joint procurators-fiscal of Fifeshire, for having obtained and carried through an illegal search of the pursuer's house and repositories in connection with the Dunbog case. In that action, which was compromised, the defenders averred in defence that the statements in the petition upon which a warrant was obtained "were and are true, and were made by the defenders in good faith and on probable grounds." The pursuer has raised a second action against the defenders, and in reference to the statement in the first action he says that it implies and imports that he had been engaged in a conspiracy against the life of the Rev. Mr Edgar and Mr John Ballingall, and for the purpose of setting fire to their premises, and also that he had been engaged in writing and sending threatening letters. These averments, he now contends, were not relevant or pertinent to the defence of that action, and were, moreover, false and calumnious, and he concludes for £1000 of damages. The defenders pleaded that the pursuer having accepted a settlement of the action in which these statements were made, he cannot now make them the foundation of another claim. To-day the Court refused to sustain this plea, and adjusted issues for the trial of the cause.

OUTER HOUSE.

(Before Lord Barcaple).

ANTERMONY COAL CO. *v.* WINGATE & CO.

Process—Mandatory. In an action at the instance of a company, suing by its descriptive firm and its individual partners, one of whom was a company with a proper firm and the other an individual who was abroad, motion that the latter should be ordained to sist a mandatory *refused* (per Lord Barcaple).

Counsel for the Pursuers—Mr Lamond. Agent—Mr W. Burness, S.S.C.

Counsel for Mr Cadell Bruce—Mr A. Moncrieff. Agents—Messrs Lindsay & Paterson, W.S.

In this action the pursuers are the Antermony Coal Company and its individual partners (Austin & Co., coalmasters, Hamilton and Glasgow, and Walter Wingate), and the defenders are Wingate & Co. and the individual partners of that firm. Appearance having been made on behalf of one only of the defenders, Mr Cadell Bruce, he to-day moved that the pursuer Wingate, who is at present abroad, and who is also one of the partners of Wingate & Co., the defenders, should be appointed to sist a mandatory, in respect that the action was at the instance of a company trading under a descriptive name, who were not entitled to sue by that name except along with at least three partners.

It was argued for the pursuer that in the present case all the purposes for which a mandatory was necessary were served. The pursuers were a Scotch company. One of their partners, Austin & Co., resided and traded within the jurisdiction of the Court, and the debt sued for was a company debt. In Rob's Trustees *v.* Hutton, 28th May 1863 (unreported), which was an action at the instance of two and a quorum of the trustees and executors of a party deceased, against the only other surviving and accepting trustee and executor nominated by the testator, Lord Kinloch (Ordinary) refused a motion by the defender that one of the pursuers, who was stated to have left Scotland, should be appointed to sist a mandatory, and on a reclaiming note the First Division adhered. The Lord Ordinary refused the motion.

Tuesday, Feb. 20.

FIRST DIVISION.

GILMER *v.* HENRY.

Bankruptcy—Composition Contract. Suspension of a charge on a bond granted for payment of a composition held (aff. Lord Barcaple) to be barred by section 143 of the Bankruptcy Act.

Counsel for Suspender — Mr Gifford and Mr Arthur. Agent—Mr A. D. Murphy, S.S.C.

Counsel for Respondent—Mr Mackenzie and Mr Alex. Blair. Agents—Messrs Murray & Hunt, W.S.

This was a suspension of a charge given upon a bond for payment of a composition in bankruptcy, which was refused by Lord Barcaple. The suspender reclaimed, and the Court to-day, without calling on the respondent, adhered.

It appeared that the parties had entered into a partnership in 1863, and carried on business in Leith until January 1864, under the firm of Gilmer, Henry, & Company. The company was then sequestrated. Under the contract of copartnery each partner was to advance capital to the extent of £300, but Gilmer having only advanced £150, Henry claimed as a creditor on the estate of the company for £150 as capital over-advanced by him. On 1st February 1864 the suspender offered a composition of 20s. in the pound on all debts due by the firm at the date of the sequestration, and also to provide for the expenses of the sequestration. This offer was entertained, and on 3d March 1864 it was accepted, the composition being made payable by instalments at three and six months respectively, after the suspender's final discharge. The respondent, by his mandatory, was present as a creditor at the meetings when the composition was offered and agreed to.

By section 143 of the "Bankruptcy Act, 1856," it is enacted that "neither the bankrupt nor his successor offering the composition, nor the cautioner for the composition, shall be entitled to object to any debt which the bankrupt has given up in the state of his affairs as due by him, or admitted without question, to be reckoned in the acceptance of the offer of composition, nor to object to any security held by any creditor, unless in the offer of composition such debt or security shall be stated as objected to, and notice in writing given to the creditor in right thereof."

The suspender argued that the provision in this section was not applicable to this case (1) because in the oath admitted by the suspender and respondent to the state of affairs the debt now claimed was not said to be due by the company; and (2) because the debt was not properly a company debt, but a debt due if at all by the suspender as an individual. The cases of Black, 15th December 1859 (22 D. 215), and Hatley, 23d May 1861 (23 D. 881), were referred to.

The LORD PRESIDENT thought, if it were necessary to decide the point, that this was a debt due by the company, and that that was a sufficient ground for sustaining the charge. But whether it was or not, it was treated as a company debt; the respondent in respect of it appeared by his mandatory at the meetings; and although it is not inserted in the state of affairs sworn to, yet it was inserted in a document referred to in the oath, containing lists of the debts due by the company and by each of the partners, where it was treated as a claim against the company.

Lord CURRIEHILL said—The respondent here made his claim, and attended meetings through his mandatory. The votes were unanimous, and the mandatory is entered in the minutes as one of the persons voting. The composition contract is settled; and the Act of Parliament says that the bankrupt shall not thereafter be entitled to object to any debt claimed which has been (1) given up as due, or (2) admitted without question. The Lord Ordinary holds that the claim was admitted without question, and I agree with him. It is not necessary to inquire further; but I think the claim was one against the company. Of course, as betwixt the respondent and the other creditors, it was a postponed debt, because he was liable to them; but in a question with the suspender it was not.

Lord DEAS concurred with the Lord President, and Lord ARDMILLAN with Lord Curriehill.

The reclaiming note was therefore refused.