deliver said receipts as evidence of loans to or debts due by the company."

The appellant further explained that "he has ascertained, and avers, that the said two bonds and dispositions in security for £10,000 and £1800 respectively were delivered to the said Thomas Clavering at Glasgow on the 10th May 1878, by or on behalf of Messrs Hodge, Young, & Martin, writers, Paisley, law-agents of the said John Morgan as an individual, and Messrs Campbell & Russell, writers there, law-agents for the company; that the receipt of that date was granted at one and the same time with the delivery of these deeds by the said John Morgan junior in the absence and as the representative or agent of his father, the said John Morgan, who was upwards of seventy years of age, as for £8000 of the money secured by and mentioned in the said bond and disposition in security for £10,000 over the latter's lands of Wester and Easter Greenlaw, Paisley; that no other or further sum was given or paid by the said Thomas Clavering in exchange for, or upon the delivery of, said last-mentioned two bonds and dispositions in security; and that in the bankrupts' books the said sum of £8000, and also the sum of £2000 alleged to have been lent to the company upon 10th July 1878, are dealt with by the company as having been advanced to the said John Morgan as an individual, and are placed to his credit as input capital with the company."

Clavering in reply narrated the circumstances in which the alleged loans had been made, and produced and founded on a correspondence between Clark & Company and himself as showing that the advances had truly been made to the firm of Clark & Company, and not to Morgan as an individual.

M'Cunn pleaded, *inter alia*—"(9) In the circumstances condescended on, parole proof is competent to instruct the circumstances under which, and the purpose for which, the receipts for £8000 and £2000 were granted."

Clavering pleaded, *inter alia*—"(2) Respondent's acknowledgment of debts for the loans claimed, and correspondence betwixt him and bankrupts establishing by written evidence that the sums claimed were paid over on the footing of repayment, and neither of them in any way in liquidation of a prior obligation, it is incompetent to redargue such documents of debt and evidence by parole proof—hence the appeal ought to be dismissed with expenses."

The Sheriff-Substitute (COWAN) pronounced this interlocutor:—"Before answer, allows the parties a proof of their respective averments, the appellant to lead in the proof, and allows the appellant a conjunct probation."

Clavering appealed, and argued—The receipts were evidence of loan—*Haldane* v. *Speirs*—and they were the only vouchers. The creditor was required by the Act to produce all the securities of the debtor which he might have, but the £10,000 bond by Morgan was not a voucher, and was in fact valueless. The vouchers and the claim therefore corresponded exactly, and parole proof consequently was incompetent.

Replied for M'Cunn—The objection was that it was sought to control writ by parole. But was the claim here vouched by writ — that is, by unambiguous writ? It was not. The receipts and the bond were for more than the amount of the claim, and therefore the writ required explanation. At all events, the creditor having himself founded on the correspondence, could not object to other extrinsic evidence being admitted. In fact, the correspondence as he had produced it was incomplete in material respects, and ought to be completed.

Authorities—*Haldane* v. *Speirs*, March 7, 1872, 10 Macph. 537; *Fraser* v. *Bruce*, November 25, 1857, 20 D. 115; *Thomson* v. *Geikie*, March 6, 1861, 23 D. 693; *Grant's Trustees* v. *Morison*, January 26, 1875, 2 R. 377.

At advising—

LORD PRESIDENT—I do not think the respondent is entitled to any further inquiry. At the same time, I am disposed, in consequence of this correspondence having been produced and founded on by the appellant, to give the respondent an opportunity of recovering any further documents passing between him and the company or its partners relating to this advance of £10,000.

LORD MURE—I am of the same opinion. The circumstance that these letters have been produced and founded on by the appellant makes it but fair to allow the respondent to recover any other documents bearing on the particular point in question.

LORD ADAM—I concur.

LORD DEAS and LORD SHAND were absent.

The SOLICITOR-GENERAL asked whether the company's books would be included in the diligence?

LORD PRESIDENT—No. The respondent has nothing to do with them.

The Court granted diligence to both parties for recovery of all letters passing between the appellant and Clavering, and the firm of J. Clark & Company or any of its partners, regarding the debt of £10,000 forming the first branch of the appellant's claim.

Counsel for Appellant—Lord Advocate (Balfour, Q.C.)—Mackintosh. Agents—Hamilton, Kinnear, & Beatson, W.S.

Counsel for Respondent—Solicitor-General (Asher)—Pearson. Agents—Mill & Bonar, W.S.

Tuesday, November 29.

SECOND DIVISION.

[Lord M'Laren, Ordinary.

YULE *v.* YULE.

Process—Curator Bonis—*Cognition*—*Proof before Lord Ordinary of Necessity for Appointment of* Curator Bonis *where Insanity denied.*

In a wife's petition for the appointment of a *curator bonis* to her husband, who was alleged to be insane and was in a lunatic asylum, and the husband lodged answers denying that he

was insane or incapable of managing his affairs —*held* by Lord M'Laren, Ordinary, that the question of the respondent's capacity might be determined in a proof before the Lord Ordinary. The respondent having reclaimed, on the ground that when the insanity was denied a cognition was necessary, the Court, without deciding the point, and of consent of the respondent *appointed ad interim* curator a person in whom the respondent had confidence, and whom he had previously appointed his factor and commissioner during the respondent's detention in the asylum.

Mrs Barbara Logan or Yule presented a petition for the appointment of a *curator bonis* to her husband George Yule. The petition was in common form, and accompanied by the certificates of two medical men to the effect that Mr Yule was at the time incapable of managing his affairs or giving directions for their management. The petitioner suggested a person to be *curator bonis*. Mr Yule, who at the time the petition was presented was in an asylum, lodged answers denying that he was incapable of managing his affairs or giving directions for their management. On the contrary, he alleged that he was quite able to do so, and that during his absence from Arbroath, where he had resided, his affairs were managed by Mr W. K. Macdonald, town-clerk of Arbroath, who held a factory and commission from him.

The Lord Ordinary allowed the parties a proof of their averments in the petition and answers.

The respondent reclaimed, and argued—Such a proof as the Lord Ordinary had allowed was unknown in practice. The respondent, ere the management of his affairs could be taken from him, was entitled to have the question of his sanity tried in a cognition—*Lockhart* v. *Ross*, July 17, 1857, 19 D. 1075. The petitioner might raise that process, which was not, as some thought, only competent to the nearest male agnate, but was competent to all relatives—*Bryce* v. *Graham*, Jan. 25, 1828, 6 S. 425, and authorities there cited; *Larkin* v. *M'Grady*, December 8, 1874, 2 R. 170, where a cousin, who was not the nearest male agnate, was found entitled to raise that process. See also *Downs, Petitioner*, reported in Shand's Practice, ii. 1008; and *Forsyth*, July 19, 1862, 24 D. 1435.

Argued for petitioner—The only questions were—(1) Whether there was a *prima facie* case for the appointment craved? and the medical certificates answered that question. (2) Whether the procedure the Lord Ordinary had adopted was competent? *Bryce* v. *Graham*, *supra*, was in the petitioner's favour on that matter; Nicolson's Ersk. i. 7, 48; *Macfarlane*, July 20, 1847, 10 D. 38, where there was a proof by remit to the Sheriff-Substitute in an opposed petition like the present.

The Lords, after hearing counsel, continued the cause for a week, that parties might consider whether Mr W. K. Macdonald, who, as above stated, held an unrecalled factory and commission for Mr Yule, might not be appointed *curator bonis* of consent of parties, and on the case being called on, it was intimated by the respondent's counsel that that course had been agreed on.

The Lords pronounced this interlocutor:—

"Recall the" Lord Ordinary's "interlocutor: Of consent appoint Mr W. K. Macdonald, town-clerk of Arbroath, to be *curator bonis* to the said George Yule, with the usual powers, he always finding caution before extract, and his said appointment to last only so long as the said George Yule is an inmate of a lunatic asylum, and decern."

Counsel for Petitioner—Guthrie Smith—Orr. Agents—Rhind, Lindsay, & Wallace, W.S.

Counsel for Respondent—Solicitor-General (Asher)—Keir. Agents—Lindsay, Howe, Tytler, & Co., W.S.

Tuesday, November 29.

FIRST DIVISION.

[Lord M'Laren, Ordinary on the Bills.

BLACK *v.* WATSON.

Bankruptcy—Notour Bankruptcy where Imprisonment rendered incompetent—Debtors (Scotland) Act 1880 (43 *and* 44 *Vict. cap.* 34), *sec.* 6—*Bankruptcy (Scotland) Act* 1856 (19 *and* 20 *Vict. cap.* 79), *sec.* 7.

Held (1) that in those cases in which imprisonment was rendered incompetent by the Debtors (Scotland) Act 1880, it is not necessary, in order to constitute notour bankruptcy, that the duly executed charge for payment should be followed by arrestment, poinding, or adjudication, as was provided by the Bankruptcy (Scotland) Act 1856 for cases in which imprisonment was at that time incompetent or impossible; but (2) that in those last-mentioned cases arrestment, poinding, or adjudication is still necessary.

This was an application by J. W. Black for the sequestration of the estates of Robert Watson. The application was opposed by Watson, and was reported to the First Division by the Lord Ordinary on the Bills (M'Laren) on the following point:—The 7th section of the Bankruptcy (Scotland) Act 1856 (19 and 10 Vict. cap. 79) provided that notour bankruptcy should be constituted by, *inter alia*, the following circumstances, viz:—"By insolvency concurring either (*a*) with a duly executed charge for payment, followed," where imprisonment is competent, by imprisonment, or formal and regular apprehension of the debtor, or by his flight or absconding from diligence, or retreat to the sanctuary, or forcible defending of his person against diligence; or where imprisonment is incompetent or impossible, by execution of arrestment of any of the debtor's effects not loosed or discharged for fifteen days, or by execution of poinding of any of his moveables, or by decree of adjudication of any part of his heritable estate for payment or in security; or (*b*)," &c.

The Debtors (Scotland) Act 1880 (43 and 44 Vict. cap. 34) abolished imprisonment for debt except in certain specified cases, and in its 6th section provided that "In any case in which, under the provisions of this Act, imprisonment is rendered incompetent, notour bankruptcy shall