Lord DEAS—I am of the same opinion. The ground on which the Lord Ordinary has proceeded is that the material allegations on which the lawburrows was obtained are not only without probable cause, but absolutely false. I am clearly of opinion that we have nothing before us to show that this is the case, and we are not entitled to take it for granted. I quite concur with your Lordship that the conviction does not entitle us to say that the respondent's allegations are false. It does not even afford a *primâ facie* ground for presuming it. The occurrence took place on Saturday the 15th May, and on the Monday following—the earliest possible day—the respondent presents an application for lawburrows, and it is only on the following day that the complaint is made against him to the fiscal. The inference from this is, not that the lawburrows was applied for in revenge for the complaint, but that it was the cause of bringing about the conviction. The Lord Ordinary overlooks the material allegations by the reclaimer. These are the threats said to have been used in February. Who is right or wrong as to what took place in May does not show that these allegations are false. It certainly does not show that the respondent did not threaten the reclaimer's life in February. I cannot, therefore, concur with the Lord Ordinary. The averment of malice and want of probable cause is not to be taken for truth. If a bare statement were sufficient, the diligence of the law would be an absurdity and useless. The allegation must be proved; and it is only reasonable that, until this is done, the respondent should be bound under a suitable penalty to keep the peace towards the reclaimer.

The other Judges concurred.

Agent for Reclaimer—A. Beveridge, S.S.C.

Agent for Respondent—A. Cassels, W.S.

Saturday, June 26.

SECOND DIVISION.

DONALD CATTANACH'S TRUSTEE *v.* JOHN CATTANACH'S TRUSTEE.

Bankrupt—Stock—Disputed Ownership. Circumstances in which the Court decided the ownership of a bankrupt stock that was disputed.

The pursuer in this action was trustee on the sequestrated estate of Donald Cattanach jun., lately merchant in Newtonmore and Kingussie.

The defender was trustee on the sequestrated estate of John Cattanach, brother of Donald. The summons concluded to have it found and declared that Donald was tenant of a shop for the sale of draperies and other goods in Kingussie; that the stock and furnishings of that shop belonged exclusively to him; and that the defender should be decerned and ordained to deliver up the stock so far as undisposed of, and to hand over the proceeds and prices thereof so far as sold.

After a lengthened proof, the Lord Ordinary (BARCAPLE) found, decerned, and declared in terms of the declaratory conclusions of the libel, and decerned the defender to concur with the pursuer in uplifting a sum deposited in bank, which the parties had agreed to hold as the proceeds of the goods sold, and found the pursuer entitled to expenses.

His Lordship added the following—

"*Note.*—The evidence is extremely conflicting, and the question at issue in regard to the ownership of the goods in the shop at Kingussie is left in much obscurity. But, on a review of the whole evidence, the Lord Ordinary is led to the conclusion that they belonged to Donald Cattanach.

"The parties concur in maintaining that they were not joint or partnership property. The question is, therefore, to which brother are they to be held to have belonged? It was strongly urged for the defender that, John Cattanach being bankrupt, he and his father and brother have no interest in the matter. This may be so; but the Lord Ordinary can only say that he entirely disbelieves their evidence. There are, however, facts not resting upon their testimony which tend to support the case of the defender. The most important of these is the undoubted existence of a firm of J. & D. Cattanach at Dingwall, which ceased to exist about the beginning of January 1868, when the Kingussie shop was opened, part of the goods from Dingwall being taken there. There is no evidence except that of the Cattanachs as to the respective interests of the brothers in that firm, or the arrangement made when it came to an end. There is the evidence of Mr Edmonstone of Aberdeen that he received and executed an order for goods to the value of £12, 9s. 3d. for the Kingussie shop from John Cattanach in his own name, though he has mislaid the letter. There is the fact that the license was taken in name of John Cattanach. And, lastly, there is the evidence of William Cumming that he was desired by Donald to furnish a sign-board with 'J. & D. Cattanach,' and that afterwards he was desired by Donald, in the presence of John, to put on only 'J. Cattanach.' It is remarkable that, though the order was given in January, the article was not furnished when Donald absconded in June.

"These are undoubtedly very important facts, tending to the conclusion that the shop was carried on by John, and that the goods belonged to him. But the Lord Ordinary thinks they are more than counterbalanced by the evidence on the other side. It goes to show that Donald was the party who ostensibly carried on the business, and with whom all parties contracted in regard to it, John being only recognised as shopman. Donald was undoubtedly the tenant of the shop, which he first took up to May 1868, and afterwards retook from that term, in his own name, and without any reference to John. The pass-books of customers bore the name of Donald Cattanach, written in his own hand, as the party to whom they were indebted. This must have been known to John, who made entries and signed receipts in these books. Donald gave orders in his own name to customers for goods which he happened not to have in the shop at the time, and these orders were implemented solely on his credit. There is strong evidence that the understanding of the place was that the shop was his, and that John was only shopman. With the single exception of Edmonstone, who supplied one parcel of goods on the order of John, Donald alone dealt with the merchants who furnished goods for the shop, even when they visited Kingussie; and they understood the shop to be his, and made the furnishings on his credit.

"Holding, as he does, the evidence of the Cattanachs to be altogether unworthy of credit, the Lord Ordinary thinks that the proof preponderates in favour of the pursuer."

The defender reclaimed.

SHAND and RUTHERFURD for him.

SCOTT and BRAND in answer.

The Court adhered, with additional expenses.

Agent for Pursuer—John Walls, S.S.C.

Agent for Defender—W. M. Johnstone, S.S.C.

Tuesday, June 29.

FIRST DIVISION.

M'LAREN & CO. AND OTHERS *v.* PENDREIGH.

Bankrupt—Composition—Statutory Majority—Bond of Caution—Massing together of two Bankrupt Estates. Certain parties carried on a business as brewers under the firm of J. & G. P., and also a separate business as grain merchants under the same firm. The two companies, and the estates of the partners, were sequestrated. The grain creditors were offered a composition, with payment of expenses, and security, the offer further stating that the like offer of composition was made to the brewery creditors, —both offers being made on the footing that the creditors should be entitled to rank upon both estates for their full claims. *Held* that this offer was not in terms of the Bankrupt Act, and that any dissenting creditor was entitled to object to the massing of the two sequestrated estates which the offer implied.

The estates of J. & G. Pendreigh, grain merchants in Edinburgh and Leith, and mill-masters at Catcune Mills, Gorebridge, and of the individual partners, were sequestrated, Carter being appointed trustee.

At a meeting of creditors held on 27th April 1869, the following offer of composition by the bankrupts was read to the meeting:—

"*Edinburgh, 27th April* 1869.

"To the Chairman of the Meeting of our Creditors to be held to-day.

"Sir—We hereby offer to make payment of a composition of three shillings and sevenpence halfpenny per pound upon the whole debts due by us as grain merchants in Edinburgh and Leith, and mill-masters at Catcune Mills, Gorebridge, in the county of Edinburgh, said composition to be in full of all claims against us, either as a company, or against us, the individual partners thereof, as at the date of the sequestration of our estates, payable said composition by the following instalments:—One shilling and threepence at three months; one shilling at six months; ninepence at nine months; and sevenpence halfpenny at twelve months after our final discharge.

"The separate firm of J. & G. Pendreigh, brewers, Abbeyhill Brewery, Edinburgh, and the partners thereof, make offer of a like composition of three shillings and sevenpence halfpenny per pound, payable by the same instalments; and both offers are made on the footing that the creditors shall be entitled to rank upon both estates for their full claims.

"We further offer to pay and provide for the expenses attending the sequestration, and the remuneration to the trustee; and we offer Mr George Pendreigh senior, residing at Upper Dalhousie, in the county of Edinburgh, as our security for the said composition, expenses, and remuneration.—We are, Sir, your most obedient servants,

(Signed) "J. & G. PENDREIGH.
JAMES PENDREIGH.
THOMAS G. SCOTT.
GEORGE PENDREIGH.
JOHN PENDREIGH.

"I hereby offer to become security for the foregoing offer.

(Signed) "GEORGE PENDREIGH senior."

Before the foregoing offer was put to the meeting, Mr M'Laren, a creditor, intimated the following protest:—"That the offer of composition is incompetent and informal, as there are two separate sequestrated estates, and the offer proposes that creditors on one estate shall rank and receive a dividend on both estates."

To this protest Mr Paterson adhered, and thereupon these gentlemen left the meeting.

The chairman having put the offer and the security proposed to the meeting, the creditors and mandatories for creditors present unanimously resolved to entertain the offer and security for consideration; and directed the trustee to call a meeting of the creditors for the purpose of having the same finally decided on, in terms of the statute.

On 7th May the trustee issued a circular intimating this offer of composition, and calling a meeting of creditors to decide thereon. The state of affairs and valuation of the grain estates annexed to the circular gave the assets at £49,155, 7s. 1d., and the liabilities at £141,694, 17s. 6d., shewing a dividend of 6s. 9d. per pound, subject to expenses of sequestration.

At a meeting of creditors on 21st May, the creditors present unanimously agreed to and accepted of the offer of composition, approved of the security, and directed the trustee to proceed accordingly. The trustee reported in terms of the 138th section of the Bankruptcy (Scotland) Act 1856, whereupon the Sheriff-substitute (HALLARD) pronounced this deliverance:—"The Sheriff-substitute, having considered the foregoing report, with the minutes of meeting of creditors and bond caution therein referred to, and having heard Mr Trayner in support of the discharge, and Mr Murdoch on behalf of certain creditors who lodged a caveat craving to be heard, Finds that the offer of composition, with the security therein mentioned, has been duly made, and is reasonable, and has been unanimously assented to by the creditors assembled at said meeting; but before granting a discharge, appoints the bankrupts to appear and emit the statutory declaration at a diet to be afterwards fixed."

M'Laren & Co. and Cochrane, Paterson & Co. appealed to the Inner House on 4th June 1869.

Young, another creditor, presented a note of appeal to the Lord Ordinary on the Bills, which note the Lord Ordinary on 11th June, in respect of the dependence of the similar appeal in the Inner House, reported.

GORDON, Q.C., CLARK, and ASHER for M'Laren and others.

SHAND and STRACHAN for Young.

Solicitor-General, (YOUNG, Q.C.), GIFFORD and TRAYNER for respondent.

At advising—

LORD PRESIDENT—In this sequestration we have six appeals, all raising the same question. There are three creditors who insist in these appeals, and each has an appeal against the resolution of the meeting approving of the composition, and each has also an appeal against the deliverance of the Sheriff-substitute approving of the composition. The question is, whether the composition has been regularly made under the statute, and is such as can be approved of and carried into effect so as to bind the whole creditors in the sequestration. This