The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming note for the defenders against Lord Curriehill's interlocutor, dated 17th December 1874, and also having heard counsel on said reclaiming note as a reclaiming note for the pursuer against said interlocutor, Recal the said interlocutor, except in so far as it grants diligence for recovery of the documents in article 4 of the specification No. 16 of process, and grant commission for that purpose; refuse the diligence *quoad ultra;* reserving all questions of expenses; and remit the cause to the Lord Ordinary to proceed as accords."

Counsel for the Pursuers—Balfour. Agent—Alex. Morison, S.S.C.

Counsel for the Defenders—Asher and Robertson. Agents—Thomson, Dickson, & Shaw, W.S.

Thursday, January 14.

FIRST DIVISION.

[Lord Young, Ordinary.

MALCOLM RITCHIE *v.* JAS. H. BALGARNIE.

Bankruptcy—19 *and* 20 *Vict. c.* 79, § 126—*Trustee's Deliverance—Interdict—Conjunct and Confident.*

The trustee on a sequestrated estate pronounced the following deliverance—"The trustee rejects this claim as not being sufficiently vouched, the claimant being the bankrupt's father, and therefore conjunct and confident with him: allows the claimant, however, eight days from this date to lodge any further documents or evidence vouching or corroborating the whole or any part of such claim." *Held* that this was not in terms of section 126 of the Bankruptcy Act, 1856, and that the claimant was entitled to interdict against the trustee paying any dividend until his claim was disposed of.

The question in this case arose out of the bankruptcy of John Ritchie, sole partner of the firm of Ritchie & Son, Leith. Mr Balgarnie was appointed agent on the sequestrated estate, and the complainer, who was the bankrupt's father, lodged a claim for a debt amounting to £406, 10s. 10d. vouched by two bills granted by the son and the bank cheques given to him by his father. On this claim the trustee pronounced the following deliverance:—"The trustee rejects this claim as not being sufficiently vouched, the claimant being the bankrupt's father, and therefore conjunct and confident with him: allows the claimant, however, eight days from this date to lodge any farther documents or evidence vouching or corroborating the whole or any part of such claim." The creditor neither tendered farther evidence nor appealed against the trustee's deliverance within fifteen days, and the trustee proposed to pay to the other creditors a dividend of 9s. 8d. per pound, which, as was alleged, would exhaust the estate.

The complainer accordingly presented a note of suspension and interdict, praying the Court to "interdict, prohibit, and discharge the said respondent from paying over to any of the creditors of the said Ritchie & Company and John Ritchie any dividend out of the sequestrated estate of the said Ritchie & Company and John Ritchie on the 4th June current, or thereafter, until the respondent has had a proper opportunity to establish the claim lodged by him as a creditor on the said estate, and the said claim has been either admitted or rejected in terms of the Bankruptcy (Scotland) Act, 1856."

The Lord Ordinary (YOUNG) pronounced the following interlocutor and opinion:—

"*Edinburgh, 13th November* 1874.—The Lord Ordinary having heard counsel for the parties, and considered the closed record: Repels the reasons of suspension: refuses the note of suspension and interdict, and decerns: finds the complainer liable in expenses, and remits the account when lodged to the Auditor to tax and report."

"*Opinion*—The question is, whether the complainer has stated sufficient grounds for suspending the proceedings of the respondent as trustee in the sequestration of Ritchie & Company, with a view to the first statutory dividend, and interdicting payment thereof. The complaint involves no disputed facts, but rests exclusively on the terms of the trustee's deliverance (quoted in stat. 4) upon the complainer's claim in the sequestration.

"The peculiarity in the deliverance is, that after formally and in terms rejecting the claim, the trustee allows the claimant, however, eight days from this date, April 17, to lodge any further documents or evidence vouching or corroborating the whole or any part of such claim.' The case turns on the effect of this peculiarity. I am unable to see clearly how the trustee, after rejecting the claim and declaring the first statutory dividend on that footing, could thereafter, with statutory regularity, of his own authority have admitted the claimant to the benefit of that dividend, had the claimant availed himself of the opportunity afforded him, to the effect of establishing his claim to the satisfaction of the trustee. At least I see difficulty in the way of such a proceeding, and know of no authority for it. But it was unnecessary to consider that matter, for the claimant was not in a condition to avail himself, and in fact did not avail himself, of the opportunity which the trustee indulgently (and with questionable regularity) afforded to him. He did not lodge 'any further documents or evidence vouching or corroborating the whole or any part of such claim,' within the eight days allowed to him for that purpose, or at any time thereafter. He does not allege now that he has any further documents or evidence; but only that, if allowed the opportunity of appealing, he may by argument satisfy the appellate tribunal that the documents and evidence which were before the trustee when he rejected the claim ought to have induced him to admit it. The purpose of this suspension is, in truth, to obtain for the complainer an opportunity of appealing against the judgment of the trustee after the lapse of the statutory period. But for this purpose I cannot, in the circumstances of the case, sustain it. I say in the circumstances of the case, because I think this Court has jurisdiction, which might be exercised by way of suspension, to afford relief to a claimant in a sequestration who had been misled to his prejudice by the form of the trustee's deliverance on his claim. But a party whose claim is rejected, subject to further documents or evidence within eight days, was put to the immediate consideration of the question whether or not he could lodge further documents or evidence, and if he determine that question in the negative, as the complainer did, I think he

ought to consider his claim as rejected so far as the judgment of the trustee goes, and act accordingly. The eight days allowed by the trustee was not for argument or debate on the documents before him, and on which he had rejected the claim, but to 'lodge' further documents if the claimant had any. I am therefore of opinion that the note of suspension should be refused, with expenses."

The complainer reclaimed, and pleaded—"(1) The respondent having, by his deliverance upon the complainer's claim, allowed the complainer to produce further evidence in support of his claim, he was bound to consider the additional evidence which was submitted to him before finally rejecting the claim. (2) The respondent was not entitled to refuse to reconsider the complainer's claim on the ground that fifteen days had expired from the date of his deliverance of 17th April. (3) The respondent having throughout the proceedings misled the complainer as to his claim, and having intimated his intention to divide the whole estate among the creditors other than the complainer, the interdict craved ought to be granted. (4) The respondent's deliverance of 17th April being unwarranted and unauthorised by the Bankruptcy Statute, he is not entitled to plead its finality, and the complainer should now be allowed an opportunity of proving his claim."

Argued for him—He was only bound to appeal against the trustee's deliverance if it were a statutory rejection, but this was not. The trustee rejected the claim and at the same time allowed further evidence of it. Under the Act 1621 the creditor was entitled to support his claim by parole evidence.

Authority—*Scobie* v. *Hill's Trustees*, 23d Nov. 1869, 8 Macph. 161.

The respondent pleaded—"(1) No appeal having been presented against the respondent's deliverance on the complainer's claim within fifteen days from the date of the publication in the *Gazette* of the said notice, the same became final and conclusive in so far as regards the dividend the payment of which is sought to be interdicted. (2) The respondent was entitled, while rejecting the complainer's claim as not sufficiently vouched by the evidence then produced, to allow the complainer an opportunity of adding further evidence, and the said deliverance was competently pronounced in terms of the said statute. (3) The said deliverance was a valid and competent rejection of the said claim, notwithstanding the allowance therein of further evidence, and became final and conclusive on the expiration of fifteen days from the date of the said notice. (4) In any event, the complainer not having taken advantage of the opportunity allowed him to produce further evidence within the time specified by the respondent, the rejection of the said claim contained in the said deliverance then became absolute and final; and no appeal having been presented against the deliverance, the same is now final and conclusive. (5) The complainer's claim having been finally and conclusively rejected, he is not entitled to interdict or interfere with the payment of the dividend. (6) The grounds of suspension stated by the complainer being unfounded in fact and untenable in law, the note ought to be refused, with expenses."

Argued for him—The trustee rejected the claim *as it stood*, but did not preclude himself from reconsidering the matter in case he got further evidence. The deliverance had now become final because the complainer did nothing within fifteen days of the gazette notice. If the allowance of the eight days was out of the trustee's power, it was simply surplusage, and did not affect the validity or finality of the deliverance. (1) The deliverance was literally in compliance with the statute, because it was a rejection of the claim. (2) It was substantially in compliance with the statute as being a rejection though conditional. (3) It was not a deviation from the statute, as it prejudiced nobody.

At advising—

Lord President—My Lords, the complainer in this case duly lodged his claim, and it was accompanied by appropriate vouchers. These consisted of certain bills of exchange and corresponding bank cheques, and these were all the vouchers which could reasonably be expected. In ordinary circumstances, and if the transactions had been between strangers, the trustee would have thought the evidence quite sufficient, but here he had to deal with a claim made by a father on his son's bankrupt estate, and he rejects the claim because the father is a conjunct and confident person; but at the same time, while rejecting his claim, he allows him eight days in which to lead further evidence in support of it. Now that deliverance was not appealed, and if it had been, a competent deliverance would by this time have been final, and, so far as I can see, a complete and final rejection. But it seems to me not to be competent. There are just three deliverances which the trustee may make in terms of the 126th section; he may reject the claim, he may admit it, or he may require further evidence in support of it, and I think that under the Act the trustee is not entitled to do anything but one of these three things. It is quite incompetent to combine two of them into one, as they are strictly alternative, besides which, to reject a claim, and at the same time to allow further evidence in support of it, is utterly inconsistent. The trustee's deliverance being therefore incompetent, I think the complainer is entitled to some remedy. If the creditor's claim is to be rejected on the ground that he is a conjunct and confident person, he is entitled to say that by the disallowance of his claim under the Act 1621 he is entitled to lead proof of it *prout de jure*, and so, until he has had an opportunity given him of doing so, I think he has not received substantial justice, and I am quite sure the trustee has no wish to withhold it from him. What the trustee should have done was to require further evidence of the claim, and then to examine any witnesses the claimant had to produce, and thereafter admit or reject the claim, and that is the course which must still be followed. What is asked here, however, is an interdict against the trustee distributing the funds of the estate until his claim is disposed of, and that, I think, he is entitled to have.

Lord Deas—The question is whether this is or is not a deliverance in terms of the statute. As your Lordship has pointed out, the statute authorises the trustee to do one of three things which are alternative to each other; this deliverance does none of them. I suppose if evidence had been

produced which was satisfactory to the trustee he would not have rejected the claim. There is another anomalous result. Where the statute allows the creditor fifteen days to appeal against the trustee's deliverance, it would be hard to say when, under such a judgment as this, they would begin to run. That very ambiguity shows the judgment to be bad. I am of opinion that the deliverance is not within the statute, and if so, a suspension is a competent remedy. I think the whole matter has arisen from the trustee not having quite an accurate view of what it was he had to do. He seems to have thought that he must reject these documents of debt as being between a father and son, whereas all he had to do was to ask for evidence if he thought them at all suspicious. The true ground of our judgment is that the deliverance was not authorised by the statute.

LORD ARDMILLAN—I am not quite satisfied with the way the complainer has dealt with this deliverance. I think he has played fast and loose with the two interpretations of it, but the first question is whether the deliverance is competent. I think not; a combination of two of the statutory alternatives is ridiculous. If he had received further evidence he could not have recalled his own deliverance rejecting the claim, and so the allowance of eight days was useless. The proper deliverance was to allow enquiry and hold the claim over for admission or rejection. The near relationship of the parties may perhaps give some ground for suspicion, but not necessarily so. If this deliverance is incompetent it cannot be beyond the reach of remedy, and the remedy proposed is a good one.

LORD MURE concurred.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming note for Malcolm Ritchie against Lord Young's interlocutor of 13th November 1874, Recall the said interlocutor; sustain the reasons of suspension; interdict, prohibit, and discharge the respondent from proceeding to divide the sequestrated estate, or any portion thereof, among the creditors of the bankrupt, until he shall have disposed of the complainer's claim by a deliverance in terms of the statute, rejecting or admitting the same, and until the said deliverance has become final, and decern: Find the complainer entitled to expenses, and remit to the Auditor to tax the amount of the said expenses, and to report."

Counsel for Complainer — Solicitor-General (Watson) and Burnet. Agent—Neil M. Campbell, S.S.C.

Counsel for Respondent — Dean of Faculty (Clark), Q.C., and Strachan. Agent—T. F. Weir, S.S.C.

Friday, January 15.

SECOND DIVISION.

[Sheriff of Lanark.

BEATTIE *v.* ARBUCKLE.

Poor Law Amendment Act, sec. 70—*Admission of Liability.*

Where an inspector of poor admitted liability after correspondence with the inspector of another parish and personal inquiries.—*Held* that a statement that the admission was made in error was not sufficient to relieve the inspector from the effects of the admission.

The summons in this suit, at the instance of the Inspector of Poor of the Barony parish, Glasgow, on behalf of the Parochial Board of that parish, against the Inspector of Poor of the parish of Cambuslang, concluded for payment of—"(*First*), the sum of £118, 5s. 2d. sterling, being the amount of an account for parochial relief supplied and incurred by the Parochial Board of the parish of Barony to and on account of Mary Slater or Moyes, widow of David Moyes, printer, who was born in the parish of Cambuslang in or about the year 1834, and who died in or about the month of July 1862, having at the time of his death a parochial settlement in the said parish of Cambuslang by reason of his birth therein, commencing said account on the 13th day of March 1869, and ending the 18th day of January 1873, annexed hereto; and (*Second*), the sum of £11, 19s. sterling, being interest on said amount of advances during the currency thereof to the 27th day of March 1873, at 2½ per centum per annum, amounting together said two sums to the amount of £130, 4s. 2d. sterling, and also to take charge of the said Mary Slater or Moyes, and so free and relieve the pursuer and the Parochial Board of the parish of Barony of her support in all times hereafter, and for all which the defender is liable, in respect that the said Mary Slater or Moyes was at the date of her chargeability, and during the whole period of her receiving parochial relief from the parish of Barony, a proper object of such relief by reason of her insanity, and her parochial settlement was in the parish of Cambuslang by reason of her deceased husband's birth therein as aforesaid, and that statutory notice of her chargeability was duly given to the defender on or about the 17th day of March 1869, with interest on the said sum of £130, 4s. 2d. sterling from the date of this action till payment, and with expenses."

The pursuer averred that Mary Slater, the pauper (who is aged about 38 years), was the widow of David Moyes, a printer, who was born in the parish of Cambuslang in or about the year 1833. She and Moyes were regularly married in Bridgeton about the year 1856. The parochial settlement of the said David Moyes at the date of his marriage to Mary Slater was in the parish of Cambuslang by reason of his birth therein. After his marriage to the pauper he did not acquire a residential settlement in Scotland. David Moyes died in Bridgeton, Glasgow, in or about the month of July 1862, and at that date his parochial settlement was in the parish of Cambuslang by reason of his birth therein. The said David Moyes had, on or about 16th June 1862, applied for and received parochial relief from the Barony parish of