not insisted on before the Lord Ordinary; and as the three first pleas in defence appear to him to depend substantially upon the same question, he has thought it better, instead of dealing with those pleas separately, to dispose of the case in the meantime by a finding relative to what he conceives to be the nature and extent of the pursuer's right and interest in the property in question on the dissolution of the marriage, the more so as it appears to him that the claim is not, strictly speaking, one in name of *jus relictæ*, but one which depends upon the wife's right, in the special circumstances of the case, to demand one-half of the goods in which she and her late husband had a common interest at the date of the divorce."

The defenders lodged a reclaiming-note, but the case was compromised.

Agent for Pursuer—William Officer, S.S.C.
Agents for Defenders — Mackenzie, Innes, & Logan, W.S.

Friday, October 20.

FIRST DIVISION.

CHRISTIE *v.* MATHESON.

Interest—Loan. Circumstances in which it was *held* that advances of money made by a person to his half-brother did not bear interest.

This was an appeal from the Sheriff-court of Dundee.

In September 1861 James Christie, then resident in California, remitted £50 to Alexander Matheson, his half-brother, a draper in Dundee. In a letter which accompanied the remittance, Christie, after referring to Matheson's circumstances, which appear to have been embarrassed, says he sends £50, and adds, "I would rather avoid to answer questions on the subject. All I have to say about it is, that this and all other remittances which I may in future make, I wish you to take your full use of, as if they were your own; when it becomes unnecessary (which I hope, for your own good, it may), then dispose of it to the best advantage." In 1862 another £50 was remitted, and a like sum in 1863. The principal sums were afterwards repaid by Matheson, but a question arose in regard to interest, in consequence of which Christie raised the present action, claiming 5 per cent interest on the sums from the dates of the advances till payment.

The Sheriff-Substitute (CHEYNE) found that the pursuer was entitled to interest, on the ground that the advances must be held as loans and not as gifts, and that there was nothing to take the case out of the ordinary rule, that *ex lege* interest is due on loans; 1 Bell's Com., 7th Ed., 692–3; *Garthland's Trustees* v. *M'Dowal*, 26th May 1820, F.C.; *Cuninghame* v. *Boswell*, 29th May 1868, 6 M. 890, 5 Scot. Law Rep., 559.

On appeal, the Sheriff (MAITLAND HERIOT) recalled the interlocutor of the Sheriff-Substitute, and found that no interest was due. The Sheriff considered that the case turned on what was the intention of parties; and that, looking to the whole circumstances, the pursuer sent the money, and the defender received it, on the understanding that no interest was to be paid; *Forbes* v. *Forbes*, 4th Nov. 1869, 8 M. 85, 7 Scot. Law Rep. 49.

The pursuer appealed to the Court of Session.

STRACHAN for him.

TAYLOR INNES, for the defender, was not called on.

At advising—

LORD PRESIDENT—I have no doubt that the Sheriff has arrived at a sound conclusion. The Sheriff-Substitute is quite right in his general view of the law, but he has overlooked the very peculiar circumstances of this case. The passage quoted in the pursuer's letter can have but one meaning. The defender was in business in Dundee. The pursuer, aware of his embarrassments, sends him £50, and writes—(*reads letter*). That means that the money which he then sent, and which he was afterwards to send, was to be used by the defender in his business on terms very different from those that regulate the ordinary relation of debtor and creditor. Telling him to take the full use of the money as if it was his own, is as nearly as possible saying "use without interest." This is rendered still more clear by what follows. After he finds the money unnecessary he is to dispose of it to the best advantage,—implying that till then the sole advantage was to be with the defender.

The other Judges concurred.

Defender assoilzied.

Agent for Pursuer—David Milne, S.S.C.
Agents for Defender—Lindsay & Paterson, W.S.

Saturday, October 21.

PARK *v.* ROBSON.

Bankruptcy—Examination under 19 *and* 20 *Vict. c.* 79, § 90—*Party resident in England*—32 *and* 33 *Vict. c.* 72, § 74. Where the trustee in a sequestration depending before the Sheriff of Lanarkshire desired to examine a person residing in London, in order to obtain information regarding some of the bankrupt's affairs,—*held* that the proper course to pursue, under section 74 of the English Bankruptcy Act of 1869, was for the Sheriff, on the application of the trustee, to pronounce an order for the examination of such person, adding thereto a request addressed to the London court having jurisdiction in bankruptcy to aid and be auxiliary to the Sheriff in carrying out the said order, and that no specific directions should be given, but the time, place, and method of examination be left to the English court.

Remarked, that in the conduct of such examination the English court would be guided by the rules adopted in Scotch practice, so that the party being examined would suffer no hardship from the English practice differing from the Scotch.

The respondent in this process of suspension and interdict was Mr George Robson, accountant in Glasgow, who had been appointed by the Sheriff of Lanarkshire trustee upon the sequestrated estate of George Lambie, grocer, wine merchant, and ship-owner in Glasgow and Helensburgh. In the course of his investigations into the affairs of the bankrupt, the respondent ascertained that he and the complainer Mr James Park, merchant, Adelaide Chambers, 52 Gracechurch Street, London, had both been engaged in transactions connected with the ship "Ferdinand de Lesseps," which, in the interest of Mr Lambie's creditors, it was his duty to bring to light. It appeared that the ship had

lately passed through several hands, and that on 10th August 1870 the complainer Mr Park had become the mortgagee of the ship to a considerable extent; that thereafter Mr Lambie had purchased the ship under burden of Mr Park's mortgage; and that Mr Park had, about the time of Mr Lambie's bankruptcy, sold the ship in virtue of his powers as mortgagee. The respondent considered it essential to the due exercise of his functions as trustee to obtain farther information relative to these transactions than was afforded by the examination of the bankrupt himself. Mr Park and certain other persons, whom he believed to possess such information, being resident in London, were therefore beyond the jurisdiction of the Sheriff of Lanarkshire, before whom the sequestration was depending. The respondent accordingly (having first intimated to Mr Park that, as trustee on Mr Lambie's estate, he held him responsible for the ship "Ferdinand de Lesseps" and her freight, and for all the consequences of the late pretended sale thereof) thereafter presented to the Sheriff a petition, in which, under "The Bankruptcy (Scotland) Act 1856," and section 74 of the English Bankruptcy Act of 1869, he craved the Sheriff 'to grant commission to any of the Registrars of the London Court of Bankruptcy to take the evidence of the said Edward Gellatly, James Park, John Morrison, Peter Hamilton junior, and David Hepburn Johnston, and any other person within the jurisdiction of the said London Court of Bankruptcy who can give such information as aforesaid, and appoint these persons to attend for such examination at such diet as may be fixed by the said Commissioner acting in execution of your Lordship's commission, on such notice as your Lordship may appoint; and farther to request the said London Court of Bankruptcy to act in aid of, and be auxiliary to, your Lordship's Court, in regard to all the matters directed by your Lordship's deliverance to follow hereon; or to do otherwise, as to your Lordships shall seem proper."

Upon this petition the Sheriff pronounced the following deliverance:—

"*Glasgow, 10th June* 1871.—The Sheriff of Lanarkshire, before whom the sequestration or bankruptcy of George Lambie, grocer and wine merchant, 80 Main Street, Anderston, Glasgow, and at 4 Hamilton Place, Hillhead, near Glasgow, and also at 55 and 57 Princes Street, Helensburgh, and also carrying on business as a shipowner in Glasgow, depends, and who has the jurisdiction in said bankruptcy, having considered the foregoing petition, orders the examination of the therein named Edward Gellatly, James Park, John Morrison, Peter Hamilton junior, and David Hepburn Johnston, relative to the affairs of the said bankrupt, and that on the interrogation of the trustee George Robson, or his agent, and requests the London Bankruptcy Court, within whose jurisdiction the said parties reside, to act in the aid of, and be auxiliary to, the Sheriff in carrying out the said order, all in terms of 'The Bankruptcy Act 1869.'"

Upon the receipt of this order and request Mr Hozlett, one of the Registrars of the London Bankruptcy Court, issued a *subpœna* or notice, which was served upon the complainer Mr Park, requiring him to appear before the London Bankruptcy Court on July 7, 1871, bringing with him certain documents said to be in his possession, and "to testify the truth according to his knowledge in the matter of a certain sequestration or bankruptcy" now pending before the Sheriff of Lanarkshire, &c. In compliance with this *subpœna* Mr Park appeared, but refused to submit to examination. In consequence of the complainer's refusal when brought before the Registrar in Bankruptcy to undergo examination, the matter was taken before the Chief Judge in Bankruptcy, who, after hearing counsel, pronounced the following judgment:—

"I have to decide, for the first time, a question like the present, which has arisen under the Bankruptcy Act, and the power which the Court possesses is entirely governed by the existing Bankruptcy Act 1869. The 73d section is the first which enacts that, 'any order made by a court having jurisdiction in bankruptcy in England under this Act shall be enforced in Scotland and Ireland in the courts having jurisdiction in bankruptcy in such countries respectively, in the same manner in all respects as if such order had been made by the courts which are hereby required to enforce the same; and in like manner any order made by any court in Scotland, and having jurisdiction in bankruptcy, shall be enforced in England and Ireland; and any order made by the court having jurisdiction in bankruptcy in Ireland shall be enforced in England and Scotland by the courts respectively having jurisdiction in bankruptcy in the division of the United Kingdom where the orders may require to be enforced, and in the same manner in all respects as if such order had been made by the court required to enforce the same in a case of bankruptcy within its own jurisdiction.' I have before me an order made by a court in Scotland, and I am requested and required by the Act of Parliament to enforce it in England, subject only of course to the Scotch law upon the subject, because I cannot enforce it according to the English law, as no English law gives me the power to do so. I cannot enlarge the jurisdiction of the Scotch court, nor would I do anything but to further the intention of, as I cannot contravene anything which has been decided by, the Scotch court.

"Then the 74th section says,—'the London and other courts therein mentioned, and the officers of such creditors respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of the court seeking aid, together with a request to another of the said courts, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by such order, the like jurisdiction which the court which made the request, as well as the court to which the request is made, could exercise in regard to similar matters and within their respective jurisdictions.' I do not think the words 'the like jurisdiction which the court which made the request, as well as the court to which the request is made,' were meant to extend the jurisdiction of this court beyond the jurisdiction which the Scotch court could exercise. Then the 75th, which, though it does not seem to me to have much bearing, cannot be disregarded: 'Any court having jurisdiction in bankruptcy in England under this Act, may, if it thinks fit, order that a person named in the order, being in Scotland or Ireland, shall be examined there.' I think that that is not an examination under the authority of the court, but an examination taken in some other way. Whatever it means, I do not think it affects the point which is raised here for decision. That throws the matter back at once to the Scotch Act

of Parliament, and the first question has been argued upon the construction of that law. Now, it must be observed, and I quite agree that it is the rule in the construction of an Act of Parliament, that, when you have to deal with general words after the enumeration or expression of particular things, the rule is to refer to and diminish the generality of the general words, and to confine them *ejusdem generis*, but that rule must be taken in regard to the whole of the statute in which the words are found. One object of the law of bankruptcy is to administer the whole of the bankrupt's estate amongst his just creditors. By the doctrine of relation, which is an important feature in bankruptcy, it is in the power of the court and the right of creditors to go into and overhaul past transactions in cases of 'fraudulent preferences,' to look into what may have been fraudulent as against the interest of creditors. Without referring to the English statute, when I find that in the Scotch power is given to examine 'the bankrupt's wife, his family, clerks, servants, factor, law-agent, and others who can give information,' I conceive that the first words, being the enumeration, are set out only for the purpose of excluding the notion that, upon the ground of professional privilege, or domestic fidelity, or for any other reason that can be suggested, those persons might reasonably, upon moral ground, scruple to give information against the father or friend. Those words are put in for the purpose of putting beyond contradiction persons standing in that relation; but the words 'and others' have universal signification, and they have no exception whatever, any human being being liable to be examined, if it appear to the court, or is suggested, that the person can give information relative to the affairs of the bankrupt. The manner in which the Court below proceeded seems, according to the practice in Scotland, to have been upon the allegation of the trustee that there were persons who could give information. The Court adopts that, I know not upon what verification, nor can I enquire; but the Court having taken up the petition, makes an order to bring the matter into this Court for me to take the examination. That in my opinion seems to me to be rightly done: I do not think that the argument founded upon the expression 'and others' can prevail so as to exempt Mr Park from examination.

"Then comes the other point of the argument, and that was clearly established by the Scotch decisions cited, as I understand them. In that respect the law of Scotland, it is to be observed, as everybody knows, is different from the law of England, because the fact that the person whom it is sought to examine may have a counter claim against the trustee, or may have a 'right' to protect from being attacked, is no exemption to an examination in England. In Scotland it seems to have been very clearly decided that it is an exemption, but then to what extent? It can only be an exemption for the purpose of protecting the 'right' which he asserts,—the protection cannot go beyond that. In has been suggested in the course of the argument that there were questions relating to the mortgage of a ship, and to the realisation of the mortgage security of the ship. When any of such questions is put to Mr Park, according to the Scotch law, as I understand it, he has a right to refuse to answer. Beyond that I cannot look. Neither in the Scotch Bankruptcy Act, nor, as far as I can infer, in the English Bankruptcy Act, is there anything to make these classes of exemption more extensive than the clause which enables the examination of all persons to be made. I cannot conceive there is any exemption to Mr Park, or any privilege to him, to refuse to answer lawful questions, not relating to his position as a creditor, or as a person having a claim, or a 'right,' which the trustee seeks to impeach. I do not think, therefore that the examination in this case, as I observed in the course of the argument, has gone far enough. Mr Park is summoned here—he appears and refuses to answer anything. He says that, according to the law he is not liable to answer any question that may be put, on the ground, as he says, and as Mr Thesiger urged this morning, that he is about to be attacked by the trustee respecting his mortgage transaction. I think he claims more than by law he is entitled to, and I think the examination must proceed. I think the trustee has a right to put all questions relating to the bankrupt's affairs, except (upon the authorities mentioned) all questions which relate to his transaction respecting the mortgage and the realisation of the mortgage security. As to the application to commit, that is out of the question—that is the form; but it is not meant; he must go before the Registrar, and the examination must proceed. He may then be at liberty, as he would be at liberty in Scotland, to appeal to the Scotch law, and say he is exempted from answering particular questions. I am of opinion that he cannot successfully appeal to the Scotch law to protect him from any examination at all. He will have to go before the Registrar."

A day was accordingly fixed for Mr Park's appearance before the Registrar in accordance with this judgment, but before it arrived he brought the present note of suspension and interdict in the Court of Session, praying their Lordships to suspend the proceedings complained of, and "to interdict, prohibit, and discharge the said respondent from following forth an interlocutor of the Sheriff of Lanarkshire, dated on or about 10th June 1871, ordering the examination of the complainer James Park relative to the affairs of the bankrupt George Lambie, before designed, and a notice, dated the 4th day of July 1871, given by the respondent to the said complainer under said interlocutor, or either of them, and from examining the said complainer in the sequestration of the said George Lambie, relative to the affairs of the said George Lambie; as also to grant interim interdict." Pending the disposal of this note of suspension, the examination of the complainer was deferred by the London Registrar.

The grounds of suspension and interdict stated by the complainer were as follows:—"(1) The complainer not being within the class of persons who are under the Bankrupt Acts compellable to give information in reference to the said bankrupt's affairs, he is entitled to suspension and interdict; (2) The complainer cannot be compelled to give information relative to a matter in which the respondent has given him notice that he holds him legally responsible; (3) The application to the Sheriff having contained no statement of any circumstances on which the complainer could give information relative to the bankrupt's affairs, it ought to have been refused by the Sheriff, and the complainer is therefore entitled to suspension."

On 2d August 1871 the Lord Ordinary officiating in the Bill Chamber (ORMIDALE) pronounced an interlocutor refusing the note of suspension and interdict, to which was appended the following

note:—"The complainer attempts in the present application to obstruct the proceedings which the respondent, as trustee in the sequestration in question, has, in the discharge of his duty, thought it necessary to adopt. In making this attempt, the complainer appears to the Lord Ordinary to have acted not very fairly or consistently, for while, according to the shorthand writer's notes produced of what took place before the Chief Judge in Bankruptcy in London on the 17th of last month, he then, by his counsel, undertook to appear and be examined, he had three days previously, viz., on the 14th of July, presented the present note of suspension and interdict, and has since persisted in it.

"The respondent has objected to the competency of the note of suspension and interdict on the ground chiefly that the order of the Sheriff for the complainer's examination was not appealed against, and that it is now final in terms of the 170th section of the Act. The Lord Ordinary doubts, however, whether this provision of the statute can be held to apply to such a case as the present, where the complainer had no notice of the respondent's intention to examine him, and in reality could not possibly have appealed within eight days after the date of the order for his examination, as prescribed by the 170th section of the statute.

"The question therefore is, Whether there is any sufficient ground for the note of suspension and interdict? The Lord Ordinary, being of opinion that there is not, has refused the note, with expenses.

"1. The plea of the complainer that he is not within the class of persons examinable under the statute appears to the Lord Ordinary to be clearly ill-founded, having regard to the comprehensive terms of the 90th section of the Bankrupt Act, and the case of *Burnet* v. *Calder*, 14 June 1855, 17 D. 933.

"2. Nor does the Lord Ordinary think the plea of the complainer, to the effect that the application for his examination did not contain a statement of the circumstances upon which he could give information, can be sustained. The statute does not require this, and the Lord Ordinary can very well understand how it might be inexpedient that it should do so. Accordingly, in the case of *Burnet* v. *Calder*, already cited, the Court would appear to have disregarded a similar plea.

"3. The plea of the complainer, to the effect that he cannot be compelled to give information relative to the matters in which he says the respondent has given him notice that he is to be examined, appears to the Lord Ordinary not to be of any force at present, or as stated in support of the present note of suspension and interdict. If the respondent should attempt to get into any incompetent inquiry at the examination of the complainer, the latter can then object and follow up his objection as he may be advised. Judging from the shorthand writer's notes of what has occurred in the Court of Bankruptcy in London, the complainer has no cause for apprehension on this point.

"4. Finally, the complainer has maintained that the whole proceedings in question, as directed against him, are unauthorised by the Bankruptcy or any other Act, and are therefore illegal and incompetent. This plea is founded chiefly on the assumption that the Scotch Bankruptcy Act does not authorise such an order as that which was pronounced in the present case by the Sheriff, and that he could only, in terms of the 90th section of the Act, have granted a commission for the examination of the complainer. Now, the Lord Ordinary doubts very much whether it would have been competent at all for the Sheriff to have granted a commission for the examination of any person domiciled and resident out of Scotland. It rather appears that the 90th section of the Act has, in regard to the granting of a commission, reference to persons resident within Scotland, but who 'cannot attend.' The English Bankruptcy Act, 32 and 33 Vict. c. 72, passed subsequent to the Scotch Act, here comes into operation, and supplies a defect in the latter. According to the Lord Ordinary's reading of sections 73 and 74 of the English Act, taken in connection with section 90 of the Scotch Act, it was competent for the Sheriff to order the examination of the complainer in the way he did, and for the respondent to carry out the order in England in the manner he was doing, when the present note of suspension and interdict was presented. By section 90 of the Scotch Act, power generally is conferred on the Sheriff to order an examination of persons who can give information relative to the bankrupt's affairs; and by sections 73 and 74 of the English Act, authority is given for carrying into effect such order in the case as here of the person ordered to be examined being resident in England. Although, therefore, the point is a new one—raised now, so far as the Lord Ordinary is aware, for the first time, and not altogether unattended with difficulty, he thinks, for the reason he has indicated, that it has been rightly determined by him against the complainer. In arriving at this result the Lord Ordinary could not forget that the object and policy generally of the bankruptcy enactments require that they should be interpreted or construed in the most beneficial manner for securing and promoting the ends contemplated by them."

Against this interlocutor the complainer reclaimed.

SOLICITOR-GENERAL (A. R. CLARK) and BURNET for him.

WATSON and ASHER for the respondent.

Authorities—*Burnet* v. *Calder* (*Aitken's Trustee*), 14th June 1855, 17 D. 933; *Ridpath* v. *Forth Marine Insurance Company*, 20th July 1844, 6 D. 1438; *A. B.* v. *Binny*, 4th June 1858, 20 D. 1058; *Paul* v. *Robb*, 21st Feb. 1855, 17 D. 457.

At advising—

LORD PRESIDENT—The question raised before us is a new one, and it is at the same time of a sufficiently delicate nature, as affecting the relations of the Scotch and English Courts of Bankruptcy, and so calculated to have some effect hereafter upon the smooth working of the powers bestowed by sections 73 to 75 of the English statute of 1869. If therefore I felt any difficulty as to the result at which we ought to arrive, I should propose to take time to consider. I do not, however, deem that course necessary, as I am perfectly satisfied that the proceedings here objected to have been carried through quite competently and regularly under section 90 of our own Act of 1856, in conjunction with section 74 of the English Act of 1869.

The 90th section of the Scotch statute gives power to the Sheriff to order the examination, not only of all persons connected by relationship or business with the bankrupt, but also of all other persons who can give information relative to his estate; and he is farther empowered to issue his warrant for their apprehension if they neglect or

refuse to appear. He is also farther empowered, if such persons are unable to attend, to grant a commission for their examination. Now, the most important consideration here is, that this is not the taking of evidence, but a proceeding for obtaining information merely regarding the bankrupt's estate—and it is so dealt with throughout the whole of the statute. The word "evidence" has indeed crept in, but obviously by a mistake, into the 92d section; but the whole tenor of the provisions shows that the object of the examination is for information only. It appears to me therefore that none of the provisions of the Scotch statutes as to the examination of witnesses have any application to the question. In the examination of witnesses the Sheriff is empowered, under the Act of 22 Vict. to issue his commission for the examination of witnesses to be executed in other parts of Her Majesty's dominions; and in like manner, under the Act of 1864, 17 and 18 Vict. c. 34, power is given to the supreme courts to summon witnesses to appear before them, though resident beyond their jurisdiction. But none of these statutes can be made available for the purpose of bringing persons from England to Scotland, or *vice versa*, or of granting warrant for their examination on commission, for the purpose of obtaining information in bankruptcy cases. I think therefore that the Sheriff, under the Scotch statute, has no power to compel the examination of parties out of the jurisdiction of the Sheriff-court; and it was to remedy this difficulty that the three clauses of the English statute already mentioned were enacted. The first of these relates to the enforcement of warrants and orders by one court within the jurisdiction of another. But the next clause—the 74th section of the Act—deals not with warrants and orders merely, it provides that all the bankruptcy courts throughout the country shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, to the effect that an order of the court seeking aid, together with a request to another of the said courts, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by such order, the like jurisdiction which the court which made the request, as well as the court to which the request is made could exercise in regard to similar matters, and within their respective jurisdictions. Now, this relates to the exercise of jurisdiction, and not to the mere issuing of orders; and the object contemplated is, that when a court in one part of the kingdom has not jurisdiction over a person residing within the territory of a court in another part of the kingdom, a power is given to the latter to aid the former in any matter of bankruptcy, so far as the exercise of its own jurisdiction, as well as that which the court asking assistance would have in its own territory, will avail. About the construction of that clause there can be, I think, no doubt whatever.

Now, in the present case the trustee in the sequestration made application to the Sheriff of Lanarkshire, before whom the sequestration depended, stating that he considered it essential that the complainer and certain other gentlemen residing in London should be examined anent the bankrupt's affairs, and requesting the Sheriff to grant commission to any of the Registrars of the London Court of Bankruptcy to take their evidence accordingly. I think that the trustee was wrong inframing his request in this form. He asks for a commission. This, I think, would have been an incompetent course. But the Sheriff, very rightly, instead of following this course, took the proper one under the Act of 1869, and made an order, dated June 10th, 1871, for the examination of the complainer and other parties desired. This order does not indicate or determine how, by whom, or in what place, the examination is to be held. But it is followed up by a request to the London Bankruptcy Court, within whose jurisdiction the said parties reside, to act in aid of and be auxiliary to the Sheriff in carrying out the said order.

Now, I think that the Sheriff would have been wrong if he had been more specific in this deliverance. All that he is entitled to do is to ask for aid from the competent court. His order is that the parties named be examined. He leaves the examination to be carried out as appears to the auxiliary court most proper. This is quite in accordance with the meaning and intention of the statute. The complainer did appear when summoned before the London Court of Bankruptcy, and a discussion took place as to the competency of subjecting him to examination. The question was taken before the Chief Judge in Bankruptcy, who decided against the complainer, and ordered him to appear before the Registrar and be examined, which he accordingly agreed to do, and a day was fixed. In the meantime he comes here and endeavours to suspend the Sheriff's order in this Court, pleading that it would be more convenient that he should come and be examined before the Sheriff himself in Lanarkshire. If he had done so timeously, and agreed to defray his own expenses, I dare say no objection would have been made. But I am not for permitting that now. He has appeared before the London court, and taken the judgment of that court, and a diet has been fixed for his examination. I am not therefore for interfering with the course taken by that court. The hardships to which the complainer appeals as likely to arise from his examination in London are purely imaginary. He says that the rules as to examinations in bankruptcy are different in the two courts. But nobody presumes that the examination is to be conducted according to the rules followed in English practice. And the English Judge who has already delivered judgment in this case has shown himself fully alive to the fact that there are differences, and the effect these may produce. The hardship on this head is therefore purely imaginary, and we cannot suppose that the Legislature had any doubt but that all the courts were equally capable of interpreting the laws of evidence applicable to the case.

The only other question is one which has been often considered in this Court. It is whether the complainer is, under the 90th section of the Bankruptcy Act, liable to be examined at all. After the case of *Burnet* against *Calder*, quoted by the Lord Ordinary, there can be no reasonable doubt. The trustee has satisfied the Sheriff that the complainer may have important information to give. It is not necessary that the complainer be in any way connected with the bankrupt, or that the trustee should condescend upon the particulars of the information he wants. That might be in many cases to defeat his object. I am therefore for adhering to the Lord Ordinary's interlocutor, and refusing the interdict.

The rest of the Court concurred.

Agent for the Complainer—John Walls, S.S.C.

Agents for the Respondent—Millar, Allardice & Robson, W.S.