

his gift—is creditable to him, and favourable to the weight of his testimony.

The Court adhered.

Agent for Pursuer—John Gillespie, W.S.

Agent for Defender—A. K. Morison, S.S.C.

Tuesday, July 16.

SECOND DIVISION.

MORITZ UNGER, APPELLANT.

Bankruptcy—Appeal—Comparing Creditors—Examination—Adjournment—Commission. Circumstances in which held that the adjournment of a diet for examination of a bankrupt, and the granting of a commission on the application of certain comparing creditors to take evidence in regard to matter embraced in a previous deposition of the bankrupt, were incompetent.

This was an appeal in the sequestration of Moritz Unger, pearl and diamond merchant in Edinburgh, and the question was as to the competency of an order for proof granted to certain creditors, pending the examination of the bankrupt.

The bankrupt was first examined on 12th March last, when he made certain statements as to the loss of a pocket-book containing upwards of £2500 worth of money and jewellery, which he said had dropped from his pocket into the sea when travelling between Hamburg and Leith in the month of February preceding. The examination having been adjourned to the 18th March, was, on that date, again adjourned till the 2d April, when the bankrupt was examined at great length by counsel on behalf of certain creditors. He repeated his statement as to the loss of the pocket-book; and the Sheriff thereupon again adjourned the examination till the 1st July that inquiries might be made. Upon 1st July a further examination took place, at the close of which the counsel for the comparing creditors moved for a further adjournment, and, having offered to guarantee the estate against any further expense that might be thereby incurred, obtained from the Sheriff-Substitute (HALLARD) the following deliverance:—"The Sheriff-Substitute, in respect of the guarantee above set forth, adjourns the further examination of the bankrupt till the 2d day of October next, at eleven o'clock forenoon; further, grants commission to Robert Stuart, Esq., of Lincoln's Inn, London, barrister-at-law, and to the British Consul at Hamburg, to examine witnesses and receive documents with reference to the various matters contained in the bankrupt's previous examination; said commission to be reported against the diet to which this meeting is now adjourned."

The bankrupt appealed against this deliverance, maintaining that the adjournment of the examination was incompetent, and that there was no authority in the Bankrupt Act for granting such a commission as proposed.

The Court to-day sustained the appeal, holding that the Sheriff had no power to adjourn the examination for so long a period, and that the proposed commission to examine witnesses in London and Hamburg was an unheard of and incompetent proceeding. The 90th section of the statute no doubt gave certain powers to the trustee in the way of obtaining information, but that section did not contemplate that its machinery should be set in motion by individual creditors, and certainly did not contemplate a roving commission to take the evidence

of parties not named, and not in any way described or defined.

Appeal sustained, with costs against the comparing creditors.

Counsel for the Appellant—The Dean of Faculty and Mr Pattison.

Counsel for the Comparing Creditors—Mr Alexander Moncrieff.

Counsel for the Trustee in the sequestration—Mr Mackintosh.

Tuesday, July 16.

GRANT v. MACDONALD AND OTHERS.

Mandatory—Sufficiency—Objection. Circumstances in which objection to the sufficiency of a mandatory repelled.

The pursuer, as creditor of John Grant, timber merchant in Wales, raised a reduction of certain transfers of a vessel named "Skylark." He called as defenders—1, the said John Grant, who had at one time been the owner, and who had executed a transfer in favour of a Mr R. H. Macdonald, residing in Glasgow; 2, the said R. H. Macdonald; 3, the pupil children of the said John Grant, in whose favour Macdonald had executed a transfer. The action sought to have set aside the transfer by Grant to Macdonald, and that by Macdonald to Grant's children, on the ground that they were all granted for the purpose of defrauding Grant's creditors. Grant's children being resident in Wales, they were ordered by the Lord Ordinary to sist a mandatory. They accordingly sisted a Mr Johnston. The pursuers then lodged the following note of objections to the mandatory:—

"PATTISON for the pursuer, objected to the sufficiency of the mandatory proposed by the defenders, who is named and designed in the mandate, 'Mr James Johnston, insurance agent, residing at East Drummond Street, Edinburgh.' The said mandatory has no known or ostensible business or means. His name is not in the 'Edinburgh Directory,' nor has he any place of business. Acting on the information of the defender's agent, who gave his description as 'collector and insurance agent, No. 23 East Drummond Street,' the pursuer's agent made inquiries at that address. He found that the house where he resides consists of a garret at the top of a common stair, having all the appearance of poverty and wretchedness. There is no name-plate on the door, the bell-wire is broken; and the only person in the neighbourhood who had any knowledge of Mr James Johnston stated he believed him to be a collector for a burial society. Nobody else knew anything of him. He does not, so far as the pursuer can learn, represent or act for any insurance office."

Lord Kinloch pronounced the following interdict:—

"19th June 1867.—The Lord Ordinary having heard parties' procurators on the minute for the pursuer, No. 22 of process, remits to the Sheriff of Edinburghshire to inquire into the sufficiency of the proposed mandatory, and to report.

(Signed) "W. PENNEY."

The Sheriff issued the following report:—

"Edinburgh, June 25, 1867.—The Sheriff has directed inquiry through the Sheriff-clerk as to the sufficiency as mandatory of James Johnston, and the result of the inquiries made is the following:—Johnston resides in the fifth flat of No. 23 East Drummond Street. There is no name-plate on the