

bills founded on. The correspondence founded on by the respondents, though perhaps of not very great importance, furnishes, so far as it goes, an additional reason why caution should be found."

The complainer reclaimed, and asked to have the note passed without caution.

FRASER and MACDONALD for him.

SOLICITOR-GENERAL and BIRNIE in answer.

The Court adhered.

Agent for Complainer—W. P. Anderson, S.S.C.

Agents for Respondents—Renton & Gray, S.S.C.

Saturday, March 19.

MARTIN & SON V. M'NAB.

Diligence—Bill—Fraud. Suspension of a charge upon a bill—alleged to be fraudulently drawn, accepted and indorsed—*refused.*

The complainers presented a note of suspension and interdict against a charge upon a bill drawn upon and accepted by them. They thus stated the ground of their suspension:—"That the complainers have been charged, at the instance of the said John Edward M'Nab, to make payment of the sum of £384, 0s. 6d. sterling, and the legal interest thereof since the same became due and till paid, contained in and due by a bill, dated the 26th day of October last, pretended to be drawn by Wright, Napier & Company, payable three months after date, upon, and pretended to be accepted by, the the complainers at four months, which bill is pretended to have been indorsed by the said drawers, without recourse to John Napier, tea merchant in Glasgow, by him to Marion M'Nab or Blair, residing there, and by her to the said respondent, under an extract registered protest, dated 1st June 1869, upon which the complainers were charged, on the 4th June 1869, most wrongously and unjustly."

Martin's son, who was in partnership with him, died two years ago; and thereon Martin took his son-in-law Lawrie into partnership with him. Lawrie, he said, looked after the business, and having involved himself through some speculations in joint-stock companies, &c., he resolved to dissolve the partnership. Meantime, he said, Lawrie had made fraudulent use of the firm's name for his own purposes—in concert with John Napier, a partner of the firm of Wright, Napier & Company. Napier in name of his firm drew the bill charged upon on the complainers, and Lawrie accepted it in their name. This bill, Martin further stated, had been fraudulently, and with a full knowledge of the circumstances, indorsed by Napier to a Mrs Blair, and by her to her brother, the respondent. In these circumstances the complainers maintained the bill and diligence should be suspended with expenses; and they lodged issues to have their allegations verified. The respondents pleaded, *inter alia*,—" (3) The complainers' averment that the respondent gave no value for the bill charged on can only be proved by the respondent's writ or oath. (4) The whole averments of the complainers as to the circumstances connected with the granting of the bill charged on are irrelevant in answer to a demand for payment by the respondents."

On 1st March 1870 the Lord Ordinary (JERVIS-WOOD) pronounced the following interlocutor:—"The Lord Ordinary, having heard counsel, and made avizandum, and considered the debate, with the record, productions, and whole process, Sus-

tains the third and fourth pleas in law for the respondent; and, with reference thereto, appoints the cause to be enrolled, that the parties may be heard as to further procedure therein; reserving, *in hoc statu*, the matter of expenses.

"*Note.*—It appears to the Lord Ordinary that were he to grant to the complainers in this process an investigation by means of a proof at large, under issues or otherwise, into the circumstances which are set forth in the statements made on the record on their behalf, he would run the hazard of interfering wrongly, so far as his judgment could take effect, with the valuable privilege of summary diligence, competent in the general case to a party holder of a bill of exchange. Proof by writ or oath is, however, in the opinion of the Lord Ordinary, open to the complainers in this process; and to such evidence they may, if so advised, still resort."

Leave having been granted, the complainers reclaimed against the interlocutor.

MILLAR, Q.C., and SCOTT for them.

SOLICITOR-GENERAL and ASHER in answer.

The Court adhered, reserving the question of expenses, and recalling the interlocutor so far as regarded the fourth plea in law for the respondent.

Agent for Complainers—James Renton, S.S.C.

Agent for Respondent—James Buchanan, S.S.C.

Saturday, March 19.

MERCER V. ANSTRUTHER'S TRUSTEES.

Evidence—Deposition. The evidence of a pursuer allowed to be taken on commission, as she was in the Mauritius, in very delicate health; and if her deposition were not taken there would be risk of her evidence being lost, or of great delay.

Mr and Mrs Mercer having raised an action against the trustees of the late James Anstruther (Mrs Mercer's father), in which *inter alia* they concluded for reduction of their marriage-contract, by which they alleged Mrs Mercer renounced certain rights competent to her under the marriage-contract of her father and mother, under essential error of the nature of these rights, the Court allowed the pursuers a proof of their averments relative to the circumstances under which their marriage-contract was executed. Mr and Mrs Mercer are both resident in the Mauritius. In July last the pursuers petitioned the Court to allow both Mr and Mrs Mercer to be examined on commission. The Court allowed this in the case of Mr Mercer, on condition that Mrs Mercer was examined in Court. An affidavit was now presented to the effect that Mrs Mercer's health was in too critical a state to permit her undertaking so long a voyage for some time, and the pursuers again petitioned the Court to allow Mrs Mercer's evidence to be taken on commission.

WATSON and SHAND for pursuers.

SOLICITOR-GENERAL and BALFOUR in answer.

The Court granted the petition. It was in general highly inexpedient to allow parties to be examined as witnesses for themselves, except in presence of the Court and of the jury, and subject to cross-examination. But the circumstances of this case were very peculiar. The distance was very great; Mrs Mercer's health was delicate; it would be unreasonable to expect her to come home now;

and if the proof was to be delayed till she was able there might be interminable delay, and, possibly, her evidence might be lost. The Court accordingly allowed Mrs Mercer to be examined on commission, reserving all objections to the admission at the trial of the deposition, in case of a change of circumstances.

Agents for Pursuers—Hamilton, Kinnear & Beatson, W.S.

Agents for Defenders—A. & A. Campbell, W.S.

Saturday, March 19.

LANG v. HALLY.

Trustee—Removal—Sequestration. The trustee on a sequestrated estate was removed on the report of the Accountant in Bankruptcy, confirming charges of mismanagement, confidentiality, &c., stated against the trustee in a petition for his removal by the bankrupt's son.

Question. Whether the trustee could have been removed solely on the petition of the son, who was not a creditor?

In 1861 George Hally, designing himself writer in Glasgow, was elected trustee on the sequestrated estate of George Lang, cattle dealer and fletcher. A petition was now presented by Robert Lang, a son of the bankrupt, praying for the removal of the trustee. He put forward a variety of statements in support of his application.

Answers were lodged for the trustee, and eventually the Court, before answer, directed the proceedings to be laid before the Accountant in Bankruptcy for his consideration. On 28th February 1870 the Accountant (Mr Esson) gave in the following report:—

"The proceedings were laid before the accountant in bankruptcy on July 9, 1869, in obedience to the interlocutor, of which a copy is prefixed. The accountant examined these proceedings, and afterwards heard the agents for the parties, and he now begs leave humbly to report to the Court as follows:—

"1. It is averred by the petitioner that the respondent has not transmitted to the accountant in bankruptcy an inventory and valuation of the estate, as is required by section 80 of the Bankruptcy (Scotland) Act, 1856, nor his accounts as required by the 84th section, and that he has not made the annual returns required by section 158 of that Act.

"This is denied by the respondent. The accountant found that the trustee has not transmitted to him a copy of the inventory and valuation of the estate; and that he has not transmitted certified copies of his accounts; but he found that the respondent had made annual returns to the sheriff-clerk.

"2. It is averred by the petitioner that the respondent was at the period of his election as trustee on 22d May 1861, and still is, a clerk in the office of Charles Reddie, writer in Glasgow, who was law-agent in the sequestration; that Mr Reddie was proposed as his cautioner, and approved of by the creditors; and that Mr Reddie was elected a commissioner on Feb. 9, 1868.

"The respondent admits that Mr Reddie was at one time law agent in the sequestration, and that he is the cautioner for the trustee, and a commissioner; but he denies that he is Mr Reddie's clerk,

and alleges that he is in business on his own account; and he does not admit that this personal objection, even if correct in point of fact, would be a disqualification under the Act or otherwise. The accountant called on the respondent to explain his position in relation to Mr Reddie, and it was stated on his behalf, at a meeting before the accountant, on Nov. 29, 1869, as follows:—"That he left Mr Reddie's employment as a clerk in 1858, before his appointment as trustee, since which time he has not acted as his clerk; but that occasionally, when Mr Reddie, who generally keeps two clerks, has had a pressure of business, he has drawn and engrossed papers for him; and that he has also attended to anything particular, at Mr Reddie's request, during his absence; but he has received no payment, and has no claim therefor." It appears to the accountant, from this admission, and from the fact of Mr Reddie being cautioner for the respondent, that the respondent is on a footing of confidentiality with Mr Reddie, who was admittedly for a long period the agent in the sequestration, and who still is a commissioner, which is not favourable to independent and disinterested action on his part in the discharge of his duties as trustee.

"3. It is averred by the petitioner that the respondent is an undischarged bankrupt.

"It is admitted by the respondent that he was sequestrated under the Bankruptcy Acts on 7th June 1862, and that he had not been discharged when the revised answers for him were lodged; but it is averred that no disqualification attaches to the respondent under the Act or otherwise on this account. The accountant found that although the respondent was an undischarged bankrupt at the date of the presentation of the petition, he was discharged on 6th March 1869, without composition.

"4. No complaint has been made to the accountant in regard to the conduct of the respondent under the 159th section of the foresaid Act. At a meeting on Dec. 24, 1868, at which the respondent submitted the petition and complaint for the consideration of the creditors, they 'resolved and approved of the whole actings of the trustee on the estate of the bankrupt from the date of his election to the present time; and further resolved to continue him as trustee on the estate, and instruct him specially to oppose, on every ground competent in law, both the action and complaint for his removal as trustee, and the action of interdict against the sale of the lands.'

"5. The accountant, notwithstanding of there being no complaint at the instance of creditors, is entitled, under the 159th and 161st sections of the said Act, to report to the Court any failure in duty on the part of a trustee, if not satisfied with the explanation given by the trustee.

"With reference to the failures in this case to transmit copies of his inventory and valuation, and of his accounts, the accountant would in ordinary circumstances have been satisfied to have accepted copies of these documents, and would have considered it unnecessary to report the case. Looking, however, to the confidentiality between the respondent and Mr Reddie before pointed out; to the fact of the former having been an undischarged bankrupt; and also to the fact of the proceedings at the instance of the petitioner of which the Court have caused intimation to be made to him; the accountant considered that this was a case which ought to be reported under the 159th and