the case as to bills differently situated, I think a bill signed in blank is not issued when so transmitted. There may arise nice questions as to when such a bill shall be held to be issued; and questions which cannot be solved by laying down any absolute rule beforehand. In the present case, where the question is exclusively between the drawer and acceptors, I think the bill was not issued till the drawer filled it up in the bank with which he discounted it. The drawer, as already said, held a mandate from the acceptor to fill up the instrument. When he proceeded to fill up the bill with its necessary elements, including the date, he was in substance just the acceptor doing the same thing. The case must be held the same as if the acceptor had himself, in the presence of the drawer, filled up the date, and then handed him the bill. In that case there would be no ground for holding that the date was inserted after issue; and as little, I think, is there in the present case.

On this ground, also, I think, the Mercantile Law Amendment Act inapplicable to the present case.

Agents for Complainer—Leburn, Henderson, & Wilson, S.S.C.

Agent for Respondent—J. C. Baxter, S.S.C.

Thursday, January 21.

OLIVER *v.* WALLACE.

Bankrupt—Evidence of Claim—Trustee. When a trustee on a bankrupt estate thinks that evidence is required in support of a claim, he ought to give the claimant an opportunity of leading that evidence.

Where a claim has been rejected by a trustee as unsupported by evidence, and the claimant appeals, it is matter of discretion for the Court either to take the evidence or to remit to the trustee to take it.

The estates of James Orr were sequestrated on 6th September 1867, and the respondent was appointed trustee. Certain claims on Orr's estate, lodged by Oliver, were rejected by the trustee, he alleging that many of the items were manifestly unfounded, and that no evidence was offered in support of them.

Oliver appealed, and craved the Court "to recal and alter the decision complained of; and to ordain the trustee to rank the appellant in terms of his claim; and to make payment of the dividend corresponding to the debt for which the appellant claimed in his oath; to be ranked with bank interest on the dividend from the time the same shall be deposited by the trustee; and to find the appellant entitled to expenses."

The Lord Ordinary (MANOR) pronounced this interlocutor:—"Remits back to the trustee to require and receive evidence of the several items of the appellant's claim, and to dispose thereof as he shall see fit: Finds the appellant liable in expenses," &c.

"*Note*—It appears to the Lord Ordinary quite incompetent for the appellant to come to the Court and ask for a proof, which he might have had, and ought to have led before the trustee."

The appellant reclaimed.

SCOTT and REID for reclaimer.

BURNET for respondent.

At advising—

LORD PRESIDENT—The Lord Ordinary says—"It appears to the Lord Ordinary quite incompetent for the appellant to come to the Court and ask for a proof, which he might have had, and ought to have led before the trustee."

I understand all your Lordships to be of opinion that it is not incompetent for the appellant to ask for a proof here, or for the Court to allow it if they see cause; and it is matter of discretion in the circumstances, whether the course adopted by the Lord Ordinary should be followed, or a proof allowed in this Court.

I should desire, however, to add that I hope it will not be understood that if we take the course of allowing the proof to be taken here, that imports in any way an expression of opinion that a trustee is justified in not taking evidence, when necessary, in support of a claim, or that what we do here can have any effect on the decision in *Adam and Kirk*. As far as I am concerned, I adhere to what I said in that case. When a trustee considers that evidence is required in support of a claim, he should give the claimant an opportunity of leading that evidence, for generally that can be done more easily and more cheaply before the trustee than here. But in this case I think it would be most expedient to take the proof here.

The other Judges concurred.

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

Agent for Respondent—John Thomson, S.S.C.

OUTER HOUSE.

(Before Lord Manor)

GOW'S EXECUTORS *v.* GOW.

Approbate and Reprobate—24 *and* 25 *Vict. c.* 114—*Testament—Domicile*—Animus revertendi—*Construction of Will—Foreign Law.* A, a Scotchman, lived abroad in an English colony from 1842 to 1863. A few days before finally leaving the colony for Scotland he executed a will in the English form, giving certain legacies to his heir-at-law, and the whole residue of his estate to a nephew. After his return, he lived sometimes in Scotland, where he bought a piece of land and began building a dwelling-house, and partly in England, where, however, he had no fixed residence. He died a domiciled Scotchman. Admittedly his residence abroad had been merely for trading purposes, he always having an *animus revertendi*. *Held*, (by LORD MANOR) that the domicile at death being Scotch, the will must receive effect according to the law of Scotland; and that the principle of approbate and reprobate applied to prevent the heir from taking both the legacies and the heritage.

Remit to English Counsel *held* unnecessary, there being no technical terms in the deed requiring interpretation.

Opinion, that A's domicile at the date of the will was foreign.

In 1842 David Gow, a Scotchman, left Scotland for Singapore. After remaining at Singapore for three or four years he went to Hong Kong, where for many years he carried on the trade of a shipbuilder, in partnership with George Harper. About the year 1861 Gow proposed finally leaving Hong Kong and returning to Scotland, his partner Harper remaining to take charge of the business at Hong Kong, but Harper asked Gow to remain, in order that he, Harper, might first come to this country to see his