

his gift—is creditable to him, and favourable to the weight of his testimony.

The Court adhered.

Agent for Pursuer—John Gillespie, W.S.

Agent for Defender—A. K. Morison, S.S.C.

Tuesday, July 16.

SECOND DIVISION.

MORITZ UNGER, APPELLANT.

Bankruptcy—Appeal—Comparing Creditors—Examination—Adjournment—Commission. Circumstances in which held that the adjournment of a diet for examination of a bankrupt, and the granting of a commission on the application of certain comparing creditors to take evidence in regard to matter embraced in a previous deposition of the bankrupt, were incompetent.

This was an appeal in the sequestration of Moritz Unger, pearl and diamond merchant in Edinburgh, and the question was as to the competency of an order for proof granted to certain creditors, pending the examination of the bankrupt.

The bankrupt was first examined on 12th March last, when he made certain statements as to the loss of a pocket-book containing upwards of £2500 worth of money and jewellery, which he said had dropped from his pocket into the sea when travelling between Hamburg and Leith in the month of February preceding. The examination having been adjourned to the 18th March, was, on that date, again adjourned till the 2d April, when the bankrupt was examined at great length by counsel on behalf of certain creditors. He repeated his statement as to the loss of the pocket-book; and the Sheriff thereupon again adjourned the examination till the 1st July that inquiries might be made. Upon 1st July a further examination took place, at the close of which the counsel for the comparing creditors moved for a further adjournment, and, having offered to guarantee the estate against any further expense that might be thereby incurred, obtained from the Sheriff-Substitute (HALLARD) the following deliverance:—"The Sheriff-Substitute, in respect of the guarantee above set forth, adjourns the further examination of the bankrupt till the 2d day of October next, at eleven o'clock forenoon; further, grants commission to Robert Stuart, Esq., of Lincoln's Inn, London, barrister-at-law, and to the British Consul at Hamburg, to examine witnesses and receive documents with reference to the various matters contained in the bankrupt's previous examination; said commission to be reported against the diet to which this meeting is now adjourned."

The bankrupt appealed against this deliverance, maintaining that the adjournment of the examination was incompetent, and that there was no authority in the Bankrupt Act for granting such a commission as proposed.

The Court to-day sustained the appeal, holding that the Sheriff had no power to adjourn the examination for so long a period, and that the proposed commission to examine witnesses in London and Hamburg was an unheard of and incompetent proceeding. The 90th section of the statute no doubt gave certain powers to the trustee in the way of obtaining information, but that section did not contemplate that its machinery should be set in motion by individual creditors, and certainly did not contemplate a roving commission to take the evidence

of parties not named, and not in any way described or defined.

Appeal sustained, with costs against the comparing creditors.

Counsel for the Appellant—The Dean of Faculty and Mr Pattison.

Counsel for the Comparing Creditors—Mr Alexander Moncrieff.

Counsel for the Trustee in the sequestration—Mr Mackintosh.

Tuesday, July 16.

GRANT v. MACDONALD AND OTHERS.

Mandatory—Sufficiency—Objection. Circumstances in which objection to the sufficiency of a mandatory repelled.

The pursuer, as creditor of John Grant, timber merchant in Wales, raised a reduction of certain transfers of a vessel named "Skylark." He called as defenders—1, the said John Grant, who had at one time been the owner, and who had executed a transfer in favour of a Mr R. H. Macdonald, residing in Glasgow; 2, the said R. H. Macdonald; 3, the pupil children of the said John Grant, in whose favour Macdonald had executed a transfer. The action sought to have set aside the transfer by Grant to Macdonald, and that by Macdonald to Grant's children, on the ground that they were all granted for the purpose of defrauding Grant's creditors. Grant's children being resident in Wales, they were ordered by the Lord Ordinary to sist a mandatory. They accordingly sisted a Mr Johnston. The pursuers then lodged the following note of objections to the mandatory:—

"PATTISON for the pursuer, objected to the sufficiency of the mandatory proposed by the defenders, who is named and designed in the mandate, 'Mr James Johnston, insurance agent, residing at East Drummond Street, Edinburgh.' The said mandatory has no known or ostensible business or means. His name is not in the 'Edinburgh Directory,' nor has he any place of business. Acting on the information of the defender's agent, who gave his description as 'collector and insurance agent, No. 23 East Drummond Street,' the pursuer's agent made inquiries at that address. He found that the house where he resides consists of a garret at the top of a common stair, having all the appearance of poverty and wretchedness. There is no name-plate on the door, the bell-wire is broken; and the only person in the neighbourhood who had any knowledge of Mr James Johnston stated he believed him to be a collector for a burial society. Nobody else knew anything of him. He does not, so far as the pursuer can learn, represent or act for any insurance office."

Lord Kinloch pronounced the following interlocutor:—

"19th June 1867.—The Lord Ordinary having heard parties' procurators on the minute for the pursuer, No. 22 of process, remits to the Sheriff of Edinburghshire to inquire into the sufficiency of the proposed mandatory, and to report.

(Signed) "W. PENNEY."

The Sheriff issued the following report:—

"Edinburgh, June 25, 1867.—The Sheriff has directed inquiry through the Sheriff-clerk as to the sufficiency as mandatory of James Johnston, and the result of the inquiries made is the following:—Johnston resides in the fifth flat of No. 23 East Drummond Street. There is no name-plate on the

door, and the bell-wire is broken. He has a small house of two rooms and kitchen, and the house appeared tolerably well furnished for a house of the kind. The rent was mentioned £10 or £10, 10s. per annum. He is employed, and has been so for about ten days, as canvasser, under Mr M'Cormick, agent for the City of Glasgow Friendly Society, residing at 135 High Street, and receives from 6s. to £1 per week, varying according to the number of insurances effected. Previous to this, and for some time, he was employed in a similar way by Mr Angus M'Kay, 4 Hill Place, agent for the Scottish Legal Insurance Company, and by Mr Geddes, St John Street, agent for the British Legal Insurance Company, and his wages when in these employments might be about £1 per week. None of the persons from whom this information was obtained had any knowledge that Johnston is a man of means, or thought he was in circumstances to be accepted as mandatory. "ARCHD. DAVIDSON."

LORD KINLOCH then approved of the mandatory, and pronounced the following interlocutor:—

"Edinburgh, 3d July 1867.—The Lord Ordinary having heard parties' procurators, repels the objections stated for the pursuer to the sufficiency of the mandatory proposed for the defenders, and sists James Johnston as mandatory for the defenders in terms of his minute, No. 30 of process; grants leave to the pursuer to reclaim against this interlocutor."

The pursuer reclaimed, but the Court adhered.

Counsel for Pursuer—Mr Pattison and Mr Alexander Nicolson. Agent—James Somerville, S.S.C.

Counsel for Defenders—Mr W. N. M'Laren. Agent—J. M. Macqueen, S.S.C.

Wednesday, July 17.

DUKE OF BUCCLEUCH AND OTHERS v.

COWAN AND OTHERS.

(*Ante*, vol. ii, p. 253, vol. iii, pp. 61, 138.)

Process—Jury Trial—Auditor's Report—Counsel's Fees—Scientific Witnesses. Circumstances in which rates fixed for fees to be allowed to counsel, and for the attendance of scientific witnesses, and for the preparation of reports.

This case came before the Court to-day on a report from the auditor of the pursuers' account, who were ultimately successful in the action. The pursuers objected that the auditor had disallowed a payment of £27, 9s. 3d. made to a water-bailiff in 1848, during the dependence of the original action, and maintained that as they had been successful in the case they should be relieved of it. The Court, however, approving of the auditor's report, held that as this was a payment made under a mutual agreement it must be held to be extra-judicial. The auditor's report dealt with three other matters—(1) the number of counsel; (2) fees allowed; (3) fees to scientific witnesses. The auditor allowed two seniors and one junior, owing to the importance of the case; and to these he allowed 30, 20, and 14 guineas per day respectively, following the principle of doubling the fees, which were allowed in the case of *Hubback v. North British Railway Company*, 25th June 1864, a course which he considered reasonable looking to the importance of the interests involved in this case. The fees of the scientific witnesses were fixed by the auditor in conformity with the rule adopted in the case of *Gillespie v. Russell*, at 5 guineas per diem, 3 guineas being allowed for each analysis; and to this the Court

adhered. The auditor's report accordingly was in all respects sustained. The amount of the account was £6053, 10s. 4d.; taxed off, £2346, 11s. 7d.; leaving a balance due by the defenders of £3706, 18s. 9d.

COURT OF TEINDS.

Wednesday, July 17.

MINISTER OF KIRKCALDY, PETITIONER.

Parish—Minister—Glebe Land (Scotland) Act 1866.

Form of procedure in a petition by a parish minister for authority to feu a glebe, presented under the "Glebe Lands (Scotland) Act 1866."

This was a petition at the instance of the Rev. Mark Johnston Bryden, minister of the parish of Kirkcaldy, in the presbytery of Kirkcaldy and county of Fife, for authority to feu part of the glebe of Kirkcaldy, presented under the provisions of the Glebe Lands (Scotland) Act.

The petition, after setting forth the name and designation of the petitioner, narrated at length the 5th section of the Act, the interpretation clause (section 2), and the 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, and 18th sections, and stated generally the nature of the remaining sections. The petition then stated the stipend of the petitioner, and the extent and population of the parish; that the glebe consisted of two portions, one portion called the small glebe, in the immediate vicinity of the manse, and the other portion called the large glebe, and of above 4616 acres in extent, lying at some distance; that the whole of the said glebe was at present arable, except a small part occupied as a rope-work; and that the large glebe was well adapted for sites for workmen's houses, for which there was a great demand in that neighbourhood, there being large public works in the immediate vicinity. The petition further stated that the minimum yearly feu-duty at which it was proposed to feu this portion of the glebe was £20 per acre, but it was anticipated that a considerably higher rate could be obtained. The rents at present derived by the petitioner from the large glebe amounted to £38, 16s., and were the whole of it feued, which there was every reason to believe would be done forthwith, the feu-duty at the minimum rates proposed would amount to £92, 18s. 4d., and the petitioner and his successors in office would thereby be benefited to the extent of £83, 16s. 4d. per annum, subject to the interest on the expenses of the present application, and of making the necessary streets, roads, passages, sewers, and drains to and through the glebe, which, however, would be ultimately paid off by the casualties of superiority.

The petition prayed for intimation and service in terms of the Act, and craved the Court:—" (1) To authorise and empower the petitioner, and his successors in office, at the sight of the heritors, as defined by the said Act, and of the presbytery, subject to the provisions of the foresaid Act, to grant and disposed of the portion second above described, of the said glebe of Kirkcaldy, or any part or parts thereof, in feu-farm, fee, and heritage for the highest feu-duties that can be got for the same, not being less than the minimum feu-duty to be fixed by your Lordships, and that either by public auction or private contract, to feu the whole or any part or parts of the said portion of the glebe of Kirkcaldy, and that at all time or times and in such portions as he or they, with the con-