Lord Ardmillan concurred with the Lord President.

The Court pronounced an interlocutor finding that by the death of M'Ewan the firm was dissolved; that thereby the contract came to an end; that the pursuer could not sue the surviving partner, or the representatives of the deceased partner, for specific implement or for damages; but that he was entitled to as much of his salary as effeired to the period between the death of M'Ewan and the 1st of October following, and had not been earned by him otherwise during that period.

The pursuer was ordained to lodge a minute stating what he had been earning during the period specified.

Agents for Pursuer—Maconochie & Hare, W.S.

Agents for Defender—Hamilton & Kinnear, W.S.

Tuesday, June 4.

MIEN *v.* MIEN'S TRUSTEES.

Landlord and Tenant—Removing—A. S., 14th Dec. 1756—Suspension—Juratory Caution. In a suspension of a decree of removing, Held (1) that a summons of removing under the Act of Sederunt 1756 did not require to libel a written title of possession, and was competently directed against a party possessing on tacit relocation or by mere sufferance; and (2) in the circumstances, the complainer's case being plainly bad on the merits, that he could not be allowed to suspend on juratory caution.

Alexander Mien, presently occupant of the farm and lands of Hopehouse, in the parish of Jedburgh, presented a note of suspension against the trustees of the deceased James Mien of Hunthill, of a charge upon a decree of removing obtained by the respondents against the complainer in the Sheriff-court of Roxburghshire on 15th December 1864. The complainer had been tenant of the lands on an eighteen years' lease, which expired at Whitsunday 1862. The summons of removing was brought on 30th September 1864, under the Act of Sederunt 14th December 1756, and 16 and 17 Vict., c. 80, § 29, and asked removal of the complainer from the said lands, which it was averred he possessed on tacit relocation, at Martinmas 1864 and Whitsunday 1865. The complainer's defence was, that the action was incompetent, in respect (1) it did not found on the tack on which the complainer had possessed the subjects, nor aver any facts to show that the original right of possession had expired, or how the tacit relocation commenced; and, in particular, it did not state that the complainer's term of possession had expired; (2) it did not libel the section of the A. S., 1756; (3) that that A. S. merely applied to cases where the possession was regulated by written tack or other legal equivalent; (4) *lis alibi pendens;* (5) no title; (6) the complainer's possession had not expired. The Sheriff-substitute decerned against the complainer; and this judgment was adhered to by the Sheriff on 30th January 1865. Mien brought a suspension.

The Lord Ordinary (Barcaple), in respect that the note of suspension was presented without caution, refused the note, and found the complainer liable in expenses.

The complainer reclaimed.

Watson and Asher for complainer.

Clark and Mackintosh in answer.

The Court adhered.

Lord President—A party asking the indulgence of being allowed to find juratory caution instead of sufficient caution must first show that he has something to say for his case on the merits; that he has some reasonable ground on which he can show that he will ultimately prevail in suspending the removing. But I look in vain for that here. The complainer's defences in the Inferior Court are untenable. The complainer apparently possessed on tacit relocation. If not, then he had no foundation at all for his possession. He plainly had no right. He was there either on tacit relocation or mere sufferance. He says (1) that the summons did not found on the tack, &c. (reads 1st, 2d., and 3d objections.) All these are bad. This is a removing under the 2d section of the A. S., and the summons of removing was to come in place of warning under the Act 1555. When a summons of this kind is instituted before a Judge Ordinary, and called forty days before the term, it is equivalent to a warning in terms of the statute, and the judge is to determine in the removing in terms of that Act, in the same way as if a warning had been executed in terms of the Act of Parliament. Now, this summons sets forth that the complainer ought, in terms of the A. S. and Act of Parliament, to be ordained to flit and remove himself, &c. from the said farm and lands as then occupied and possessed by him on tacit relocation, and to leave the same void, to the effect the pursuers of the removing might enter thereto and peaceably possess the same in time coming. It seems to me that it would be very dangerous to hold that anything more precise is necessary in such a summons of removing. There is neither authority nor necessity for it. The defender may prove his title of possession. If he has it, it will be a good answer. If he has not, I don't see why he should not remove on warning. Therefore the defences in the Inferior Court are out of the question and cannot be made available. But it is said that, since decree of removing, there have been negotiations which have resulted in an agreement, one part of which was, that the complainer was to get a new title in the form of a liferent lease. It is plain to me, on the complainer's own showing, that that is untenable, and that he has no right to get that new title. If he had such a right, one would have expected that he would have enforced it long ago. There is some peculiarity in this that the decree of removing has not been enforced for so long a period. But it is plain that, from the relationship of the parties, attempts were made to settle the matter amicably, and so the delay is accounted for. Now that it is enforced, there is no objection to it in law or otherwise, and therefore no occasion to consider whether, in other circumstances, the complainer might have been allowed to suspend on juratory caution.

The other Judges concurred.

Agents for Complainer—White-Millar & Robson, S.S.C.

Agent for Respondent—John Rutherford, W.S.

Tuesday, June 4.

MACKINTYRE & OTHERS *v.* MULHOLLAND.

Bankruptcy—Cessio—*Liberation.* Circumstances in which a party found entitled to the benefit of *cessio.* Warrant of liberation granted.

Mulholland, on 2d January 1867, petitioned in the Sheriff-court of Stirlingshire for *cessio.* He had

been imprisoned on 30th August preceding at the instance of a creditor. Creditors opposed, on the ground (1) of the unsatisfactory and contradictory nature of the bankrupt's explanations; (2) of his concealment of funds and disposal of his property on the eve of bankruptcy, to the prejudice of his creditors.

The Sheriff-substitute allowed a proof of the second objection. The creditors, however, did not lead any proof. The Sheriff-substitute found the petitioner entitled to the benefit of *cessio*. The Sheriff adhered.

The creditors reclaimed. The Lord Ordinary on the Bills (CURRIEHILL) refused the reclaiming note.

F. W. CLARK for reclaiming creditors.

R. V. CAMPBELL for respondent.

The Court adhered. They held that it was the duty of the creditors to take advantage of the allowance made to them to lead counter-proof to the petitioner's averments. They had not chosen to do this, and could not be heard now. The want of clear explanation of the bankrupt's affairs was no doubt owing to his illiterate character. Expenses were given to the petitioner since the date of the Lord Ordinary's interlocutor.

CAMPBELL, for petitioner, craved the Court to grant a warrant of liberation, and to allow immediate extract thereof *ad interim*.

The LORD PRESIDENT pointed out that the Sheriff's interlocutor, reclaimed against, found the petitioner entitled to the benefit of *cessio*, and asked whether this was not equivalent to a warrant of liberation.

CAMPBELL referred to M'Laurin's Forms of Process in Sheriff-courts, p. 536, as containing, in addition to the decree for *cessio*, the form of a warrant of liberation when the insolvent is in prison.

The Court accordingly granted the petitioner's motion.

Agent for Creditors—J. Y. Pullar, S.S.C.

Agents for Respondent—Macgregor & Barclay, S.S.C.

Wednesday, June 5.

SECOND DIVISION.

FRASER *v.* ROBERTSON.

Poor — Residential Settlement — Forisfamiliation — Lunatic. 1. Circumstances in which (aff. LORD KINLOCH) held that majority had not, *per se*, the effect of forisfamiliating a daughter living in family with her father, and dependent on him. 2. That absence as a patient in an asylum had not the effect of acquiring for her any other than the derivative settlement she had through her father, that the father's settlement at the date of his death enured to the pauper, and that that was still her settlement as the statutory period by which it might be lost had not expired.

The pursuer in this action (Inspector of Killearnan) sues the defender (Inspector of Edinkillie) for advances made to a lunatic pauper, who, it is maintained by him, had at the date of her chargeability a settlement in the parish of Edinkillie. The pauper was born on 6th October 1830, in the parish of Edinkillie, where her mother was then paying a visit to her brother, George Wilson. The pauper's father resided in Killearnan at the date of her birth, and he did so continuously from that period until his death in 1858. During the earlier years of the pauper's life she resided with her mother, who lived apart from her husband, in the house of George Wilson in Edinkillie. George Wilson married in 1843, and then the pauper and her mother returned to the father's house at Killearnan, and she continued to reside there till 1853, when she became a lunatic, and was taken away to an asylum. She has since then been in several asylums, all of which were out of the parish of Killearnan.

The Lord Ordinary (KINLOCH) found that, at the time of her father's death, the pauper had a settlement in Killearnan, derivatively through him, and that up to the period of her becoming chargeable, and being relieved by Killearnan (1st April 1860), she had not lost that settlement. He therefore assoilzied the defender. His Lordship observed in his note:—

"In the discussion of the question thus raised, it appears to the Lord Ordinary that the primary point for consideration is what was the pauper's settlement during the lifetime of her father; in other words, whether she had ever acquired, prior to her father's death, a settlement different from his. The Lord Ordinary is of opinion that she cannot be held to have done so. Originally, beyond all doubt, her settlement was no other than the settlement by parentage derived from her father. She was a member of her father's family, living with him and supported by him. She cannot be held to have been in any different position from that of children generally in their father's house, as to whom it is trite law that their father's settlement is theirs by derivation.

"This being her case originally, it appears to the Lord Ordinary that nothing occurred prior to her father's death to alter her legal position. Two circumstances have been relied on, as one or other, or both, effectual to do so; but it appears to the Lord Ordinary that these are not sufficient for the purpose.

"The one of these is the majority of the pauper, which occurred on 6th October 1851. But the Lord Ordinary can find no sufficient authority for holding that the bare occurrence of majority has the effect of forisfamiliating a daughter, *who continues to stay in family with her father, and to be supported by him.* Majority in a father's house is not *per se* forisfamiliation. Yet it is a case of forisfamiliation, and no other, which the pursuer must on this point make out. Unless he can show that Margaret M'Dougall became forisfamiliated by the occurrence of majority in her father's house, he has on this point no case. If she was not forisfamiliated by her arrival at twenty-one years of age, her position continued, exactly as before, that of a child in a father's house, and her father's settlement remained hers. The Lord Ordinary considers it at variance with all principle and authority to hold that the mere occurrence of majority in the father's house is forisfamiliation, in the case of a daughter of the house.

"The Lord Ordinary therefore holds that Margaret M'Dougall's settlement continued that of her father after majority as before. And the question next arises, whether an alteration took place by her removal to a lunatic asylum in September 1853? The Lord Ordinary is of opinion in the negative. Again it is to be said, that the removal of a child to a lunatic asylum cannot be accounted forisfamiliation. It is something the very reverse of what is generally involved in the idea of foris-