familiation, which is removal from the father's house for the purpose of self-support. The child in the present case still continued supported by the parent; required, indeed, the support much more than ever. She was still to be reckoned amongst the children of the father, dependent upon him. She still filled the place of a proper child, with only added helplessness. It seems to the Lord Ordinary of no sort of consequence in this question that the lunatic asylum was out of the parish. If such a removal imported forisfamiliation, the result would equally arise were the asylum in the same parish, and simply across the road. If, on the contrary, such a removal does not in itself import forisfamiliation, the result will not arise because the asylum is out of the parish. Many cases may be figured in which a child removes, for a time, from a father's house, and into a different parish, and yet does not lose the legal character of a child, or thereby sustain forisfamiliation, as the very familiar one of a daughter going to a boarding-school. It was never supposed that a young lady was forisfamiliated by going to a London boarding-school; she has only the character of a child more deeply impressed by the well-known expensiveness of that proceeding. A daughter would not be held forisfamiliated because sent at her father's expense to the baths at Buxton or Harrogate, even though her absence should unfortunately be protracted for years. The residence in a lunatic asylum—from which, doubtless, a daily hope pictured a speedy return—appears to the Lord Ordinary to supply a case *a fortiori*, for the non-occurrence of forisfamiliation.

"The conclusion at which the Lord Ordinary arrives is, that when Margaret M'Dougall's father died, in March 1858, her settlement was her father's by derivation—that is to say, was in the parish of Killearnan. And this, it must be remembered, was a residential settlement, for such is every settlement derived from residence, whether the residence be that of the party or his parent. The question which remains is, whether this settlement was lost anterior to Margaret M'Dougall becoming chargeable as a pauper in 1860? This question is made easy to answer by the very circumstance that the settlement was residential; for being so, it could only be lost in the way in which residential settlements can be lost. The Court is not called on to decide what would have been the legal result had the father's settlement been a *birth* settlement. Whatever might be said in such a case, the case is not that which actually occurs. The case is strictly that of a residential settlement, and no other. In law the case is the same as if Margaret M'Dougall had personally resided in Killearnan for more than five years immediately prior to her father's death. In such a case, it need scarcely be said, the subsequent absence of two years would not be effectual to destroy the settlement. It as little does so in the general case, in the Lord Ordinary's estimation.

"The fallacy of the pursuer's argument consists in reckoning the pauper's absence from the parish of Killearnan back from 1860 to 1853. But, in true legal computation, it can only be reckoned back to the father's death in 1858. When the arithmetic is corrected, the true legal conclusion emerges, and becomes manifest.

"The Lord Ordinary had quoted to him several decisions, alleged to bear on the question at issue. But none of these cases ran on all-fours with the present. The Lord Ordinary therefore felt himself compelled to fall back on legal principles. It is difficult, perhaps impossible, to reconcile all the decisions on the subject of settlement of paupers; and the consolatory observation is often made, that it is of more consequence that a rule is fixed than that it is abstractly right. The Lord Ordinary has endeavoured to deduce from the authorities what on the whole seems the right rule in the present case."

The pursuer reclaimed.

FRASER and JOHNSTONE for him.

SOLICITOR-GENERAL and JOHN MARSHALL in answer.

The Court unanimously adhered to the interlocutor of the Lord Ordinary, holding that as the pauper was a member of her father's family, not forisfamiliated in 1853, her settlement then was his. During the ensuing five years till his death, no change took place. Though she was absent, owing to the state of her mind, she still belonged to the family, as an infant would, and was acquiring no independent settlement; nor did she acquire any new settlement after her father's death, as the statutory period had not elapsed between that event and the date of her chargeability.

Agent for Pursuer—John Galletly, S.S.C.

Agents for Defender—Mackenzie, Innes, and Logan, W.S.

Thursday, June 6.

FIRST DIVISION.

GORDON *v.* SCOTTISH NORTH-EASTERN RAILWAY COMPANY AND MITCHELL.

(*Ante*, vol. iii, p. 370.)

Jury Trial—Expenses. Circumstances in which modified expenses awarded.

The pursuer, Gordon Ettershank Gordon, of Mosstown, was injured by falling among some large stones lying on a temporary roadway made while the defenders were constructing the Denburn Valley Line. He sued the Railway Company and Adam Mitchell, their contractor, for damages. Three issues were sent to the jury. The 1st was founded on the joint liability of the defenders; the 2d was founded on the liability of the Railway Company alone; and the 3d on the liability of the contractor alone. The jury found for the defenders on the first issue of joint liability; for the defenders on the second issue directed against the Railway Company; and for the pursuer on the third issue, directed against the contractor, with £450 of damages.

H. J. MONCRIEFF for the pursuer, now moved for expenses against Mitchell.

ASHER for Mitchell objected, in so far as the motion applied to expenses caused by the appearance of the Railway Company.

BIRNIE for the Railway Company, moved for expenses against the pursuer.

H. J. MONCRIEFF for the pursuer, objected, (1) because the Railway Company had refused, prior to the raising of the action, to give him access to their contract with Mitchell, and to the other writings which had passed between them and their contractor; and (2) because, if they had any claim for expenses, it lay against Mitchell, and not against the pursuer, since, if Mitchell had admitted liability, as ultimately fixed upon him by the verdict of the jury, the other defender, the Railway Company, would not have been called.

The Court found (1) that the pursuer was entitled to expenses against Mitchell, leaving it to be seen, when the account was given in, what amount, caused by the appearance of the Railway Company, was not fairly chargeable against Mitchell. They held, (2) that as the Railway Company had been assoilzied by the jury from both joint and several liability, they would, in the ordinary case, have been entitled to their expenses against the pursuer; but looking to the whole circumstances as stated to the Court, the proper course in this case would be, to find the Railway Company entitled to their expenses only since the date of the closing of the record.

Lord Deas differed, and thought that no expenses should be given to the Railway Company.

Agent for Pursuer—Æneas Macbean, W.S.

Agent for Railway Company—James Webster, S.S.C.

Agents for Mitchell—Henry & Shiress, S.S.C.

Thursday, June 6.

LINDSAY *v.* BRYSON.

Bankruptcy—19 *and* 20 *Vict., c.* 79, §§ 90, 91—*Trustee—Examination—Documents.* Held that a trustee in a sequestration, having obtained, from a party examined as to the bankrupt's affairs, production of documents relative to the same, is bound to re-deliver the documents after the lapse of a reasonable time for inspecting them.

In the sequestration of James Trowsdale & Son, contractors at Peebles and Innerleithen, and at Stockton-on-Tees, Durham, the trustee, Thomas Steven Lindsay, under a warrant granted by the Sheriff of Edinburgh, examined various parties and recovered documents relative to the bankrupts' affairs, and on 21st January 1867 he examined, *inter alios*, William Bryson, C.E., Darlington, Engineer of the Forcett Railway Company, who produced various books and writings having reference to the line of the Forcett Railway now in course of construction. Bryson, on 14th March 1867, petitioned the Sheriff to ordain the trustee to deliver back the books and documents, reserving right to the trustee thereafter to call for copies, or excerpts, or the principals when required, alleging that the want of the books and documents caused great inconvenience to the petitioner and the railway company.

The Sheriff-substitute (Hallard) sustained the prayer of the petition, and ordained instant delivery to Bryson of the books and documents "which were produced by him at his examination, and voluntarily delivered by him to the said trustee, reserving to the trustee to apply for delivery of said documents and others, under the 91st section of the Bankrupt Statute."

The trustee presented a note of appeal to the Lord Ordinary against this deliverance.

The Lord Ordinary (Kinloch) recalled the deliverance, and remitted to the Sheriff to allow the trustee such farther opportunity as might be reasonable to examine the documents in question, or take copies of the same; and after such opportunity had been had, to ordain the documents to be delivered to the petitioner, Bryson, reserving all questions as to the right of property in the documents, and finding neither party entitled to expenses.

His Lordship added this note:—

"The Lord Ordinary cannot adopt the extreme view contended for by either party.

"He has no doubt that a party producing documents under a statutory examination in bankruptcy is entitled, by means of a summary application in the process of sequestration, to have the documents ordered to be returned to him when the purposes of the statute have been served.

"On the other hand, he is of opinion that the Sheriff, when he conducts the examination, and any commissioner who holds his delegated authority, is entitled, in the course of the examination, to order documents to be produced, and that this does not require a separate application and warrant.

"But he conceives that such production is, like the examination generally, only for the purpose of informing the mind of the trustee, and that so soon as this object is served, the party producing the documents is entitled to have them returned.

"The Lord Ordinary does not think that the statutory examination can be converted into a proceeding for determining the right of property in the documents. It is a different form of process which must be adopted for that purpose.

"The Lord Ordinary finds neither party entitled to expenses in the appeal, as the course which he has taken is not what either party contended for."

The trustee reclaimed, and asked the Court "to recal the interlocutor submitted to review; to find that the reclaimer is entitled to retain such of the documents that have been produced as belong to the bankrupts; and to remit to the Lord Ordinary with instructions to him to allow an inquiry in regard to the right of ownership of the bankrupts in the documents in question, or to ordain him to remit to the Sheriff to make such inquiry, and thereafter to ordain the Lord Ordinary to find, or to remit to the Sheriff to find, that the reclaimer is only bound to deliver up such of the documents as are not the property of the bankrupts; or to do otherwise," &c.

A. Moncrieff for reclaimer.

Watson for respondent.

The Court adhered.

The Lord President thought the Lord Ordinary was right. The 91st section of the Bankruptcy Act applied to the case, but the 90th must also be kept in view, and the object of the statutory provisions as to examinations. By the 90th section, the Sheriff "might, at any time, on the application of the trustee, order an examination of the bankrupt's wife and family, clerks, servants, factors, law agents, and others"—but for what purpose?—"who can give information relative to his estate." Section 91 empowered the Sheriff to "order such persons to produce, for inspection, any books of account, papers, deeds, writings, or other documents in their custody relative to the bankrupt's affairs, and cause the same, or copies of the same, to be delivered to the trustee." But for what purpose? For inspection. It would be monstrous to hold that a person ordered to produce his business books to inform the mind of a trustee as to a bankrupt's affairs should be obliged to leave them in his possession, and have no means of recovering them out of his hands. If the law were otherwise, then that section might be wrested to most improper purposes, and made an instrument of oppression in the hands of a trustee. Bryson was examined, apparently in England, under commission, and there he produced thirty-seven documents, which it was very apparent were properly in the custody of an officer