ing the shares offered for sale, and it is dealing with this alternative case that the mode of expression to which I have alluded is found. The article directs that if the company do not wish to purchase the shares the company is to "intimate said offer to the other ordinary B shareholders." But these shareholders are not entitled to treat the offer as an offer to sell made by the shareholder to them; on the contrary, what the article directs is that such shareholders as please are themselves to make offers to the shareholder who wishes to sell, and he is to accept the highest of these offers on certain conditions specified. In short, if the company do not purchase the shares the position of offerer and acceptor is reversed. Now, I do not omit to notice that the defenders' letter of 31st January is in the form of an offer to sell the shares, but it bears to be an offer made under article 4 of the company's articles of association, and the only "offer" which a shareholder wishing to sell can make under that article is an offer to the company; he makes no offer to the other shareholders, and his offer, if not accepted by the company is, as an offer to sell, at an end. But it may be followed by offers to buy by such shareholders as may desire to purchase, and this will make a contract if followed by an acceptance by the selling shareholder. There was no reply to the defenders' letter of 31st January until 12th February when the directors of the company, according to their minute of that date, intimated to the defender that "his offer was accepted." But accepted by whom? Not by the company to whom alone the offer was made, but by one of the shareholders Mr Crawford, to whom the defender had made no offer. Now, if there was no offer to Mr Crawford there could be no acceptance by him or by the company on his behalf, and if there was no offer and consequently no acceptance there could be no contract constituted by offer and acceptance. That being so, no decree can be given in terms of the first conclusion of the summons nor can we order (in terms of the second conclusion) implement of a contract which had never been made.

I think that this is sufficient for the disposal of the action, but I agree with what has been said as to the defender's right to withdraw his offer, as he did on 5th February before there was any acceptance, or professed acceptance of his offer. I can find nothing in article 4 to exclude him from exercising the ordinary right of a seller to withdraw an offer to sell before acceptance. I can find nothing to suggest that an offer made under article 4 is to be regarded as a "firm" offer binding the offerer not to withdraw his offer for fourteen days, and as the defender had withdrawn his offer before the 12th February, I think it was competently withdrawn whatever view may be taken of the so-called acceptance on that date.

I agree with the Lord Ordinary that we can take no account of the alleged sale by the defender of his shares to Mr Stevenson. If Mr Stevenson has any rights in regard to these shares, he will be entitled to enforce these rights if necessary in competent proceedings for the purpose, but we cannot enter into that question in this action, to which Mr Stevenson is not a party.

LORD MONCRIEFF—I also think that the Lord Ordinary is right. The contention of the pursuers was that under article 4 of the company's articles of association a shareholder who has intimated to the company his intention to sell his shares was not entitled to withdraw that intimation although he has abandoned his intention of selling his shares, and although there has been no acceptance of an offer to sell in terms of the article. I am unable to spell any such condition out of article 4. There is no doubt that at common law a person who has made an offer to sell is entitled to withdraw the offer at any time before acceptance, unless he has bound himself to leave the offer open for a specified time. I cannot find anything in article 4 to introduce a condition altering the common law on this point. Now, the defender withdrew his offer to sell his shares on 5th February before he received intimation of any acceptance of his offer, and I have no doubt that he was entitled so to withdraw his offer. It would have been a different question if any of the B shareholders had sent in an offer for the defender's shares before the defender had withdrawn his offer. In that case he might have been held bound. But as I have said the defender withdrew his offer before anything was done in the way of accepting it. As regards the conclusion for interdict, I do not think that the pursuers have set forth a relevant case, for they expressly aver that the alleged sale to Stevenson was subject to the right of pre-emption contained in article 4 of the articles of association.

The Court adhered.

Counsel for the Pursuers and Reclaimers — W. Campbell, K.C. — Cullen. Agents—J. W. & J. Mackenzie, W.S.

Counsel for the Defender and Respondent—Clyde. Agents—Webster, Will, & Co., S.S.C.

Thursday, June 27.

FIRST DIVISION.

[Sheriff of Fife.

M'ARTHUR *v.* M'QUEEN.

Process—Proof—Filiation and Aliment—Calling Defender as Pursuer's First Witness.

Observations (*per* the Lord President, Lord Adam, and Lord M'Laren) on the practice of calling the defender as the first witness for the pursuer in actions of filiation and aliment.

Margaret M'Arthur, residing at Crossgates, Fife, brought an action of filiation and aliment in the Sheriff Court of Fife at

Dunfermline, against John M'Queen, miner, also residing there.

Proof was allowed and led. The defender was called and examined as the first witness for the pursuer, and afterwards gave evidence on his own behalf. The Sheriff-Substitute (GILLESPIE) decerned in favour of the pursuer, but on appeal the Sheriff (CHISHOLM) recalled his interlocutor, and assoilzied the defender from the conclusions of the action. The pursuer appealed to the Court of Session.

LORD PRESIDENT — [*After stating his opinion that the pursuer had failed to prove her case*] — I should like to add a word as to the practice of a pursuer calling the defender as the first witness. For many years strong disapprobation of this practice has been expressed from the bench, not only in this Court but in the House of Lords. It is not (unless under very exceptional circumstances) the proper mode of conducting a case. The defender is put into the witness-box in order to get him to commit himself during a hostile examination on some point or points in regard to which it is intended to bring other witnesses to contradict him. It has repeatedly been said that (unless under exceptional circumstances) where a witness is called by either party, he is presented to the Court by that party as a witness of credit, and that the party cannot be allowed afterwards to contradict or discredit him.

This case is an illustration of the injustice which may result from the practice of a pursuer calling the defender in order that he may afterwards be contradicted and treated as a witness who should not be believed.

LORD ADAM — [*After dealing with the facts*]—I entirely concur with your Lordship's observations on the practice — an entirely improper practice in my opinion—of attempting to hamper the defender by producing him as a witness in order to try to get him to perjure himself on some more or less irrelevant and collateral point, and then to contradict him by independent witnesses. I think that is not a fair practice to the defender, and should be discouraged.

LORD M'LAREN—There are cases, such as the reduction of a will, when it may be necessary for the pursuer to put his adversary in the witness-box as a necessary witness to prove a matter of fact which cannot be proved without his testimony. In such cases the examining counsel will be allowed to examine him as an adverse witness—in fact, to examine him according to the rules of cross-examination. But the present is not a case of that sort, for the facts are not necessarily to be proved by the defender's evidence—indeed, if the pursuer's case had to be proved by the evidence of the defender, cases like this would never be brought. Without going so far as to say that the pursuer, if she puts the defender in the box, is bound by everything which he says—for instance, if he denied the fact of connection, I should not hold her bound by that—I think it must be assumed that the defender is put forward by the pursuer as a person of credit, not necessarily on the main issue, but on all the minor facts of the case from which light on the main issue may be obtained. In so far as he speaks to matters of fact with regard to which he must be familiar, and in so doing discredits the pursuer's averments, I think the case must be taken as if one of the pursuer's principal witnesses had failed to establish the facts for which he was adduced.

LORD KINNEAR concurred.

The Court refused the appeal.

Counsel for the Pursuer and Appellant—A. M. Anderson. Agent—P. R. M'Laren, Solicitor.

There was no appearance for the Defender and Respondent.

Friday, June 28.

FIRST DIVISION.

[Lord Low, Ordinary.

GRANT *v.* GREEN'S TRUSTEE.

Bankruptcy—Sequestration—Acquirenda—Debt incurred after Sequestration—Vesting Order — Diligence — Arrestment — Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. c.* 79), *secs.* 102 *and* 103.

The tenant under an agricultural lease was sequestrated in 1893, and a trustee was appointed. By the lease all assignees voluntary and legal were excluded, and it was provided that if the tenant should be sequestrated the lease should, in the option of the proprietor, become *ipso facto* null and void, but that the tenant should be entitled to be paid as an outgoing tenant. It was also provided that the tenant at waygoing should be entitled to be paid for grass, dung, and meliorations on the ground. Upon the sequestration of the tenant the landlord claimed to set off the sum due by him to the tenant at outgoing against arrears of rent amounting to a larger sum, and this claim was not disputed. The whole assets of the tenant other than this claim were bought and paid for by his wife, who had arranged with the landlord to become tenant. The trustee did not take any steps to take up the lease on behalf of the creditors. Ultimately, instead of the arrangement with the bankrupt's wife being carried out, the bankrupt himself continued to occupy the farm, and remained in it till Whitsunday 1898, when he left in consequence of being warned away by the landlord. The trustee in the sequestration had meantime been discharged but the bankrupt himself had not been discharged. At the bankrupt's waygoing in 1898 a certain sum was found to be