stinately refuse to give obedience to it, notwithstanding a charge given him upon letters of horning, the obtainer of the decree may procure letters of ejection, issuing from the Signet, and directed to the Sheriff, who is required to dispossess him, and to put the pursuer in the possession; or, if the decree be pronounced by a Sheriff, he himself may grant a precept of ejection, directed to his own officer, for the same purpose" (iv, iii, § 17). Here we have an application at once for the diligence of law, without any removing applied for. On that ground, I think this petition is altogether incompetent. Whether even an action of summary removing would have been competent, it is not necessary to inquire. I think it would not have been competent; because the party had been seven years in possession without challenge. In an action of removing, that might have been a good defence. But I find it sufficient here to rest my judgment on the ground that the remedy here sought was incompetent.

Lord Deas—I arrive at the same result. I think there are grounds on which we must dismiss this petition apart altogether from the merits of the question. I am disposed to think there are three grounds, any one of which would be sufficient. The first is that on which your Lordship in the chair mainly went—that there is not set forth here any such ground of action as, according to the forms of process in the Sheriff-court, will warrant an ejection. An ejection is only competent when a party is either a vicious possessor or a precarious possessor, in the sense of having no title at all. These are the cases in which a summary ejection is competent, and a party asking it must set forth something *ex facie* to support his allegation. There is nothing here setting forth that the case comes under either category. The facts set forth in the petition may be all true, and yet be no warrant for summary ejection. It is not said that the respondents are either vicious or precarious possessors. It is quite consistent with all in the petition that the party was in possession on a good right of liferent. There might be a well constituted burden of liferent under which the widow might possess all her life. I doubt if a defect of that kind in the petition could be remedied by a condescendence. A condescendence is an exceptional proceeding. The parties were heard before the condescendence was ordered, and the petition might have been disposed of at once. But the condescendence, after it was put in, does not, any more than the petition, set forth a good ground for summary ejection. Secondly, the case, if you go beyond the petition and look at the condescendence, does not fall under the provisions of the Act of Sederunt—whereby you can only have such a summary petition in a case requiring extraordinary dispatch. The title of the trustee has been the same as it is now during the whole period of possession. When a party allows peaceable possession for years, the law refuses to consider that as a case requiring extraordinary dispatch. That is different from the preliminary objection arising on the petition itself. But when the nature of the action was seen by the Sheriff, it was quite competent for him to send it out of court as not requiring such dispatch. Thirdly, even if this were an action of removing, it is a question if this is not a case where the possession would entitle the party to a possessory judgment on an *ex facie* valid title. Possession has been had for more than seven years in the time of the trustee on a deed of conveyance *ex facie* good. Moreover, the heir who granted it had been infeft on a *clare constat* long unchallenged, and it was only in 1865 that that was reduced, on the ground, then discovered, that the granter had died before infeftment. If that had not been done, the title would have been good. Apart from that, to show that the disposition was not a good conveyance to the liferentrix would require the whole of the elaborate argument we have had from the advocator. The benefit of a possessory title is, that it requires discussion to make out the title to be bad. On all three grounds, either of which is sufficient, the petition is incompetent.

Lord Ardmillan concurred.

Agents for Advocator—Lindsay & Paterson, W.S.

Agents for Respondent—M'Ewan, & Carment, W.S.

Friday, June 28.

DICKSON *v.* MATTHEW.

Bankruptcy — Claim — Loan — Bond — Acknowledgment of Debt — Preference — 1696, *c.* 5 — 1621, *c.* 25 — *Husband and Wife.* A husband, within sixty days of bankruptcy, granted a bond in favour of his wife, acknowledging receipt in loan of various sums of money at different times from his wife, from her own funds, binding himself to repay the accumulated sum of principal, amounting to £531, and interest, amounting to £120, under a penalty of one-fifth more of the foresaid principal sum of £652; and to pay interest on the said principal sum, from the date of the bond. Held (Lord Deas dissenting) that this was a mere acknowledgment of debt, not struck at by the Act 1696, c. 5, and that the wife was entitled to rank for the accumulated sum in the bond, with interest upon the principal sum therein from the date of accumulation; but not for interest upon the interest accumulated in the bond. Held that in a reduction of a deed under 1621, c. 25, or as fraudulent at common law, proof *prout de jure* is competent in support of the deed.

In the sequestration of William Matthew, formerly grocer in Broughty Ferry, afterwards manufacturer in Arbroath, his wife, Mrs Agnes Harris or Matthew, on 2d July 1861, lodged an affidavit and claim, in which she deponed, "that the said William Matthew, above designed, is at this date justly indebted and resting-owing to the deponent, exclusive of his *jus mariti* and right of administration, the sum of £652, 11s. 1d. sterling of principal, contained in a bond granted by the said William Matthew to the deponent, dated the 20th day of June 1866; together with the sum of £1, 1s. 5d., being the interest thereof at the rate of 5 per cent. from said 20th June 1866 to this date, amounting together to the sum of £653, 12s. 6d." The bond narrated that Mrs Matthew had received various sums of money from the trustees of her deceased sister, Elizabeth Harris, in implement of a direction to them by the testator to convey the whole fee residue of her trust-estate to her sister, the claimant, exclusive of her husband's *jus mariti* and power of administration; that Mrs Matthew had at different dates advanced "to me, on loan, the several sums above mentioned, as received by her as aforesaid, amounting in all to the sum of £531, 18s. 2d. sterling, of which I hereby acknowledge the

receipt: And whereas no interest has ever been paid or accounted for by me to the said Agnes Harris or Matthew on the said several sums, and that the same amounts, up to this date, to £120, 12s. 11d, conform to state hereto annexed, the said sums of £531, 18s. 2d. of principal, and £120, 12s. 11d. of interest, amounting together to £652, 11s. 1d.: And now, seeing that the said Mrs Harris or Matthew has required me to grant these presents in manner underwritten, and that it is right and proper I should do so; therefore I bind and oblige myself, my heirs, executors, and successors, jointly and severally, without the necessity of discussing them in their order, to repay to the said Mrs Agnes Harris or Matthew, whom failing, to her issue, equally among them, but exclusive always of the *jus mariti* and power of administration, and debts and deeds, and diligence of the creditors of myself, and of any future husband of the said Mrs Agnes Harris or Matthew, the said sum of £652, 11s. 1d. sterling, being the foresaid several sums and interest remaining due thereon, accumulated as at this date, and that on demand, with a fifth part more of the foresaid principal sum of £652. 11s. 1d. sterling of liquidate penalty in case of failure; and the interest of the said principal sum, at the rate of 5 per centum per annum, from the date hereof till payment."

The trustee after taking evidence rejected the claim. The Sheriff-substitute (J. G. Smith) recalled the deliverance of the trustee, and remitted to him to admit the claim. The trustee presented a note of appeal to the court. The Lord Ordinary on the Bills (Curriehill) dismissed the appeal and adhered to the interlocutor of the Sheriff-substitute, adding this note:—"What is claimed by the respondent Mrs Matthew is to be ranked as a *common creditor* upon the sequestrated estate of the bankrupt, who is her husband. She is not claiming a *preference*, directly or indirectly, over all or any of the other creditors. Hence, the only question is, whether or not the *evidence* upon which her claim is founded is sufficient. That evidence consists of a bond granted by the claimant, dated 20th June 1866, with various documents and parole testimony produced in support of the narrative of that bond. As that bond was granted to the claimant by her own husband, and within a fortnight of the date of his sequestration. that evidence requires to be very carefully sifted. But on examining the evidence by which the claimant supports the bond, the Lord Ordinary sees no cause to doubt the truth of the narrative of the bond. He has no doubt that, at common law, that evidence, in the absence of all counter-evidence, is sufficient to establish that the claimant is a personal creditor of the bankrupt. The bond explicitly states that that is the case, and sets forth the manner in which the debt was incurred; and the other evidence, written and parole, which has been adduced, not only throws no doubt of suspicion upon the statement in the bond itself, but so entirely accords with it as to leave no reasonable doubt that the debt was incurred by the bankrupt to the claimant. And accordingly, at the debate before the Lord Ordinary, the appellant's counsel stated that his challenge of the claim was founded, not upon the common law nor upon the Bankrupt Statute 1621, but upon the later Bankrupt Statute 1696, c. 5.

"The Lord Ordinary thinks that the present question is not within the category of cases which fall under the operation of the Statute 1696. The enactments in that Statute are applicable only to deeds the grantees of which are *creditors* of the bankrupt, and by which an undue preference is given directly or indirectly over the bankrupt estate to such creditors, 'either for their satisfaction or further security, in preference to other creditors.' Unless, therefore, the claimant in the present case was a creditor of the bankrupt, she could not be in the predicament of a creditor who had obtained satisfaction or security out of the bankrupt's estate in preference to other creditors. If her claim be not challengeable on other grounds, it could not be so in virtue of the Statute 1696, for, as already mentioned, she is not claiming any preference, directly or indirectly, over the bankrupt's estate, or anything more than to be ranked as a common creditor.

"The Lord Ordinary does not think that that Statute has the effect of rendering null and void all mere *acknowledgments of debt* granted by debtors within sixty days of their bankruptcy, unless such acknowledgments either appear to be untrue or are founded upon or made use of as a means of obtaining for the grantees indirectly a preference over all the other creditors, or over some one or more of them. In the cases founded upon by the appellant, the documents under challenge appear to have been granted, or at all events to have been attempted to be used, for such purposes. And although the *dicta* of some eminent Judges may seem to indicate that the Statute 1696 might have a wider application, the Lord Ordinary does not think that these expressions were intended to support the doctrine contended for by the appellant, or that that doctrine is admissible.

"On reading the bond the Lord Ordinary observes that it is granted, not only for the principal sums which belonged to the claimant, but also for the *interest* which became due thereon after the money was received by her husband. If she was alimented by her husband during that period a question might perhaps have been raised whether he was not entitled to credit for such interest. The appellant has not raised any such question, and the Lord Ordinary of course gives no opinion upon it."

The trustee reclaimed.

A. R. Clark and Watson for him.

Monro and Mackintosh for respondent.

Lord President—The question raised by this appeal in the sequestration of William Matthew is one of very great importance, and of extensive application. It is a question which has come under the notice and consideration both of judges and lawyers over and over again for many years, but has never been decided; and one cannot approach the decision of such a question without a good deal of hesitation and diffidence, especially as it is contended by one of the parties that there are cases that have decided it in one way, by implication at least, if not by express decision. The facts are simple. The bankrupt's wife lodged a claim and affidavit in his sequestration, in which she said that her husband was indebted to her in a sum of £652, and that, she says, is contained in a bond by him dated 20th June 1866—the sequestration, as I understand, having been awarded on 2d July thereafter. The bond, therefore, is granted within thirteen days of the sequestration of the bankrupt's estate. It bears in its narrative that the wife claimed to have advanced various sums of money at different times to her husband in loan, which formed part of her own separate estate, exclusive of her husband's *jus mariti* and right of administration; but at that time no receipt was granted, and no interest had been paid since the date of the ad-

vances. The total amount of these being £531, it is concluded that the interest which has accrued, amounting to £120, shall be added; and the bankrupt acknowledges that these sums are due by him, and, in addition to that, he grants a personal bond for payment of the sums. That is the deed produced in support of the claim and affidavit. The trustee rejected the claim, and the Sheriff-substitute, on the deliverance being brought under his cognisance, recalled, and remitted to him to admit the claim. Against that this present appeal has been brought. It is not, and never has been, contended that there was any fraud in these proceedings at common law, or that the bond could have been reduced at common law, but it was contended that it was reducible under the first branch of the Act 1621; and I may accordingly notice that in passing. In consequence of the claim being opposed, a proof was allowed that there was a true, just, and necessary cause of granting the deed. I am bound to say that the proof of the claim has been successful, and the proof, though parole, is quite competent to obviate the objection under the statute. That statute declares null and void all deeds granted to conjunct and confident persons after insolvency, without just and necessary cause. But not deeds granted for a true cause. And there are many examples in which the cause of granting the deed has been proved by parole evidence, although the debt itself could not, under other circumstances, have been so proved; because the parole proof was intended as in answer to the charge of statutory fraud, or what, before the statute and irrespective of it, would have been a good charge of fraud at common law. But we approach the other objection, that this bond is cut down by the Act 1696, because granted within the period of constructive bankruptcy, or as falling otherwise under the description of those deeds which a bankrupt is prohibited from granting within sixty days of bankruptcy. Now, in considering the question as to the application of the Act 1690, I think it necessary, in the first place, to say that there are some elements in the case very important in considering it under the Act 1621, and at common law, that are of no relevancy under the Act 1696. It is quite true that the granter and grantee are in the relation of conjunct and confident persons, but that is of no consequence under the Act 1696. If they were not in that relation, the Act would still apply; and if they were in that relation, the Act would not apply any more on that account. The honesty of the debt does not matter under the Act 1696. Whether the debt is honest or not, the trustee may challenge it as not due. The application of the statute 1696 does not depend on the debt being honest or not. The statute applies to all debts, whether honest or not honest. And therefore, in coming to this question, I dismiss these two elements—the relation of the parties, and the honesty of the debt. The whole question is, Whether the debt itself is within the description of those struck at by the Act 1696? If this were a recent statute, and we were about to apply to it the rules of construction which we apply daily to statutes of the Imperial Parliament, I should feel my hesitation much less, because on the words of the Act there is not much doubt. The deeds struck at in the Act are thus described—"all and whatsoever voluntar dispositions, assignations, or other deeds which shall be found to be made or granted, directly or indirectly, by the foresaid dyvor or bankrupt, either at or after his becoming bankrupt, or in the space of sixty days of before, in favour of his creditors, either for his satisfaction or farder security, in preference to other creditors." Now, I am not disposed to question that this is, in the meaning of the statute, a voluntary deed; and, of course, it is not to be disputed that it is granted within sixty days of bankruptcy, but it is not in satisfaction of the creditor's debt, because it does not extinguish the debt at all; and therefore that part of the statute does not apply. It remains to be seen if it is a deed in farther security of a creditor in preference to other creditors. Now, as I read this deed, with certain exceptions to be noticed hereafter, and look to the period when it was granted, within thirteen days of bankruptcy, it amounts to nothing more or less than an acknowledgment of the subsistence of a debt, or an I. O. U.; because that part which contains a proper obligation cannot be of any avail in the circumstances, beyond what the mere acknowledgment of debt would be. It was no longer possible for the grantee, by diligence, to obtain any advantage over other creditors. And, therefore, the only advantage of any kind was to enable the creditor to rank as an ordinary creditor in the sequestration, *pari passu* with the lowest class of unsecured creditors. That being the nature of the deed, the question is, is that a deed in farther security of a creditor in preference to others? And, taking the words of the statute alone, I should say it is not a security at all, and that it creates no preference, and, therefore, it does not satisfy either requirement of the statute. But then we are reminded that there is a class of cases in which this has come to be considered, and it is said that some of these have indirectly construed the statute, so that even the granting of an I. O. U. within the period of bankruptcy is illegal, as a contravention of the statute. The first passage appealed to occurs in Bell's Commentaries, when the author says, (ii, 212, 5th ed.)—"It does not save a conveyance or security from the rule of the statute that it is indirect in its operation, though it may be a little more difficult to expose the nature of the transaction." Then he gives some examples, and goes on to say that formerly this power of creating preferences was very great, because, everything depending on rapidity in diligence, the least aid from the bankrupt might create a preference, but that, he says, is of slighter importance now, because, sequestration comes down upon them and equalises them all. Then comes this passage:—"In the first cases where this question occurred, the Court supported bills accepted by the debtor within 60 days of the public bankruptcy. But in the later cases the rule has been settled that, from the moment of constructive bankruptcy, the debtor can do no act by which the situation of his creditors may be altered, even to the effect of establishing equality among them." And he refers to the case of *Cowan* v. *Mansfield's Trustees* (M., 1167). Now, it has been contended that that means that the bankrupt cannot grant an acknowledgment of debt within 60 days of bankruptcy, under any circumstances. I do not think that is the fair meaning of the passage, but, if it be so, I don't think it is supported by the cases on which it is founded, the cases of *M'Math* (2 Bell's Com. 213, and Bell's Cases, p. 22) and others. I don't think that is the meaning of the passage, for this reason, that it can bear a more reasonable construction. It may mean this—that, supposing there is a set of creditors who all, except one, have some advantage in the way of preference over the estate, it would produce equality to advance him to that favoured position

but it would still be against the Act. And when we look to *Strang* v. *Mackintosh* (1 S., 1), that was just the kind of preference sought to be created there. There a creditor had obtained a preference, and the object of the bill was to enable the creditors in whose favour it was conceived to come in and take a share with the rest of the poinding creditors. In order to bring the deed of the bankrupt within the prohibition, it must be something to have the effect of a preference in favour of the person to whom it is granted. If Mr Bell meant otherwise his cases do not support him. *M'Math* is the most important, and there the deed challenged was a bond of corroboration. The bond was granted by the bankrupt in favour of a claimant, not only embracing debts due to the claimant, but also to his father, to whom he had not confirmed. It accumulated these debts, and there were many of them, some bill debts where there were no penalties; and all this for enabling the claimant to lead an adjudication for the whole sum in the bond. It was held to be a preference challengeable under the Act 1696. I am far from saying it was wrong. On the contrary, I think that was a contravention of the statute. But the case is referred to for *dicta* of Lord President Campbell; but I cannot forget that in the minority in this case—and there was only a majority of one—I find the names of Braxfield and Eskgrove, and both of these gave elaborate opinions to the contrary effect of that given by Lord Campbell on the question, whether a bare acknowledgment of debt, so as to create a claim, would be illegal. The judgment does not decide this, and I should say that the weight of opinion was with the minority.

But then the next case which Mr Bell refers to is *Dunbar's Creditors* v. *Grant* (M., 1027), but that is not under this Act at all, but under the Act 1621, and requires no further observation. There remains the case of *Strang* v. *M'Intosh*, and I have already made some remarks upon that. The main point, as regards the present question, is this, that one of the creditors had poinded certain goods of the bankrupt, and the bankrupt, being desirous to defeat the preference which that creditor was getting, granted a bill for the purpose of securing to the other creditors the same preference. That was constituting a preference undoubtedly, in the best sense of the term, over a particular part of the bankrupt's estate; and it was clearly within the meaning of the Act.

There remains only one other case to be referred to, of more recent date, in which we are referred to *dicta* of an eminent authority, Lord Rutherfurd, for whose opinion I have the greatest possible respect. But I think he misunderstood the passage in Bell's Commentaries, and construed it in a sense inconsistent not merely with the Act of Parliament, but with the cases on which Mr Bell relies. Lord Rutherfurd's opinion was expressed in the case of *Wilson* v. *Drummond* (16 D., 275). That was a strong case in its own circumstances, and I cannot doubt that the judgment was sound, because Douglas the bankrupt was sequestrated on 8th April 1852, and he had been engaged some time previous in an important litigation with Drummond and Wright, from whom he held a lease. On 10th March he suddenly struck his flag in this litigation; he surrendered at discretion, and, without any apparent cause, allowed decree to go against him for a considerable sum. He granted an assignation to the pursuers of the action in satisfaction of their claim. There was ground for the application of the Act 1696 to that as a whole. But the defenders said they would abandon the assignation, and stick to the compromise. But that also was untenable, for the compromise or abandonment was in effect a surrender to the pursuers of a most important right of property in these leases, and was undoubtedly reducible under the Act 1696. It was a satisfaction of a very important kind, giving them a preference over other creditors. But there is a passage in Lord Rutherfurd's note which goes beyond the decision of the case. He says—"Supposing these (the abandonment and assignation) could be separated, what does the deed amount to according to the statement of the pursuer, which must here be assumed? Plainly the abandonment by the bankrupt of claims of great importance to his creditors, and the constitution against himself of considerable liabilities. Take the case first under the Act 1696. Can he be allowed to do this within the period of constructive bankruptcy? It has been held that he cannot grant a bill constituting a debt not otherwise constituted, and Mr Bell (Com., p. 213), referring to various cases, lays it down that a bankrupt, from the moment of constructive bankruptcy, can do no act by which the situation of his creditors may be altered, even to the effect of establishing an equality among them," &c. It seems to me that here Lord Rutherfurd is reading the passage from Mr Bell in the sense which it does not properly bear. But I doubt if I do justice to Lord Rutherfurd in saying so; for I find in another case soon after—the case of *Gordon* (16 D., 905)—that judge expressed himself in terms inconsistent with the notion that it is against the Act 1696 for a bankrupt to grant an acknowledgment to a creditor. He thinks that if done in good faith it may stand as a good foundation of a claim. There is no authority to entitle us to say that this Act of Parliament has been, in practice and by judgment, construed so as to strike at a mere constitution by acknowledgment of a debt within the period of constructive bankruptcy.

But there is one part of this case a little embarrassing, and, if it were not easy to disjoin it from the rest of the claimant's demand, it might expose her claim to some risk. The debt is constituted, and there is an obligation for payment of interest also, and the claimant asks in her affidavit and claim that she shall have interest on the accumulated sum of principal and interest in the bond. If that were the question, I should be against her. I am not satisfied that, if that were the reading of the bond, it would not have been struck at. But I am not embarrassed by that. I think we may instruct the trustee to disallow that; and, with that slight variation, we may adhere to the interlocutor of the Lord Ordinary.

Lord Deas—This is a case of great difficulty, and, if we were construing the statute for the first time, the question would depend on a consideration of the words used in it. Supposing we were in that position, I should have great difficulty in coming to the result at which your Lordship has arrived. The words of the statute 1696 are, "all and whatsoever voluntar dispositions, assignations, or other deeds, which shall be found to be made or granted directly or indirectly, by the foresaid dyvour or bankrupt, either at or after his becoming bankrupt, or in the space of 60 days of before, in favour of his creditors, either for his satisfaction or farder security, in preference to other creditors." There is no doubt that this is a voluntary deed. It may or may not be that the bankrupt, if he had

been solvent, could have been compelled to grant it, for a deed may be voluntary in the sense of the Bankrupt Act though the bankrupt may be compelled to grant it. But although this is a voluntary deed, that is not enough to render it good. It must be either in satisfaction, or farther security, and in preference to other creditors. The next question therefore is, is this a deed in satisfaction or farther security? If a party in place of having one document of debt or more, gets a bond of this kind, it may be said that he takes it in satisfaction. It is difficult to say whether that is under the statute or not. I am disposed to think that satisfaction there has a different meaning. There is no great doubt that the deed is in farther security. It is not necessary that a special subject should be made over to the creditor. The meaning of the Act is not limited to that. But that is not enough, for the question remains, whether it must be said that this deed was in preference to other creditors? It is there that the question hinges, and there lies the strength of the view stated. I am rather disposed to think, looking to the words and the object of the statute, that this is, in the sense of the statute, a deed granted in preference to other creditors. The object of the statute was to fix a period within which things done, which otherwise would have been unchallengeable, should not be allowed to prejudice the right of creditors. It seems to be conceded that if any diligence had followed on this deed it would have been struck at by the statute. There is great difficulty in holding that, if diligence real or personal had followed on the bond, that diligence would have been struck at, and yet the bond stand. That is making the validity of the bond depend on the use made of it. I rather think the object of the statute was to prevent the granting of a deed which *might* be used for such purposes, without raising the question whether it was actually used. It would be an anomalous result that the deed should stand or not, according to the use made of it. It is said that the object of the statute was, not to prevent anything to induce equality, but only a preference of one creditor. I am not quite satisfied that if a party, having no document, gets a document like this, to enable him to rank with other creditors, that is not such a preference as is contemplated by the statute. It has the effect of diminishing the dividend they may receive. It ousts them to some effect from the position they would otherwise have. It may injure them as much as if it were a preference properly so called. There may be a great many more in the position of this lady, having no documents of debt, and I don't see how it can be said that if the bankrupt gives such documents of debt to one and not to all, he is not giving a preference, The fact that we don't hear of any others having such a claim, is of no moment. The question is, what may be expected to happen if there were other creditors in that position? There would be great power in the bankrupt to prefer one creditor to another, if he may give documents of debt to some of them. It is difficult to say that it is not a preference. But the words are not preference *over* other creditors, but *to* other creditors. Supposing there are other creditors not having such documents of debt, is it not a preference to give such a document? The deed accumulates interest with principal, making the whole payable on demand on a penalty, which penalty gives important advantages to the payee in many cases. The obligation to pay interest is either struck at by the statute, or it is good; and when your Lordship holds that that is not to receive effect, it seems to me difficult to say that that is consistent with upholding the principal sum. But we are not in the position of construing the statute for the first time, for it has been enforced for centuries, and has been interpreted and acted on frequently. In so far as there seems to have been any interpretation of it by judges or institutioned writers, their opinions seem to me to countenance the view I suggest of the import of the statute. I cannot think that Mr Bell's doctrine is consistent with the judgment to be pronounced. It may be read in different ways, but I think it points in the direction I have stated. I don't mean to go over the cases, but I think they have been understood by the judges in the sense I have indicated. On the whole matter, I think the object of the statute was to fix a period within which things of this kind should have no effect at all, so as to save inquiry into individual cases, but make a general rule which should lead to a fair disposal of the estate of the bankrupt. This is a favourable case for taking an opposite view if the case admits of it. There were means here by following out which it might be found whether this was a just claim or not.

Lords Ardmillan and Curriehill concurred with the Lord President.

Agents for Trustee—G. & J. Binny, W.S.

Agents for Claimant—Hill, Reid, & Drummond, W.S.

Friday, June 28.

SECOND DIVISION.

ADVOCATION—MORISON & FIELD *v.* JAMIESON & CO.

Accounting—Interest—Commission—Exchange—Homologation—Acquiescence. Circumstances in which held that a merchant who had made advances on security of goods consigned abroad, was entitled to charge a commission of 3 per cent. in addition to 5 per cent. interest on his cash advances, and was entitled to transfer to his own credit the sums received abroad as the price of goods, without holding them for the benefit of the consigner, to wait a fall in the rate of exchange.

This was an advocation from the Sheriff-court of Lanarkshire of two conjoined actions. There were three points raised—(1) the rate of commission charged by the respondents, Jamieson & Co., in their accounts with the firm of Morison & Field, the advocators, on cash advances; (2) the amount of exchange on the remittance of a sum of 47,000 dollars from America; (3) a claim in respect of the non-recovery of certain bills of a person of the name of Robertson. Morison & Field, of whom the leading partner was a nephew of Mr Jamieson, the leading partner of Jamieson & Co., entered into the trade of forwarding goods to New York, induced by the hope of support from Jamieson & Co. The support was given by granting acceptances, and, ultimately, by money advances applied to the retirement of bills for their behoof. The case involves mainly mere questions of fact, which are fully explained in the annexed judgment of the Lord Justice-Clerk. The Sheriff-Substitute (Bell) and the Sheriff (Alison) pronounced elaborate interlocutors containing a great number of particular findings