

Counsel for Pursuer—Mr Moncrieff. Agents—Messrs Patrick, M'Ewen & Carment, W.S.
Counsel for Defender—Mr J. R. Davidson. Agents—Messrs Hill, Reid, & Drummond, W.S.

In this case a jury returned a verdict for the pursuer. The question involved was whether the defender Scott had signed a bill, or whether his name which appeared on the bill was a forgery. The defender moved for a new trial on the ground that the verdict was contrary to evidence. After hearing Mr Davidson in support of the motion for a rule, the Court refused the motion, because although there was undoubtedly conflicting evidence, it did not appear that any advantage would be gained by disturbing the verdict.

SECOND DIVISION.

APPEAL—DAVID M'KAY.

Bankruptcy—Abandonment of Estate by Creditors—Offer to Purchase Trustee's Interest. A majority of creditors having resolved to abandon their claim to a bankrupt estate, and a creditor having thereupon offered to purchase the trustee's right for a sum of £15, the Sheriff ordained the trustee to assign on receiving payment of the sum offered. The bankrupt having appealed and offered a larger sum, the Court recalled the resolution of the creditors, and appointed the trustee to call a new meeting, in order to consider the offers and any other offer that may be made.

Counsel for the Appellant—Mr Campbell Smith. Agents—Messrs Ferguson & Junner, W.S.

Counsel for the Respondent—Mr Trayner. Agents—Messrs Campbell & Smith, S.S.C.

This is an appeal brought under the 170th section of the Bankruptcy Act by David M'Kay, merchant, Glasgow, against an interlocutor pronounced by the Sheriff-Substitute of Lanarkshire in a process depending before him of sequestration of the appellant's estate. It is brought in the following circumstances:—On the 26th of July last a meeting of creditors in the sequestration was called by the trustee, for the purpose "of instructing the trustee regarding the estate generally;" and at this meeting the following resolution was adopted by a large majority of the creditors:—"That the trustee and creditors abandon and give up all claim to the bankrupt estate, and that the trustee take no further steps towards recovery of the same, with the exception of the claim lodged for him in the multiplepoinding, presently depending in the Sheriff Ordinary Court at Glasgow, between Randolph, Elder, & Co. and the trustee, and the common debtor, John Nicholson." At this meeting, Mr Martin M'Kay, writer in Glasgow, mandatory for Mr Brownlee, a creditor, protested against this resolution, and offered to pay the trustee the sum of £15 for an assignation of the trustee's right and title to the estate of the bankrupt, and of his right and title to recover the same to the extent to which the said estate was proposed by the resolution to be abandoned, he (the creditor) always finding security to relieve and indemnify the trustee and the trust estate of all expense and damage which may be incurred by granting said assignation, and in prosecuting for the recovery of the estate proposed to be renounced. He also offered to hand over any surplus that might remain after satisfying his own debt. The motion made on behalf of Brownlee having been refused, he appealed to the Sheriff, praying that the trustee should be instructed to grant the assignation demanded on condition of his being paid £15. The Sheriff-Substitute (Bell) found that where a majority of creditors give instructions to the trustee to abandon the estate, it is open to the minority or an

individual creditor to demand an assignation to the abandoned claims, on condition of a sum being paid for such assignation, and of security being found to relieve the trustee and the other creditors of all expense and damage incurred through the granting thereof, or through the prosecuting for the renounced portion of the estate; and also in the event of a greater sum being recovered than will pay the assignee 20s. per pound of the debt claimed by him in the sequestration, to hand over the said surplus to the trustee for behoof of the other creditors. No appearance was made before the Sheriff on behalf of the creditors who carried the resolution complained against; and although one of the abandoned claims was a debt due by the appellant Brownlee himself, the Sheriff-Substitute sustained the appeal, recalled the resolution in so far as it was an absolute abandonment of the claims by all the creditors, and in consideration of the appellant's offer found the trustee bound to grant, *unico contextu* with the said offer being duly obtempered, the assignation demanded by the appellant. This appeal from the Sheriff's judgment is brought by the bankrupt, who was respondent in the Court below, and who contended that a bankrupt estate which has been abandoned by the creditors reverts to and belongs to the bankrupt. At the bar to-day he offered £25 for the estate.

The LORD JUSTICE-CLERK said he had some difficulty in adhering to the whole of the Sheriff-Substitute's interlocutor. This was not a proceeding under any particular clause of the Bankruptcy Act, but was a question to be decided by common law and the principles of equity, which was the common law of bankruptcy. If the motion for the abandonment of the estate had been adopted without objection the trustee would properly have proceeded on it. But another creditor proposed that the estate should not be abandoned, and proposed to give a sum of money on a portion of the estate being assigned to him. This proposal being before the creditors, it was not consistent with the rules of bankruptcy proceedings that the first resolution should be carried. That resolution would not stand in the face of Martin M'Kay's tender, and therefore it has been properly recalled. But the Sheriff-Substitute has gone too far in saying that on payment of £15 the trustee was bound to grant an assignation to the whole estate proposed to be abandoned. His Lordship doubted whether the creditors were tied up by the offer made by Martin M'Kay. He thought there should be a remit made to the creditors to reconsider the tender made by M'Kay, and any other tender that might be made, either by him, or by any other creditor or by the bankrupt. It was not unimportant to consider the authorities. The principle was laid down in "Bell's Commentaries," II. 415. Bell gave no authority for his opinion, and there were no authorities bearing directly on the point. But the case of *Sprot and Others v. Paul*, 5th July 1828 (6 S. 1083), evolved the principle enunciated by Mr Bell. One important lesson to be derived from that case is, that while a minority of creditors may protest against a majority abandoning a part of the estate, and may make proposals to recover or to buy that part, it is always a question of circumstances in what condition he was entitled to do so. It appeared that at the meeting of creditors the first thing only had been done. It was not probable that the offer made by M'Kay was one which the majority of the creditors would accede to; but whether or not, there was still much to be done in arranging the conditions of transference. He was of opinion that the case should be sent back to the creditors.

The Court recalled the interlocutor of the Sheriff-Substitute, of new recalled the resolution of the 26th of July, and appointed the trustee to call a meeting of the creditors to reconsider the offer made by Brownlee or any other offer to be made by him, or by any other creditor, or by the bankrupt.