[14*th June* 1834.]

No. 24. WILLIAM PAUL, Accountant in Edinburgh, Appellant.

ARCHIBALD GIBSON, Accountant in Edinburgh, Respondent.

Bankruptcy — Sequestration. — 1. Held (affirming the judgment of the Court of Session) that in a competition for the office of trustee on a sequestrated estate, it is not a relevant objection to allege that a claim is suspicious, and that the claimant has an interest adverse to the other creditors, and may have the sole command of the estate and control of the trustee.

2. A claimant, who was so situated as to be unable to make any other oath than that a sum was due to him, according to the best of his knowledge and belief, but without prejudice to augment or restrict the sum afterwards,— Held (affirming the judgment of the Court of Session) entitled to vote for a trustee.

3. Where a party made affidavit to a precise sum as being due, and was so situated as not to require, hoc statu, to produce a voucher,—Held (affirming the judgment of the Court of Session) that his founding on a deed, in support of his claim, did not vitiate his vote, although the deed did not support the claim made, but was at variance with it.

4. A party, in emitting an affidavit, having deponed that he could not write, and the oath being signed by the magistrate,—Held (affirming the judgment of the Court of Session) that there was no need of a signature by notaries for the party.

5. *Husband and Wife.*—A married woman, whose husband was abroad under sentence of transportation, having been found entitled to pursue an action of count and reckoning, with concurrence of a curator ad litem, and the defender's estates being sequestrated,—Held (affirming the judgment of the Court of Session) that she was entitled to vote in the election of a trustee, without her husband's concurrence.

1st Division.
Lord Moncreiff.

THOMAS ANDERSON died in Jamaica on the 2d January 1810, unmarried, leaving two brothers, John and Alexander, and a sister Margaret, who was married to Alexander Bain. He had made a will, by which he nominated his brother John, who resided in Jamaica, and Alexander, who resided in Scotland, with another person, to be his executors. After certain provisions, the will concluded thus: "The remainder I give "and bequeath unto my dear and affectionate sister "Margaret Bain, or brother Alexander Bain if he sur-"vives her, my dear and affectionate brother Mr. Alex-"ander Anderson, or his present lawful wife if she "survives him, each to draw a moiety of the yearly "interest during their natural lives, for their accom-"modation and family; and after their deceases or "decease, that brother Alexander and sister Margaret's "children, with brother John Anderson's daughter "Eliza Anderson, a free Mustee girl, have each a divi-"dend of the interest, and may draw equal shares of "the capital, as they become of age."

John qualified as executor, and it was alleged that he intromitted with the property of Thomas to a large amount. John died on 28th December 1818, leaving a will, by which he appointed William Shand, and another person, his executors; but it was alleged that

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Shand alone qualified and acted. By this will, after directing payment of his debts, he made, inter alia, the following bequests: "I give and bequeath unto my dear "sister Margaret, the wife of Alexander Bain of the "county of Moray, in that part of the United Kingdom "of Great Britain and Ireland called Scotland the sum "of 1,000*l.* sterling money of Great Britain, the same "to be equally divided between herself and such of her "children as may be living and residing in Scotland "aforesaid at the time of my decease. Item, I give and "bequeath unto my nephew William Bain, of the "parish of Clarendon aforesaid, planter, son of the "aforesaid Margaret and Alexander Bain, the sum of "500*l.* current money of Jamaica. Item, I give and "bequeath unto my reputed daughter Eliza Anderson, "now residing in the city of Bristol, the sum of 1,000*l.* "sterling money aforesaid; but in case of her death and "leaving lawful issue, then and in such case I direct "the same shall be divided between them, if more than "one, share and share alike; but if only one child, then "to such only child. Item, I give and bequeath unto "my other reputed daughter Ann Anderson, now "residing with me, the sum of 1,000*l.* sterling money "aforesaid; but in case of her death, and leaving lawful "issue, then and in such case I direct that the same "shall be divided between them, if more than one, "share and share alike; but if only one child, then to "such only child; which said two last-mentioned lega- "cies I do hereby direct shall be paid as soon after my "decease as may be convenient to my executors." He then left some additional legacies, and concluded thus: "And as to all the rest, residue, and remainder of my 'estate, real and personal, I give, devise, and bequeath

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" the same and every part thereof unto my said brother
" Alexander Anderson senior, for and during the term
" of his natural life; but subject nevertheless, and my
" will and mind is, that my said brother Alexander
" Anderson do and shall, after payment and satisfaction
" of the debts and legacies here before mentioned, pay
" unto each of his children that may be then living, the
" sum of 200*l.* sterling money of Great Britain; but in
" case of his death without payment of the said last-
" mentioned legacies, then and in such case I do hereby
" direct that the same shall be paid by such other person
" as shall become entitled to and be in possession of the
" residue of my estate; and from and immediately after
" the decease of my said brother Alexander Anderson,
" I give, devise, and bequeath the same and every part
" thereof unto Alexander Anderson junior, son of the
" said Alexander Anderson senior, for and during the
" term of his natural life; and from and immediately
" after the determination of that estate, I give, devise,
" and bequeath the same unto the eldest son of the said
" Alexander Anderson junior, lawfully to be begotten;
" but in default of such issue then living, then and in
" such case I give and bequeath the same unto the next
" eldest son that may be living of the said Alexander
" Anderson senior, to him and his heirs for ever law-
" fully begotten; but in case no such son shall then be
" alive, then I give and bequeath the same unto my
" said two reputed daughters named Eliza Anderson
" and Ann Anderson, to them and the survivor of
" them, and to the heirs and assigns of such survivor
" for ever; but in default of such heirs, then to the
" heirs of my said sister Margaret, their heirs and
" assigns for ever."

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It was alleged that Shand, as executor of John, intromitted to a large amount not only with John's proper estate, but also with that of Thomas, without rendering any account. Shand afterwards came to Scotland, and in 1829 Margaret Anderson or Bain (the sister), who had survived her husband, her daughter Elspet, wife of one Garrow, a convict under sentence of transportation, the widow of Alexander (the brother), and three of his children, as legatees and next of kin of Thomas and John, raised an action of count and reckoning before the Court of Session against Shand, as intromitter with the two estates. A curator ad litem was appointed by Elspet, and, on the dependence, inhibition and arrestment were executed. The estates of Shand were sequestrated in September 1833, whereupon Margaret and her daughter Elspet, and the widow of Alexander, and her three children, made affidavits, and lodged claims as creditors. The affidavit of Margaret was in these (and the others were, mutatis mutandis, in similar) terms:

"At Forres, the 18th day of September 1833.—In "presence of Alexander Urquhart esq., one of "the bailies of the royal burgh of Forres,—

"Compeared Margaret Anderson, relict of the deceased Alexander Bain, day-labourer at Altyre in the "county of Moray, and who was one of the representa- "tives, legatees, devisees, or residuary legatees, and "nearest of kin to the deceased Thomas Anderson, "late of the parish of St. John's, county of Middlesex, "and island of Jamaica, her brother-german, and who "was also one of the representatives, legatees, and devi- "sees, or residuary legatees, and nearest of kin to the "also deceased John Anderson, late of Clifford in the "parish of Clarendon in the county and island afore-

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" said, also her brother-german; who being solemnly
" sworn, examined, and interrogated, depones, that
" William Shand esq., of Arnhall in the county of Kin-
" cardine, merchant and trader, was, at the time and date
" of the sequestration awarded against him, and is still,
" justly indebted, resting, and owing to the deponent, as
" legatee and devisee, or residuary legatee, under the last
" will and testament of the said deceased Thos. Anderson,
" and as one of his representatives and nearest of kin as
" aforesaid, and as relict of the said deceased Alexander
" Bain, the sum of 14,498*l.* 14*s.* 2*d.* sterling, being her
" share of the aggregate sum of 43,496*l.* 14*s.* 2*d.* ster-
" ling, arising from the intromissions of the said William
" Shand with the estates and effects of the said Thomas
" Anderson, lying in the island of Jamaica, conform to
" state subscribed by the deponent as relative hereto:
" As also depones, that the said William Shand is also
" justly indebted, resting, and owing to the deponent,
" as a legatee and devisee, or residuary legatee, under
" the last will and testament of the said deceased John
" Anderson, and as one of his representatives and
" nearest of kin, in manner foresaid, and as relict of the
" said deceased Alexander Bain, her husband, the sum
" of 2,848*l.* 10*s.* 10*d.* sterling, being her share of the
" aggregate sum of 8,545*l.* 2*s.* 6*d.* sterling, arising from
" the intromissions of the said William Shand with the
" estates and effects of the said deceased John Ander-
" son lying in the said island of Jamaica, conform to
" state subscribed by the deponent as relative hereto,
" making together the sums claimed by the deponent
" in her own right, the sum of 17,347*l.* 5*s.* sterling,
" upon the premises assumed and founded on in the

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" process of count and reckoning depending before the " Court of Session, at the instance of the deponent and " Elspet Bain, her daughter, against the said William " Shand; nevertheless, without prejudice to the depo- " nent to augment or restrict her claim hereafter as she " may see proper for any cause: Farther depones, that " neither the deponent nor any other person on her " account and behoof, hold any other security for the " foresaid sums than an action and process of count " and reckoning, presently depending before the Court " of Session, at the instance of the deponent and Elspet " Bain, her daughter, against the said William Shand, " and letters of inhibition and arrestment raised at their " instance on the dependence of the said action, with " the executions, inhibition, and arrestment following " thereon; and that no part of the said sums has been " paid or compensated in any manner of way. All " which is truth, as the deponent shall answer to God: " Farther depones, that she cannot write.

" *Alex. Urquhart*, B."

The state referred to was entitled "State of the " claims and interest, at the instance of the represen- " tatives, legatees, and nearest of kin of the deceased " Thomas Anderson, late of the parish of St. John, " county of Middlesex and island of Jamaica, and of " the also deceased John Anderson, late of Clifford in " the parish of Clarendon, and county and island afore- " said, against William Shand esq., of Arnhall in the " county of Kincardine in Scotland, for the said William " Shand's intromissions with the estates of the said " Thomas and John Anderson."

A specification in detail of the claim in respect of

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each of these estates was then given, and the state concluded thus:—

APPORTIONMENT.

	The estates of Thomas Anderson.			The estates of John Anderson.		
	£	s.	d.	£	s.	d.
" 1st. Alexander Anderson's family	43,496	2	6	8,548	11	5½
Whereof one third to the relict	14,498	12	2	2,848	2	10
For the children two thirds	28,997	8	4	5,700	8	7½
" 2d. Alexander Bain's family	43,496	2	6	8,548	11	5½
Whereof one third to the relict	14,498	14	2	2,848	2	10
For the children two thirds	28,997	8	4	5,700	8	7½

Forres, 18th September 1833. This is the state referred to in our respective affidavits against the sequestrated estate of William Shand esq., of Arnhall, emitted this day.

It was signed by notaries for Margaret, and by the other parties themselves. The total claims by them amounted to above 104,000*l.*

A competition having taken place for the office of trustee between the appellant Paul and the respondent Gibson, Margaret Anderson and others voted for the respondent, while creditors, to the amount of about 2,900*l.*, voted for the appellant. Both presented petitions for confirmation, and mutual objections were ordered to be stated. The respondent made no objections to the votes for the appellant, but the latter objected to all the votes for the respondent.

These objections rested partly on general grounds, and partly on particulars. The general objections were, —1, that the claims were fictitious, were contradicted by the wills and evidence produced, and were of a random and extravagant character; 2, that they had been got up by near relatives having a hostile interest to the other onerous creditors, and in order to enable them to have an entire control over and guidance of the trustee.

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The respondent answered by denying the truth of the allegations on which these objections were founded, but that at all events they were, in the question of voting for a trustee, premature and irrelevant.

The particular objections were,—1st, that the affidavits were merely of credulity, and not of verity, as required by the statute, seeing that they did not bear that any debt was truly due, but only "upon the premises assumed and founded on in the count and reckoning," and they were not definite, because the affidavits were made "without prejudice to augment or restrict the claim hereafter;" 2d, that the claims were not consistent with the wills, and were made up on principles at variance with the provisions; 3d, that Margaret's affidavit was not subscribed by herself or by notaries; and, 4th, that although Elspet's husband was a convict, yet his goods had not been escheat, and the claim made by her belonged to him; that she had therefore no title to claim, and the concurrence of the curator was of no avail in the sequestration.

The respondent answered,—1st, that the oath expressly showed that a debt was due, and reference was merely made to the action of count and reckoning, to point out the grounds on which the claimants held the debt to be due; that in hoc statu they must be assumed to be true, and it was quite competent, in the peculiar circumstances of the case, to reserve a power to augment or restrict the claims; 2d, that even if there was any inconsistency between the claims and the documents referred to this was at present of no relevancy; but there was no inconsistency, as the claimants claimed both as legatees and next of kin of Thomas and John; 3d, that the signature of the magistrate to the affidavit was

sufficient, seeing Margaret deponed that she could not write; and, 4th, that as Elspet's title had been sustained in the action of count and reckoning she was entitled to make the affidavit and claim in concurrence with her curator.

Lord Moncreiff reported the case to the Court, with this note: "There is an evident necessity for reporting "this competition. It would require a very minute and "extended statement to exhaust all and each of the "objections, and the points of fact and law involved "in them. The Lord Ordinary will only, therefore, "observe in general, that it appears to him that the "objections are insuperable; and, in particular, that "no good answer has been made to the three first ob- "jections. There is no doubt that the same accuracy "and completeness in the evidence of the debt is not "required in a question as to the right of voting, as in "the ultimate question of ranking, and that objections "which might be good in the latter case will not be "good or relevant in the other. That distinction re- "quires no enforcement; but it does not appear to "the Lord Ordinary to settle the present case. The "first question is, whether the affidavit is sufficient as a "positive oath to a debt of defined amount, witnout "condition or qualification; and the second is, whether, "on the face of the affidavit, and the account or voucher "necessarily produced in support of it, the one agrees "with the other, so as to show the same specific debt "as due to the individual claimant. It is entirely a "different and separate question, by what evidence, "apart from the affidavit and voucher produced, the "claim may competently be shown to be unfounded or "incorrect. In the present case the Lord Ordinary "thinks that the claims fail in the two first points;

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" and he will only farther observe, that however just " and expedient it may be that the Court should not in " general be required to go into the question as to the " actual verity of the debts, where the affidavits and " vouchers are clear, positive, and consistent, yet, " where on the face of those documents the claims are " so manifestly uncertain, and made of any given " amount at mere random conjecture, as he thinks they " are in the present case, it is a question of very se- " rious importance whether the whole command of the " business of such a sequestration may be assumed by " parties resting upon such hypothetical, uncertain, and " conditional claims. It may be of little consequence " here which of the two competitors for the office of " trustee shall be preferred, both being known to the " Court to be equally respectable; but there are cases " in which the principle might lead to serious evils, " even in that point.

" The Lord Ordinary does not enter into the more " particular objections; but many of them seem to " require careful attention, if the general objections " should not be thought to be made out."

The Court, on the 14th January 1834, repelled the objections stated to the election of the petitioner, Archibald Gibson, and confirmed his nomination as trustee.*

Paul thereupon appealed, on the same grounds which he had maintained in the Court below.

LORD CHANCELLOR.—My Lords, in some respects I consider this question to be of no ordinary importance.

* 12 S. & D. 431.

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I cannot help thinking that if appeals are to be allowed in a case like this, there will hardly be any litigation not encouraged; if we are not only to encourage proceedings in the Court of Session upon a question of the choice of a trustee, but, after it shall have run the gauntlet of litigation in that Court, if we encourage appeals to this Court, of the last resort, from the decision of the Court below, a more fruitless, a more useless, on the one hand, and on the other a more dilatory, and therefore oppressive, course of administration of the bankrupt laws can hardly be imagined. Of two persons, both undeniably men of respectable character and station,—both admitted to be, without dispute, persons of competent skill to manage the affairs of the estate, which of such two persons shall ultimately manage those affairs to the exclusion of the other is one of the least important matters that can possibly be suggested to the great object in view,—namely, the careful, skilful, reasonably skilful, and perfectly honest and impartial distribution of the bankrupt's estate. The law of Scotland, differing from the law of England in this respect, has applied various regulations to the administration of such estates. In the first place, the leading and cardinal difference between our bankrupt law system and theirs, and which pursues the whole arrangement of those concerns, is, that instead of making a man, as we do, a bankrupt behind his back, and by the merely ministerial act of the great seal and of certain commissioners by the great seal appointed, now by the Crown rather, since the new law,—he is in Scotland appointed by a sentence in a case in which he is a party, and which sentence he has a right to resist; the judges in that case, who give forth that sentence, being the Su-

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preme Court of Judicature of the country. That court is therefore the commissioners of bankrupts, besides having that leading and characteristic distinction in the mode of exercising the bankrupt jurisdiction, that it does not act ex parte, but in foro contentioso, on hearing the parties and on cause shown. That court is the commissioners of bankrupts also from the beginning to the end; but they are not in our sense of the word, though, at first sight, the use of the word may import into the question some little obscurity and confusion; but the Court of Session are the commissioners and the great seal at once. From them proceeds the adjudication; to them all applications are made in the course of the sequestration, as with us formerly to the great seal, now to the court of review in the first instance, and only by appeal on matter of law afterwards to the great seal. That is the great cardinal distinction between the two systems, and it gives rise to various important observations, some of which are not inapplicable to the structure of the law as regards the present question, and by which the present question is to be decided.

Another and a very great distinction between the two systems has been adverted to from the bar; and I have thrown out an opinion, not a casual one, but a deliberate one, which I have long entertained, upon the structure of that branch of the Scotch bankrupt law. With us the creditors choose the assignee, who is to become, as the trustee is in Scotland, the administrator of the estate for the benefit of the whole. In Scotland the creditors also choose the assignee; but whereas with us the assignee once chosen can only be removed by application to the court, and upon cause

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shown, and for something which entitles the court to remove him, in Scotland, the creditors who choose have a right to displace him without applying to the court; although it is true there may be an application to the court, on a certain proportion of the creditors joining to make it,—I think it is one fourth by the 71st section,—to have him removed on cause shown. He is thus an instrument in their hands to all intents and purposes; from them proceeded his existence; they were his creators; from them may also at any moment,—without ground, without cause shown, without the necessity of alleging any one single word of a reason,—proceed that fiat which is to take the breath out of his nostrils, and to destroy his existence as a trustee.

My Lords, I will venture to say, without the least fear of contradiction, that speaking with all possible, with all due deference of an act of the legislature which stands unrepealed on the statute book; that is to say, speaking with all the respect of it which it is possible for a rational person to feel for such an act of the legislature, and with all the respect which is due to an act of that kind, meaning by that all due and all possible respect,—I will venture to say, within the limits of that respect, that there never was a provision of law less calculated to do justice amongst the parties, or to accomplish the object of the bankrupt laws,—the equitable and just and honest administration of the bankrupt's estate and effects,—than this to which I have now adverted. For, see the consequence: I am a creditor to the amount of a bare majority in value; for it does not require four fifths to choose; a bare majority creates a trustee, and a bare majority destroys him. There is an estate to the amount of 100,000*l.* of debt. I have a claim of 51,000*l.* as a

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creditor in my own person, which is a very possible case, and may happen any day. I choose my trustee, who is then accountable, not to the Court or to God and his own conscience, but who is accountable to me, the interested party; and if he does not give me every possible facility in proving my debt against the estate, I have only to give fourteen days notice in the Edinburgh Gazette. I hold a meeting, and if nobody attends that meeting but myself,—and I may hold it on a day that is convenient to me, and inconvenient to every other creditor,—I hold that meeting on that notice, and I remove my creature, my instrument, my tool whom I have created for the purpose of working my iniquitous work. I am assuming that that is my intention, and I am showing that if I have that intention I may execute it also. How are the other creditors likely to be off? If he has an interest in aiding me who am his maker, and may be his destroyer at any moment,—if he has an interest in giving me ample facilities to prove my debt,—he has just the same interest, and there is just the same likelihood that he should operate in the opposite direction towards all the other creditors; and in order to give me a larger dividend, namely, 20*s.* in the pound, that he may not give one farthing in the pound to any of the other creditors representing 49,000*l.* Now that may or may not be the operation of the law, or may or not be the law in Scotland; but reading the 71st section with all possible attention, I have not been able to discover any possibility of answering that argument which arises on that section. If any thing could be more remarkable than the structure of this legislative provision itself, it would be the very extremely inartificial and untechnical frame in which this strange

enactment is conveyed to the subjects who are to obey it, and who are to be cheated and oppressed under the colour of it. It proceeds in the beginning artificially enough, and it sounds like an act of parliament; it is of a statutory aspect; but see how soon it gets over that, and becomes to be rather more like a memorandum in a pocket-book, or a paragraph in a newspaper. I will read it for that purpose; it shows that it does not appear to have been thoroughly weighed, digested, and considered:—"And be it enacted, that the interim "factor, sheriff clerk, and the trustee and commis-"sioners, or any of them, shall at all times be amenable "to the Court of Session, by summary application to "that Court, to account for their intromissions and "management, and to answer for their conduct, at the "instance of any party interested; and in case it "shall appear to the Court that such application ought "not to have been made, the party complained of shall "be entitled to his costs, to be either retained out of the "funds or recovered from the party complaining, as the "Court shall direct, but otherwise the Court shall give "such directions in regard to costs as they shall think "fit." Now it is all proper until you come down to here; "and it shall be competent," (this is technical enough still) "at any time for one fourth of the cre-"ditors in value to apply summarily to the Court "of Session for having the said interim factor or "trustee removed, upon cause shown; a majority of "creditors in value, at any meeting to be advertised for "the purpose, shall likewise be entitled to remove or "to accept of the resignation of any trustee; and in "either of these cases, or in the event of the acting "trustee's death, the next trustee in succession shall be

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" entitled to act." Why it has not even the common decorous covering of even the ordinary technical phraseology of an act of parliament; and yet in such vague and loose language is introduced one of the most important defects, I will venture to say, in the whole constitution of bankruptcy in Scotland.

My Lords, it is not immaterial that I should call your Lordships attention, and that of the learned counsel the Lord Advocate, who is now at the bar, and does me the honour of attending to what I am stating on this subject, because I do hope that as the frame of the Scotch bankrupt law is now undergoing revision, with the intention of passing a new bankrupt act, in the hands of Professor Bell and others in Scotland,—I do hope that the Lord Advocate will do me the favour not to allow this new bankrupt act to pass through without very carefully attending to the structure of this branch of the 71st section, for the purpose of seeing whether there be any necessity in Scotland,—whether the nature of traders, creditors and debtors, and trustees in Scotland be so different from what it is every where else, as to make it reasonable, or even tolerable, that this provision should continue on the face of this statute.

Well, my Lords, such being the provision of the bankrupt law, I must observe that a great portion of the argument, in the reply, seemed to me rather to be directed legislatively against the expediency and consistency of this provision of the statute, than judicially against the ground of the decision which was to be come to; because, although it is very true that the case of a single creditor, or one of two creditors, affords the strongest illustration of the absurdity of this provision of the Scotch bankrupt law, yet it must be

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admitted that even under any assumption, even if you take the other trustee chosen by the other creditors, upon any principle you can take it, there is the same objection, and it is applicable to the same argument, and the same iniquity may be perpetrated under it, and the same absurdity may be justly attributed to it. It it worse, perhaps, in this case than it would be in the other case; but no view of the case, no way in which the trustees can be chosen, and no trustee who is elected, can be said to leave the case free from this grave and radical objection. If a great number of creditors have all combined, no doubt every one of those has a power pro tanto of making the majority to amove the creature of his choice; consequently, for all those who have chosen, he has the benefit, be they one or fifty; he has the interest, I mean, in keeping himself from being amoved, by allowing them to prove their debts; and, be it one or fifty, he has the same interest in preventing them proving their debts, because his business must be if he has a profitable office, and it is always profitable, because the commissioners are appointed by the same creditors, who are to award him a compensation for his trouble. He, therefore, has an interest in keeping down the claims of those who opposed him, the opposite party; of letting in claims, and substantiating and allowing them to substantiate the claims of those who are his supporters, and who will cease to support him if he ceased to oppose them, because, if their debts are destroyed by their claims being rejected, the party comes in, removes him, and sets up another in his place; away goes he, and in comes the other. Therefore, my Lords, I am not greatly moved, though greatly in a legislative point of view,—yet in a judicial sense I am not greatly moved by this argu-

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ment, either as to the power of removing a commissioner or as to the power of approval of a trustee. Now, it is very true that all these considerations may tend to make us sift more accurately what the grounds of the title to choose, being also the ground of the title to amove, have been, and in that sense I do not deny they are entitled, on the part of the appellant, to the benefit of it. Now comes the question which we are to consider, whether the oaths of those persons contain that which is a compliance in substance and effect, if not absolute literal or verbal compliance, with the requisites of the statute in the 23d and 24th section, somewhat modified by the 64th section.

My Lords, upon the best attention I can give to those affidavits, I am of opinion that as on the one hand it is perfectly clear, that if three or four words had been left out you would not have objected to them at all, so I conceive on the others all you have to attend to is, what the Court below had mainly to attend to, namely, to see whether the introduction of those words vitiates the whole so as to make these no longer affidavits within the twenty-third section. They are clear affidavits of debt, which the parties have taken on themselves to make, but they do refer to the ground on which they have sworn, whether it be of virtue or credulity. Can I be said the less to swear to a fact, if I refer to the reason I have for swearing it either in the one case or the other?

My Lords, I have paid great attention to the arguments, and taken a full note. I have examined the opinions of the Learned Judges; I do not quite agree with the notion that Lord Balgray is the only judge who has gone into the case, for I think that the Lord President has gone rather fully into the case, though he

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states shortly and decidedly his opinion on the subject. I see nothing to stop me moving at present, that this judgment should be affirmed, except the very great and very important and highly to be respected authority of Lord Moncreiff, who is undoubtedly of a different opinion; but except for that, and for the respect which I do unfeignedly feel for the opinion which proceeded from that most able and enlightened lawyer, and most active, intelligent, and dignified judge, who never omits any consideration, though he never overloads his opinions with any thing superfluous, and upon whose judgments it is your Lordships practice, generally speaking, to place a more than ordinary degree of reliance whensoever they appear before you; except for that, and for the respect I am bound to pay to such an authority, I myself should have no hesitation in saying, I differ with his Lordship and agree with the whole of the Court, who reversed his decision. Impressed with these sentiments, and following the practice which I am generally wont to adopt on these occasions when a discrepancy of so important a nature is to be found in the opinions of the Court below, I shall not move at present to affirm this judgment. I shall examine the matter more fully, with the assistance of the notes I have taken of the Learned Counsels argument. If I shall continue to be of the opinion I am at present, that the Court below is right, and that Lord Moncreiff's opinion is not sufficiently well founded, I shall move your Lordships, without more, to affirm the judgment. If I should ultimately agree with Lord Moncreiff, and change the opinion which I do at present entertain, I shall then have occasion to trouble your Lordships, in which case I shall enter more at large into the grounds of that difference

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with the Court below. For the present I shall move that the further consideration of this judgment be postponed.

LORD CHANCELLOR.—My Lords, I stated when this case was last before the House, that I wished to have an opportunity to look further into it; that in all probability, for the reasons I then explained to your Lordships, I should feel it my duty, in the result, to move an affirmance of the judgment pronounced in the Court below. That if I should on further consideration come to a different conclusion, and should move your Lordships to reverse the judgment, I should at the same time that I did so state the reasons on which I proceeded; but that if my opinion remained unaltered after the statement I then made, a further detail of reasons would be unnecessary. It is necessary only, my Lords, that I should now state, that further reflection and consideration have confirmed me in the view I then took of the case, and that I feel no hesitation in moving your Lordships, that the judgment of the Court below be affirmed. Under the circumstances of the case, I say nothing about costs.

The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this House, and that the interlocutors therein complained of be and the same are hereby affirmed.

MONCRIEFF and WEBSTER—ALEXANDER DUFF, Solicitors.