and additions, I do hereby ratify and confirm the said trust-disposition and settlement in the whole heads, articles, and clauses thereof." That trust-disposition and settlement which, subject to certain alterations and additions, is expressive of his will, he confirms in the whole heads, articles, and clauses thereof, and which disposes of all he could possibly die possessed of, is supposed to make intestacy. I cannot agree to that. I think that is deliberately violating the will of the testator, according to which—and I have no other source of information—I am as satisfied as I can judicially be of anything, he intended to give directions with respect to the fee of the residue of his estate. He gives the liferent to his son, and he gives the fee in the manner which is expressed. I think there is a blunder in the expression of the codicil—a plain blunder—for there is no sense in it. I put the question over and over again to the defenders' counsel during the debate—"Can you suggest any view according to which it might have occurred to the testator to give Mrs Miller's husband the *jus mariti* of her share of the fee of the residue if his son David predeceased him, but not if he survived him?" And the answer was necessarily, No. The meaning which the defenders give could not have been that of the testator; there is no sense in it. Therefore there is an inaccuracy in the expression. And in order to reach the man's will I should overcome that blunder. But I do not think that that is even necessary, for I think that under the words of the original will intestacy is, I again say, an impossibility. That deed is confirmed in the whole heads, articles, and clauses thereof, and it is subject, not to intestacy in a certain case, but to certain alterations and additions.

My opinion, therefore, in deference to the mind and will of the testator, and, I think, in accordance with rules and views of law for which there is sufficient authority, is adverse to the judgment of the Court.

LORD RUTHERFURD CLARK—I think the Lord Ordinary's interlocutor is right, and ought to be affirmed. I have nothing to add.

LORD M'LAREN—I concur in the opinion of the Lord Ordinary and Lord Craighill. I may perhaps add, that as a matter of impression I should probably agree with what Lord Young has said as to the intention of this testator. But I arrive at that impression solely as a matter of probability, because I cannot deduce it from the words of the will; and I do not think there is any reason why one should be ingenious in the construction of a will to favour the legatee rather than the next-of-kin. The next-of-kin may be as deserving as the legatee; and if the heir-at-law were the Chancellor of the Exchequer I should think that the same kind of reasoning ought to be applied to the construction of a will, and to the determination of what has been omitted, as in the case where the parties were the children, and therefore the persons most favoured by the testator in the eye of the law.

LORD JUSTICE-CLERK—I entirely agree with Lord Young. Of course the judgment is fixed by the opinions which your Lordships have delivered; but it seems to me that our choice lies between holding that this codicil operates, and was intended to operate, intestacy as regards part of the residue, and adopting any reasonable construction by which effect could be given to the will. The result of intestacy of course is not to be presumed, and in my opinion there is no ground for arriving at the conclusion; and, indeed, I come to the opposite conclusion on the grounds which have been so clearly indicated and explained by Lord Young, but mainly on this ground—the Lord Ordinary holds the revocation in the codicil to be absolute, while I am of opinion with Lord Young that it is not absolute, but conditional and contingent—that the very words of the deed, and indeed the words of the revocation clause which follow, indicate that the revocation was to the intent and for the purpose of bringing the provisions of the will into operation. If these provisions failed, then I think the intention of the testator was that the clauses which are conditional should remain to regulate the succession, and when we arrive at the end of the deed we find that expressed in words which I think explicit.

The Court adhered.

Counsel for Pursuers (Reclaimers)—Trayner—Lorimer. Agent—John K. Lindsay, S.S.C.

Counsel for Defenders Mrs Miller's Trustees (Respondents)—Mackintosh—Dickson. Agents—J. & J. Gardiner, S.S.C.

Counsel for Defender Dr Miller (Respondent)—Pearson. Agent—N. Briggs Constable, W.S.

Thursday, March 20.

FIRST DIVISION.

[Bill Chamber Cause.

KERR (TEENAN'S TRUSTEE) *v.* MAXWELL WITHAM.

Bankruptcy — Sequestration — Joint-Adventure — Accommodation Bills — Vote — Voucher — Conjunct and Confident — Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. c.* 79).

At the first meeting of creditors subsequent to the election of a trustee in a sequestration there was produced a claim founded on certain bills in which the bankrupt was an obligant, and which were long over-due. The claimant was a joint-tenant with the bankrupt in a farm, and had managed the farm for the joint-tenants. He had made no claim for the sums in the bills when the bankrupt's affairs had some time previously to the sequestration been in charge of a *curator bonis*, though claims had been advertised for, and he had been specially written to on the subject. *Held* that the claimant being a conjunct and confident person, and the claim being suspicious in its nature, it was not by the production of the bills sufficiently vouched to entitle the claimant to vote.

Conjunct and Confident — Cheque — Separate Writing.

In a sequestration, the bankrupt's son, and partner in business, claimed to vote,

and produced in support of his claim a cheque in his favour by the bankrupt, a receipt to the bankrupt by a creditor, and a letter (subsequent to the sequestration) from the creditor stating that the debt had been paid by the claimant as an advance to the bankrupt. *Held* that this claim was insufficiently vouched, and that the claimant could not vote.

Trustee, Duty of—Trustee as Mandatory for Creditor.

Observed per curiam—That it is improper and inconsistent with the quasi-judicial duty of a trustee to act at meetings of creditors as a mandatory for creditors.

The estates of Michael Teenan, farmer in Greenmerse and Crookthorn, in the parish of Troqueer and Stewartry of Kirkcudbright, were sequestrated by the Sheriff-Substitute of the Stewartry of Kirkcudbright on 2d November 1883. In the month of April preceding, on the application of the bankrupt's friends and relations, Mr Henderson, solicitor, Dumfries, had been appointed *curator bonis* to the bankrupt, and Mr James M'Gowan as agent to the curator. Mr M'Gowan advertised for claims against the bankrupt estate, and among others lodged was one for £100 by Hugh Crawford, horse-dealer. In prosecuting his investigation Mr M'Gowan became aware of other bills in Crawford's hands, and of bills in the hands of Union Bank at Beith to the amount of £1450, on which were both the names of Crawford and the bankrupt. It appeared that these bills were in connection with a farm (Laigh Grange) in Ayrshire, in which both were interested. The farm was being carried on by Crawford for behoof of himself, the bankrupt, and Mr Richmond, brother of the tenant lately in the farm, who were all large creditors of the tenant. Crawford lodged no claim with the *curator bonis* except for the £100 already referred to.

Thomas Kerr, farmer, Whitehill, near Sanquhar, was appointed trustee in the sequestration. He issued a report on 2d January 1884, after the bankrupt's examination, which had taken place on 20th December 1883, and at which Mr M'Gowan had been examined and had given evidence as to the bills just mentioned. In this report the trustee submitted a state of his affairs, from which it appeared that the assets were £1702, 1s. 8d.; liabilities, £2609, 18s. 1d.—leaving a deficiency of £907, 18s. 1d. The trustee further reported that he had received intimation calling up the amounts lent on bonds on the bankrupt's heritable estate, and he proposed that the heritable property should be disposed of at once.

The first meeting of creditors after the election of a trustee was held on 2d January 1884, being the same date as this report. Mr Kerr, the trustee, was present as mandatory for Crawford, who claimed to be a creditor on the estate, and who claimed to be ranked as a creditor on (1) two bills dated 29th December 1882, drawn at four months by James Richmond upon and accepted by Matthew Richmond, endorsed by James Richmond to the bankrupt, and from him to the claimant; (2) acceptance by M. Teenan & Son, of which firm the bankrupt was a partner, at two months from 1st August 1882; (3) bankrupt's proportions of two acceptances, both dated 23d October 1882, at six months, drawn by the claimant, the bankrupt, and James Richmond, and accepted by Matthew and William Richmond, but dishonoured by the acceptors and uplifted by the claimant.

The total claim for Crawford on these bills was £1581, 7s. 11d., making him the largest creditor.

There also attended as a creditor Robert Teenan, the bankrupt's son, who claimed to be a creditor for £260, 12s. 4d., as the amount, with interest, of an advance to bankrupt to enable him to square accounts with Mr J. A. Smyth, solicitor, Dumfries. He produced with this claim a receipt in bankrupt's favour from Mr Smyth for £200, as follows:—"*Dumfries, 4th April* 1876.—Received from Mr Michael Teenan, horse-dealer here, the sum of £200 sterling, in full of all claims between us; Mr Teenan to grant me a discharge of all claims for money received by me on his account, that is to say, mutual discharges. The expenses of the process *Charles M. Robertson* v. *Michael Teenan* are not included in this settlement, the same being reserved by me, as this case is not yet finished." Also a cheque, dated 6th April 1876, by the bankrupt for £200, and payable to the claimant Robert Teenan, or bearer; and a letter from Mr Smyth to the claimant dated 17th December 1883, as follows:—"Dear Sir—With reference to the receipt granted by me to your father Mr Michael Teenan, dated 4th April 1876, for the sum of £200 sterling, said receipt being in full of all claims between us as therein mentioned, I beg to state, as desired by you, that the said sum was paid by you, outwith the presence of your father, out of your own personal funds, as an advance to your father, to be repaid by him. —Yours truly, J. A. SMYTH."

Other creditors and mandatories also appeared. It was moved by a mandatory for creditors, Mr Hairstens, that the trustee be instructed to sell the bankrupt's heritable property by auction on obtaining consent of heritable creditors, and by another mandatory that he be instructed to sell it and no further instruction be given. For the latter motion Mr Kerr, as mandatory foresaid, and Robert Teenan, and one other creditor, voted, and they being a majority in value their motion was declared carried.

It was then moved by Mr Sharpe, mandatory for Mr R. Maxwell Witham and other creditors, that, *inter alia*, the trustee be directed to obtain from the claimant Crawford a strict accounting of his intromissions in connection with the farm of Laigh Grange, Ayrshire (that which it had been discovered at the time the curator was appointed that the bankrupt Crawford and the Richmonds, mentioned in Crawford's claim, were connected with), and of the bankrupt's interest therein; and further, that the trustee consult counsel as to reducing a bond which the bankrupt had some time before granted to a son named James Teenan. Against this motion Mr Kerr, as mandatory for Crawford, Robert Teenan, and Mr M'Gowan, mandatory for a creditor, voted, and they forming a majority in value it was lost.

Mr Sharpe, on behalf of Mr Maxwell Witham, appealed to the Sheriff.

The Sheriff-Substitute (MAXWELL) pronounced this interlocutor:—"Sustains the first objection stated to the vote of Thomas Kerr, mandatory for Hugh Crawford: Sustains the objection stated to the vote of Robert Teenan: Finds it unnecessary to deal with the other objections: Finds

that there is a majority of votes, in point of value, in favour of the resolution proposed by Mr Hairstens: Finds, further, that there is a majority of votes in point of value in favour of the resolutions proposed by Mr Sharpe: Therefore recals the resolutions appealed against: Declares that the resolutions proposed by Mr Hairstens and Mr Sharpe respectively are the resolutions of the second general meeting of creditors on the sequestrated estates of Michael Teenan, held in the New Bazaar Hotel, Dumfries, on January 2, 1884, &c.

"*Note.*—This is an appeal against the resolutions of the creditors at the first meeting after the election of a trustee. The appeal is on two grounds—(I) That the votes of the mandatory for Hugh Crawford and of Robert Teenan are invalid; (II) On the merits, that the resolutions are inexpedient, and should be overturned. The vote of the mandatory for Hugh Crawford is objected to on three grounds—That the claim is not sufficiently vouched; That it is illegal for Thomas Kerr, trustee in the sequestration, to act as mandatory for Hugh Crawford; That Crawford having an interest adverse to the first instruction moved by Mr Sharpe to be given to the trustee, his mandatory cannot vote on this question. As for the objection that the claim is not sufficiently vouched on the face of the bills produced, and, without further information, I take it that these bills would be held as sufficient vouchers, but the appellant argues that the facts stated in the evidence of Mr M'Gowan disclose such suspicious circumstances that the vote of Mr Crawford's mandatory should not be allowed. It appears from the evidence of Mr M'Gowan that the bankrupt was cognosced insane, and a *curator bonis* appointed in April 1883. Mr M'Gowan was agent to the curator. He advertised for claims on the estate. Mr Crawford did not lodge any, but on being written to he lodged a bill for £100. The agent, on pursuing his investigations, found in the possession of Mr Crawford two bills amounting to £960, and afterwards, other bills in the hands of the Union Bank, Beith, to the amount of £1450, on which were both Mr Crawford's and the bankrupt's names. He further ascertained that these bills were in connection with the farm of Laigh Grange, in Ayrshire, and he was informed that Mr Crawford was carrying on this farm for behoof of himself, the bankrupt, and a Mr Richmond, brother of the tenant who had been in the farm; and that the farm was to be carried on to Martinmas 1883, when the assignation to the lease expired. From the report of the trustee it appears he has not obtained any further information, so that the validity of the vote at this meeting must be judged by examining the bills produced, taken along with the facts stated above. Two of the bills are of date December 29, 1882, at four months' date, drawn by James Richmond upon and accepted by Matthew Richmond junior, and the one endorsed by J. Richmond to the bankrupt, and by him to Crawford; and the other endorsed by J. Richmond to the bankrupt's firm of Messrs Teenan & Son, and by them to Crawford. Another bill is of date August 31, 1882, at two months' date, drawn by Crawford upon and accepted by the bankrupt's firm Messrs Teenan & Son. Crawford also claims on a proportion of the sums in two other bills, both of date October 23, 1882, drawn at six months' date by himself, the bankrupt, and James Richmond upon and accepted by Matthew Richmond junior and William Richmond, endorsed to the Union Bank of Scotland, dishonoured by the acceptors, and uplifted by Crawford. I am of opinion that the objection to this vote is well founded, and the bills are not sufficient vouchers. The claim here is by a confident person; for the claimant Crawford appears to have been joint-tenant with the bankrupt in the farm of Laigh Grange, and also to have managed the farm on behalf of the other joint-tenants. There are also suspicious circumstances, of which no explanation is given, in regard to the claimants not having lodged any claim, except a bill for £100, with the *curator bonis*, even after being written to by the agent. Further, there is no statement as to how the parties stood at the expiring of the lease, when it is to be presumed the stock and crop were realised and there was an accounting between them. I think, therefore, this case is ruled by the decision in *Tytler* v. *Walker*, February 28, 1883 [20 S. L. R. 440], and that the trustee should not have allowed this vote, because insufficiently vouched. Having sustained this objection, it is unnecessary for me to deal with the other objections to this vote.

Deducting the value of this vote, which is £1575, 7s. 11d., there still remains a majority in point of value in favour of the resolutions as carried, but the vote of Robert Teenan is also objected to on the same ground, that it is not sufficiently vouched. The vouchers are a cheque by bankrupt, payable to the claimant or bearer, dated 6th April 1876, and a receipt by J. A. Smyth for £200 received from the bankrupt, and a letter by Smyth dated 17th December 1883, stating that the £200 was paid by the claimant out of his own funds as an advance to the bankrupt. These documents appear to me of a kind not usually lodged as vouchers. The claim is, in fact, founded on a loan alleged to have been made by the claimant to the bankrupt on April 4, 1876. It is to be observed also that the claim is by a conjunct and confident person, son and partner with his father in the firm of Michael Teenan & Son; it must be therefore very 'narrowly examined' (*per* Lord Shand in *Tytler* v. *Walker*, 28th February 1883), Now, a loan of money can be proved only by the writ or oath of the borrower, and it appears from the case of *Haldane* v. *Speirs*, 7th March 1872 [9 S.L.R. 317], that a cheque is not a writing sufficient to overcome this rule of law. So I do not think the cheque taken alone would be a sufficient voucher in the circumstances of this case. The claimant has, however, also lodged in support of his claim the receipt and letter mentioned above. The receipt on the face of it bears no reference to the claimant whatever. It is connected with the cheque by the letter of J. A. Smyth. This letter was written for the purpose of being lodged with the claimant's affidavit, and I do not think it can be taken as a sufficient explanation of the receipt, in which it does not appear that the claimant paid the money out of his own funds. I am of opinion, therefore, considering the relation between the claimant and bankrupt, that these documents are not sufficient vouchers, and that the vote should be disallowed. The value of this vote is £260, 12s. 11d. Deducting the value of the two votes disallowed, amounting together to £1836, 0s. 10d., there re-

mains a vote to the value of £46, 18s. in favour of the resolution proposed by Mr M'Gowan, compared with £149, 15s. 1½d., the value of the votes in favour of the resolutions proposed by Mr Hairstens and Mr Sharpe. The latter, therefore, are the resolutions come to by the meeting, and it is unnecessary for me to go into the question of the expediency of the former."

Kerr, as the trustee in the sequestration, appealed to the Court of Session.

Argued for him—(1) Crawford was not a "conjunct and confident person;" he happened to be joint tenant with the bankrupt in a farm, but that fact did not render him conjunct and confident. It was said that this claim was not sufficiently vouched, but what better vouchers could be obtained than the bills themselves? In the question of expediency it was not necessary to obtain the consent of the heritable creditor in order to sell the heritage; it was *ultra vires* of the creditors to resolve to sell under sec. 96, and then to hedge the sale with a condition. (2) As to the trustee acting as a creditors' mandatory, it was a matter of constant practice—there was nothing in the statute opposed to it, the only section that might be read in opposition to this being the 51st. Besides, the trustee's remuneration was fixed not by himself but by the commissioner and the Accountant in Bankruptcy. (3) As to the trustee's right to appeal, in the first case he only appeared in answer to a citation, and he now appealed in the interests of the estate. See *Forbes* v. *Mansfield*, 13 D. 1272.

Argued for respondent—It was incompetent and improper for a trustee to act as mandatory for creditors. His position among the creditors was that of a judge; he might, if the appellant were right, value his mandant's debts and security, and even vote for his own discharge. Crawford's position, in the absence of any documents of debt confirming the bills, was that of a conjunct and confident person. Teenan's claim was untenable, being a claim by the son of the bankrupt, the only document of debt produced for which was a cheque, which by recent decisions was not a sufficient voucher. The trustee had no right to appeal, not even to appear before the Sheriff. He was not required to attend; all that he got was notice that an appeal was being taken. As to the question of the resolution to sell the heritable estate, the proposed sale was bad, because the amount to be obtained would not cover the bonds upon it. The Sheriff's interlocutor should be affirmed both on the questions of competency and on the merits.

Authorities—Bankruptcy Act 1856, secs. 51, 63, and 152; 2 Bell's Comm. (5th ed.) 350.

At advising—

Lord President — In this case the Sheriff-Substitute has pronounced a very careful and distinct interlocutor, and I am for adhering to that interlocutor, and on the same grounds. The objections which have been taken to the votes both of Crawford and Teenan appear to me to be well-founded. The only vouchers which are produced in support of Crawford's vote are certain bills which bear to have been negotiated and retired by Crawford himself. It is obvious that before any settlement can take place there must be some further investigation, because it appears that these bills were drawn in connection with a speculation in which both Crawford and the bankrupt were engaged, and that they had reference to a farm in Ayrshire in which both had an interest. This is shown by the evidence of Mr M'Gowan. Now, it is well known that when parties desire to carry on such a transaction as that connected with this farm appears to have been, the expedient of accommodation bills is one not unusually resorted to. I think, therefore, that this is quite a sufficient reason why these bills should not be taken as vouchers. No explanation seems to have been offered or allegation made that they were granted for value, and in these circumstances I am clearly of opinion that the Sheriff-Substitute was right in rejecting the vote. Before the time for ranking arrives Crawford will have ample opportunity of proving his debt, but in the meantime I agree with the Sheriff-Substitute in thinking that no sufficient voucher has been produced.

As to Teenan's vote the case is clearer still. He has no voucher at all. There is produced a receipt for £200 in these terms:—"*Dumfries, 4th April* 1876.—Received from Mr Michael Teenan, horse-dealer here, the sum of £200 sterling in full of all claims between us, Mr Teenan to grant me a discharge of all claims for money received by me on his account—that is to say, mutual discharges;" and then follows a condition regarding certain law expenses in a depending action. Now, that proves nothing against the bankrupt's estate. The only other document is a cheque signed by Michael Teenan, and payable to Robert Teenan, his son, and this constitutes no claim whatever, while the letter addressed by Smyth to Teenan after his bankruptcy cannot be made use of at all.

I think, therefore, that the Sheriff-Substitute was right in rejecting this vote also. But a question of general interest has also been raised in the case, and it is this, Whether it was competent for the trustee in the sequestration to act at the same time as mandatory for creditors?

There have been averments on both sides of the bar as to the practice in such cases. On the one side it is maintained that it is matter of common practice for trustees so to act, while on the other side it has been as firmly maintained that such procedure is not only illegal but unknown to exist. I have taken an opportunity of consulting the Accountant in Bankruptcy, and have ascertained from him that the practice is as has been stated by the appellant's counsel. I can only say that I am very sorry to hear it. It is not only a mode of procedure of which I cannot approve, but one which I earnestly trust may be discontinued. I cannot conceive anything more undesirable than the trustee in his quasi-judicial proceedings acting for one set of creditors and against another, all the more as there may be many occasions in which the trustee's interest might be opposed to that of certain of the creditors. It is practically opening the door for fraud; for what was to prevent in the present case—to take it as an example—an arrangement being made between the trustee and Crawford to the effect that Crawford's vote was to be at the service of the trustee, who in his turn was to do the best in his power for Crawford as the largest creditor of the bankrupt. If a practice such as took place in this sequestration is common, as we are informed it is, then I desire to express my reprobation of it. I cannot

however, decide in this case that the trustee acted illegally, and no suggestion has been made of any corrupt motive upon his part. I cannot therefore give effect to that objection in this appeal.

Another question has been raised in the course of the discussion, whether it was competent for the trustee to appeal, not as a mandatory, but in his capacity as trustee? Now, had the trustee not a good title to appear in the Sheriff Court for the purpose of defending the resolutions which he had declared to be carried? There is nothing in the statute to the effect that the right of appeal is confined to the creditors themselves; on the contrary, the bankrupt has a right to appeal, and although in certain circumstances the trustee has no interest in prosecuting an appeal, yet there are other circumstances in which the trustee may appear and support the resolutions carried, because such resolutions may sometimes be of great importance for the interest of the estate. I therefore give no opinion upon the question of the competency of the trustee's appealing in certain circumstances and under certain limitations.

In the present case I adopt the interlocutor of the Sheriff-Substitute in all respects.

Lord Mure—I concur in the opinion which your Lordship has expressed. On the main question, as to whether Crawford and the bankrupt are not in the position towards each other of conjunct and confident persons, there can, I think, be little doubt. They were parties granting bills to each other, and standing in the relation of joint-adventurers. The bills amounted to about £4000, and shortly after they were granted the bankrupt was under the necessity of getting someone to look after his affairs. Bills granted in the circumstances in which these were, cannot, it is hardly necessary to say, be voted upon or received as vouchers, and it will require careful investigation before they will be available for a ranking. As to the procedure by which a trustee comes to act as a mandatory for creditors, I agree with what your Lordship has said about it being a most undesirable practice, and one which may in certain circumstances interfere most seriously with the discharge of his duty as trustee.

With regard to the question of the trustee's right to appeal, I think certain cases might arise in which it would be the trustee's duty to appeal. It certainly would be undesirable to appeal merely on the ground of expediency, but, as your Lordship has pointed out, there is no express prohibition in the statute of such appeal.

Lord Shand—I am of the same opinion upon all the points referred to.

The leading question is, Whether the vote of Crawford's mandatory is to render effectual Crawford's claim for £1580?

It is conceded that if Crawford's claim be admitted he can control the sequestration. I think that the amount is an important element in considering the quality of the vote in such circumstances. Reference has been made in the course of the discussion to the depositions taken in the course of the sequestration. I do not desire to express any opinion upon how far it is competent to refer to these depositions. It appears that the farm in Ayrshire was being carried on by Crawford, the bankrupt, and Richmond, the tenant's brother, for debts owed to them by the tenant. Crawford and the bankrupt were therefore conjunct and confident persons within the definition given by Mr Bell in his Commentaries, vol. ii (5th ed.),p. 187. The decisions in this class of cases show that it will not be sufficient with a large claim like this, that Crawford should merely table his bills. Some explanation of his debt will be required from him over and above these mere adminicles of evidence. Looking to the position in which the parties were placed to one another, this money may have been advanced as a joint contribution for the support of the farm, and this supposition is rendered the more likely from the bills having the signatures of the different parties but though any one of the parties might take part in the preparation of these bills, it is not by any means so clear that he was debtor or creditor in the amount. I think therefore that some investigation will be necessary before these debts can be admitted, and I agree with the Sheriff-Substitute and think that he rightly rejected this vote.

As to Teenan's vote, all I shall say about it is, that it cannot for a moment be considered.

Upon the other points raised in this case I entirely concur in what your Lordships have said.

It is most improper that a trustee should in any circumstances act for creditors by mandate, especially looking to the judicial duties which he has to discharge. Questions are constantly arising regarding the nature of claims, about the taking over of securities, and even about his own conduct, and a trustee must feel himself considerably hampered, to say the least of it, if he holds a mandate for the very parties upon whose claims he has to adjudicate. Under section 51 of the statute he may have to give directions for amendment of claims, and if he is acting as mandatory his position in such circumstances must be very awkward. The trustee also by canvassing among the creditors might by obtaining a sufficient number of mandates secure the carrying of any motions he might propose—a state of matters in every way most undesirable.

It may be observed, however, that section 63 is not by any means limited in its terms, yet it might become a serious question for a particular creditor whether a trustee has in all circumstances, a right of appeal, but upon that I express no opinion. As to the present position of the trustee, perhaps that arises from the very circumstances of these mandates. He may perhaps unconsciously have been influenced, as representing Crawford, in supporting one body of creditors against another, and may thus have been led to adopt the course of appealing. Yet if he thought Crawford's motion desirable in the true interests of the estate, I am not prepared to say that he was not entitled to appeal.

Lord Deas was absent.

The Court affirmed the Sheriff-Substitute's judgment.

Counsel for Appellant — M'Kechnie — James Reid. Agent—John Macpherson, W.S.

Counsel for Respondents—Jameson—Goudy. Agents—Scott, Bruce, & Glover W.S.