founds upon his guarantee to the bank for Weir Brothers & Company, as one of the business transactions for relief of which he held the security. He avers that when the bond was granted there were bills discounted by Weir Brothers & Company in the hands of the bank to an amount exceeding £5000, and that since that time the bank has always held bills so discounted greatly exceeding that amount, the sum due by the firm for such discounts at the date of its sequestration being £8774. But he does not aver, and at the debate it was admitted not to be the case, that any part of this sum is due for or in any way represents bills which had been discounted by the bank at the date of recording the bond in the Register of Sasines.

"The defender asks that, for the purposes of this question as to its validity as a security, the bond shall be read along with, and as qualified by, the back letter. The back letter has not been recorded, and the Lord Ordinary is disposed to hold that it cannot be taken account of for the purpose of exempting the completed heritable security from any invalidity which may attach to it under the Act 1696, c. 5. The purpose of the provision of that Act as to heritable securities for future debts, was to prevent frauds which could hardly be accomplished if such securities might be validated by the production of latent deeds. But whether the bond and disposition in security be read along with the back letter or not, the Lord Ordinary is of opinion that, when founded upon as a security for the relief of the defender from his obligation to the bank for the amount of Weir Brothers & Company's discounts at the date of their sequestration, it falls within the enactment of the Act 1696, c. 5, and that it is not exempted from the application of that Statute by 19 and 20 Vict., c. 91, sec. 7, as to securities of cash accounts, the provisions of which have not been complied with if they were applicable to the case.

"The back letter makes no reference to the defender's guarantee to the bank. It merely acknowledges that the bond is held as a security and relief of all business transactions. As regards future ordinary business transactions, this was clearly a security struck at by the Act 1696, and in no way supported by 19 and 20 Vict., c. 91. But, assuming that the declaration in the back letter includes relief of the obligations under the guarantee, the Lord Ordinary thinks that under the provisions of the latter Statute the attempted security is invalid even as to it. The exception from the Act 1696 established by that Statute, and by the Bankrupt Acts 33 Geo. III, c. 74, and 54 Geo. III., c. 137, sec. 14, in favour of securities for cash accounts or credits, and for relief of cautioners for the payment of these, is guarded by a provision that the principal and interest, 'which may become due upon such cash accounts or credits, shall be limited to a certain definite sum, to be specified in the security.' The Statute thus requires that the nature of the transaction and the limit of the security shall enter the record. The Lord Ordinary cannot hold that this provision has been complied with by the bond being taken for payment and in security of a sum of £5000 as having been advanced, which in point of fact never was advanced. The insertion of that sum in the bond had no special reference to the transaction with the bank, more than to any ordinary business transactions that might take place between the defender and Weir Brothers & Company. The bond was not for any sum to become due on an account with the bank, but for payment of £5000 at Martinmas 1861, with interest till paid; while the Act requires that the interest shall be limited to three years' interest.

"The defender pleaded that the date of his cautionary obligation to the bank must be taken as the date of the debt to him, and that on that ground the Act 1696 does not apply. But that view was distinctly set aside in *Geddes* v. *Smith's Trustee*, 1st December 1810, F.C."

The defender reclaimed.

MACKENZIE for reclaimer.

WATSON for respondent.

The Court adhered, holding that the bond could not be brought under the Act 19 and 20 Vict., c. 91, not being in compliance with the provisions thereof; and farther, that this was not one of the class of cases to which the Statute referred, not being a security either for a cash credit account, or for a bond of caution for a cash credit account.

Agent for Pursuer— A. K. Morison, S.S.C.

Agents for Defender—A. G. R. & W. Ellis, W.S.

Saturday, November 14.

RANKIN *v.* JAMIESON (JARDINE'S TRUSTEE).

Bankrupt—Bankruptcy Act 1856—*Agent and Client—Proof—Haver.* Circumstances in which a person who had for some time acted as agent for the bankrupt, being examined under secs. 90 and 91 of the Bankruptcy Act, was ordained to produce certain documents in his possession relating to the bankrupt's affairs.

Mr Jardine's estates were sequestrated on 9th April last. It appeared that he had for many years carried on business in a small way as a cattle dealer. In August 1865 he succeeded, through the death of his father, to the estate of Blackrigg, worth £5000. He thereupon entered into possession of the property, at same time continuing the cattle dealing. In June 1867 he granted a trust-deed for behoof of his creditors, in favour of George Gentle, accountant, Airdrie. The bankrupt was thus only about 96 weeks in possession of his property, and, so far as could be seen, must have spent during the whole of that time at the rate of £50 pe- week. When examined before the Sheriff of Linr lithgow under the sequestration, the bankrupt failed to give any satisfactory or intelligible account of what had become of his means. He kept no books, and had no documents to show, but stated that the appellant had been his agent for many years, having the charge of his affairs. The appellant was thereafter examined under sections 90 and 91 of the Bankrupt Act, and, *inter alia*, was called upon to produce a statement of accounts betwixt him and the bankrupt, made up in August 1865; his accounts current with the bankrupt betwixt that date and February 1867; and also his (the appellant's) books, that excerpts might be taken therefrom of all entries therein tending to show what had become of the bankrupt's means. The appellant declined to produce or exhibit the documents called for upon various grounds; and, in particular, that on 27th February 1867 the bankrupt had granted him a letter of authority, whereby he (the bankrupt) acknowledged to have received just count and reckoning of all sums intromitted with on his account, and authorised Messrs Rankin & Motherwell to pay the appellant the sums in vari-

ous bills admitted to be due to him. The Sheriff ordained the appellant to produce or exhibit the documents; and he thereupon appealed to the Court of Session, maintaining—(1) that he was protected by the discharge by the bankrupt of all intromissions on 27th February 1867; and (2) that the documents called for did not relate to the bankrupt's affairs.

A. MONCRIEFF and GLOAG for appellant.

Solicitor-General (MILLAR) and CRICHTON, for respondent, were not called on.

At advising—

LORD PRESIDENT—This is about the clearest case I ever saw. Under the provisions of the 90th and 91st sections of the Bankrupt Act, the Sheriff, on the application of the trustee, orders the examination of the law agent of the bankrupt. Now, how far the trustee may be entitled to proceed in the examination of the law agent must depend upon the circumstances of each case.

In this case the bankrupt, having in August 1865 succeeded to an estate, the value of which was £5000 and having not above £800 of debt, and there being no burden on the estate, he, on 25th June 1867, finds himself in such a state of insolvency that it is necessary to execute a trust-deed for behoof of his creditors. When the bankrupt was asked, on his examination, to give an account of his affairs, he said he kept no accounts, and had no books or papers to deliver to the respondent as trustee upon his estate.

It is in these circumstances that the trustee examines Mr Rankin, under the provisions of the 90th section of the Bankrupt Act; and one of the first things he sees is, that on the 15th of August 1865, the time when the bankrupt succeeded to the property, Rankin had made up a state of debt for which he makes a charge in his business accounts, and the trustee says, I should like to see that state of accounts, because it will throw light on the circumstances of the bankrupt, and accordingly he asks Rankin to produce it. Rankin admits that the state was made up, and that he has such a state in his possession, but he declines to produce it. We are told that it is not a document relating to the bankrupt's affairs. That, I think, it is impossible to maintain. Then another, and the principal, reason assigned by the appellant for not producing it is, that having got a document on 27th February 1867 which discharges him of all his intromissions, he stands upon that, and refuses to produce anything prior to its date. I give no opinion with regard to the effect of this document, but I do not hesitate to say that upon its face it does not discharge Rankin. It contains no words of discharge whatever. I must say, however, it produces a very different impression on my mind. It creates a strong suspicion against Rankin with reference to his transactions with the bankrupt. It results in this, that at the date of this document the bankrupt undertook to pay to Rankin bills to the amount of £2139, and also to pay a business account to the amount of £198, amounting together to no less a sum than £2337. That is rather a startling sum. This document is founded on as shutting out all inquiry, and Mr Rankin appeals to this Court for protection. Before his examination began there was no reason to suspect anything against Mr Rankin. But his refusal to produce this document, and his account with the bankrupt, subjects him to the gravest suspicion. Therefore, in consequence of what he has done, the fullest and most searching inquiry must be demanded of his hand. The other plea, that the document and account called for do not relate to the bankrupt's affairs, is quite untenable. The documents are indispensable to the trustee.

LORD DEAS—This is the clearest possible matter. What the appellant is called upon to produce is—(1) The adjusted state made out in August 1865; (2) the account-current between the appellant and the bankrupt; and (3) the appellant's books. He declines to produce the adjusted state and the accounts-current prior to a certain date on the same grounds—viz., that by the letter of authority of 27th February 1867 he is discharged of all intromissions, and therefore he says the production of these documents is unnecessary. He does not say that he will suffer the slightest prejudice. There is not a word about prejudice set forth even in his pleas in law. Now, is the appellant to be the judge whether the accounts called for are necessary or unnecessary? All that is asked is that the trustee may have an opportunity of seeing them. The effect to be given to the letter of authority is not at present to be judged of. Whatever had been the nature of this document, the result would have been the same. But when we look at it, it is plain that it does not operate as a discharge. It rather shows that there was to be a complicated accounting. But even though this letter could have been held to be a discharge, I am not prepared to say that the trustee would not have been entitled to see the accounts called for.

The only thing with regard to which there was room to say one word was as to the books. He refuses to produce these because they contain the accounts of other parties. Now I see no more reason for alarm as to that, in this case, more than in any other. Either the Sheriff or Sheriff-clerk can make the excerpts. The accounts of other parties are not to be seen by the trustee. The Sheriff won't allow anything to be excerpted except what has reference to transactions with the bankrupt's estate. He is not to judge of the effect to be given to the accounts. The appellant acted as the agent of the bankrupt, and he managed the whole of his money affairs. Is he then to be the judge of what part of his accounts he is to exhibit and what not? I think not, and I agree that this appeal must be dismissed.

LORD ARDMILLAN and LORD KINLOCH concurred.

The Court dismissed the appeal.

Agents for Appellant—Wilson, Burn, & Gloag, W.S.

Agents for Respondent—Waddell & M'Intosh, W.S.

Tuesday, November 17.

HEBENTON *v.* MILNE.

Process—Burgh Court — Sheriff-Court Act 1853—*A. S.* 13*th February* 1845—*A. S.* 18*th July* 1851—*A. S.* 8*th July* 1831—*Summons—Proof in Inferior Court.* The form of summons and mode of taking evidence introduced into Sheriff-Courts by 16 and 17 Vict., c. 80, do not apply to Burgh Courts.

This was a suspension at the instance of William Hebenton, flesher in Brechin, of a threatened charge on a decree of the Burgh Court of Brechin obtained against him in an action at the instance of David Milne, tacksman of the Petty Customs, Shamble, and Weigh-house dues of the Burgh of Brechin. It was contended by the defender