the effect of that enactment, as of the corresponding clause in the earlier statute which has been the subject of decision, is just this, that no objections can be entertained at this stage of a sequestration except such as are capable of instant verification. I include in the exceptional cases those in which it may be necessary to grant delay in order by diligence to obtain certain specified papers, but I exclude the case where it is sought to obtain a general diligence for the recovery of papers.

With regard to the present case, if it be the fact that a loose practice with regard to the taking of affidavits in bankruptcy such as is here averred really exists, of course it is very strongly to be condemned, and it was a condemnation of something of the kind that led to the observations of the Lord President in *Hall* v. *Colquhoun;* but those *dicta* do not touch the question whether a sequestration is to be stopped for the purpose of allowing inquiries to be made as to whether affidavits *ex facie* regular were or were not taken with all proper solemnity. That is not a matter capable of instant verification, but would involve a proof which would certainly take days, possibly weeks, to complete. I think such a proceeding would be entirely contrary to practice, decision, and to the whole spirit of the statute regulating the matter. Here it is said that all the affidavits were objectionable, and there are a great many of them; but I should have held precisely the same opinion if the objection had been taken to one affidavit only.

Whether a proof under an appeal, of which the object was an inquiry into the personal disqualification of the proposed trustee, would be competent is a different question. Very possibly the only way to settle the question might be to have a proof, but that question is not raised here, and I therefore give no opinion upon it.

I will only add, that the Sheriff-Substitute in this case appears to have been misled by the view he took of the case of *Hall* v. *Colquhoun*. There the Lord President condemned very strongly a loose and improper proceeding which the proof in the case showed to have taken place, and the course which was followed was to remit the matter to the Lord Advocate for inquiry; but that case seems to me to have nothing to do with a question such as we have here—whether a proof at large should be allowed as to the validity of the affidavits in a sequestration on which the votes were given with reference to the question of the appointment of a trustee.

Lord Adam—We all know that if it were to become the custom for protracted litigation to take place between parties desiring the office of trustee, it would be an unfortunate business for anyone except those actually carrying on the proceedings. It was having this evil in view that made the Legislature provide that the Sheriff's judgment declaring a certain person elected to the office of trustee was to be final, and in no way subject to review, and the object of this enactment was clearly to prevent litigation for trusteeships being carried on at the expense of creditors.

The case of *Rhind* shows, I think, that a proof at large in the present case is not to be thought of, and that even a diligence at large would not be allowed. Here the affidavits are all *ex facie* regular and formal, and yet it is proposed by means of a proof at large to show that they were not actually sworn. I cannot see upon what grounds such a proof should be allowed by way of meeting the present objection, and not also be allowed against any other form of objection which might be taken to those affidavits. I do not think it makes any matter whether the objections be taken to one or to twenty affidavits. I think a proof at this stage of the proceedings incompetent, and I agree in the opinion expressed by your Lordships.

The Lord President and Lord Deas were absent.

The Court sustained the appeal and recalled the interlocutor of the Sheriff-Substitute, and remitted to the Sheriff to proceed as accords.

Counsel for Appellant—Strachan—M'Kechnie. Agent—P. S. Malloch, S.S.C.

Counsel for Respondent — Darling — Watt. Agent—David Milne, S S.C.

Tuesday, July 1.

FIRST DIVISION.

[Sheriff of Dumbartonshire.

WATERSON *v.* MURRAY & COMPANY.

Reparation—Master and Servant—Relevancy—Want of Specification.

An action for damages at the instance of the widow of a person alleged to have been killed while in the service of the defenders, by falling from a gangway provided by them, and which the pursuer alleged was insufficient or defective—*held* not relevant, because it was not specifically averred in what respect the gangway was insufficient or defective.

This was an action at the instance of Christina M'Kinlay or Waterson, widow of the late James Waterson, boiler coverer, against Henry Murray & Company, owners or builders of the steamship "Sergipe," to recover damages for the death of her husband.

The pursuer averred that on 18th April her husband, who was in the employment of William Duff, was sent by him to assist in work at the boilers of the defenders' ship "Sergipe," which he (Duff) had been employed to cover; that the "Sergipe" was lying at the dock outside the "Tennasserim," which it was necessary to cross and thence go by a gangway to the "Sergipe;" that it was the custom where, as in this case, the vessel is not out of the hands of the builders (which she alleged the defenders to be) for them to supply a gangway for the use of all who are working at the ship. "(Cond. 4.) The 'Tennasserim' was a much higher vessel than the 'Sergipe,' and the said gangway, which was lashed at one end to the 'Tennasserim,' at the other end rested upon a block of wood placed on the gunwale of the 'Sergipe;' and the gangway was unsteady, as the block of wood shook at any movement of the vessels. The gangway consisted of two planks about 12 feet long, joined together by small

pieces of wood; its whole width was not more than 18 inches, and it had no rail or protection at either side. (Cond. 5) The said James Waterson commenced his work by carrying two buckets of covering composition from the quay towards the 'Sergipe,' and had got as far as the gangway between the two ships when, owing to the insufficiency or defective condition or arrangement of said gangway, he fell from it into the dock, and was drowned or killed." The pursuer then averred that a constable on duty at the dock, and some of the defenders' men, had complained to the defenders' foreman of the state of the gangway. "(Cond. 8) The death of the said James Waterson, as aforesaid, was due to the fault and negligence of the defenders, the said Henry Murray & Co., or those for whom they are responsible. In particular, it was due to defects in the condition of the ways connected with or used in the business of the defenders, the said Henry Murray & Co., and to these defects not being remedied, owing to their negligence, or the negligence of some person in their service entrusted by them with the duty of seeing that the ways were in proper condition. There was a duty on the part of the defenders, the said Henry Murray & Co., to see that the said gangway was sufficient for the purposes for which the deceased was using it at the time of the accident; but they neglected this duty, and allowed deceased to use said gangway as it was."

The defenders denied fault, and pleaded (1) that these staements were irrelevant.

The Sheriff-Substitute (GEBBIE) pronounced this interlocutor:—"Sustains the defenders' first plea-in-law, and assoilzies them from the conclusions of the action as laid."

"*Note.*—The fault through which the pursuer lost her husband, who fell from a gangway leading to a vessel on board which he was to work, seems to be that the condition or arrangement of the gangway was insufficient or defective. There is, however, as it appears to me, no specific averment in what respect it was so. Such an allegation is essential in an action of this description, and without it no relevant case is stated. The record is far from being skilfully prepared. Indeed, the fact—if it was a fact—of the deceased having been engaged in a common employment under the defenders, is so meagrely stated, that the greatest difficulty is felt in regard to the relevancy of that branch of the case; also, there is nothing like the full and precise statement upon that matter which is found in the recent case of *Morrison* v. *Baird & Co.*, Dec. 2, 1882, 10 R. 271."

The pursuer appealed to the Court of Session.

The Court, after hearing pursuer's counsel, without delivering opinions, affirmed the Sheriff's judgment.

The pursuer then moved that the action should be dismissed, and pointed out that the Sheriff instead of dismissing it had assoilzied the defenders from the conclusions of the action as laid.

The Court refused the motion, and held (following the case of *Russel* v. *Gillespie*, July 22, 1859, 21 D. (H.L.) 13) that this interlocutor could not be pleaded as *res judicata* in bar of another action, because it only assoilzied the defenders from the conclusions of the action "as laid."

Counsel for Pursuer (Appellant)—Watt. Agent—Alexander Clark, S.S.C.

Counsel for Defender (Respondent)—Jameson. Agents—J. & J. Ross, W.S.

Tuesday, July 1.

SECOND DIVISION.

BUCHANAN BROTHERS *v.* THE LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY.

Insurance—Fire Insurance—Insurance on Rent—Rent-Clause—Period of Untenantableness.

The proprietors of premises held a policy of insurance with the Liverpool Company against loss by fire for a certain amount, and also against loss of rent for £500 on twelve months' rent of the premises. The policy contained this provision—"The insurance on rent is recoverable only in the event of the above building being so damaged or destroyed by fire as to become untenantable; the said insurance to cover the rent of said building from the time of such accident until the period of reinstatement or of perfect repair, and in the proportion which the period of untenantableness bears to the term of rent which is insured, not exceeding twelve months' rent." The total yearly rent of the premises was £2345. A fire occurred in the premises, causing a loss of rents from untenantableness for a portion of a year of £856, 2s. 2d. Half of this sum was recovered by the insured under a separate policy with another company. The Liverpool company refused to pay the remaining half of this amount, viz., £428, 1s. 1d., and tendered payment of the proportion which the sum insured on rent bore to the total yearly rental and the period of untenantableness, being a sum of £190, 7s. 11d. *Held* that the company's construciion of the clause was right, and that they were only liable to pay the sum tendered.

John Buchanan & Brothers, wholesale confectioners in Glasgow, proprietors of 49–53 Buchanan Street, and 44 to 46 Mitchell Street, obtained on 9th November 1877 from the Liverpool & London & Globe Insurance Company a policy of insurance against loss by fire over these premises to the extent of £8000 on the buildings and £500 on twelve months' rent thereof. The total year's rent of the buildings amounted to £2345. They also, on the 20th of the same month, obtained another fire policy over the same subjects from the Royal Insurance Company for £11,000 over the building and £500 on twelve months' rent thereof. In the policy of the Liverpool & London & Globe Company there was this clause—"The insurance on rent is recoverable only in the event of the above building being so damaged or destroyed by fire as to become untenantable; the said insurance to cover the rent of said building from the time of such accident until the period of reinstatement or of perfect repair, and in the proportion which the period of untenantableness bears to the term of rent which is insured, not exceeding twelve months' rent."

On 3d November 1883 (both policies being still