not content with having the names of all the worthies already referred to on his petition, and from whom he receives his religious certificate, in which he so greatly rejoices. In the next sentence he rises to the climax of his argument in its favour, and at the same time to the climax of his insolence and untruth, when he says—'I maintain that the petition was signed by all the religious, church-going people in the villages and district who had children under my tuition.' The shortest and most decisive answer that I can give to so bold and unblushing an assertion is, that it is a wilful and deliberate falsehood, and he knows it."

The defender averred that the opinions and statements contained in the letter were "well-founded," and he proposed to take a counter-issue in regard to the pursuer's statement about the petition in his favour referred to in the above extract from the letter. The following was the counter-issue which he proposed :—"Whether, in a letter written by the pursuer to the editor of the *Perthshire Courier* newspaper, and published in that newspaper on or about 8th September 1863, the pursuer falsely stated that the petition in his favour, therein-mentioned, was signed by all the religious church-going people in the villages and districts who had children under the pursuer's tuition ?"

The Court to-day, on the report of Lord Jerviswoode, approved of an issue proposed by the pursuer, but disallowed the counter-issue proposed for the defender. It was observed on the bench that no issue of justification had ever been granted founded on such a statement as that made on this record, and it was thought that the statement was not intended to found such an issue.

Expenses were found due to the pursuer since the date of the Lord Ordinary's interlocutor.

Counsel for Pursuer — Mr David Marshall. Agents—Lindsay & Paterson, W.S.

Counsel for Defender—Mr Young and Mr Gifford. Agents—Dalmahoy & Cowan, W.S.

Wednesday, Nov. 28.

DAVIS *v.* HEPBURN.

Bankruptcy — Sequestration — Objection — Proof—Onus— Process — Reclaiming Note — Competency. A creditor having applied for sequestration of his debtor's estates, the debtor appeared to object. The Lord Ordinary on the Bills allowed him a proof and to the creditor a conjunct probation. The debtor having reclaimed, objections to competency of reclaiming note repelled, and both parties allowed a proof and to each a conjunct probation.

This was a petition by Davis for sequestration of the estates of Hepburn, who was designed in it "Younger of Smeaton-Hepburn, Haddingtonshire, and now or lately residing there." The petition bore that Davis was a creditor of Hepburn to the extent required by law conform to oaths and bills produced ; that Hepburn was subject to the jurisdiction of the Supreme Courts of Scotland ; that he was notour bankrupt, and that he had resided in Scotland within a year of the date of the petition.

Upon this petition warrant was granted as craved (in the usual form) to cite Hepburn to appear to show cause why sequestration should not be awarded. The petition was executed edictally and at his alleged residence.

Hepburn appeared and gave in a minute of objections to the petition, in which he stated that while he did not admit the bills founded on to be due, he objected to the sequestration on the grounds—(1) that he was not subject to the jurisdiction of the Scotch Courts, and that he had been for some years resident in England and on the Continent ; (2) that he was not notour bankrupt ; and (3) that he had not within a year resided or had a dwelling-place or place of business in Scotland.

The Lord Ordinary officiating on the Bills (Benholme) allowed Hepburn a proof of his averments and to Davis a conjunct probation.

Hepburn reclaimed against this judgment, whereupon

WATSON, for Davis, objected to the competency of the reclaiming note, citing the Bankruptcy Act, 19 and 20 Vict., cap. 79, sec. 31, which made the deliverance awarding sequestration final, and which, he contended, must be held to apply to interlocutors regulating preliminary procedure such as the one under review. *On the merits* he cited the 30th section of the Act which imposed upon the person objecting to sequestration of his estates the duty of showing cause why it should not be awarded. The only matter that had been decided was who was to take the lead in the proof.

MONRO and GIFFORD, for Hepburn, in reply *as to the competency*, referred to the 169th section of the Bankrupt Act, and contended that review of the interlocutor in question had not been anywhere excluded. The point had been substantially decided in Gordon *v.* Paul, 30th May 1855, 17 D. 779. *On the merits*, a petitioner for sequestration was in no better case than the pursuer of an ordinary action who must prove his case. The obligation imposed by the Act of "showing cause" was not intended to invert ordinary process. The Court (abstaining expressly from determining any question of *onus*) remitted to the Lord Ordinary on the Bills to vary the interlocutor reclaimed against so as to allow Hepburn a proof of his objections and Davis a proof of the statements in his petition, and to each of them conjunct probation, with power to dispose of all questions of expenses.

Agents for Davis—Murdoch, Boyd, & Co., W.S.
Agents for Hepburn—Duncan & Dewar, W.S.

SECOND DIVISION.

DUKE OF BUCCLEUCH *v.* COWAN & OTHERS (*ante*, vol. ii. p. 253).

Jury Trial—Special Jury—New Trial—Bill of Exceptions—55 Geo. III., c. 42, *secs.* 6 and 7. Held that the verdict of a jury could only be set aside in the manner provided by secs. 6 and 7 of the Act 55 Geo. III., c. 42, and that any other mode of doing so was incompetent. A motion that the proceedings at the trial should be set aside, in respect the jury had not been properly struck, and the presiding judge had declined to separate the trials of the defenders' cases, held on that ground irregular and not entertained.

In this case, which was tried at the last jury sittings and resulted in a verdict for the pursuers, the defenders to-day moved the Court to quash the whole proceedings at the trial, resting the motion on the ground of legal right, and not as an appeal to the discretion of the Court. At the trial the defenders objected that the special jury had been struck on the principle of allowing them collectively to strike off one juryman for every jury-

man struck off by the pursuers, whereas each defender was entitled individually to that right. The Judge presiding at the trial overruled the objection, and further held that it could not be made the subject of a bill of exceptions, which was a statutory remedy not extending to such a case. It was also moved at the trial on behalf of the defenders, that each case should be tried separately, each being a distinct case, but this motion was also overruled by the Judge. The defenders now contended that the proceedings should be set aside on this double ground.

SOLICITOR-GENERAL and SHAND (with them LORD ADVOCATE), for the pursuers, objected to the competency of the motion, and contended that any questions as to the constitution of the jury ought to be brought under the notice of the Court by the defenders in their motion for a new trial; that, and a bill of exceptions, being the only competent methods of impugning a verdict. On the merits, they contended, on the authority of Wallace, 14 S. 720, and Dobie, 23 D. 1139, that the jury had been properly struck.

D. F. MONCREIFF and YOUNG (with them CLARK, GIFFORD, A. MONCRIEFF, and ASHER) replied for the defenders.

At advising,

LORD JUSTICE-CLERK—The Court are of opinion that this motion is incompetent and cannot be entertained. The whole procedure in any cause appropriated to jury trial, and in every cause in which issues are sent to be tried by a jury, from the time when the issues are adjusted till the verdict is applied, is previously regulated by statute and Act of Sederunt. After a verdict is returned by the jury, there is no form or mode in which the Court of Session, in either division thereof, can set aside a verdict or order a new trial, except such as are prescribed by statute and regulated by Act of Sederunt. The Act 55 Geo. III., cap. 42, sec. 6 and 7, regulates this matter, and there is no other way in which a party can interpose between the returning of a verdict by the jury and its being entered up and applied by the Court. Wherever the complaint of a party against the verdict is directed against the opinion or direction of the presiding Judge, as to competency of evidence or other matter of law arising at the trial, it may be brought, under the authority of the 7th section, in the form of a bill of exceptions, and the judgment of the Court on the exceptions is subject to appeal to the House of Lords. Every other complaint, as well as objections to the directions of the Judge, having for its object the setting aside of the verdict and ordering a new trial, must be in the form of a motion for a new trial, in the manner and subject to the conditions prescribed by the 6th section; and the judgment of the Court on this application is not subject to review by appeal to the House of Lords. The defenders who make this motion have already availed themselves of the remedies prescribed by both sections of the statute by procuring the signature of the Judge to a bill of exceptions, and by giving notice in due time of a motion for a new trial; and on the bill of exceptions, and also on the motion for a new trial, the Court are ready to hear the parties. But the present motion is an attempt to supersede altogether the statutory remedies to which the parties have already resorted, and substitute therefor, or superadd thereto, another remedy unauthorised by statute, and altogether unknown in practice from the introduction of jury trial in civil causes in the year 1815 to the present day. It is said that this is the same remedy which is known in England as a *venire de novo*. If it be so, a *venire de novo* is not one of the remedies given by the statutes introducing and regulating jury trial in civil causes in Scotland. It is further said that if this motion is not entertained there will be a serious legal wrong without a remedy. We are clear that this is not so; for, as already said, every competent objection that can be stated against a verdict may be brought before the Court under one or other of the 6th and 7th sections of the 55th Geo. III., cap. 42. For these reasons we consider this motion to be altogether unauthorised, and that it would be irregular to pronounce any deliverance upon it.

This was the opinion of the Court.

Agents for Pursuers—J. & H. G. Gibson, W.S.

Agents for Defenders—White-Millar & Robson, S.S.C.

Nov. 21—29.

REGISTRATION APPEAL COURT.

(Before Lords Kinloch and Ormidale.)

RENFREWSHIRE.

GUY *v.* PATERSON.

Voter—Qualification. A proprietor of a piece of ground having no value except as a building stance, but not built upon or yielding any return, held (rev. Sheriff of Renfrewshire) not entitled to be placed on the roll.

At a Registration Court held at Pollokshaws on the 26th September 1866, Hugh Paterson claimed to be enrolled as "owner or proprietor of land occupied by the claimant," which claim was objected to by John Guy, a registered voter. The Sheriff of Renfrewshire having admitted the claim, Guy appealed.

The Sheriff stated the following special case:—

"The land was situated in the parish of Cathcart, and consisted of a plot or area of ground laid off for building, but upon which no houses have yet been built. The extent of the ground was one acre and one-third of an acre.

"It was proved to my satisfaction that the ground was of no agricultural value, and would yield no return if dealt with as an agricultural subject, nor was it fitted for a market garden. It had value only as a building stance, and if it were sold as such it would realise only £290.

"It was objected by John Guy, writer in Glasgow, a voter on the roll, that this property did not yield the yearly value of £10, and was not capable of yielding that value to the claimant.

"I was of opinion that it was capable of yielding that value to the claimant, in respect that it was of the value of £290. I accordingly admitted the claim."

MILLAR, for the appellant, argued—The subject upon which a voter's qualification is founded must be one actually yielding issues or profits. It must be of a present value to the claimant; 2 and 3 Wm. IV., c. 65, s. 7. By the Reform Act there are provided only two tests of the sufficiency of the qualification—either (1) actual issues or profits; or (2) the issues or profits which one year with another the subject produces. Neither of these tests can be applied to the present claim.

LANCASTER, for the respondent, replied—This was a mere question of fact, and not of law, and therefore the Sheriff's judgment could not be altered. The land would at the present moment command a ready sale, and the Sheriff was a competent judge of the price which it would bring.