the requirements of the Act, and accordingly on 4th June 1892 the respondent posted to his landlord, the complainer, another notice of claim dated 2nd June, in which he referred to the three terms mentioned in the decree quoted above as those of the determination of his tenancy.

On 28th June 1893 the respondent served the complainer with a petition in the Sheriff Court of Berwickshire, craving the appointment of a referee under section 2 of the Agricultural Holdings Act, in respect of his notice of claim against the complainer dated 2nd June 1892.

The complainer raised a note of suspension and interdict against the respondent proceeding with the petition, and pleaded that the pretended notice of claim referred to in the petition were inept and invalid.

The respondent pleaded, *inter alia*—"(2) The respondent having given proper notice of his claim in terms of the statute four months before the determination of his tenancy, the note should be refused with expenses."

Section 7 of the Agricultural Holdings Act provides—"Notwithstanding anything in this Act, a tenant shall not be entitled to compensation under this Act unless four months at least before the determination of the tenancy he gives notice in writing to the landlord of his intention to make a claim for compensation under this Act. . . . Every such notice . . . shall state, so far as reasonably may be, the particulars and the amount of the intended claim."

On 20th July 1893 the Lord Ordinary (Low) pronounced the following interlocutor—"The Lord Ordinary having heard parties' procurators, and considered the note of suspension and interdict and answers thereto, Refuses the note and recals the interdict: Finds the complainer liable in expenses, &c.

"*Opinion.*—The question in this case is, whether the notice of claim for compensation under the Agricultural Holdings Act, which was given by the respondent on the 4th June 1892, was given timeously—that is to say, four months before the determination of the tenancy.

"The complainer does not now maintain that the notice required to be given four months before the term of Whitsunday 1892, but he argued that it required to be given four months before the actual separation of the crop of that year.

"It was held in the case of *Strang* v. *Stuart*, 14 R. 637, that for the purposes of the Agricultural Holdings Act the determination of the tenancy is when a total determination of the tenancy takes place, and no further possession can be had by the tenant in terms of the lease.

"In the present case the respondent was, in terms of the lease, entitled to retain possession of the barn and cot-houses until Whitsunday 1893, and the respondent argued that the determination of the tenancy did not take place until that term. There is force in the argument, but I am not prepared to express an opinion on the point, as I think the notice was timeously given in view of the termination of the respondent's possession under the lease of the arable land.

"I have already said that it was conceded by the complainer that the termination of the possession of the arable land was the point of time to be regarded, but he argued that as the respondent was only entitled to hold the land until the separation of the crop, the actual date when the crop was separated must be ascertained.

"The tenant's claim for compensation under the Act is absolutely lost if he does not give notice four months before the termination of the tenancy, and it must be an anomalous result if the four months fell to be calculated from a date which cannot be ascertained beforehand, but which depended upon the character of the particular season. Thus a tenant might give notice four months before the ordinary time when the crop was secured, and an unusually early harvest might cut him out of his claim. Again, a claim which would be lost if the tenant gathered his harvest expeditiously might be saved if he was dilatory in the work.

"I think that an ish at the separation of the crop is practically a Martinmas ish. The rent of a farm is due for the crop and possession of each year separately, and the term of Martinmas is regarded as the end of one crop year and the beginning of another. It is assumed on the one hand that the crop will be secured by Martinmas, and on the other hand the tenant has up till Martinmas to secure the crop. No doubt if the crop is secured before Martinmas the incoming tenant could not be refused access to the land for the purpose of ploughing, but the outgoing tenant is entitled to exercise his discretion as to the most suitable time for gathering the harvest. And accordingly it is not uncommon that the ish and entry of the arable land is made at 'the separation of the crop, *or* Martinmas, the two terms being used as synonymous.'

"The question therefore is, whether, it being admitted that the tenancy did not determine until the separation of the crop, notice was timeously given upon the 4th of June? I think that the question must be answered in the affirmative—(1) because if there was no specific point of time from which the four months fell to be calculated, but if in every case of this sort the actual date of the separation of the crop had to be ascertained, the statute would be practically inextricable; and (2) because under the lease the respondent had, in my opinion, a title to possess the lands until Martinmas, if he found it necessary or expedient to do so, for the purpose of gathering the crop.

"I am therefore of opinion that the note falls to be refused, with expenses to the respondent."

The complainer reclaimed, and argued—The tenant practically removed at Whitsunday, before which (18th May) he had his displenishing sale. After that date all he had was a limited common law right of possessing and using the farm buildings for the purpose of winning the crop on the ground. If he had sold the crop to the incoming tenant this right would have ceased. The purpose of the four months notice prescribed by the Act was to enable the landlord to verify the statement as to what had been put in the ground by the tenant, but after Whitsunday nothing was put in by him. The value of the barns and cot-houses was an infinitesimal part of the rent of the farm, and it could not be argued that "tenancy" as spoken of in the Act terminated only with the removal from them. This case fell directly under the rules laid down in the case of *The Earl of Hopetoun* v. *Wight, &c.* (*Hunter's Trustees*) where the second of two terms of removal was held to be the one to be considered in the question of timeous notice of removal by the tenant to the landlord—*Wight* v. *The Earl of Hopetoun*, July 10, 1863, 1 Macph. 1074, 2 Macph. (H. of L.) 35. The cases of *Strang* and *in re Paul* quoted for the respondent were easily distinguishable from the present, for in each of them the tenant had possession of a substantial part of the farm till the later term of removal, and so could not make out his claim before the earlier one as he could easily have done here.

Argued for the respondent—The case turned upon the meaning of the words "determination of tenancy" in the Act. The purposes of the Act could only be served by notice being given at a time when the nature of the claim could be approximately fixed, so by "determination of the tenancy" was meant the time when the tenant could be asked by the landlord to remove from the whole of his holding. The decree in the landlord's action of removing showed that part of the holding remained in the tenant's hand till Whitsunday 1893. That was the date before which the statutory notice must be given. If the landlord had to give in his counter claim before the tenant actually left, he could not anticipate the damage which the tenant might subsequently do to the buildings, &c. [LORD PRESIDENT—The same objection might apply to the tenant having to give the notice four months before leaving, for he might have further claims arising during that period.] The respondent's interpretation would at anyrate reduce this inconvenience to a minimum. The case of *Wight* v. *Earl of Hopetoun* did not contradict this view, for it did not interpret the statute, but a special clause in a special lease—*Strang* v. *Stuart*, March 10, 1887, 14 R. 637; *in re Paul*, November 19, 1889, L.R., 24 Q.B.D. 247.

At advising—

LORD M'LAREN—This is a reclaiming-note against the judgment of the Lord Ordinary in a process of suspension and interdict instituted in this Court for the purpose of restraining the respondent John Clay, lately tenant on the suspender's farm of Winfield, Berwickshire, from proceeding with a petition to the Sheriff for the appointment of a referee under the Agricultural Holdings (Scotland) Act 1883. The suspender maintains that the respondent is not in a position to enforce his claims for the value of unexhausted improvements, in respect that the notice of claim given to the suspender was not given

four months before the "determination of the tenancy," and the validity of the objection depends on the ascertainment of the point of time at which the lease is, within the meaning of the Act of Parliament, determined.

In the argument addressed to us the complainer relied mainly on the authority of the decision in *Wight* v. *Earl of Hopetoun*, a decision depending on the construction of a written contract, and which was said to be capable of application to the cognate question which arises on the construction of this statute. It may be convenient to consider, first, what would be the true principle of construction to be applied to the statute, supposing there were no decisions to guide us in this matter.

The respondent's holding is, or was, a lease for nineteen years of a farm which is partly arable and partly pastoral, and which is therefore as regards tenure and entry to be classed as an arable farm. According to universal custom there is for such farms a duplicate entry, which results from this, that entry to arable land can only be given at or after the separation of the crop from the ground, while considerations of convenience have led to the term of Whitsunday being generally chosen for the entry to houses and pasture. We know that there are differences of local custom as to which of these entries shall precede the other. We are familiar with leases which fix the entries to the houses and the arable land respectively as at Whitsunday and separation of the crop of the same year; and we know that it is usual in certain localities to give entry first to the arable land, the occupation of the house being deferred to the Whitsunday following. The lease in question is peculiar in this respect, that it contains three distinct entries—that is, an entry to the houses (with the exceptions after mentioned), grass, and fallow lands on the 26th of May 1860, to the arable land in corn crop at the separation of the crop of the same year from the ground, and to the barns and barnyard and two cot-houses at Whitsunday 1861. It is declared that the location for nineteen years is to be "from these periods respectively," and again in a later clause, under the head of accommodation for the outgoing tenant, it is provided that Mr Clay and his foresaids "shall, in addition to the barns, barnyard, and two cot-houses before referred to, have stable-room allowed them for two pairs of horses, with the straw required for fodder and litter, without any charge, and that until the term of Whitsunday after their removal from the arable land as aforesaid."

The question then is, which of these three terms is to be taken as the "determination of tenancy" from which the time of giving notice is to be reckoned? The statute says (sec. 42) that "determination of tenancy" means the termination of the lease "by reason of effluxion of time or from any other cause," but, as has been before observed, this definition does not make the matter any clearer, because the possession under the lease terminates at different times. But in construing the statute it is important to observe (1) that there is no limit fixed as to the time within which improvements may be made for which the tenant shall have a claim; and (2) if we assume that the last term of removal is the one most probably intended we must follow this construction consistently in all cases, and irrespective of whether the latter term be Whitsunday or Martinmas or any other date. The statute contemplates that the notice to be given by the tenant to the landlord should embrace (if the tenant desired it) all improvements which had been made by the tenant within the currency of the lease; but this object could not very well be attained under a lease in which the successive terms of removal extend over a whole year if the tenant were put under the obligation to give notice four months prior to the first of these terms, or sixteen months before the actual termination of the lease according to the ordinary use of language.

It was objected that where the last of the prescribed terms of removal is the separation of the crop from the ground, this could not be the term from which notice is to be reckoned, because it is an indefinite time, and represents the end of a series of agricultural operations rather than a term certain. But it seems to me that this objection is directed not so much against one particular construction of the statute as against the statute itself, because if the alternative view were taken that notice must be given four months before the earliest period of removal, then the objection would apply to the ascertainment of the period in leases like that in *Strang* v. *Stuart*, where the entry is to the arable land at Martinmas and to the houses and grass at the Whitsunday following. The answer is—and there is authority for the proposition—that the tenant is understood to have until Martinmas to reap and ingather the crop of the arable land, and that the second legal term for payment of rent is Martinmas, because according to all the authorities that is the term at which the crop is supposed to be fully reaped. The reason why the expression "separation of the crop" is used in the clauses relating to entry and removal is that the incoming tenant may have access to each field as soon as its crop has been ingathered, and shall not be liable to be kept out of possession by a troublesome outgoing tenant in the assertion of a theoretical right to retain possession until Martinmas. But this construction is quite consistent with Martinmas being the autumnal term wherever it is necessary that something to be done in fulfilment of the lease should be referred to a definite day, payment of rent being a clear case in point. I have therefore no difficulty in holding that where notice has to be given four months before the autumnal term the term of Martinmas is the time from which the period of four months is to be reckoned.

It has already been found by a decision

of the Second Division of the Court that where a lease prescribes two terms of removal the later term is the one from which the period of notice is to be reckoned. I refer to the case of *Strang* v. *Stuart*, where the principle is distinctly announced in the opening sentences of the Lord Justice-Clerk's opinion. His Lordship there observes—"The statute says that the notice must be given four months at least before the determination of the tenancy, and it seems to me that the statute would be entirely inextricable unless there were a specific point. It can only mean one point, and I think that the just and reasonable interpretation to put upon the words 'determination of the tenancy' is the period after which no possession can be had by the tenant in terms of the lease." The same construction has been put upon the corresponding provision of the English statute, passed for the same purpose, in the English case *in re Paul*, 24 Q.B. Div. Now, in the case of *Strang* v. *Stuart* the tenant's possession of the houses and grass terminated as usual at Whitsunday, and his possession of the arable land terminated at the separation of the crop preceding that term, and I think that in the present case, where the possession of the arable land ceases at a period subsequent to the term of removal from the houses and grass, the Lord Ordinary has rightly applied the decision by holding that the notice which was given four months before Martinmas is a sufficient notice under the statute.

There remains for consideration the argument that was maintained to us, founded on the concurring decisions of the Court of Session and the House of Lords in *Wight* v. *Earl of Hopetoun*. That was a decision on the construction of a lease for nineteen years, renewable in perpetuity on notice of renewal being given by the tenant to the landlord. The notice was to be given "at least twelve months before the expiry of the above term of nineteen years," and by the terms of the lease the entry to the arable lands was at the separation of the crop subsequent to the Whitsunday entry for houses and pasture. The notice given was held to be insufficient because it was not given twelve months before the Whitsunday term, when the tenant's possession of the houses and pasture came to an end. The construction there put upon the obligation to give notice was therefore different from the construction which I suggest as the true construction of the statutory obligation in the Agricultural Holdings Act, and it is proper to notice that amongst the reasons given by the Lord Chancellor for the judgment, his Lordship refers to the difficulty of determining what precise time is meant by the separation of the crop from the ground in the alternative view of the case of notice being reckoned from the term of entry to the arable lands. But Lord Wensleydale, as I read his Lordship's opinion, construed the obligation as meaning that notice must be given at the earlier term, because the intention was that the landlord should have a year to look out for another tenant in the event of the lease not being renewed, and in this view the other judges of the Appellate Court concurred. Now, if this be the true ground of judgment, the case of *Wight* v. *Hopetoun* is an authority entirely consistent with the judgment which I propose, because the principle suggested by Lord Wensleydale is this, that when there are two terms of entry or removal, and the words of the obligation are indifferently applicable to either of these, we are to look to the purpose and motive of the obligation to ascertain which view is the more consistent with the intention of the parties. This is also the principle announced in the passage which I have quoted from the Lord Justice-Clerk's judgment in *Strang* v. *Stuart*, but as the motive of the statutory requirement of notice was altogether dissimilar to that of the contract in *Wight* v. *Hopetoun*, it follows quite legitimately that the last term or last "determination of the tenancy" is to be taken as the term to which notice is referred in accordance with the policy and intention of the statute.

I have only to add that in my apprehension this is a very unfavourable case for maintaining the argument that the notice ought to have relation to the Whitsunday entry, because not only is the tenant to remain six months longer in possession of the arable lands, but, as I have shown, he is to have possession of a substantial part of the subject for a whole year subsequent to his surrender of the house and pasture, which accordingly cannot in any real sense be regarded as the termination or determination of his right under the contract of location.

LORD KINNEAR—The ground on which this reclaiming-note was supported was not maintained before the Lord Ordinary in the Outer House, because his Lordship says that "the complainer does not now maintain that the notice required to be given four months before the term of Whitsunday 1892." But the point which was not maintained in the Outer House was the only point which was seriously argued here. On that point I agree with Lord M'Laren that the case is ruled by the case of *Strang* v. *Stuart* in the other Division, 14 R. 637, and I think also that the decision of the Queen's Bench Division in the case of *in re Paul*, 24 Q.B.D. 247, is very much in point. The observations of Mr Justice Matthew in that case appear to me to have a very direct application to the circumstances of the present case, because if the construction which the respondent proposes were to be adopted, a tenant would be in a position to deteriorate the lands for a period of twelve months, and the landlord would be altogether precluded from claiming compensation.

The LORD PRESIDENT concurred.

LORD ADAM was absent.

The Court adhered.

Counsel for the Complainer — Comrie Thomson — Salvesen. Agents—H. & H. Tod, W.S.

Counsel for the Respondent—Sol.-Gen. Asher, Q.C. — Dickson — Cook. Agents—Pringle, Dallas, & Co., W.S.

Tuesday, November 7.

FIRST DIVISION.

[Sheriff of Lanarkshire.

HOPE *v.* MACDOUGALL.

Bankruptcy—Bankruptcy Act 1856 (19 *and* 20 *Vict. cap.* 79), *secs.* 26 *and* 30—*Procedure in Sheriff Court Prior to Sequestration—Review.*

In a petition for sequestration presented by a creditor, the Sheriff by his first interlocutor appointed a diet for disposing of a caveat lodged by the debtor. The debtor thereafter lodged a note objecting to the jurisdiction of the Sheriff, and by his second interlocutor the Sheriff allowed a proof on the question of jurisdiction. After hearing the evidence the Sheriff pronounced a third interlocutor repelling the plea to jurisdiction, and *quoad ultra* granting warrant to cite the debtor, and granting diligence against witnesses and havers in the usual form.

Held that the first and second interlocutors of the Sheriff, and that part of his third interlocutor which dealt with the question of jurisdiction, fell to be *recalled* as *incompetent*, in respect that under section 26 of the Bankruptcy Act the Sheriff was bound, on a petition for sequestration being presented, forthwith to pronounce an interlocutor granting warrant to cite the debtor, and that objections to the Sheriff's jurisdiction fell to be dealt with after citation of the debtor.

John Alfred Hope presented a petition in the Sheriff Court of Lanarkshire for sequestration of the estates of Robert Macdougall. The petition prayed the Court in the usual form "To grant warrant, in terms of the Bankruptcy (Scotland) Act 1856, and Acts explaining and amending the same, to cite the defender to appear before the Court to show cause why sequestration of his estates should not be awarded; to grant diligence against witnesses and havers, to recover evidence of the defender's notour bankruptcy and other facts necessary to be established, and thereafter to award sequestration of the estates."

The defender having lodged a caveat, the Sheriff-Substitute (ERSKINE MURRAY) on 5th September 1893 pronounced this interlocutor:—"Appoints the 7th day of September current, at ten o'clock forenoon, within the chambers of the Sheriff-Substitute, Mr Murray, County Buildings, 50 Wilson Street, Glasgow, as a diet for disposing of the caveat lodged by the defenders to-day, with certification."

The defender thereafter lodged the following note of objections—"The said Robert Macdougall objects to the jurisdiction of the Sheriff of Lanarkshire on the ground that he is not subject thereto in terms of the Bankruptcy Statute."

On 7th September the Sheriff-Substitute pronounced this interlocutor:—"Allows the note of objections to be received, and having heard parties' prors., before answer and *primo loco* allows a proof on the question of jurisdiction, and assigns Monday first, at 10·15 a.m., before Sheriff Spens, as a diet."

Proof was accordingly taken, and thereafter the Sheriff-Substitute (SPENS) pronounced this interlocutor:—"Having heard evidence, finds respondent has been carrying on business in Glasgow within the twelve months preceding the date of presentation of this petition, therefore repels the plea of no jurisdiction: *Quoad ultra*, having considered the foregoing petition with the writs produced, grants warrant to cite, in terms of the statutes, the therein designed Robert Macdougall to appear in Court on an *inducice* of seven days from the date of such citation, to show cause why sequestration of his estates should not be awarded; directs intimation of this warrant, and of the diet of appearance on the said *inducice*, to be forthwith made in the *Edinburgh Gazette* in terms of the statute; and grants diligence against witnesses and havers to recover evidence of the notour bankruptcy of the said Robert Macdougall, and of the other facts necessary to be established for obtaining the sequestration, and commission to the Clerk of Court or any of his deputes to take the examinations of witnessess and havers, and to report."

Section 26 of the Bankruptcy Act provides—"When a petition for sequestration is presented without the consent of the debtor, or for the sequestration of a debtor who is dead, without the consent of the successor, the Lord Ordinary or Sheriff to whom it is presented shall grant warrant to cite the debtor, or if dead his successor, to appear within a specified period . . . to show cause why sequestration should not be awarded, and the Lord Ordinary or the Sheriff shall, if desired, grant diligence to recover evidence of the notour bankruptcy or other facts necessary to be established."

Section 30 provides as follows—"When the petition is not by or with the concurrence of the debtor, or if dead of his successor, and if the debtor, or if dead his successor, do not appear at the diet of appearance, either in person or by his counsel or agent, and show cause why the sequestration cannot be competently awarded, or if the debtor so appearing do not instantly pay the debt or debts in respect of which he was made bankrupt, or produce written evidence of the same being paid or satisfied, and also pay or satisfy, or produce written evidence of the payment or satisfaction of the debt or debts due to the petitioner or to any other creditor appearing and concurring in the petition, the Lord Ordinary