fiscal he related a statement with reference to the case volunteered to him by the appellant, who accosted him on the street on the evening of the day upon which he, the appellant, had been liberated on bail. The law agent of the appellant objected, on the ground that the constable had not cautioned the appellant; but I repelled the objection on the ground that it was volunteered by the appellant when he was not in custody."

The question of law for the opinion of the High Court of Justiciary was — . . . "(3) Whether the statement volunteered to the constable by the appellant, after liberation on bail, should have been admitted in evidence."

Argued for the appellant—This evidence should not have been admitted. The law was very jealous of statements made by accused persons to those in the position of governors of prisons, warders, or police constables. In *Grant's* case, *infra*, a statement made to the wife of a policeman was not allowed by Lord Ardmillan to be proved, although his Lordship believed nothing unfair was intended on that occasion. The constable should not have entered into conversation with an accused man about the offence with which he had been charged, and if the man insisted upon making a statement it was the constable's duty to have cautioned him before listening to it. Unless they had been duly cautioned it was only statements made by prisoners at the time of apprehension which the law admitted as evidence—*Catherine Beaton* (*Inverness*), 19th and 20th Sept. 1856, 2 Irv. 457; *May Grant* (*Perth*), April 18, 1862, 4 Irv. 183; *Proudfoot* (*Inverness*), March 28, 1882 (Lord Craighill), 4 Coup. 590.

Counsel for the respondent were not called upon.

At advising—

Lord Young—This case is too clear for argument, and I am of opinion that this appeal should be dismissed. It was stated for the appellant that the Magistrate ought to have rejected the evidence of the policeman to whom the accused, not then a prisoner but at large, volunteered a statement. It was argued that the constable ought to have warned him, that he ought to have said, "Take care, don't make any statement to me, for I shall remember it, and it will be used against you."

I know of no rule of our law requiring a constable to give any such warning, and it is ridiculous to say that a constable by not doing so failed in his duty. I desire to say with regard to the authorities cited that I know of no such rule.

It is a matter of daily practice to ask a policeman—"What did the prisoner say when you charged him?" It never crossed my mind, or I should think the mind of any other Judge, to object to the question. A Glasgow Circuit never passes but such statements are made by constables as "He said he wasn't there"—"He admitted the theft, and gave me the purse,"—and so on.

No doubt when a man is in durance, in jail, the law is jealous of conversations between him and his warders. It is not the business of a jailer or a turnkey to go into the cells and converse with the prisoners about the crimes with which they are charged. The law guards a prisoner against all confessions extorted by promises made to him or inducements to confess set before him by his jailers. The Court will see that no advantage is taken of the opportunities possessed by his custodiers by virtue of their relation towards him, but that is a totally different thing from what is here contended for.

Lord M'Laren—I concur. I have always understood on general principles of law that the admission of voluntary statements in evidence applied to police-officers as well as to other members of the public, except where the relation between the parties gives to the one an authority or an opportunity of using an amount of pressure from which the other requires protection. No such case is presented here. The appellant went up to the constable and spoke about the case, and there was no duty incumbent upon the constable of cautioning him to say nothing.

Lord Rutherfurd Clark—I agree. On the question of the competency of the evidence it is sufficient for me that the statement was volunteered. In these circumstances I am not doubtful that the evidence was competent.

The Court dismissed the appeal.

Counsel for the Appellant—Kennedy. Agent—Thomas Carmichael, S.S.C.

Counsel for the Respondent—Comrie Thomson—Harvey. Agent—Alex. Morison, S.S.C.

COURT OF SESSION.

Saturday, March 17.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

TAYLOR *v.* RUTHERFORD.

Reparation—Wrongous Use of Diligence—Liability of Debt Collector

A person who carried on business as a debt collector received instructions to collect a debt, and in pursuance thereof employed a duly qualified law agent, who took out a debts recovery summons in the Sheriff Court against the debtor. Arrestments were used upon the dependence of the action. Decree in absence was obtained, and arrestments in execution were used upon the decree. Upon the application of the debtor this decree was subsequently recalled, and the action dismissed, upon the ground that he had been cited by leaving the summons at a house in Glasgow, of which he had been tenant, whereas as he had gone to England he should have been cited edictally. The debt was subsequently recovered in another action.

The debtor then raised an action to recover damages from the debt collector for wrongous use of diligence. *Held*-that the debt collector being merely an intermediary between the creditor and the law agent was not liable, and action *dismissed* as irrelevant.

Reparation—Libel—Black List—Publication of Decree in Absence.

The decree in absence obtained in the circumstances above stated was published by the debt collector in a list circulating amongst tradesmen and commercial and professional classes. The debtor sought to recover damages from him for this publication. He averred that the list in question was compiled, printed, and published, or at all events issued and circulated, by or on behalf of the defender for his own behoof and profit, and that he maliciously and wrongfully, and in the full knowledge that the decree in absence had been wrongously and illegally obtained, furnished the information for the publication. *Held* that as the defender was not liable for the decree having been obtained, the mere statement of the fact was not a libel.

This was an action of damages at the instance of Robert Aiton Taylor, residing at No. 3 Mayville Gardens, Trinity, against Alexander C. Rutherford, manager and secretary of the Glasgow and West of Scotland Guardian Society, No. 145 Queen Street, Glasgow, in the following circumstances:—In 1884 the pursuer, who was then assistant secretary to the Caledonian Insurance Company at their Glasgow office, was tenant of a house No. 91 Claremont Street, Glasgow, belonging to M'Dougall & Sons, glass merchants there, for three years from Whitsunday 1883. On 8th April 1884 he left Glasgow for Liverpool, having got an appointment there.

On 21st May 1884 M'Dougall & Sons left instructions at the defender's office to have the pursuer's effects sequestrated for the half-year's rent past due. On 24th May the rent and expenses of sequestration were paid.

On or about the same day, the 24th, instructions were left at the defender's office by M'Dougall & Sons to take out a summons against the pursuer for the recovery of a debt of £30, 15s. due to them for goods supplied, which was accordingly done.

The pursuer averred—"(Cond. 9) At the time when he received instructions to recover the said rent and trade debt, the defender was informed by his clients, and was himself well aware, that the pursuer had left his Glasgow house *animo non revertendi*, and that his domicile was in England, and he knew the pursuer's address, and that he was joint secretary in Liverpool of the Caledonian Insurance Company, of which company the defender was an agent, but notwithstanding such knowledge he caused the summons to be served at the pursuer's dwelling-house after he had left it, and after his furniture and effects were out of it, and another tenant was in possession. He also caused the sheriff officer employed by him to serve the summons, who is one of his employees, and has no separate business of his own, to watch the removal of the pursuer's furniture during the said 24th May 1884 until it had been transferred to the Caledonian Railway Station in Glasgow, addressed to the pursuer for transit to him at Liverpool, and there to arrest the said furniture on the dependence of the action, and on 2nd June 1884 he moved for and obtained decree in absence against the pursuer for the amount of said account, and immediately thereafter arrested the furniture above referred to in the hands of the Caledonian Railway Company on said decree. The pursuer knew nothing of all this procedure, nor that a decree in absence was being obtained against him till on or about the 4th of June, when he received a telegram from his brother informing him that his name was published as a defaulting debtor in Stubbs & Company's paper of that same date, and in other papers of a similar nature commonly known as the 'Black Lists.' In particular, publication of the pursuer's name was made by the defender in one of those lists called *The Commercial Compendium*, purporting to issue from the said Glasgow Guardian Society. The said *Compendium* is compiled, printed, and published, or at all events is issued and circulated, by or on behalf of the defender for his own behoof and profit, and he maliciously and wrongfully, and in the full knowledge that said decree in absence against the pursuer had been wrongously and illegally obtained, furnished the information whereby the said decree in absence was published in said lists." "(Cond. 10) As soon as the pursuer became aware of the defender's proceedings he instructed the decree in absence to be sisted, and consigned the amount of debt and costs in the hands of the Clerk of Court at Glasgow, and on the 16th July 1884 the Sheriff-Substitute issued an interlocutor, finding, *inter alia*, and for the reasons therein stated, that the pursuer had not been duly cited to the action on which the said decree in absence was obtained, and that he had no notice of the proceedings, although the pursuers in said action, Messrs M'Dougall & Sons, knew his address and could have given him such notice. Accordingly the said Sheriff-Substitute sustained the sist, recalled the decree, dismissed the action, and found the said M'Dougall & Sons liable to the pursuer in expenses."

The defender explained "that the ground on which the Sheriff-Substitute recalled the decree in absence was that the pursuer had been cited by leaving the summons at No. 91 Claremont Street, Glasgow, instead of edictally."

The pursuer further averred—"The defender . . . carries on business at No. 145 Queen Street, Glasgow, and styles himself 'manager and secretary' of a concern which he calls and advertises as 'the Glasgow and West of Scotland Guardian Society for the Protection of Trade.' It is believed and averred that there is no such society in existence, but that this title is merely a name under which the defender carries on, solely for his own behoof and profit, the business of an ordinary debt collector. The defender is not a qualified legal practioner, and is neither entitled nor competent to undertake the duties of a law agent."

The defender's answer was—"Admitted that the defender is manager and secretary of the Glasgow Guardian Society, and resides and carries on business at the addresses stated. Admitted that the defender is not a law agent, and explained that he does not represent himself to be so, and that the proceedings in question were all carried on by a duly qualified law agent acting on the instructions communicated by the defender's manager. *Quoad ultra* denied."

The pursuer further averred—"The said

decree was illegally, wrongfully, and unwarrantably obtained by the defender. The application therefor, and the publication thereof were made, and the whole other proceedings complained of were taken in *mala fide*, recklessly, oppressively, maliciously, and without any just or necessary cause by the defender for his own ends, and ultimately for the purpose of gratifying the malice he entertained towards the pursuer by ruining his credit and prospects in life, and the defender is liable to the pursuer for the loss, injury, and damage resulting to him therefrom, and for *solatium* in respect thereof."

The pursuer also averred—"The defender on or about the 12th of December 1884 reinstituted proceedings in name of the said M'Dougall & Sons for recovery of said account from the pursuer by issuing from the Debts Recovery Court at Ayr a summons for the amount thereof. Decree was obtained thereon on the 18th December, and a petition for *cessio* was immediately threatened. The *cessio* proceedings were prevented by the pursuer paying the amount of the debt and costs."

In March 1885 Taylor had raised an action of damages against M'Dougall & Sons in the Court of Session, which was dismissed with expenses.

On 22nd September M'Dougall & Sons settled with Taylor his claim of damages for the alleged illegal proceedings and arrestments, and received from him a receipt in the following terms—"In consideration of Messrs M'Dougall & Sons having agreed to abandon their claim for expenses in my recent action in the Court of Session against them, I hereby discharge them of all claims I may have against them for alleged wrongful citation and arrestment in or about May 1884 under a summons for payment of their account, amounting to £30, 15s. 0½d., against me, and I have no other claim whatever against them up to this date."

The pursuer pleaded—"(1) The defender while in knowledge of the pursuer's permanent removal from Glasgow, and of his address in Liverpool, having raised and served the said action, and taken the decree condescended on without having given to the pursuer any citation or intimation of the dependence thereof, the same, and the subsequent proceedings therein, were illegal, nimious, oppressive, and wrongful. (2) The said proceedings having been taken by the defender maliciously and without probable cause to the loss, injury, and damage of the pursuer, the pursuer is entitled to reparation as concluded for, with expenses. (3) The defender having published the said decree in absence against the pursuer, or having issued and circulated it in the full knowledge that the same had been wrongously and illegally obtained, to the great loss, injury, and damage of the pursuer, the pursuer is entitled to reparation therefor, as concluded for. (4) The said publication having been made maliciously and without probable cause by the defender to the great hurt and prejudice of the pursuer, he is entitled to reparation as concluded for."

The defender pleaded—"(1) No relevant case. (2) The defender not having exceeded his instructions, he is entitled to absolvitor. (3) The pursuer having discharged Messrs M'Dougall & Sons, upon whose instructions the defender acted in the proceedings mentioned, of all claims in respect of said proceedings, is barred from maintaining the present action against the defender."

On 25th February 1888 the Lord Ordinary (M'Laren) approved of the following issues for the trial of the cause and disallowed the counter issue:—"(1) Whether on or about 24th May 1884 the defender maliciously, and without probable cause, raised, or caused to be raised, in the Sheriff Court of Lanarkshire at Glasgow, a summons under the Debts Recovery (Scotland) Act 1867 against the pursuer at the instance of Messrs M'Dougall & Sons, china merchants, Glasgow, for the sum of £30, 15s. 0½d. sterling, and arrested, or caused to be arrested on the dependence of the said summons, in the hands of the Caledonian Railway Company, certain articles or parts of articles of furniture belonging to the pursuer, and lying at the station in Glasgow of the said railway company, addressed to the pursuer for transit to him at Liverpool to the loss, injury, and damage of the pursuer? (2) Whether on or about 2nd June 1884 the defender, in execution of a decree obtained by him in absence in the said Sheriff Court on or about said date, at the instance of the said Messrs M'Dougall & Sons against the pursuer for the said sum of £30, 15s. 0½d., wrongfully arrested certain articles or parts of articles of furniture belonging to the pursuer, or caused the same to be arrested, to the loss, injury, and damage of the pursuer? (3) Whether on or about 5th June 1884 the defender wrongfully, and without probable cause, published the pursuer's name, or caused it to be published, in a publication called the *Commercial Compendium* issued by or for him in the form contained in the schedule annexed hereto, meaning thereby to represent the pursuer to be a defaulting debtor, against whom a decree in absence in the Sheriff Court of Lanarkshire at Glasgow, for payment of the sum of £30, 15s. 0½d., with expenses of process, to Messrs M'Dougall & Sons, china merchants, Glasgow, had been obtained to the loss, injury, and damage of the pursuer? Damages laid at £3000 sterling."

SCHEDULE.

Decreets in Absence, &c.

County.	Amount.	Date.	Defenders.	Pursuers.
Lanark	£ s. d. 30 15 0½	June 2	R. Aiton Taylor, 91 Claremont St., Glasgow.	M'Dougall & Sons, 71 & 73 Buchanan St., Glasgow.

Issue proposed by the defender—"Whether the statements in the said Schedule are true?"

The defender reclaimed, and argued that the issues should be disallowed in respect that there was no issuable matter on record. As to the first issue, there was no relevant averment of malice. The summons disclosed the fact that the debt existed, and it was not disputed that it was subsequently recovered in another action. Besides, the discharge granted by the pursuer to M'Dougall & Sons covered the present action—Ersk. iii. 1, 15; *Scott* v. *Turnbull*, July 18, 1884, 11 R. 1131. As to whether the arrestments used were illegal—*Wolthekker* v. *The Northern Agricultural Company*, December 20, 1862, 1 Macph. 211; *Taylor* v *M'Dougall & Sons*, July 15, 1885, 12 R. 1304. With regard to

the second issue, if allowed at all, the wrong complained of should be specified and put in issue; it should be stated what the defender really did —*Gibb* v. *Edinburgh Brewery Company*, June 19, 1873, 11 Macph. 705. As to the third issue, all that the defender did was to print what was open to all in the records of the Sheriff Court; the publishing was the natural outcome of the decree in absence having been obtained. It was not the act of the defender at all. Besides, this incident was covered by the discharge granted to M'Dougall & Sons—*Stevenson* v. *Pontifex & Wood*, December 7, 1887, 15 R. 125. Further, the debt with regard to which these proceedings were taken was justly due, and this was the second action raised by the pursuer with reference to these proceedings. It was neither an action directed against the principal, nor yet against the law agent, but against one who was an intermediary between the two. There was no authority for such an action—*Smith* v. *Taylor*, December 8, 1882, 10 R. 291. It was impossible that any action could lie against the defender in so far as he acted upon the instructions of M'Dougall & Sons.

Replied for the pursuer—The agreement with M'Dougall & Sons was no bar to the present action, and the pursuer could competently proceed against both the agent and the client; or he might forgive the one and sue the other. This was a case of joint delinquency, and it was impossible for the defender to say that he was in any way prejudiced because the claim of the pursuer against M'Dougall & Sons had been discharged—*Inglis* v. *M'Intyre*, July 3, 1861, 23 D. 1240; *North British Railway Company* v. *Leadburn Railway Company*, January 12, 1865, 3 Macph. 340. This was not a case in which the pursuer required to prove malice or want of probable cause, because the proceedings were null *ab initio*—*Wilson* v. *Mackie*, October 22, 1875, 3 R. 18; *Wightman* v. *Wilson*, March 9, 1858, 20 D. 779; *Meikle* v. *Sneddon*, March 5, 1862, 24 D. 720. Looking to the facts as to the pursuer's relation to the house at the date of the diligence, the Sheriff had no jurisdiction, though the Supreme Court had, because he was tenant of heritage in Scotland — *M'Bey* v. *Knight*, November 22, 1879, 7 R. 255; *Thomson* v. *Whitehead*, January 25, 1862, 24 D. 331. Under the Sheriff Court Act 1876, sec. 9, which related to citation, as the pursuer's address was known to the defender a copy of the summons should have been forwarded to him; this was not done, and therefore all that followed was null, for if the citation was bad it vitiated all arrestments on the dependence; here both the arrestments on the dependence and also the arrestments on the decree were bad, and so the case of *Wolthekker* did not apply.

At advising—

Lord President—The main complaint which is made in this case by the pursuer is, that there has been a wrongous use of diligence, first as regards the arrestments used upon the dependence of the action raised against him at the instance of M'Dougall & Sons, and second with reference to the arrestments in execution of the decree in absence obtained against him on 2nd June 1884. Now, it may be observed that the law agent who carried through these proceedings is not made a party to the present action, and we know nothing about him. This action is directed solely against a debt collector who was employed by M'Dougall & Sons to collect the debt due to them by the pursuer. That this debt was justly due to M'Dougall & Sons there can be no doubt, for it was afterwards paid by the pursuer. But the objection to the proceedings upon which diligence was used is that at the time of citation the pursuer was not residing in Glasgow, and that he could only have been effectually cited to any action by means of edictal citation.

That the pursuer was not duly cited to this action appears from what followed to be quite clear, and the result of the defective citation was to render the subsequent proceedings invalid. Upon that matter there can be no doubt, and the decree in absence was accordingly recalled.

The peculiarity of the present action is its being directed against the defender, who was merely employed to collect the debt, and I have very great doubts in the circumstances about the relevancy of this claim. The office of a debt collector is a simple one. He receives instructions from the creditor to collect the debt, and perhaps there is implied in the instructions authority also to employ a law agent if he finds himself unable otherwise to recover the money. The client is liable for everything done under his authority by the law agent, while on the other hand the law agent is liable if for want of skill he subjects his client to loss.

In the present case the defender obeyed the instructions which had been given to him, and the proceedings which are objected to were carried through by a properly qualified law agent acting upon information duly conveyed to him from M'Dougall & Sons. No doubt a mistake was made by this law agent in connection with the present pursuer's citation, a mistake for which he is responsible, and so is his client. But the wrong which the present defender is said to have committed I can neither comprehend nor define, and I must say that I have not heard any intelligible definition of it as yet from the pursuer's counsel. What I have already said therefore disposes of the first and second issues.

With regard to the third issue—Assuming that there was no fault on the part of the defender—and from what I have already said I do not think there was—upon what ground is he to be made liable if he neither committed the wrong nor was responsible for it? He is alleged to be the proprietor of a publication called the *Commercial Compendium*, in which, among other things, are published decrees in absence, and the complaint is that the decree obtained against the present pursuer was published in it.

Now, assuming that the defender here is in no way liable for this decree having been obtained, then there is no ground for this third issue. The mere statement of a fact is not a libel, and the fact that decree in absence was obtained against the pursuer is not disputed. The fact that decree in absence was obtained against the pursuer, and the publishing of this fact, is not a thing for which the defender can be made responsible. I am therefore for disallowing all these issues.

Lord Adam—I am of the same opinion. In a case like the present the client and the law agent are the responsible parties, and if any

wrong is done they will have to make it good. But the position of the defender here is neither that of a law agent nor of the client who instructs him. He is merely the medium of communication between the client and the law agent, and his duty is only to collect the debt. The mere circumstance of his having received instructions to employ a law agent to help him to recover the money does not in any way render him liable for the actings of the law agent whom he thus employs. I therefore agree with your Lordship with reference to the first and second issues.

As regards the third issue, it is in very much the same position; all that the defender has done is to publish what appeared in the lists and books of the Sheriff Court. I therefore think this third issue should be also disallowed.

Lord Kinnear—I am of the same opinion. The facts of the case come to this, that the defender on the instructions of the creditor employed a qualified law agent to assist him in recovering this debt. In the proceedings which followed one irregularity took place. If the averments of the pursuer had been that the defender had in any way interposed or become a party to the irregularity which occurred, that would have been different, but there is no such averment. The position of the defender was that merely of a messenger, and that being his true character, he cannot be made responsible for what has taken place. As regards the third issue I concur with your Lordships.

Lord Mure and Lord Shand were absent from illness.

The Court recalled the interlocutor of the Lord Ordinary, disallowed the issues, found the pursuer's averments were not relevant, and dismissed the action.

Counsel for the Pursuer—Comrie Thomson—G. W. Burnet. Agents—Fodd, Simpson, & Marwick, W.S.

Counsel for the Defender — Gloag — Shaw. Agent—P. Morrison, S.S.C.

Monday, March 12.

BILL CHAMBER.

[Lord Ordinary (Trayner) on the Bills.

AULD, PETITIONER.

Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *sec.* 93—*Debtors (Scotland) Act* 1880 (43 *and* 44 *Vict. cap.* 34), *sec.* 9, *sub-sec.* 2—*Imprisonment of Bankrupt for Refusing to Answer to the Satisfaction of the Sheriff—Recal of Warrant of Imprisonment.*

Circumstances in which a bankrupt, who had been in prison for four months on a Sheriff's warrant for refusing to answer at his public examination to the satisfaction of the Sheriff, and who had undergone re-examination, was *held* entitled to have the warrant of imprisonment recalled.

By the Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79), sec. 93, it is provided that "if the bankrupt . . . shall refuse to be sworn, or to answer to the satisfaction of the Sheriff any lawful question put to him by the Sheriff or trustee, or by any creditor with the sanction of the Sheriff, or without lawful cause shall refuse to sign his examination, or to produce books, deeds, or other documents in his custody or power relating to the estate, the Sheriff may grant warrant to commit him to prison, there to remain until he comply with the order, which warrant shall specify the question and answer, book, deed, document, or the refusal to swear, or to sign the examination, and such warrant shall not be subject to the review of the Court of Session, but the bankrupt or person imprisoned may apply by written petition (without argument) to the Lord Ordinary for a recal of the warrant, and the Lord Ordinary shall order the petition to be served on the trustee or the creditor, and shall thereafter hear parties *viva voce*, and pronounce judgment." By the Debtors (Scotland) Act 1880 (43 and 44 Vict. cap. 34), sec. 9, is prescribed the procedure in cases of *cessio* at the instance of the creditor. Sub-sec. 2 provides that "on the day appointed for the compearance of the creditors, the debtor shall appear in public court in presence of the Sheriff for examination as to his affairs, and the Sheriff shall have power to put him on oath or affirmation, as the case may be, and the debtor shall be bound to answer all pertinent questions put to him by the Sheriff, or by any creditor with the approbation of the Sheriff, and it shall be competent to the Sheriff to adjourn the examination for such time as to him shall appear fit and reasonable; and the provisions of section ninety-three of the Bankruptcy (Scotland) Act 1856 shall, as nearly as may be, apply to the examination of debtors and the production of books, deeds, or other documents by them under this Act."

John Auld, night-watchman, 19 South Constitution Street, Aberdeen, was charged on 3rd August 1887 at the instance of his wife, upon a decree of the Court of Session in her favour, to make payment of certain sums due to her and to her agent-disburser William Officer, S.S.C., as aliment and expenses respectively.

In consequence of the charge and other claims by his wife, which were pressed against the petitioner, he was not at the time able to meet the same, and accordingly an application was made at the instance of William Officer to the Sheriff of Aberdeenshire, under the Debtors (Scotland) Act 1880, for an award of *cessio bonorum* against the petitioner, and for an order on him to grant a disposition *omnium bonorum*. The first deliverance on the petition was granted on the 3rd of September 1887, and the petitioner's examination was ordered to take place at Aberdeen on the 20th of September 1887. Decree of *cessio* was pronounced on 7th October 1887, and the petitioner was then ordained to execute a disposition *omnium bonorum* in favour of Alexander Forbes Wight, advocate in Aberdeen, as trustee for behoof of his creditors. The examination was continued from time to time, and at a diet thereof on 4th November 1887 the following occurred:—"Compeared the bankrupt John Auld, who being solemnly sworn and examined, depones—I got £50 from my nephew on 19th July 1886, in repayment of the loan men-