that was the nature of his right; and these negotiations ended in the written agreement we have before us. The important part of that agreement is that which is contained in a paragraph at the middle of page 4, regarding the terms on which the works were to be sold:—"The arrangements will therefore stand as follows: The works at Glenarm to be sold to you at the price of Six hundred pounds over and above the present bonds, payable thus—(1) £200 by your own pro. note to me as factor at six months from 5th instant; (2) £100 by your and James M'Allister's joint pro. note at twelve months from same date; £100 by your and Peter Murty's joint pro. note of same date and currency; and (3) £200 by your and Mrs Donaghy's joint pro. note at sixteen months from said date—making in all, £600." These are very clear and distinct statements of a contract of sale of the works by the trustees to Donaghy at the price of £600, and a distinct statement of the manner in which the price is to be paid. The way in which M'Allister comes to be introduced into the case is by having engaged to be granter, along with Donaghy, of one of the promissory-notes for the price. If this sale was carried through, of course M'Allister was bound either to pay, or to see it paid by Donaghy. But the consideration for granting that and the other promissory-notes was a sale of the subjects. If that cannot be carried through, the consideration of the promissory-notes fails absolutely. It is not a promissory-note granted for payment of a debt of £600 due by Donaghy, but expressly and exclusively for the price of a subject sold. What follows? I take it from the statement of the respondent. He says—"The only security which the trustees had to look to for their reimbursement of their advances of £600 was the property which had been assigned to them, and they came under no agreement or undertaking at any time to vacate or divest themselves of that property without full payment of the above sum. A reconveyance to Donaghy was not considered by him to be for his interest, as it might expose him to trouble from creditors who had not acceded to the trust-deed, or whose debts were incurred subsequent thereto." Now, this shows that the trustees, according to their reading of the agreement, were not to part with the real security they had from possession of a title to the works till the price was fully paid; in short, that the transaction in that written agreement could only be carried out by the whole price of £600 being paid in money, *simul ac semel* with which a conveyance was to be granted. Then the 11th article runs thus:—"The trustees did not accede to these requests, and when the promissory-note for £200, being the first instalment of the price, fell due on October 1865, it was dishonoured. When the first half-year's rent of the mill fell due in November, Donaghy was unable to meet it. The landlord threatened legal proceedings for the rent, and Donaghy was pressed with other claims. He therefore resolved to apply for sequestration, which he did in January 1866. The respondent was the concurring creditor in applying for the sequestration, his claim as creditor being founded on the £200 bill above mentioned, and he was appointed trustee on Donaghy's sequestrated estate, with Donaghy's approval. As trustee on the sequestrated estate, the respondent has not interfered with the Glenarm Mill, and materials, and machinery, &c., or with the equity of redemption of the lease which was in Donaghy, and was conveyed by him to the trustees above named." And statement 12:—"The respondent and the trustees, his constituents, have been all along willing, and are still willing, to convey the reversion of the lease of the mill, &c., to Mr Donaghy, or any one in his right, upon his paying them the said sum of £600. But Donaghy has not only failed to pay the first instalment of £200, but is utterly unable to pay any of the remaining instalments, and the equity of redemption of the lease of the mill, &c., is not worth more than £300, and would not sell for more. The landlord has distrained some of the effects on the premises for past due rent, and the property is deteriorating." How can any statement more clearly and convincingly show that the agreement in the letter has become abortive, and that it is impossible to carry out the contract of sale on either part. But yet the promissory-note is confessedly granted on the sole consideration of a sale to Donaghy, one of the conditions being a conveyance of the subjects to Donaghy. The next sentence shows the mistake on which the respondent has been proceeding throughout. "Even upon payment of the two promissory-notes, upon which the suspender and Murty are obligants, the debt due to the trustees, and the respondent as their factor, will remain unsatisfied." No doubt of that. But did M'Allister ever become bound to pay any part of that debt? Certainly not. The trustees intended no doubt that they should be reimbursed by obtaining the price of £600 for a reconveyance of the mill, but M'Allister had nothing to do with that. He became co-obligant, not for any debt due to the trustees, but for the price of a subject sold, and it is impossible to allow the respondent to charge on this bill. I am therefore very clearly of opinion that this threatened charge must be suspended, and that the consigned money must be had up by the suspender.

The other Judges concurred.

Agent for Complainer—John Ross, S.S.C.

Agent for Respondent—R. P. Stevenson, S.S.C.

Saturday, February 8.

SECOND DIVISION.

ALLAN *v.* HIGGINS AND BURTON.

Poor—Residential settlement—Birth settlement—Continuity of Residence—Common Begging—Onus—*Expenses.* Circumstances in which *held* (Lord Benholme diss.) (1) that an absence of six months destroyed continuity of residence, and thereby prevented the acquiring of a residential settlement; (2) that while the *onus* of proving the character of residence lay on the parish of birth, that had not been discharged by showing that there had been that absence of common begging without which a settlement by residence could not be acquired. Pursuer held not entitled to expenses in the Inner-House, his appearance there being unnecessary.

This was an action of relief, brought by the Inspector of the parish of Cambusnethan, against the Inspectors of the parishes of Shotts and Dalmeny, concluding for repayment to the pursuer of the sum of £135, 8s. 7d., advanced for the support of John Linn or Lind, a lunatic pauper, and for relief of all future advances for the same purpose. The parish of Dalmeny was the parish of birth, and the parish of Shotts was alleged to be the one in which the pauper had acquired a residential settlement. The question came to lie between these two

parishes, there being no dispute that theu purser was entitled to relief from the one or from the other.

It appeared that, from a period anterior to the month of March 1852, down to July 1852, the pauper resided in the parish of Shotts, sleeping beside the furnaces of the Shotts Ironworks, some of which are in Shotts and some in Cambusnethan, and living partly by occasional employment which he obtained, and partly by the unsolicited charity of his fellow-workmen. In July 1852, he obtained regular employment in the Shotts Ironworks, and continued there till March 1857, when he was dismissed, and went to England, subsisting, it did not appear how, for a period of six months. At the end of these six months, he again returned to Shotts, and resumed his employment in the works, and continued in that employment till about March 1359, when he removed to the parish of Cumbusnethan. It was in these circumstances maintained by Dalmeny (the parish of birth) that there had been a residential settlement acquired in the parish of Shotts, and that that settlement was not affected by the gap of six months during which the pauper was absent—(1) because that absence was a mere incident, which did not affect his residence; and (2) because, even if the absence did break the continuity of the residence, the residence in Shotts must be held to have begun at least in March 1852, whereby the five years necessary to a residential settlement were completed in March 1857, before the six months' absence began.

The Lord Ordinary (JERVISWOODE) decerned against the parish of Shotts, holding that the pauper had acquired a residential settlement in that parish, beginning in July 1852, when he obtained regular work there, and not interrupted by the six months' absence in England.

The Inspector of Shotts reclaimed.

FRASER and DEAS for him.

WATSON and TRAYNER for Dalmeny.

R. V. CAMPBELL for pursuer.

The Court (LORD BENHOLME diss.) recalled the Lord Ordinary's interlocutor, and found that there had been no residential settlement acquired, and that the parish of birth was liable.

The majority of the Court, while conceding that a residential settlement did not imply an industrial settlement, but only the absence of common begging, were yet of opinion, upon the evidence—(1) that prior to July 1852, when the pursuer obtained regular employment, there was no satisfactory evidence of such residence in the parish of Shotts as would constitute a residential settlement; (2) that the pauper's subsequent residence in Shotts was interrupted in March 1857 by his six months' absence in England, which was not proved to be *incidental* to his employment or otherwise consistent with his retaining his connection with the parish of Shotts. Their Lordships held that the *onus* of proving residence, and especially of proving that a *hiatus* in the period of residence was incidental and not interruptive, lay always upon the parish of birth, and that in this case the parish of birth had not discharged itself of this *onus*.

LORD BENHOLME took a different view of the evidence, and held that, looking to the circumstances as a whole, the fair inference was (1) that the pauper's absence in England did not interrupt his residence in Shotts, but (2) that even if it did there was five years' residence before that absence began, in respect that the pauper resided in Shotts, and was not a common beggar from March 1852, and not merely from July 1852 as assumed by their Lordships.

The parish of Shotts was therefore assoilzied, and decree pronounced against the parish of Dalmeny, with expenses. The pursuer having moved for the expense of appearing and taking decree against the unsuccessful parish, their Lordships refused to allow any expenses to the pursuer, as his appearance in the Inner-House was unnecessary.

Agents for Shotts—Waddell & Mackintosh, S.S.C.

Agents for Dalmeny—Duncan, Dewar and Black, W.S.

Agent for Cambusnethan—Alexander Wylie, W.S.

Tuesday, Februarg 11.

FIRST DIVISION.

MACFARLANE, PETITIONER.

Diligence — Arrestment — Dependence—Recal. Arrestment used on the dependence, against private estate of a party, *recalled*, on the ground that the dependence on which the arrestment was used was a dependence against the party solely in the character of executrix.

This was a petition for recal of arrestments. An action had been raised against Macfarlane, but he having died, a summons of transference was raised against his widow, Arrestments were used on the dependence against her private means and estate. She petitioned for recal.

CLARK and LEE for her.

N. C. CAMPBELL in reply.

The Court unanimously recalled the arrestment on the ground that the dependence, as appearing from the closed record, was a dependence against the petitioner as executrix of her deceased husband, and in no other character, and therefore was not a dependence that would justify arrestment against her private means and estate.

Agents for Petitioner—A. & A. Campbell, W.S.

Agents for Respondent—Murray, Beith, & Murray, W.S.

Tuesday, February 11.

SECOND DIVISION.

THOMAS CANT PETITIONER.

Bankrupt—Petition for Discharge—Bankrupt Act (49th section)—Objection to Discharge. Held that the qualifications of the 49th section of the Bankrupt Act, though necessary to enable a creditor to vote and rank in the sequestration were not imperative in the case of a creditor objecting to a bankrupt's discharge.

This was a petition by a bankrupt for the discharge of his sequestration. The sequestration was granted in May 1864. The trustee in the sequestration was discharged on 27th October 1865. The present application was presented on 27th September 1867. Upon its being presented, objections were lodged for a party who claimed to be a creditor in the bankrupt estate, and who had been given up as such in the bankrupt's state of affairs, but who had not ranked in the sequestration, or qualified as a creditor for purposes of voting and ranking, in terms of the 49th section of the statute. The grounds of objection were, *inter alia*,