and if the proof was to be delayed till she was able there might be interminable delay, and, possibly, her evidence might be lost. The Court accordingly allowed Mrs Mercer to be examined on commission, reserving all objections to the admission at the trial of the deposition, in case of a change of circumstances.

Agents for Pursuers—Hamilton, Kinnear & Beatson, W.S.

Agents for Defenders—A. & A. Campbell, W.S.

Saturday, March 19.

LANG *v.* HALLY.

Trustee—Removal—Sequestration. The trustee on a sequestrated estate was removed on the report of the Accountant in Bankruptcy, confirming charges of mismanagment, confidentiality, &c., stated against the trustee in a petition for his removal by the bankrupt's son.

Question, Whether the trustee could have been removed solely on the petition of the son, who was not a creditor?

In 1861 George Hally, designing himself writer in Glasgow, was elected trustee on the sequestrated estate of George Lang, cattle dealer and flesher. A petition was now presented by Robert Lang, a son of the bankrupt, praying for the removal of the trustee. He put forward a variety of statements in support of his application.

Answers were lodged for the trustee, and eventually the Court, before answer, directed the proceedings to be laid before the Accountant in Bankruptcy for his consideration. On 28th February 1870 the Accountant (Mr Esson) gave in the following report:—

"The proceedings were laid before the accountant in bankruptcy on July 9, 1869, in obedience to the interlocutor, of which a copy is prefixed. The accountant examined these proceedings, and afterwards heard the agents for the parties, and he now begs leave humbly to report to the Court as follows:—

"1. It is averred by the petitioner that the respondent has not transmitted to the accountant in bankruptcy an inventory and valuation of the estate, as is required by section 80 of the Bankruptcy (Scotland) Act, 1856, nor his accounts as required by the 84th section, and that he has not made the annual returns required by section 158 of that Act.

"This is denied by the respondent. The accountant found that the trustee has not transmitted to him a copy of the inventory and valuation of the estate; and that he has not transmitted certified copies of his accounts; but he found that the respondent had made annual returns to the sheriff-clerk.

"2. It is averred by the petitioner that the respondent was at the period of his election as trustee on 22d May 1861, and still is, a clerk in the office of Charles Reddie, writer in Glasgow, who was law-agent in the sequestration; that Mr Reddie was proposed as his cautioner, and approved of by the creditors; and that Mr Reddie was elected a commissioner on Feb. 9, 1868.

"The respondent admits that Mr Reddie was at one time law agent in the sequestration, and that he is the cautioner for the trustee, and a commissioner; but he denies that he is Mr Reddie's clerk, and alleges that he is in business on his own account; and he does not admit that this personal objection, even if correct in point of fact, would be a disqualification under the Act or otherwise. The accountant called on the respondent to explain his position in relation to Mr Reddie, and it was stated on his behalf, at a meeting before the accountant, on Nov. 29, 1869, as follows:—'That he left Mr Reddie's employment as a clerk in 1858, before his appointment as trustee, since which time he has not acted as his clerk; but that occasionally, when Mr Reddie, who generally keeps two clerks, has had a pressure of business, he has drawn and engrossed papers for him; and that he has also attended to anything particular, at Mr Reddie's request, during his absence; but he has received no payment, and has no claim therefor.' It appears to the accountant, from this admission, and from the fact of Mr Reddie being cautioner for the respondent, that the respondent is on a footing of confidentiality with Mr Reddie, who was admittedly for a long period the agent in the sequestration, and who still is a commissioner, which is not favourable to independent and disinterested action on his part in the discharge of his duties as trustee.

"3. It is averred by the petitioner that the respondent is an undischarged bankrupt.

"It is admitted by the respondent that he was sequestrated under the Bankruptcy Acts on 7th June 1862, and that he had not been discharged when the revised answers for him were lodged; but it is averred that no disqualification attaches to the respondent under the Act or otherwise on this account. The accountant found that although the respondent was an undischarged bankrupt at the date of the presentation of the petition, he was discharged on 6th March 1869, without composition.

"4. No complaint has been made to the accountant in regard to the conduct of the respondent under the 159th section of the foresaid Act. At a meeting on Dec. 24, 1868, at which the respondent submitted the petition and complaint for the consideration of the creditors, they 'resolved and approved of the whole actings of the trustee on the estate of the bankrupt from the date of his election to the present time; and further resolved to continue him as trustee on the estate, and instruct him specially to oppose, on every ground competent in law, both the action and complaint for his removal as trustee, and the action of interdict against the sale of the lands.'

"5. The accountant, notwithstanding of there being no complaint at the instance of creditors, is entitled, under the 159th and 161st sections of the said Act, to report to the Court any failure in duty on the part of a trustee, if not satisfied with the explanation given by the trustee.

"With reference to the failures in this case to transmit copies of his inventory and valuation, and of his accounts, the accountant would in ordinary circumstances have been satisfied to have accepted copies of these documents, and would have considered it unnecessary to report the case. Looking, however, to the confidentiality between the respondent and Mr Reddie before pointed out; to the fact of the former having been an undischarged bankrupt; and also to the fact of the proceedings at the instance of the petitioner of which the Court have caused intimation to be made to him; the accountant considered that this was a case which ought to be reported under the 159th and

161st sections of the Bankruptcy Act. There being no provision made by that Act for the necessary expense of such proceedings in Court, the accountant presented a memorial to the Lord Advocate, submitting that a prosecution should be raised at the public expense. This memorial was laid before the law officers of the Crown, who, on 11th February 1870, advised the accountant as follows:—'We are of opinion that in present circumstances it is not expedient and proper that any proceedings should be taken at the public expense. But the accountant in bankruptcy will, we believe, hold it to be his duty to report the circumstances of the case to the Court.' The accountant considers it to be his duty to report the circumstances of the case to the Court."

BURNET for petitioner.

THOMS in answer.

At advising—

LORD PRESIDENT—The trustee resists the application to lodge the inventory and accounts and documents that it is his duty to lodge; and there are various other allegations made and proved against him. I think it is therefore our duty to remove him from his office, even though it be bad for the creditors. But I wish it to be understood that I think we should do so because of the report by the Accountant in Bankruptcy, and not on the ground of the petition presented to us by the bankrupt's son. I entirely reserve my opinion on the competency of doing so in such a case. But in the meantime I think this trustee should be removed, and the creditors desired to meet to elect another.

LORD DEAS—I adopt the statements your Lordship has made, and the conclusion your Lordship has arrived at. I say nothing as to the competency of the petition.

LORD ARDMILLAN—I have nothing to add.

LORD KINLOCH—Except for the interposition of the Accountant in Bankruptcy, I think we could not have taken action in this case; for I entertain no doubt that the petition of Mr Robert Lang is incompetent. The petition is for removal of the trustee in George Lang's sequestration, and the petitioner is not a creditor in the sequestration. I do not say that it may not be competent for a party interested, as the petitioner represents himself to be, in the residue of a sequestrated estate, to complain to the Court of any acts of the trustee by which his interests are prejudiced. But the present is not an application of this sort. It is a prayer for removal of the trustee for misconduct in office; and to this effect a petition at the instance of one not a creditor seems to me clearly incompetent. By the 74th section of the statute it was made requisite that one-fourth in value of the creditors should concur in the application.

But the report of the Accountant in Bankruptcy both entitles, and, as I think, calls on us, to take notice of the conduct of the trustee. I cannot dissent from the proposal to remove him from his office. Besides direct breaches of the statute, his conduct, as a whole, has been marked by great neglect of duty. The sequestration has endured for sixteen years. For a great many years back the simple duty of the trustee has been to sell a small heritable property to the best advantage, divide the price, and pay over any surplus to the bankrupt's heir. The trustee has done nothing except to go on incurring a law agent's account to the extent, it is said, of upwards of £600. It is impossible for the Court to allow such an one to continue in the management of the estate.

The trustee was found liable in expenses to the petitioner from the date of the Accountant's report being lodged.

Agent for Petitioner—John Walls, S.S.C.

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

Friday, March 18.

SECOND DIVISION.

ABERDEIN'S TRUSTEES *v.* ABERDEIN AND OTHERS.

Trust—Division of Estate—Equal Shares—Grandchildren—Intention—Casus improvisus. A party who had two sons, by his settlement divided his estate between them. There were various provisions in the trust-deed, under which the grandchildren were to participate equally in their fathers' shares of the estate. The deed provided that, in the event of the first deceaser of the two sons dying without leaving lawful issue, the trustees were to hold his share for the survivor and his issue, according to the equal shares appointed by the deed. The truster died, leaving two sons. One died in 1856, leaving seven children, and the other in 1865, without issue. The deed did not provide for the event which happened, that the second deceaser died without issue. *Held*, in a question with the children of the first deceaser, that the shares of the estate which would have gone in equal shares to the children of the second deceaser, if he had had any, went in the same way to the children of the first.

This was a process of multiplepoinding brought by the trustees of the late James Aberdein, merchant in Dundee, for the purpose of distributing his estate. The question arose upon the construction of the deceased's settlement, which, after providing annuities to his two sons, James and John, provided as follows:—

"*Ninthly*, Declaring if either of the said James Aberdein or John Aberdein shall die leaving lawful issue, then and immediately after that event my said trustees shall get the whole property, heritable and moveable, under their management, in virtue thereof, valued and appraised by two men, and shall either sell the half of the said property and subjects, as shall be thus ascertained, or borrow money to the amount of half the value of said property and subjects, and burden the said whole heritable property with the same; and my said trustees shall hold the moneys thus received in trust and for behoof of the child or children of such deceaser, and divide the same equally between or amongst them, share and share alike, if there shall be more than one, each to receive his or her share as they shall respectively attain the age of twenty-one years complete; and in the event of the death of any of said children, the share of the deceaser or deceasers to be divided among the survivors if more than one, or if only one, to be paid to such one on its attaining majority as aforesaid; but if there be but one, then the whole of said moneys shall be paid to such child on its attaining the age of twenty-one