having a limited title, as a curator, a judicial factor, a trustee. But the appointment is in all these cases general and unlimited; it is given to a party having a general right to administer; and no reason exists in the nature of the case why the entire administration may not be completed and the executry estate wound up by the party appointed. There is no sanction given by this to the appointment of an executor to administer, without power of distribution, only during the pendence of a particular law-suit. I consider the appointment incompetent. My grounds are these two, already suggested:—1st, Because Mr Whiffin possesses no title on which to be appointed, generally and indefinitely, executor of the deceased; 2d, Because, supposing the appointment to be held restrained to administration during the pendence of the suit in England, I consider such an appointment to be inadmissible, according to the law and practice of our Courts.

I consider the case to be unaffected by the provisions of the 21st and 22d Vict., c. 56. By the 14th section of that Act it is declared, that in the case of any one dying domiciled in England or Ireland, where letters of administration have been granted in either of these countries, the production of these letters shall entitle to a concurring power of administration issued from the Commissary Court of Scotland. This provision is inapplicable in the present case, because President Lopez did not die domiciled in England, and the case does not therefore come under the statutory enactment, which is confined to administrations issuing within the domicile. Besides, I think the provision only applies to the case where a general right of administration is granted in England, not to that of a limited power of management during the dependence of a suit, which is all that here was conferred. This, although presenting the formal aspect of letters of administration, is in reality nothing more than a factorial power, or the creation of the office of receiver for a temporary period. Even had the deceased been domiciled in England, I should demur to the granting of a Scottish confirmation on the production of such a limited English title. But the case not being one of a party domiciled in England, the provision of the statute has manifestly no sort of application.

I am therefore of opinion that the interlocutor of the Commissary should be recalled, and the petition of Mr Whiffin refused. This will not deprive the parties interested of the power of having any effects in Scotland belonging to the deceased placed in secure custody. There are well-known means of effecting this object. But the only question before us now is, whether the appointment of Mr Whiffin to be executor-dative of President Lopez is sustainable. And I am clearly of opinion in the negative.

Agents for Appellant—Fyfe, Miller, & Fyfe, S.S.C.

Agent for Petitioner—William Mason, S.S.C.

Friday, June 14.

URQUHART *v.* BANK OF SCOTLAND.

Bill—Forgery—Adoption.

Held that a person who knew that his brother-in-law was in the habit of forging his name on bills, and who received a notice from a Bank informing him that a bill was past due on which his name appeared as an obligant, which proved to be also forged by his brother-in-law, and who nevertheless failed to inform the Bank that his signature was a forgery for three weeks after receipt of the notice, during which time the forger absconded, was barred from disputing his liability for the bill.

This was a suspension at the instance of Alexander Urquhart, farmer, Invermoriston, Inverness-shire, of a charge which he had received at the instance of the Bank of Scotland for payment of a bill for £34, bearing to have been endorsed by him to the Bank.

The suspender averred that the signature of his name upon the bill was a forgery.

The bill in question is dated 29th May 1871, and bears to be drawn by Hugh Gair on, and accepted by, William Macmillan, flesher, Inverness, and Duncan Fraser, farmer, Westerleys, and to be endorsed by Gair and the suspender. Gair is a brother of the suspender's wife, and was then a farmer at Hilton, near Inverness. The bill fell due on 1st August 1871, and as it was not paid on that day, the agent of the Bank of Scotland at Inverness, on 2d August, sent by post to the suspender, as well to the other obligants in the bill, a notice in the following terms:—

"*Inverness, 2d August* 1871.

"Sir, I beg to intimate that the bill after specified, on which you are an obligant, has been protested for non-payment. You are therefore requested to retire it at this office.

"William M'Millan and Duncan Fraser's acceptance to Hugh A. Gair, endorsed by you p. £34, dated 29th May 1871, @ 2 m/d, due here 1st inst.—I am, &c., "DON. DUFF, *Agent.*"

The notice was received in course of post by the suspender, who returned no answer till 23d August, when the Bank agent received a letter from him, dated 21st August, stating that he had never signed the bill. Meanwhile, on 17th August, Gair had absconded. He was afterwards apprehended and committed to prison on the charge of forging bills.

The Bank, besides maintaining the genuineness of the suspender's signature, pleaded—"(2) The complainer having homologated and adopted the signature in question as his genuine signature, is now barred from objecting that it is forged. (3) The complainer having, as condescended on, by his failure timeously to intimate to the respondents the alleged forgery, deprived them of their recourse against the said Hugh A. Gair, is barred from disputing his liability for said bill."

The note was passed on caution, and a proof taken.

From the evidence it appeared that Urquhart, who had been originally a ploughman, and was now a small farmer, though a shrewd and intelligent man, had received little or no education. He could write with difficulty, and his wife seems to have conducted his correspondence. For some time past Gair had been in the habit of forging Urquhart's name on bills, for the purpose of raising money. In general, these bills were retired by Gair before they came due, and Urquhart heard nothing about them. But on several occasions, shortly before the bill became due, Gair wrote to Mrs Urquhart, telling her that her husband would receive a notice from the Bank in reference to the bill, but that he need not mind, or something to

that effect, for he (Gair) would retire it. On these occasions Urquhart duly received from the Bank a notice that a bill was past due, on which he was an obligant. On one occasion, viz., 8th June 1870, Urquhart received from the Bank agents the following notice:—

"69 *Church Street, Inverness, 8th June* 1870.

"Sir, Your past due bill to Mr Hugh A. Gair, Hilton, has been handed to us for recovery by the Bank of Scotland. Our instructions are to take extreme measures at once if payment is delayed any longer. We have therefore to intimate that, unless we receive payment by *Twelve o'clock next Tuesday*, the bill will be at once protested, and thereafter placed in the hands of a sheriff-officer.

"The amount of the bill is £37, 19s. 3d. stg., exclusive of expenses of recovery.—Your Obed. Serv.,

"INNES & MACDONALD."

It was proved that on receipt of this letter Urquhart had spoken to Gair about it, and had received no satisfactory explanation, but that nevertheless he had lent Gair money to take up the bill. The bill which was the subject of the present suspension was also proved to be forged by Gair.

The Lord Ordinary (JERVISWOODE) pronounced the following interlocutor. (The clause in italic was added by the Inner House.)

"*Edinburgh, 6th February* 1872. — The Lord Ordinary having heard counsel on the proof adduced, and whole cause, and having made avizandum and considered the same, Finds that the bill, to which the present note of suspension has relation, and which bill bears to be dated the 29th May 1871, and to be drawn by Hugh A. Gair upon, and accepted by William Macmillan and Duncan Fraser, and which bill was endorsed by the said Hugh A. Gair, and is stated to have been also endorsed by the complainer to the respondents, was not, in point of fact, so indorsed by the complainer; and finds that the indorsation on the said bill, bearing to be that of the complainer, is not the signature of the complainer; but further finds, that the said complainer did, on or about the 3d August 1871, receive the intimation to the effect that the said bill on which he was stated to be an obligant, had been protested for non-payment, and that he was requested to retire the same, as set forth in the 2d article of the statement of facts for the respondents, and that the complainer, *though well aware that the said Hugh A. Gair, his brother-in-law, was in the habit of forging his name on bills, and that he himself had not signed the bill in question, as indorser or otherwise*, did not, on receipt of such intimation, and not until on or about the 23d of said month of August, inform the respondents or their agent that the signature on the said bill, bearing to be that of the complainer, was not his signature: Finds, as matter of law, that no sufficient or relevant cause for such delay on the part of the complainer, in making intimation to the respondents as aforesaid, has been established by the proof led on his behalf, or otherwise appears: Therefore, and with reference to the preceding findings, sustains the 3d plea in law for the respondents, and, in respect thereof, repels the reasons of suspension: Finds the letters and charge orderly proceeded, and decerns: Finds the complainer liable in expenses, of which allows an account to be lodged, and remits the same to the auditor to tax and to report.

"*Note.*—This is a case of considerable interest, and is of importance to the parties, and more especially to the complainer, who, if the present interlocutor be well founded, must bear a serious loss in consequence of refraining from repudiating at once an obligation which was never truly granted by him, and from which he derived no personal benefit; but, as in the question with the present respondents, and with which the Lord Ordinary has here to deal, there seems to be no valid ground for suspension of the charge."

The suspender reclaimed.

When the case was called, Lord Deas, as a shareholder of the Bank of Scotland, proponed a declinature, which the Court repelled; A.S., Feb. 1, 1820.

WATSON and MACKINTOSH, for the suspender, argued that that Urquhart, being an illiterate man, did not understand that Gair had forged his name till Gair confessed it in a letter written the night before he absconded. He had led Urquhart to believe that in some way or other he could use his name for the purpose of raising money for short periods. The whole evidence and correspondence shows that the announcement that Gair had forged his name came upon Urquhart by surprise. In any view, even if it were held that Urquhart knew of the forgery, mere silence for three weeks, even after a demand for payment, will not make a party liable for a document which he has not signed: *Macarthur*, 3d March 1825, 3. S. 607, 427 (N. E.); *Warden*, 13th February 1863, 1 Macph. 402; *Boyd*, 12th Dec. 1854, 17 D. 159. In all the cases in which the plea of adoption had been sustained there had been communings between the party and the bank, or in some other way the signature had been accredited.

SOLICITOR-GENERAL and ASHER, for the respondents, were not called upon.

At advising—

LORD PRESIDENT—I am of opinion that the interlocutor of the Lord Ordinary is well founded. The silence of the suspender after receiving notice that the bill had been protested, and a request to retire it, combined with the other circumstances, as showing the state of knowledge in which the suspender was, is sufficient to make him liable for the bill. The notice is in these terms—(*Reads notice of 2d August* 1871). I cannot take it off the hands of the suspender or his wife that they did not understand the meaning of this notice. Knowing, then, that there was an overdue bill lying at the bank on which Urquhart's name appeared as indorser, they remained without answer for three weeks. I do not say that this was sufficient to constitute liability if nothing had ever occurred to engender suspicion in the suspender—in other words, if the history of the case had begun and ended with this particular bill. But Urquhart and his wife well knew that on several previous occasions Gair had forged his (Urquhart's) name to bills, for the purpose of raising money. They deny knowledge on their part, and say that they did not understand what was going on. But that they did understand is, I think, very clear from what they say about a bill retired in June 1870. This bill was placed in the hands of Messrs Innes & Macdonald, the bank agents, to recover payment. They accordingly write to Urquhart on 8th June 1870—(*Reads letter*). This letter was shown to Urquhart. He says in his evidence—"I had never signed the bill to which that letter refers. When I got that letter I went and spoke to Gair about it. I asked him what was the meaning of its

being sent to me—of my being bothered with that bill? He said he was hard up, and asked if I would lend him as much money as would pay it. I lent him, so far as I remember, £38 or £39 for the purpose of taking up that bill. I did not tell the bank that I had not signed that bill. I never thought anything about it. I just gave the money to my brother-in-law to pay the bill, as he had asked it for that purpose, and said that he was hard up." Whatever else this proves, this is clear, that Urquhart, in the knowledge that his brother-in-law had forged his name to the bill, gave him money to retire it. As he knew that this former bill had been forged, is it possible that he did not understand that the bill which forms the subject of the present proceedings was also forged? Urquhart's position, when he got the notice of 3d August 1871, was this—He knew that his brother-in-law had been in the habit of forging bills in his name to raise money, and that he had now forged another bill. To keep silence for three weeks under these circstances is a clear case of adoption.

Very few of the cases cited for the suspender have much bearing on the present case. The nearest is that of *Brown* v. *British Linen Company*, 16th May 1863, 1 Macph. 793. It was there held that the facts averred by the respondents were sufficient to entitle them to a counter issue of adoption. The Lord President said, "I do not think mere silence without anything more is enough to constitute adoption; but when intimation is given to the acceptor that he is regarded as responsible, and when he finds that his name is being forged to bills by the same drawer, it becomes his duty to repudiate the bill." It appears to me that this doctrine is peculiarly applicable to the present case, the circumstances of which are even stronger.

The case of *Boyd*, 12th December 1854, was very different from the present. The bank alleged that they had been induced to discount the bill charged on by the circumstance that previous bills with the same signature had been retired with the knowledge of the suspender. The issue they proposed to take was, Whether, for a period reaching back from the date of the bill charged on, the suspender adopted and accredited the signature as his subscription? But they did not put in issue, Whether the suspender knew that the signature was forged? This was a weak case in answer to an allegation of forgery. But in the present case knowledge on the part of the suspender of the forgery of the previous bills, and of the forgery of this particular one, is equally clear.

The other Judges concurred.

The Court adhered, with the addition mentioned above.

Agent for Suspender—Charles S. Taylor, S.S.C.
Agents for Respondents — Tods, Murray, & Jamieson, W.S.

Friday, June 14.

SECOND DIVISION.

COUPER AND LOGAN *v.* RIDDELL.

Separate Aliment—Parent and Child—Husband and Wife.

A widow with four children having contracted a second marriage with a man whose antenuptial conduct had been immoral, the children sued their mother and stepfather for separate aliment, on the ground that his character precluded them from living with him. The stepfather, a country surgeon with a small income, whose character appeared to have been respectable subsequently to his marriage, offered to implement the obligation to support his wife's children by alimenting them in his own house. *Held* that, in the circumstances, this was a sufficient offer, and that the stepfather could not be compelled to pay for their separate aliment.

This was an action for separate aliment at the instance of Marion Walker Logan, a girl of fourteen years, eldest daughter of the deceased Alexander Logan, farmer at Boon, in Berwickshire, and Peter Couper, tutor-dative to the three other pupil children of Alexander Logan, against their mother, Mrs Marion Logan or Riddell, widow of the said Alexander Logan, and afterwards wife of Robert Riddell, surgeon in Lauder, and against the said Robert Riddell as her administrator-in-law. Alexander Logan died on 4th December 1864, and his widow married the defender Riddell on 18th February 1867. The pursuers pleaded that the defender Mrs Riddell was bound to aliment and educate the children, and that Mr Riddell, as her husband and administrator, was liable for the said aliment. They further pleaded that the defenders, in consequence of their immoral character and conduct, were unfit to be entrusted with the custody of the children. The defenders admitted their obligation to support the children, but offered to implement it by alimenting them in their own house; and they pleaded that, in consequence of the smallness of their means, this was a sufficient and relevant answer to the conclusions of the summons.

The Lord Ordinary (GIFFORD) allowed the pursuers a proof of their averments. It was proved that the defender Riddell had been guilty of immoral conduct prior to his marriage, and he admitted in letters written upwards of five years before the present action was raised, that he had had improper intercourse with a Mrs Bloomfield, a sister of the deceased Alexander Logan. It also appeared that in 1867 Riddell was dismissed by the Board of Supervision from his appointment as medical officer of the parish of Lauder, as being an unfit person for that office, but the precise grounds of his dismissal were not stated. The defenders offered to prove that their character during the subsistence of the marriage was not open to challenge; but the Lord Ordinary disallowed proof on this point, on the ground that their "general character" was not impugned. The Lord Ordinary then pronounced the following interlocutor:—

"*Edinburgh, 12th February* 1872.—The Lord Ordinary having heard parties' procurators, and having considered the closed record, proof adduced, productions, and whole process—finds that the defenders are not bound to aliment and maintain Mrs Riddell's children by her first marriage otherwise than in family with the defenders themselves, along with and in the same manner as the defenders aliment, clothe, educate and maintain their children by their present marriage: therefore, and in respect of the defenders' offer upon record, assoilzies the defenders from the whole conclusions of the libel, and decerns; finds the pursuer, Peter Couper, liable in expenses, and remits the account thereof,