mer bill, and some small items appearing in the ledger of Ferguson, Anderson, & Company at the debit of John M'Intyre & Company; and at the same time the old bill for £100 was given up by Ferguson, Anderson, & Company either to John or James M'Intyre; that Ferguson, Anderson, & Company retired at maturity the bills mentioned in the letter of guarantee, with the exception of the bill first-mentioned, for £71, 18s. 10d., as well as the renewed bill for £103, 15s. 3d.; that the estates of Kirkpatrick, M'Intyre, & Company, and James M'Intyre, the sole partner of that company, were sequestrated on 12th December 1867; and that notour bankruptcy was thereby constituted against the said firm and individual partner."

In these circumstances, the Sheriff, sustaining one of the grounds on which the trustee rejected the claim of the appellants, found—"That the above-mentioned letter of guarantee granted by Kirkpatrick, M'Intyre, & Company, in favour of the appellants, Ferguson, Anderson, & Company, who were creditors of the said Kirkpatrick, M'Intyre, & Company on the bill for £100 at the time of granting, is a voluntary deed granted by the said bankrupts within sixty days of their becoming bankrupt, in favour of creditors for their satisfaction or further security in preference to other creditors; and Finds that said letter of guarantee is, under the provisions of the Statute 1696, cap. 5, void and null: Finds that the first ground on which the trustee's deliverance is founded, under the Statute 1621, cap. 18, is not now insisted in: Sustains the second or alternative ground on which the appellants' claim is rejected: Dismisses the note of appeal: Finds the appellants liable in expenses," &c.

Ferguson, Anderson, & Company appealed.

SHAND and CLARK for appellants.

WATSON and TRAYNER for respondent.

LORD DEAS—A very nice question is raised under this appeal as to the application of the Act 1696, c. 5. The state of matters may be shortly stated thus—Laying aside the company firms, the repetition of which rather darkens the matter, we may take it in this way:—James M'Intyre and John M'Intyre are debtors in a £100 bill, mentioned in the interlocutor, and John is debtor in various other bills, the whole being due to Ferguson and Company. The transaction said to have taken place is, that Ferguson and Company agreed to renew the £100 bill, in which James M'Intyre, the bankrupt, was debtor, on condition that James guaranteed payment of the three other bills which were the debt of John. The question is, whether that transaction is struck at by the statute? that is, whether that is a voluntary deed granted by the bankrupt in favour of a creditor on the bankrupt's estate, for his satisfaction or farther security, in preference to other creditors? That is, whether it is a voluntary deed by the bankrupt in favour of one of his own creditors, in satisfaction or security of a debt due by him to these creditors? After the best consideration I can give to the matter, I think that, whatever other objections may apply,—whether the deed would have been challengeable under the Act 1621, or whether it is reducible at common law,—it is not granted in satisfaction or security of any debt due by the bankrupt in any way. The bankrupt might have granted that guarantee within sixty days of bankruptcy, although he himself owed no debt whatever to Ferguson and Company, and unless that had been set aside on some other ground than the Act 1696, there must have been a ranking on the estate of the defenders. If, again, the debt of £100 had been paid, the guarantee would still have remained, so as to give a ranking on the estate of the bankrupt who had granted it. As the case stands, although the bill for £100 stands and has not been retired, it stands in the same position as if this guarantee had not been granted. It is not contended that the £100 bill is to rank for the full amount. If the bankrupts had paid any thing in satisfaction of that debt, the amount of the debt would have been *pro tanto* diminished. But how this can be said to be in satisfaction of a debt which is not satisfied, or in security of a debt which is neither more nor less secured, I cannot understand. I am not surprised that the Sheriff-substitute took a different view. This transaction looks at first sight rather complicated, and there is an appearance of equity in the view taken in the interlocutor before us. But on full consideration, I think we have nothing to do with the nature of the transaction, and that it would be dangerous to extend the application of the Act 1696 in cases to which it does not naturally apply.

LORD ARDMILLAN and LORD KINLOCH concurred.

The LORD PRESIDENT was absent.

Agents for Appellants—J. W. & J. Mackenzie, W.S.

Agent for Respondent—A. K. Mackie, S.S.C.

Tuesday, March 2.

SECOND DIVISION.

BROWN *v.* LINDSAY (DUNCAN'S TRUSTEE).

Bankrupt—Act 19 *and* 20 *Vict. c.* 79, §§ 71 *and* 75 *—Irregular Procedure—Sheriff. Held* that a creditor was foreclosed from stating objections to the election of a trustee and other procedure at the meeting held for that purpose by his failure to bring such objections under the notice of the Sheriff.

Opinion reserved as to the effect of fraud in making said objection competent.

This was an action brought by Matthew Brown, cabinetmaker in Edinburgh, to set aside the election of trustee, and other proceedings, in the sequestration of William Duncan, S.S.C. The ground of reduction was certain alleged irregularities in connection with the meeting at which the trustee was elected, and, in particular, the alleged fact that the minutes of the meeting in question were not, as required by the statute, written out and signed in presence of the meeting.

The defence was a denial of the allegations of the pursuer with reference to what passed at the meeting, and the mode in which the minutes were prepared; but, in addition, the defender pleaded—(1) That the pursuer was bound to have stated his objection before the Sheriff, and that, the Sheriff having confirmed the trustee without objection, the matter was now foreclosed. (2) That the pursuer, having been present at the meeting in question, having concurred in the trustee's election, and having alleged nothing beyond certain irregularities, by which he was in no way prejudiced, had no interest to insist in the present action.

The Lord Ordinary (JERVISWOODE) sustained both of the foregoing pleas, and dismissed the action. His Lordship added the following note:—"There is in the Lord Ordinary's opinion some difficulty here, as to whether the whole facts of the

case are so fully before him as to warrant his present judgment. But after consideration of the terms of the Bankruptcy (Scotland) Act, 19 and 20 Vict., c. 79; and more particularly of the 71st and 75th sections of that Statute, as illustrated by the judgment of the Lord Ordinary, and of the Court in the case of *Buchan and Others* v. *Bowes*, June 13, 1863, the Lord Ordinary has come to the conclusion that, dealing with the statements on the record as they stand, the pursuer cannot succeed in the present action.

"If this conclusion be well founded in relation to the statutory provisions, there is no apparent hardship in giving effect to it here, as no specific allegation is made on the part of the pursuer of actual loss or injury suffered, or anticipated by him in respect of the proceedings, which, at the risk of probable hardship to others, he seeks to set aside."

The pursuer reclaimed, and pleaded, with reference to the alleged finality of the Sheriff's judgment, that under the statute the Sheriff had no power to intertain objections to the validity of the minute of meeting, but could only deal with objections which were disclosed in that minute and related to such matters as the votes of particular creditors or personal objections to the trustee.

FRASER and SCOTT for pursuer.

CLARK and SHAND in answer.

The Court adhered to the interlocutor of the Lord Ordinary, and adopted both his Lordship's grounds of judgment. With reference to the Sheriff's power to deal with objections like the present, Lord Neaves held that such power did not require to be expressly given. Whether it was expressly given or not, it was fairly within the contemplation of the statute. It would be a different matter if a creditor could allege that an irregular meeting had been held behind his back and fictitious minutes concocted, and the Sheriff's confirmation obtained, all before he had been aware of the proceedings. On such a case no opinion need be expressed. A reduction-improbation of the minute might in that case possibly be competent, but there was no suggestion of such a case here; and the pursuer was, in the circumstances of this case, fairly foreclosed by his failure to state his objections before the Sheriff.

Agent for Pursuer—Thomas Wallace, S.S.C.
Agent for Defender—William Spink, S.S.C.

Wednesday, March 3.

FIRST DIVISION.

BATE *v.* CORSTORPHINE.

Sale—Heritage—Missives—Concluded Contract—Condition. A, proprietor of land, wrote, "I agree to accept an offer of £12,600 from B, provided he couples his offer with" a certain condition. B wrote accepting the offer, subject to the condition. *Held* that there was a concluded contract of sale between the parties, and that, on fulfilment of the condition, B was entitled to a disposition.

Bate wished to purchase the lands of Broad-chapel, belonging to the defender, and offered £11,000, which offer was declined. Farther correspondence about the purchase took place between Waugh, a friend of the pursuer, and the defender, and then the defender wrote and delivered to Waugh the following letter:—"*Kingsbarns, 26th July* 1868,—Dear Sir,—As I now understand that an offer for Broadchapel is to be made by another party, and as I have not had an opportunity of ascertaining the amount of it, I agree to accept an offer of £12,600 from Mr John Bate, provided he couples his offer with the condition that, in the event of a better offer than his being made before he has gone to any expense in improving the property, he will divide equally with me the sum offered or accepted in excess of £12,600.—Yours truly, Alexr. Corstorphine. Mr John Waugh, Castlehill.'

The pursuer sent this answer,—"*Broadchapel, Lochmaben, Dumfriesshire, July* 29, 1868.—Captain Corstorphine,—Dear Sir,—I agree to accept of your offer of the property of Broadchapel for the sum of £12,600, subject to the condition named in your letter of the 26th instant to Mr John Waugh.—Very sincerely yours,—JOHN BATE."

These writings were holograph of the parties.

The pursuer contended that by these letters a sale of the land was validly constituted, and alleged his willingness to pay the price, and perform all the obligations incumbent on him under the letters.

The defender alleged that, at his interview with Waugh, he "stated that he expected Mr Jardine, a neighbouring proprietor, to offer; but if the pursuer would offer £12,600, and so ensure that price to the defender, he (the defender), in the event of his selling the estate to Mr Jardine at a higher price, would give a-half of the excess over £12,600 to be got from Mr Jardine to the pursuer, as a douceur for the loss of the property. Mr Waugh thought this proposal quite reasonable, and the letter quoted in this article was accordingly written by the defender as the first step of the above arrangement. It was quite understood between the parties that defender was to be entitled to accept a higher offer from Mr Jardine. The expression in the said letter, 'he will divide equally with me' is a Fifeshire provincialism, and means, 'he will receive an equal share with me.' On 30th July 1868, Mr Jardine made an offer of £13,050 for the lands of Broadchapel, which was, of same date, accepted by the defender. The defender is willing to pay to the pursuer one-half of the difference between £13,050 and £12,600."

The Lord-Ordinary (JERVISWOODE) found "that the terms of the letter of 26th July 1868, addressed by the defender to Mr Waugh, import a present consent to sell to Mr John Bate the property of Broadchapel therein mentioned, for the sum of £12,600, subject only to a condition subsequent, to the effect that, in the event of a better offer being made for the property before Mr Bate had gone to any expense in improvements, he, Mr Bate, should divide equally with the seller, Mr Corstorphine, the amount of the sum offered, so far as in excess of the £12,600, whether he, Mr Bate, should accept or should decline to accept such offer; and finds that the acceptance of the said offer by the pursuer, in terms of the letter of the 29th July 1868, as set forth in the 7th head of the condescendence, was unconditional; and, with reference to the foregoing findings, finds, as matter of law, that a binding contract of sale was completed between the parties: Therefore sustains the first plea in law for the pursuer, and appoints the cause to be enrolled with a view to further procedure."

The pursuer reclaimed.

ASHER for reclaimer.

GIFFORD and BURNET for respondent.