them out. The boy's death was the result of a piece of foolhardiness with which the Commissioners had nothing to do. I think, then, we must affirm the Sheriff's judgment.

Lord Craighill—I am of the same opinion. The accident took place in broad daylight, and I do not think that there was any obligation, as suggested, on the Commissioners to keep a watchman to warn boys of sixteen off the sheet of water. The poor lad was quite able to take care of himself, and he took the risk.

Lord Rutherfurd Clark concurred.

The Court pronounced this interlocutor:—

"Find that the pursuer has not proved that his son's death is attributable to fault or negligence on the part of the defenders: Therefore dismiss the appeal, and affirm the judgment of the Sheriff appealed against: Of new assoilzie the defenders from the conclusions of the action."

Counsel for the Appellant—Ure. Agents—Ronald & Ritchie, S.S.C.

Counsel for the Respondents—Asher, Q.C.—Dickson. Agents—Morton, Neilson, & Smart, W.S.

Tuesday, January 24.

FIRST DIVISION.

[Sheriff of Aberdeen.

CAIRD *v.* PAUL.

Bankruptcy—Appeal from Sheriff in Cessio—Debtors (Scotland) Act 1880 (43 *and* 44 *Vict. cap.* 34)—*Act of Sederunt, Dec.* 22, 1882, *secs.* 6 *and* 11.

An appeal to the Court of Session is competent in a process of *cessio* under the Debtors Act 1880 against an interlocutor of the Sheriff reviewing a deliverance of the trustee.

Bankruptcy — Balancing of Accounts—Landlord and Tenant.

The trustee in a process of *cessio,* in which the bankrupt was tenant of a farm under an unexpired lease, did not adopt the lease, and only intromitted for the purpose of winding-up. For this purpose he entered into two agreements with the landlord, by the first of which it was agreed that he should remove at the ensuing term, and have all the privileges of an outgoing tenant; and by the second a reference was made to arbiters to ascertain the value of certain articles which under the lease were to be taken over and paid for by the landlord. The landlord claimed right to set off the amount of this valuation against arrears of rent due by the bankrupt. *Held* that as the debt due by the landlord was payable under the agreements between him and the trustee, there was no concourse between it and a debt due by the bankrupt.

William Taylor, tenant of the farm of Blackbutts, Muchalls, Kincardineshire, executed a disposition *omnium bonorum,* under the Debtors (Scotland) Act 1880, in favour of George Scott Caird, solicitor, Stonehaven. At the date of the *cessio* there were still several years of his lease to run.

Caird, as trustee, entered into two agreements with William Paul, advocate in Aberdeen, as factor and commissioner for the landlords, Dr Milne's trustees. The first of these agreements provided—"And whereas the said first party, as trustee foresaid, has intimated that he is not to continue the possession and occupation of said farm of Blackbutts, or to adopt said lease, and it is consequently expedient that an arrangement should be made for the laying down of the grain crops for the present year;" therefore, under certain reservations as to the landlord's right of hypothec, and subject to certain estate regulations, it was agreed—"*First,* that the said first party hereto shall, as trustee foresaid, continue in the occupation of said farm of Blackbutts until the term of Whitsunday next, when he shall remove therefrom as outgoing tenant in manner provided in the said general regulations and conditions, and shall have all the privileges of an outgoing tenant as if the lease had then come to its natural termination; *second,* That in the preparation of the ground for the crops of 1887, the first party hereto shall observe the regulations above mentioned, and perform the necessary work in an efficient manner, and lay down the crops at the sight and to the satisfaction of the ground officer on the estate; and *third,* That the said first party shall grant at his expense, if required by the said second party, a formal and valid renunciation of said lease in favour of the said proprietors as at and from the term of Whitsunday 1887."

The second agreement provided that the value of certain enumerated articles on the farm, which under the lease were to be taken over and paid for by the landlord, should be ascertained by arbiters. The valuation of these articles amounted to £108, 7s. 6d.

Paul then lodged a claim, as factor for the landlords, for arrears of rent amounting to £328, 14s. 2d., from which he claimed right to deduct the sum of £108, 7s. 6d., the amount of the valuation.

The deliverance of the trustee upon this claim was that the factor was not entitled to take credit or plead compensation in respect of his claim against the bankrupt for this sum of £108, 7s. 6d., but that they were entitled to a dividend on the sum of £328, 14s. 2d.

Paul also lodged, as factor, a preferable claim for the rents due at Martinmas 1886, and Whitsunday 1887, with the expenses incurred in connection with sequestration for the rents, amounting to £104, 19s. 7d.

The deliverance of the trustee upon this claim was that Paul was entitled to retain the amount of this claim of £104, 19s. 7d. from the sum of £108, 7s. 6d. above mentioned, due by him to the trustee, and he therefore rejected the claim *in toto.*

On appeal, the Sheriff-Substitute (Brown), on 26th November 1887, pronounced this interlocutor—"Finds (1) that the claimant William Paul is entitled to be ranked preferably on the bankrupt's estate for the sum of £104, 19s. 7d., in terms of his claim; (2) that the said William Paul is entitled to compensate the amount of the

valuations under the minute of agreement, submission, and award referred to by the trustee in his deliverance, by his claim for arrears of rent, amounting to £328, 14s. 2d., and to be ranked as an ordinary creditor for the balance of £220, 6s. 8d., in terms of his claim: Remits to the trustee to rank the claimant accordingly, and to make up a new list of ranking: Finds the trustee liable to the claimant in the sum of 30s. of expenses."

"*Note.*—The circumstances under which this bankrupt estate is in the process of being extricated are somewhat peculiar, and to that I am disposed, in a large measure, to impute the error which I think the trustee has made in dealing with the landlord's claim. The position which the trustee takes up is that the valuations due under the lease and the relative regulations of the estate, which have been liquidated by arrangement between the parties, are both by law and covenant payable to him, and that no concourse between landlord and tenant having existed prior to bankruptcy, his duty requires him to retain these sums for division among the general body of creditors.

"Apart from covenant with the trustee, there seems to be no doubt of the extent of the landlord's right. He is entitled to set off arrears of rent against any liquid claim of his tenant, and as the right to set off passes against assignees, legal, or voluntary; and as a trustee in bankruptcy takes the estate *tantum et tale* as it was vested in the bankrupt, the landlord was in a position to enforce his claims, whether he were settling with the trustee or as incoming tenant. The landlord's right rests on the general principle that claims arising *hinc inde* on a consensual contract may be compensated, and it has been quite decisively established that the effect of bankruptcy is to strengthen the plea of compensation in the mouth of the landlord. In balancing accounts in bankruptcy, Mr Bell (Comm. vol. ii. (7th ed.) p. 122) says that if one party have failed, and a demand be made upon the other, he will not be obliged to pay the liquid debt, and come in as a creditor only for a dividend, and that is precisely the case here. It appears to me therefore, that the equitable obligation to permit the landlord to set off claims arising under the lease, is a burden on the bankrupt's estate, which the creditors are not entitled to get rid of without the landlord's express consent.

"But the landlord, instead of having lost or compromised the rights which the law gives him by negotiations with the trustee, appears to me to have most carefully safeguarded these.

"On entering upon his office the trustee found a lease with several years to run, and at once intimated his intention not to continue the tenancy, and on that view there is no doubt he did not adopt the lease. But he proceeded, no doubt with the intention and result of doing the best for the creditors, to invite the landlord to concur in his taking another crop, and having certain claims arising under the lease and the regulations of the estate liquidated, stipulating at the same time that he was to have the privilege of an outgoing tenant, as if the lease had come to a natural termination as at Whitsunday 1887; and in that sense it appears to me that the claimant is perfectly right in his contention that the trustee did adopt the lease. The effect of that adoption was very beneficial to the creditors, for it gave the trustee the benefit of a large deduction of rent; but apart altogether from the question as to who took most advantage from the agreement into which the parties entered, it appears to me that that had the effect of operating not a surrender, but a ratification of the landlord's right. The error into which I conceive the trustee has fallen, is in forgetting that the lease is the measure of the rights of parties in regard to all claims arising under it, and he has accordingly misinterpreted the negotiations with the landlord, the effect of which, in my opinion, is very wide of ousting his rights.

"There is no dispute as to the landlord's preferable claim, the only question being whether the landlord is entitled to impute the valuations *pro tanto* to extinguish his unsecured debt arising from arrears of rent, and the mistake which the trustee makes, is in assuming, in taking up the estate or transacting about it, that the concourse which lies at the root of the plea of compensation, lies between him and the landlord, instead of being, as it is, between the latter and the tenant.

The trustee appealed to the Court of Session.

Paul objected to the competency of the appeal, and argued—In a process of *cessio* before 1880 the decree of the Sheriff awarding *cessio* was the only appealable interlocutor. After that, the bankrupt's estate was in the hands of a trustee, whose actings could only be challenged on the ground of mal-administration. The new process of *cessio* was introduced by the Act of 1880, by which *cessio* could be awarded at the instance of a creditor, but the procedure for carrying out this new process was only prescribed by the Act up to the point when the Sheriff decerned the bankrupt to execute a disposition *omnium bonorum* in favour of a trustee for behoof of his creditors. That decree could be appealed against as before, but after that the trustee's actings were still unchallengeable. The Act of Sederunt of 1882, which provided the machinery for working out the Act, gave the Sheriff the right of reviewing the trustee's deliverances at the second meeting of creditors, but gave no further right of appeal. The policy of the statute of 1880, taken along with the Act of Sederunt of 1882, was plainly to provide a simple and economical system for winding-up small estates, and to discountenance a multiplication of appeals. This argument was supported by the 11th sec. of the Act of Sederunt of 1882, which provided that the Sheriff was to dispose of the objections summarily and by the 11th section of the Bankruptcy and Cessio Act of 1881 (44 and 45 Vict. cap. 22), which provided for the superseding of *cessio* by sequestration, where the Sheriff thought it advisable, if the debtor's liabilities exceeded £200. This was clearly to substitute a process in which appeals were competent for one in which they were not. The interlocutors contemplated by sec. 26, sub-sec. 4 of the Sheriff Courts Act 1876, to which sec. 9, sub-sec. 4, of the Act of 1880 referred back, were interlocutors decerning the debtor to execute a disposition *omnium bonorum*. These were the only final interlocutors—*Galbraith* v. *Ritchie*, December 6, 1856, 19 D. 136; *Adam* v. *Kinnes*, February 27, 1883, 10 R. 670.

Argued for the appellant—The appeal was competent. The old process of *cessio* was at the instance of the debtor, and was purely to protect him from personal diligence; the new process of *cessio* was a process for the distribution of small estates. In that one process the claims formed a congeries of actions, in each of which the trustee was defender, and the different claimants the respective pursuers. The Sheriff's judgment dealing with the trustee's deliverance on each claim was a final judgment in the cause in which it was pronounced. As a final judgment it was appealable under the 26th section of the Sheriff Courts Act of 1876, unless the right of appeal was in some manner taken away. The only Act which was referred to as taking away the right was the Act of Sederunt of 1882. But an Act of Sederunt could neither confer nor take away such a right. This Act of Sederunt merely prescribed the method for carrying out the provisions of the 1880 Act. Therefore the right of appeal remained.

At advising—

LORD PRESIDENT—The interlocutor sought to be brought up for review was pronounced by the Sheriff-Substitute at Aberdeen on 26th November 1887, and it finds—"(1) that the claimant William Paul is entitled to be ranked preferably on the bankrupt's estate for the sum of £104, 19s. 7d. in terms of his claim; (2) that the said William Paul is entitled to compensate the amount of the valuations under the minute of agreement, submission, and award referred to by the trustee in his deliverance, by his claim for arrears of rent amounting to £328, 14s. 2d., and to be ranked as an ordinary creditor for the balance of £220, 6s. 8d. in terms of his claim: Remits to the trustee to rank the claimant accordingly, and to make up a new list of ranking: Finds the trustee liable to the claimant in the sum of 30s. of expenses."

Now, nobody can read that interlocutor without seeing that it is the judgment of a Sheriff-Substitute in a process of distribution of a bankrupt estate. It is very much the same as if the distribution were under the Act of 1856, but as a fact it is not under that Act, but under the Act of 1880 (43 and 44 Vict, c. 34), which provides among other things for considerable extension in the process of *cessio bonorum*. That Act provided very imperfectly for working out this new process of *cessio*, and accordingly it was supplemented by the Act of Sederunt of 1882. It is under the combined operation of the Act of 1880 and of the Act of Sederunt of 1882 that this distribution is going on, and that the Sheriff-Substitute is able to pronounce this interlocutor. If the Act of Sederunt of 1882 had not been passed I do not see how it could have been possible for the Sheriff-Substitute to have pronounced this interlocutor, and yet it seems anomalous that he should derive his right from an Act of Sederunt, and not from an Act of Parliament. That is the worst of an Act of Parliament which provides a new process, and no method of carrying it out. This Court gave practical effect to the Act of Parliament of 1880 by passing the Act of Sederunt of 1882. Now, by that Act of Sederunt, which we must assume the Court was entitled to make, there is a bankruptcy process on the same footing as one under the Act of 1856. For it is provided by the 6th section of the Act of Sederunt that "the rules of the Bankruptcy (Scotland) Act 1856, regarding the nature and form of affidavits or claims of creditors for ranking, and the valuation of securities and deductions to be made, and regarding the documents of debt to be produced therewith, shall *mutatis mutandis* apply to claiming and being ranked for dividends in processes of *cessio*." Then there is provision made for the way in which the claims of creditors are to be made, and after that provision is made for what is to be done by the trustee and the creditors in view of the second meeting, at which by sec. 11 all objections to the trustee's deliverances are to be brought up before the Sheriff. It is provided by that section that "the debtor or any creditor . . . shall be heard orally in support of objections to the trustee's deliverances, . . . and the Sheriff shall, if desired by the trustee or by the debtor or by any creditor, make a note of such objections, and of the answers made thereto, and deliver the same to the clerk of court, and on a *viva voce* hearing, and after such proof, if any, as he may allow . . . shall dispose of the objections summarily, and settle the rankings of the creditors." Nothing is said about whether the Sheriff's judgment is to be final or be subject to appeal. The reason for this is obvious, because the Court has no power by Act of Sederunt to confer or to take away the right of appeal. If it existed before the Act of Sederunt it will still remain; if there was none, an Act of Sederunt will certainly not create the right. But deliverances of the trustee in the distribution of a bankrupt's estate are all appealable by the 1856 Act, and even before that—before sequestrations were sent to the Sheriff at all; therefore they belong to a class of cases in use to be brought, and which always have been brought, by appeal to this Court—by appeal direct from the trustee before 1856, and after 1856 by appeal to the Sheriff, which was then given for the first time, and so to this Court. I think therefore this right of appeal remains. It is not enough to say that the procedure in such cases is intended to be summary. Often the more summary procedure is, the more need is there to guard against abuse, and therefore that has nothing to do with the question.

But we must look to the Act of 1880 to see what it says, for it seems to me to give the right of appeal by one of its sections, and we must see whether this case comes under the class of appealable cases specified in that section or not. I do not think it necessary to have recourse to that section, because I hold the appeal competent on the ground that the right of appeal is nowhere taken away, but still let us see what this section says. It is section 9, subsection 4, and it provides that "any judgment, or interlocutor, or decree, pronounced in such petition [for *cessio* at the instance of the creditor] may be reviewed on appeal in the same form and subject to the like provisions, restrictions, and conditions as are by law provided in regard to appeals against any judgment or interlocutor or decree pronounced in any other process of *cessio bonorum*."

It must be kept in view that this section plainly contemplates that *cessio* implies a process of distribution, and I cannot see how the

right of appeal can be restricted to a particular class of decrees pronounced in such a process. I think a party may say that whatever decrees can be competently pronounced under this process of *cessio* are appealable.

Lord Mure—The claims in this *cessio* were made by affidavit, as they would have been made if the process had been one of sequestration. The machinery for working out the process of *cessio* is that provided by the Act of Sederunt of 1882, to the clauses of which we were referred in the course of the discussion. In accordance with the provisions of that Act of Sederunt the claims were dealt with by the trustee, and taken up at the second meeting of creditors when the parties were heard orally on the deliverance of the trustee, and judgment pronounced by the Sheriff. The question for us to determine is, whether the Sheriff's deliverance is appealable or not. I think it is plain that that being an interlocutor in the process of *cessio* it is made appealable by the 4th sub-section of the 9th section of the Act of 1880. That section says—"Any judgment or interlocutor or decree . . . pronounced in such petition may be reviewed on appeal in the same form and subject to the like provisions, restrictions, and conditions as are by law provided in regard to appeals against any judgment or interlocutor or decree . . . pronounced in any other process of *cessio bonorum*," and so we are sent back to the Sheriff Court Act of 1876, section 26 of which expressly regulates these matters. This judgment of the Sheriff is a final judgment relative to the claim of Mr Paul, and being final is subject to review under the 26th section of the Act of 1876.

Lord Adam—My view of the case is this. The interlocutor here was competently pronounced in the Sheriff Court in a proper Sheriff Court action, and therefore the procedure in this action is subject to the ordinary rules of procedure which regulate Sheriff Court practice, except so far as these have been modified and altered by the Acts of Sederunt of this Court which has power to regulate the procedure in the Sheriff Courts. The question now before us is, whether the Act of Sederunt of 1882 has taken away the right of appeal which otherwise exists. We could not by Act of Sederunt competently do this; we have not even endeavoured to do what would have been incompetent. All the provisions of that Act of Sederunt only regulate procedure, and as it has not taken away the right of appeal that right still remains.

In the second place, I think this interlocutor is a final judgment in the process which has arisen within the process of distribution, because it disposes of the whole merits in this particular competition, and therefore as a final judgment it is appealable.

The Court held the appeal competent.

Argued for the appellant on the merits—The trustee had not adopted the lease. He had only intromitted in order to wind up. The debt of £108 arose out of the agreements between the trustee and the landlord's factor after the bankruptcy. It did not exist at the date of the bankruptcy, and therefore there could be no concourse between it and a debt due by the bankrupt—*Stewart* v. *Rose*, Hume, 229.

Argued for the respondent—The transaction was really one between the landlord and the trust-estate which was taken over by the trustee—*Munro* v. *Fraser*, 21 D. 203; Murdoch on Bankruptcy, p. 94.

At advising—

Lord President—The respondent Paul, as representing the bankrupt's landlord, has a preferable claim to the extent of £104, 19s. 7d., and there is no dispute about that. He has, besides, a claim for £328, 14s. for arrears of rent, and it is conceded that for it he can only claim a ranking. But it is said that he was owing £108 as the amount of certain valuations, and that he can set one against the other so as to obtain payment in full of his ordinary claim to the extent of £108 and rank for the balance. If the ordinary rules of ranking in bankruptcy are to apply, then the claim is good. But is this a debt existing at the date of the bankruptcy? How is this a debt due by the landlord? It came into existence under two minutes of agreement. The trustee might have adopted the lease if the landlord had consented, and if he had done so he would have become tenant for the unexpired part of the lease. He did not do that; he only intromitted to wind up. Sometimes it is difficult to say whether a trustee has adopted a lease or has only intromitted in order to wind up, and generally this has to be spelt out from the actings of parties. But there is no question of that kind here, because all that was arranged is in writing. By the first minute of agreement we find it stated—"Whereas the said first party, as trustee foresaid, has intimated that he is not to continue the possession and occupation of said farm of Blackbutts, or to adopt said lease, and it is consequently expedient that an arrangement should be made for the laying down of the grain crops for the present year," therefore it was agreed—"*First*, that the said first party hereto shall, as trustee foresaid, continue in the occupation of said farm of Blackbutts until the term of Whitsunday next, when he shall remove therefrom as outgoing tenant in manner provided in the said general regulations and conditions, and shall have all the privileges of an outgoing tenant as if the lease had then come to its natural termination; *second*, that in the preparation of the ground for the crops of 1887 the first party hereto shall observe the regulations above mentioned, and perform the necessary work in an efficient manner, and lay down the crops at the sight and to the satisfaction of the ground officer on the estate; and *third*, that the said first party shall grant at his expense, if required by the said second party, a formal and valid renunciation of said lease in favour of the said proprietors as at and from the term of Whitsunday 1887." There is no doubt that the meaning of this is that the lease was to be ended as at Whitsunday, so that there is no adoption here. There is only continuance of possession in order to wind up. The trustee binds himself to work the farm, and the landlord binds himself to give the privileges of an outgoing tenant. To settle what these were the second agreement was entered into, by which it was provided that the factor should take over certain enumerated articles which were on the farm at a valuation. Therefore it is clear from these two agreements that this was a new obligation which did not exist before, and existed on the execution of these

agreements which were dated after the bankruptcy of the tenant. Therefore the debt which the landlord incurred for the price of these things is a debt which could not have existed at the date of the bankruptcy. That leads me to conclude that there is no room for a balancing of accounts. The landlord owes this debt to the trustee personally. I therefore think that the Sheriff-Substitute has mistaken the principle of the case, and has applied the rule of balancing of accounts to a case to which it cannot apply.

LORD MURE—The question is whether from the sum of £328, 14s. the landlord can deduct £108, which he has undertaken to pay to the trustee, and rank for the balance. At the date of the *cessio* there were several years of the lease to run. The trustee and the landlord came to an agreement which your Lordship has quoted, and it is quite plain that the claim for the £108 did not exist at the date of the *cessio*, but emerged afterwards in consequence of the agreements.

LORD ADAM — The question is whether the £108 is a debt due to the bankrupt or a debt due to the trustee arising after the bankruptcy? If it is a debt due to the trustee there is no *concursus debiti et crediti*. I think it is plain that the debt is due to the trustee, and that it arises from the very reasonable agreements entered into between him and the landlords.

LORD SHAND was absent from illness.

The Court recalled the interlocutor of the Sheriff-Substitute and affirmed the deliverance of the trustee.

Counsel for the Appellant—Low. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Respondent—Balfour, Q.C.—Ferguson. Agents—Gordon, Pringle, & Dallas, W.S.

Wednesday, January 25.

SECOND DIVISION.

[Sheriff of Lanarkshire.

TAYLOR (JONES' TRUSTEE) *v.* JONES.

Bankruptcy—Cash Payment—Fraudulent Preference at Common Law.

The trustee in a sequestration raised an action for repetition of sums retained by the bankrupt's daughter out of payments made to her as saleswoman in her father's shop, when she knew he was insolvent, and within sixty days of his bankruptcy. The defence was that these were cash payments of arrears of wages for two years due to her. The Court *held* that the trustee was entitled to repetition, the Lord Justice-Clerk and Lord Craighill being of opinion the payment was in the circumstances a fraudulent preference over the other creditors, Lord Craighill being further of opinion, with Lord Rutherfurd Clark, that there was no sufficient proof of the existence of the debt

On 10th March 1886 Robert Jones, hardware merchant, 104 Gallowgate, Glasgow, was sequestrated, and James Taylor, chartered accountant, Glasgow, was appointed trustee on his estate. Taylor raised this action against Maria Borland Jones, the bankrupt's daughter, for the sum of £69, which he averred the bankrupt had paid her at different dates between 27th February and 30th March 1886 as wages said to be due to her for services as assistant and saleswoman in his shop. He averred—"(Cond. 5) The defender by reason of her near relationship and knowledge of the bankrupt's business was conjunct and confident with him, and the said sums were received by her, well knowing that her father was insolvent and that his creditors were thereby defrauded thereof. (Cond. 6) The said bankrupt was at the time and still is insolvent, and the transfer of funds above mentioned was an alienation struck at by the Act 1621, cap. 18, and also reducible at common law."

The defender stated that her father had engaged her as assistant saleswoman at a salary of 15s. per week, over and above her board, from 27th December 1883 till 22nd December 1885. In December 1885 a composition arrangement had been unsuccessfully attempted, and the defender stated that at that time her claims as well as those of her brother were tabled and considered by a committee of creditors, and were admitted to be correct, and that her father continued thereafter to carry on his business until his sequestration. She explained "that said salary was not paid to her as it fell due; that she did not press her father for same as she knew he was scarce of money for the requirements of the business, and as she did not actually need the money at the time, and knew that it was sure. Explained further, that defender, after the private settlement of her father's affairs fell through, demanded payment from her father of her salary up to date, and received from him in part payment thereof the sums sued for."

The pursuer pleaded—"(1) The defender being a daughter of, resident with, and helper in business to, the bankrupt, is a conjunct and confident person with him. (2) The said sums having been handed over by the bankrupt and received by the defender in the knowledge of the bankrupt's insolvency within sixty days of bankruptcy, and having been handed over gratuitously, and without just, true, and necessary cause, and the bankrupt being still insolvent, the transaction constitutes an alienation struck at by the Act 1621, c. 18, and a fraud against Robert Jones' creditors reducible at common law."

The defender pleaded—"(1) The bankrupt having been justly indebted to the defender in said sums as wages due to her for services rendered, he was entitled to pay same on receiving a discharge thereof. (2) The sums paid to defender being for value, and for a true, just, and necessary cause, the transaction in question is not struck by the Act 1621, cap. 18, and is not reducible at common law."

Proof was led, in which parole evidence alone was tendered of the alleged debt, the witnesses being the bankrupt himself, the defender, and her brother. It was proved that the pursuer knew that her father's sequestration in bankruptcy could be delayed only for a few weeks after she received the payments in question. The import of the proof