ous bills admitted to be due to him. The Sheriff ordained the appellant to produce or exhibit the documents; and he thereupon appealed to the Court of Session, maintaining—(1) that he was protected by the discharge by the bankrupt of all intromissions on 27th February 1867; and (2) that the documents called for did not relate to the bankrupt's affairs.

A. MONCRIEFF and GLOAG for appellant.

Solicitor-General (MILLAR) and CRICHTON, for respondent, were not called on.

At advising—

LORD PRESIDENT—This is about the clearest case I ever saw. Under the provisions of the 90th and 91st sections of the Bankrupt Act, the Sheriff, on the application of the trustee, orders the examination of the law agent of the bankrupt. Now, how far the trustee may be entitled to proceed in the examination of the law agent must depend upon the circumstances of each case.

In this case the bankrupt, having in August 1865 succeeded to an estate, the value of which was £5000 and having not above £800 of debt, and there being no burden on the estate, he, on 25th June 1867, finds himself in such a state of insolvency that it is necessary to execute a trust-deed for behoof of his creditors. When the bankrupt was asked, on his examination, to give an account of his affairs, he said he kept no accounts, and had no books or papers to deliver to the respondent as trustee upon his estate.

It is in these circumstances that the trustee examines Mr Rankin, under the provisions of the 90th section of the Bankrupt Act; and one of the first things he sees is, that on the 15th of August 1865, the time when the bankrupt succeeded to the property, Rankin had made up a state of debt for which he makes a charge in his business accounts, and the trustee says, I should like to see that state of accounts, because it will throw light on the circumstances of the bankrupt, and accordingly he asks Rankin to produce it. Rankin admits that the state was made up, and that he has such a state in his possession, but he declines to produce it. We are told that it is not a document relating to the bankrupt's affairs. That, I think, it is impossible to maintain. Then another, and the principal, reason assigned by the appellant for not producing it is, that having got a document on 27th February 1867 which discharges him of all his intromissions, he stands upon that, and refuses to produce anything prior to its date. I give no opinion with regard to the effect of this document, but I do not hesitate to say that upon its face it does not discharge Rankin. It contains no words of discharge whatever. I must say, however, it produces a very different impression on my mind. It creates a strong suspicion against Rankin with reference to his transactions with the bankrupt. It results in this, that at the date of this document the bankrupt undertook to pay to Rankin bills to the amount of £2139, and also to pay a business account to the amount of £198, amounting together to no less a sum than £2337. That is rather a startling sum. This document is founded on as shutting out all inquiry, and Mr Rankin appeals to this Court for protection. Before his examination began there was no reason to suspect anything against Mr Rankin. But his refusal to produce this document, and his account with the bankrupt, subjects him to the gravest suspicion. Therefore, in consequence of what he has done, the fullest and most searching inquiry must be demanded of his hand. The other plea, that the document and account called for do not relate to the bankrupt's affairs, is quite untenable. The documents are indispensable to the trustee.

LORD DEAS—This is the clearest possible matter. What the appellant is called upon to produce is—(1) The adjusted state made out in August 1865; (2) the account-current between the appellant and the bankrupt; and (3) the appellant's books. He declines to produce the adjusted state and the accounts-current prior to a certain date on the same grounds—viz., that by the letter of authority of 27th February 1867 he is discharged of all intromissions, and therefore he says the production of these documents is unnecessary. He does not say that he will suffer the slightest prejudice. There is not a word about prejudice set forth even in his pleas in law. Now, is the appellant to be the judge whether the accounts called for are necessary or unnecessary? All that is asked is that the trustee may have an opportunity of seeing them. The effect to be given to the letter of authority is not at present to be judged of. Whatever had been the nature of this document, the result would have been the same. But when we look at it, it is plain that it does not operate as a discharge. It rather shows that there was to be a complicated accounting. But even though this letter could have been held to be a discharge, I am not prepared to say that the trustee would not have been entitled to see the accounts called for.

The only thing with regard to which there was room to say one word was as to the books. He refuses to produce these because they contain the accounts of other parties. Now I see no more reason for alarm as to that, in this case, more than in any other. Either the Sheriff or Sheriff-clerk can make the excerpts. The accounts of other parties are not to be seen by the trustee. The Sheriff won't allow anything to be excerpted except what has reference to transactions with the bankrupt's estate. He is not to judge of the effect to be given to the accounts. The appellant acted as the agent of the bankrupt, and he managed the whole of his money affairs. Is he then to be the judge of what part of his accounts he is to exhibit and what not? I think not, and I agree that this appeal must be dismissed.

LORD ARDMILLAN and LORD KINLOCH concurred.

The Court dismissed the appeal.

Agents for Appellant—Wilson, Burn, & Gloag, W.S.

Agents for Respondent—Waddell & M'Intosh, W.S.

Tuesday, November 17.

HEBENTON *v.* MILNE.

Process—Burgh Court — Sheriff-Court Act 1853—*A. S.* 13*th February* 1845—*A. S.* 18*th July* 1851—*A. S.* 8*th July* 1831—*Summons—Proof in Inferior Court.* The form of summons and mode of taking evidence introduced into Sheriff-Courts by 16 and 17 Vict., c. 80, do not apply to Burgh Courts.

This was a suspension at the instance of William Hebenton, flesher in Brechin, of a threatened charge on a decree of the Burgh Court of Brechin obtained against him in an action at the instance of David Milne, tacksman of the Petty Customs, Shamble, and Weigh-house dues of the Burgh of Brechin. It was contended by the defender

Hebenton, in the Burgh Court, as a preliminary plea, that the summons was inept, being in the form prescribed for Sheriff-Courts by the Act of 1853; whereas it ought to have been in the form prescribed by the Act of Sederunt of 13th February 1845, or Act of Sederunt of 18th July 1851, and no condescendence was annexed as required by the latter Act. The Bailie (CRAIG) repelled this plea, holding that it was to be assumed that the form of process prescribed in 1853 for Sheriff-Courts was applicable to Burgh Courts. After proof, the Bailie found Hebenton liable in certain sums to the pursuer. In the suspension at Hebenton's instance it was now pleaded, in addition to the objection to the form of the summons, that two of the interlocutors were not duly authenticated by the Judge's signature; that the proof was irregularly taken, in the shape of notes instead of in the form of a deposition; and that the proof was not authenticated by the signatures of the witnesses and magistrate on each page.

The Lord Ordinary (BARCAPLE) pronounced this interlocutor:—"Finds that the summons is libelled in an incompetent form according to the legal rules of procedure in Burgh Courts: Finds that the proof on which the judgment of the Inferior Court proceeded was incompetently taken, and not duly recorded or authenticated, having regard to the rules of law in that matter applicable to Burgh Courts; on these grounds sustains the reasons of suspension, suspends the letters and charge *simpliciter*, and decerns; reserving to the respondent his right to bring a new action in the premises in competent form: Finds the respondent liable in expenses," &c.

"*Note.*—The summons is framed according to the form prescribed by the Sheriff-Court Act 1853, 16th and 17th Vict., cap. 80. That would have been a form altogether incompetent in any court in Scotland before the passing of that Act, and the Statute only authorises its adoption in the Sheriff-Courts. The judgment (in the Burgh Court) sustaining it as competent refers to the Act 6th Geo. IV., cap. 23. By section 7 of that Statute, the Acts of Sederunt which it authorises the Court of Session to pass in regard to Sheriff-Courts are made equally applicable to the courts of royal burghs, and the power to make such Acts of Sederunt was continued by 1st and 2d Vict., cap. 119, sec. 31. But the former Statute had relation to the fees of the clerks of Court, and the Act of Sederunt which followed upon it, on 27th January 1830, has reference to that matter. The form of proceedings in Sheriff and Burgh Courts had been already dealt with in separate Acts of Sederunt on 12th November 1825, following on the Judicature Act. The Lord Ordinary cannot discover any ground for holding that the new forms of summons introduced by statute into the Sheriff-Courts has been in any way imported into the Burgh Courts.

"In the same way, there has been adopted in this case the form introduced by the Sheriff-Court Act of 1853 of taking evidence, by the Judge taking notes of the evidence. This is materially different from the mode of taking depositions sanctioned by law prior to that Statute. The functions with which the Sheriff was thereby vested have not been conferred by the Legislature upon Judges in other inferior courts, and it does not appear that they can be assumed without statutory authority.

"The suspender also objected that the interlotutors are not duly subscribed by the Judge. There is certainly great looseness and departure from ordinary practice in this matter. But the Lord Ordinary is not disposed to hold that it amounts to a fatal defect. The Judge signs at the end of each interlocutor, and in every instance the whole interlocutor is written on the same sheet."

Milne reclaimed.

WATSON, Solicitor-General MILLAR) with him, for reclaimer.

FRASER and ASHER, for respondent, were not called on.

The Court adhered.

Agents for Suspender—Henry & Shiress, S.S.C.

Agent for Respondent—James Webster, S.S.C.

Tuesday, November 17.

THOMSON *v.* THOMSON'S TRUSTEES.

Husband and Wife—Conjugal Rights (Scotland) Amendment Act 1861—*Aliment—Revocable Deed.* A trust-deed executed by a husband and wife, proceeding on the narrative of a claim by the wife under the 16th sec. of the Conjugal Rights Act, and conveying to truster funds coming to the wife, the income to be paid as aliment to the wife, *held* not revocable by the husband.

In January 1866 Jane Duncan or Thomson, wife of the pursuer, became entitled to a share in the estate of her deceased uncle, William Grant, and in the following month she intimated to Grant's executor a claim for a provision in terms of the 16th section of the "Conjugal Rights (Scotland) Amendment Act 1861," to be made to her from the property thus falling to her. Thereafter, in November 1866, the pursuer and his wife executed a trust-deed narrating the 16th section of the Act, the claim made by Mrs Thomson, and that £236 of the fund had been paid to the granter of the deed, and conveying to trustees a sum of £600, and a farther sum not then realised coming to the wife from Grant's estate, for the purpose of paying the income to the wife, exclusive of the *jus mariti*, and after her death to the pursuer, and the fee to the children.

The pursuer, in December 1867, brought this action, asking declarator that the trust-deed was revocable, and had been revoked by him, and that he was entitled to payment of the £600. His wife had previously brought an action of separation and aliment against the pursuer, and on 5th February 1868 obtained decree, the Lord Ordinary (KINLOCH) holding that the provision in the trust-deed was sufficient aliment.

In this action his Lordship held that "the trust-deed libelled, so far as granted for the purpose of paying the yearly proceeds of the sums thereby conveyed to the defender Jane Gray Duncan, the wife of the pursuer, by way of aliment, was not, and is not, revocable by the pursuer, and that the trustees under the same are entitled to hold and invest the said sums for the purpose of making such payment to the said defender during her lifetime."

The pursuer reclaimed.

FRASER and GUTHRIE for reclaimer.

CLARK and LEE for respondent.

The Court adhered.

Agents for Pursuer—Neilson & Cowan, W.S.

Agents for Defender—Mackenzie & Kermack, W.S.