to apprisers to insist upon an entry. It enacts 'that the overlord receive the creditour or ony ither buyer tenand till him payand to the overlord a year's maill as the land is set for the time.' The Act of 20 Geo. II. c. 50, obliged the superior to receive as his vassal any person who produced a proper conveyance, and charged him with horning to enter him upon payment of such fees and casualties as the superior is entitled by law to receive. What he was 'entitled by law to receive' was very distinctly stated in the interlocutor in the leading case of *Aitchison* v. *Hopekirk*, decided in 1775, 2 Ross' L.C. 183, as follows:—'That the pursuer as superior is entitled for the entry of singular successors, in all cases where such entries are not taxed, to a year's rent of the subject, whether lands or houses, as the same are set or may be set at the time, deducting the feu-duty and all public burdens, and likewise all annual burdens imposed on the lands by the consent of the superior, with all reasonable annual repairs of houses and other perishable subjects." This decision settled the rule which guided the practice till 1874. It was not the rent of the year when the lands fell into non-entry, nor the rent of the year when the superior raised his declarator of non-entry and took possession of the lands, but the rent of the year when the entry was actually given. Under the old law there could be no question as to the rent of the year when a demand for composition was made, because the superior was not entitled to demand composition. His only mode of enforcing payment of that casualty was by declarator of non-entry, and if the vassal chose to submit to decree in such an action without taking out an entry, the superior could not compel him to pay composition.

"Now, all this is changed by the Act of 1874, which gives to the superior a right to bring a petitory action for payment of the composition when there is an implied entry under the statute. But in the opinion of the Lord Ordinary it does not alter the rule of the old law, that the rental of the year of entry is to be looked to. By taking the rental of that year it operates to the superior's disadvantage in this case to the extent of about £200, and it was strenuously maintained for the pursuer that the statute did not intend in any way to prejudice the rights of the superiors but to preserve them. This it has certainly done in several particulars where it was not intended. Granting all this, it does not follow that by adhering to the old rule, that the rental of the year of entry is to be taken, superiors will in all cases suffer. It was an accident merely in the present case that the rental of the year of entry (1876) was less than the rental of the year of demand (1883). It might have been otherwise, and the pursuer would in that case have been a gainer.

"Now, after considering carefully the Act of 1874, the Lord Ordinary has come to the conclusion that although there is not in it an express declaration that the old rule shall be followed, the whole spirit of the 4th section of that Act with the relative schedule is to that effect. It is unnecessary to offer any comment upon it, because that has been already done in a reported judgment by Lord Curriehill—*Stewart* v. *Murdoch* and *Rodger* (19 Scot. Law Rep. 649)—in terms with which the Lord Ordinary entirely concurs. The learned Judge has completely expressed the opinion which the Lord Ordinary has formed of the meaning of the statute, and of the expediency of adhering to a rule which is at once simple and intelligible, and excludes all opportunity for so managing matters as that the superior shall delay making his claim until he sees improving operations on the property, which are in progress or in prospect, completed."

Following upon this interlocutor the parties entered into a joint-minute, in which they concurred in stating that in 1876 the lands were held by the trustees of the late Alexander Campbell, Esq. of Monzie and Inverawe, under a lease entered into between the late James Macdonald, Esq. of Dalness, and the said Alexander Campbell, dated 21st February 1839, for 44 years from Whitsunday 1838 at a rent of £375 sterling; that in 1873 the lands were sublet by the trustees to the Rev. J. A. Gould at a rent of £750 for a term of nine years from Whitsunday 1873.

If the casualty fell to be ascertained at the rent paid for the year 1876 under the original lease to Alexander Campbell, the parties admitted that the rent was £375, and that the deductions to be made amounted to £103, 19s. 8d., leaving the sum of £271, 0s. 4d. as the amount of casualty payable to the superior. But if the casualty was to be ascertained on the rent paid by the Rev. J. A. Gould, the parties admitted that the rent was £750, and the deductions falling to be made amounted to £205, 18s. 10d., leaving the sum of £544 as the amount of casualty due.

The Lord Ordinary issued the following interlocutor:—"The Lord Ordinary having considered the joint-minute for the parties, and heard counsel, Finds that the rent that must be taken as the casualty payable to the pursuer is the rent payable under the lease between James Macdonald of Dalness and Alexander Campbell of Monzie, dated 21st February 1839, and not the rent payable under the sub-lease between the trustees of the said Alexander Campbell and the Rev. J. A. Gould, dated 20th, 26th, and 29th May 1873: Therefore decerns against the defender for the sum of £271, 0s. 4d., being the amount of casualty payable to the pursuer: Finds the defender entitled to expenses."

Counsel for Pursuer—W. Campbell. Agents—Murray, Beith, & Murray, W.S.

Counsel for Defender — Gloag — Mackay. Agents—Mackenzie & Kermack, W.S.

Friday, December 12.

OUTER HOUSE.

[Lord Kinnear.

A B, PETITIONER.

Partnership—Judicial Factor—Sisting Executors of Partner in Petition to Wind up Partnership.

A partner of a firm of law-agents presented a petition stating that his firm was in consequence of his partners' extravagance drifting into bankruptcy, and craving the appointment of a judicial factor for the purpose

of winding up the business. Pending the petition he died, and after his death his trustees and executors craved to be sisted in his place. The application was *refused.*

This was a petition by a partner of a firm for sequestration of the partnership estate and appointment of a judicial factor to wind up the firm's affairs.

It was stated in the petition—On 1st April 1880 a firm of law-agents in Glasgow entered into a contract of copartnery with the petitioner, who had been a clerk in their service. Under this contract the capital of the new firm was to consist of £3000, of which £1000 was to be furnished by the petitioner and the remainder by the other partners; the petitioner was also bound to give his whole time and attention to the business, but the other partners of the firm, of whom there were two, were only to give so much time as might be necessary. It was also provided that the petitioner was to receive one-fifth of the profits, and all the partners were entitled to draw a certain sum monthly in anticipation of profits. The contract further provided for a dissolution in the case of death or bankruptcy, but there was no provision for the dissolution of the firm by a majority. The deed also provided for a reference in case of certain disputes or differences arising between the parties.

The petitioner presented in July 1884 this petition craving the Court to sequestrate the estate of the firm and to appoint a judicial factor to wind up its affairs. He set forth that though the business had been a prosperous one, his partners had been very extravagant and had far exceeded the stipulated amount of the drawings they were entitled to make under the contract; that in May 1883 he had pointed out that they were by so exceeding their proper amount of drawings bringing the firm into difficulties and making bankruptcy inevitable; that he had fallen into bad health, and was unable to attend to the business; that he had been persuaded by his partners to remain in it though he wished to retire, but that they had in May 1884 executed, as a majority of the partners, a deed of dissolution bearing that in consequence of his having been unable to attend to business from ill-health and other causes, and having infringed the contract in various ways, they declared the copartnership to be renounced and dissolved. This he alleged to be an illegal attempt to expel him, which was *ultra vires* of his partners. He further set forth that his partners had taken exclusive possession of the business and effects, and transferred the funds to their names.

The other partners of the firm lodged answers asking that the petition should be dismissed, and stating that the firm of which they were partners was quite solvent, and that the debt of the firm to the petitioner amounted to about £3000, which they were willing to pay to him under deduction of his drawings and all other proper deductions. They also stated that the pursuer from the state of his health and of his habits had not attended to the business according to the contract, and that he had subscribed certain obligations in breach of it, and that they were entitled to terminate the partnership. They offered without prejudice to pay him a sum of £2000 on his retiral, or to refer to the arbiters named in the contract the questions raised as to his contraventions or as to the deductions claimed by them.

The petitioner died on 9th August 1884, and thereafter the trustees and executors under a trust-disposition and settlement lodged a minute craving that they might be sisted as trustees and executors in the place of the petitioner. In this minute of compearance they stated that the state of the firm had changed for the worse, and submitted that the respondents did not stand to the deceased's estate in the ordinary relation of surviving partners who might be safely trusted to ingather the estates of the firm, but were truly large debtors to it, whose obligations had recently increased and whose interests conflicted with those of the estate. They therefore craved that a neutral party should be appointed to wind up the firm.

The Lord Ordinary refused the application, and issued the following interlocutor:—"The Lord Ordinary having heard counsel on the motion for the compearers, the trustees and executors of the petitioner A. B., now deceased, to be sisted in terms of the minute, refuses the craving of the said minute."

Counsel for Petitioner—Brand. Agent—Adam Shiell, S.S.C.

Counsel for Respondents—R. V. Campbell. Agents—W. & J. Burness, W.S.

Saturday, December 20.

OUTER HOUSE.

ORR (MACLEAN'S TRUSTEE), PETITIONER.

Trust—Investment of Trust Funds—Colonial Stocks—Trust (Scotland) Act Amendment Act 1884, *sec.* 3.

Investment of trust funds in certain Colonial Government stocks *approved* after a report from a person of skill.

This was a petition by the trustee under the settlement of the late Donald Maclean, who died in 1853. The purposes of the trust were, so far as need here be narrated, for behoof of the testator's children. There was only one beneficiary in life at the date of the petition.

The estate consisted of house property in Edinburgh, and certain funds, including a sum of £3200 which had been for many years lent to the Glasgow Improvement Trust at 4 per cent., but had been repaid, the trustees declining to renew the loan at higher interest than 3½ per cent. The petitioner set forth that the beneficiary was in delicate health, and that the trust income being barely sufficient to meet his necessary expenditure, it was very desirable that there should be no diminution of income.

The trust-deed gave the trustees power to "alter, change, or vary such funds, stocks, or securities in or upon which they shall have lent or placed out the monies in virtue of the present trust, for others of the like nature, when and so often as it shall seem to them expedient."

The petitioner stated that he had been unable to find for the £3200 an investment yielding 4 per cent. of a class which he could of his own authority under the trust-deed or the statutes accept without incurring personal responsibility.