

ALEXANDER EWING, BUCHANAN & Co., and MALCOLM, Appel- No. 3.
lants.—*Shadwell—Robertson.*

WILLIAM LAWRIE, Respondent.—*Keay—Jas. Campbell.*

Bankrupt—Trustee.—Held (affirming the judgment of the Second Division), in a petition and complaint by creditors against a trustee on a sequestrated estate, praying for his removal,—that although he had committed some irregularities, yet they were not such as to warrant his removal, and as the other accusations against him were not well founded, he was entitled to his expenses, subject to modification.

HUGH GILCHRIST, merchant in Glasgow, having become ^{Feb. 28, 1826.} bankrupt, his estate and effects were sequestrated, and William ^{2D DIVISION.} Lawrie appointed trustee. After certain proceedings had taken place under the sequestration, and after the lapse of three years, Ewing, Buchanan and Co., and Malcolm, creditors of Gilchrist, presented a petition and complaint to the Court of Session against Lawrie, praying ‘ to ordain him to account for his intromissions ‘ and management, and to answer for his conduct generally ; ‘ and thereafter to find that the said William Lawrie has con- ‘ travened the provisions of the statute, and has otherwise mis- ‘ conducted himself in the management of the estate, and the ‘ affairs of the sequestration ; and in case it shall appear, in the ‘ course of the investigation to follow hereon, that the said trus- ‘ tee has been guilty of such misconduct as to warrant his remo- ‘ val, to remove him accordingly from his office of trustee, and ‘ to appoint the creditors of the said Hugh Gilchrist to meet at ‘ such time and place as your Lordships shall appoint, to elect ‘ another trustee in his room ; or otherwise to inflict such cen- ‘ sure upon the said William Lawrie, as his conduct shall appear ‘ to merit ; and to ordain him to take such steps for the interests ‘ of the creditors, and for the due management of the estate, as ‘ the statute requires.’ In support of this prayer they made various accusations against Lawrie, and particularly that he had not regularly transmitted a copy of the Sederunt-book to the Clerk of Court ; nor framed and exhibited periodical states of the bankrupt’s affairs ; that he was a confidant of the bankrupt ; had got himself appointed trustee, merely with the view of carrying through a discharge ; and that he had given to the bankrupt pecuniary allowances, without the sanction of the creditors.

Lawrie denied the charge of misconduct and mismanagement, and stated that he had regularly kept a Sederunt-book ; and although a copy had not been regularly lodged in process, no injury had been thereby suffered ; that there were scarcely

Feb. 28, 1826. any personal funds, so that periodical states were unnecessary, and would merely have created expense to the creditors; that the bankrupt had been employed by their sanction to act as superintendant of the heritable property, and had received a recompense for his labour; and that the objections to the election of Lawrie as trustee were unfounded, and at all events were not competent, seeing that he had been duly confirmed, and had acted for upwards of three years; and there was no prayer for removal in respect of original disqualification.

The Court found, ‘ that although there were certain irregularities committed by the trustee, yet these were not such as to warrant his removal, therefore dismiss the complaint and decern : Find expenses due, subject to modification, and remit to the auditor to report on the account thereof when lodged.’ And on advising a reclaiming petition and answers, they adhered.*

In relation to the objections mainly founded on by Ewing, their Lordships held, that if any allowance had been made to the bankrupt without authority, the only consequence would be, that Lawrie would not be allowed credit for it in his account; that, under the peculiar circumstances of this case, the neglect to frame periodical states of the affairs, and to lodge a copy of the Sederunt-book, was not such an irregularity as to infer a forfeiture of office; and that the objection as to Lawrie being a confidant of the bankrupt, was only competent prior to his confirmation as trustee.

Ewing having appealed, the House of Lords ordered and adjudged that the interlocutors complained of be affirmed, with £100 costs.

Lord Gifford.—My Lords, the appellants in this case appeal from certain interlocutors pronounced by the Second Division of the Court of Session.—It appears that the respondent, Mr Lawrie, was appointed trustee on the sequestrated estate of Mr Hugh Gilchrist. The appellants, who were creditors of Gilchrist, presented to the Court of Session a petition and complaint, alleging that Mr Lawrie had contravened the provisions of the statute, and been guilty of misconduct, for which he ought to be removed from his situation of trustee. When this petition came on to be heard before the Court of Session, they pronounced this interlocutor:—
‘ The Lords having advised this petition and complaint, with answers thereto, replies and duplies, find, that although there were certain irregularities committed by the trustee, yet these were not such as to warrant his removal: Therefore dismiss the complaint, assoilzie the respon-

* See 3 Shaw and Dunlop, No. 178.

‘dent, and decern : Find expenses due, subject to modification, and remit Feb. 28, 1826. ‘to the auditor to report on the account thereof when lodged.’—Against this interlocutor there was a reclaiming petition, and upon that petition coming on to be heard, they affirmed the interlocutor reclaimed against, and refused the prayer of the petition. From these judgments an appeal has been brought to your Lordships.

My Lords, I must confess, considering the nature of this proceeding, that it appears to me that appeals of this nature do not deserve much encouragement ; because, when a complaint of this sort is made against a person in the situation of trustee on a sequestrated estate, on whom an onerous duty is cast, it does appear to me, that charges brought against the trustee ought to be fully substantiated. In this case, it was conceded at your Lordships’ bar, that many of those complaints which have been preferred against the trustee, were clearly of such a nature, that the Court could not do otherwise than consider that they ought not to have been preferred ; and of others, that they were not substantiated. At the same time, it must be admitted, that, looking to this complaint, the Court of Session were of opinion, that, in some respects, the trustee had been guilty of irregularity.

My Lords, by the Act of Parliament in question, it is enacted, that the interim factor, Sheriff Clerk, and the trustee, and commissioners, or any of them, shall at all times be amenable to the Court of Session, by summary application to that Court, to account for their intromissions and management, and to answer for their conduct, at the instance of any party interested ; and in case it shall appear to the Court that such application ought not to have been made, the party complained of shall be entitled to his full costs, to be either retained out of the funds, or recovered from the party complaining, as the Court shall direct ; but otherwise, the Court shall give such directions, in regard to costs, as they shall think fit. It then goes on to enact, that ‘it shall be lawful for one-fourth of the creditors ‘to apply summarily to the Court of Session, for having the said interim ‘factor or trustee removed, upon cause shown.’

My Lords, by this petition the individual creditors, the appellants, seek to have the trustee removed ; and then, in the alternative, if the Court shall not think fit to remove, seek for a censure by the Court of Session, such as they shall conceive appropriate to the merits of the case. It is said, that though the Act of Parliament enacts, that it shall be competent for *one-fourth* of the creditors, yet that, nevertheless, it is competent to every individual creditor to apply. If that be the case, it appears to me that this part of the Act of Parliament is so far wholly useless. However, without further adverting to that part of the case, the simple question before your Lordships is, in the first place,—Is this interlocutor well founded,—it finding that there were certain irregularities, but that they were not such as to warrant the trustee’s removal ? I apprehend no fault can attach to the interlocutor in that respect. It appears to me, that the major part of the complaint against the trustee was either irrelevant or not proved ; that there were certain irregularities, is also clear. Then

Feb. 28, 1826. comes this question, that part of the interlocutor being right,—Have the Court exercised a sound discretion with respect to the costs? My Lords, when I first read this interlocutor, without attending to those words, to which I first called your Lordships' attention, it struck me as a little singular, that, if the Court found the trustee guilty of any irregularity, they should give him the whole costs of the proceedings in Court; but that is not the effect of the interlocutor—it finds expenses due, 'subject to modification,'—that is to say, that they do not give the whole expense against the petitioner, but thinking, as they do, that a great part of this complaint ought never to have been made, as casting unfounded calumnies upon this respondent, they say, that as to that part of the complaint he ought to have his costs; and I must confess, I agree with the Court of Session in that view of the case. If the Court of Session had found the petitioner liable to all expenses of this proceeding, the judgment might have been charged with the inconsistency charged upon it, at your Lordships' bar; but it only finds the petitioner liable to expenses, subject to modification—that is, it finds him liable, when the report of the auditor comes back, for the costs of that part of the proceeding, in which the Court think he has completely failed, and which ought, therefore, never to have been insisted in by him.

My Lords, in this view of the case, I feel it my duty to move your Lordships, that these interlocutors be affirmed; and thinking as I do, though I would not prevent a fair creditor bringing forward a fair complaint against a trustee, and, on the contrary, holding that the door ought to be open to him, but thinking that many of the complaints in this petition are unfounded, it does appear to me that this appeal to your Lordships, which is not so much an appeal on the merits of the interlocutor, as against that part fixing the appellant with costs, is an appeal which ought not to be encouraged; and I shall therefore move your Lordships, that this interlocutor be affirmed, with costs.

J. GREGGSON and J. RICHARDSON, Solicitors.

No. 4. ALEXANDER EWING, Appellant.—*Shadwell—Robertson.*
 HUGH GILCHRIST, Respondent.—*Keay—Jas. Campbell.*

Bankrupt—Discharge.—Judgment, affirming that of the Second Division, discharging a bankrupt under the Act 54 Geo. III. c. 137, and repelling various objections to the discharge being granted.

Feb. 28, 1826. HUGH GILCHRIST, merchant in Glasgow, having become
 2D DIVISION. insolvent, his estate and effects were sequestrated on the 21st
 July 1820, under the statute 54 Geo. III. c. 137. Thereafter, having obtained the statutory concurrence, he presented a