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*,

that there were funds payable to the bankrupt under contracts entered into by him since his sequestration, which might be made available to his creditors under the 103d section of the statute.

The petitioner objected to the objector's title; and maintained that, not being qualified as a creditor in the sequestration, he could not now come forward to object to the discharge.

The Lord Ordinary (MURE) repelled this objection to title, and deferred consideration of the petition for four weeks, in order that the necessary steps might be taken by the objector for having a new trustee elected, and the sequestration proceeded with.

His Lordship added the following note:—

"Had this case depended solely upon the terms of the report by the trustee, the Lord Ordinary would not have been disposed to delay granting the discharge, because, as at present advised, he does not think that report shows such culpable and undue conduct on the part of the bankrupt as would warrant the refusal of the petition. But as it appears that there are funds payable to the bankrupt under contracts in which he has an interest, entered into by him since his sequestration, which may be made available to his creditors under section 103 of the Bankrupt Act, the Lord Ordinary does not consider that it would be right to grant a discharge until the creditors shall have an opportunity of taking steps, if so advised, to make those funds available. And, as regards the title of the objector to oppose the discharge, it appears to the Lord Ordinary that, as the objector was admittedly entered as a creditor to the extent of £75 in the state of affairs given up by the bankrupt, and has now produced an oath of verity, he has shown a sufficient title and interest to appear and state the objections he has done to the present application, although that oath may require to be amended before any dividend is paid on it."

The petitioner reclaimed.

D.-F. MONCREIFF and CAMPBELL SMITH for him.

DUNCAN in answer.

The Court adhered.

Their Lordships held that, while for the purpose of voting, ranking, and otherwise taking part in the sequestration, an oath on vouchers were necessary in terms of the 49th section, yet that did not apply to such a matter as opposing an application by the bankrupt to have the sequestration brought to an end. Under the former Bankrupt Act this distinction was well recognised; and the only difference, *quoad hoc*, between the former bankrupt statute and the present was, that under the present statute the bankrupt could, after a certain time, petition for discharge without any concurrence on the part of his creditors, whereas under the former Act such concurrence was always necessary. That difference was, if anything, in favour of the objector, and therefore there was no reason for applying a different rule in construing the present statute from that which was adopted in construing the former one.

Agent for the Petitioner—W. R. Skinner, S.S.C.

Agents for the Objector—Jardine, Stodart, and Frasers, W.S.

Tuesday, February 11.

FLEMING *v.* IMRIE'S TRUSTEES.

Sale—Heritable Bond—Clause of Sale—Intimation and Requisition—Defect in Title—Transaction between Co-trustees—Assignation—Bond of Corroboration—Confusio—*Consignation—Expenses.* A heritable bond, containing a clause of redemption and a power of sale, provided that intimation of an intended sale should be made to the granter and his successors personally if in Scotland, and by notice at the market-cross if furth of the kingdom. The granter though still alive is now entirely divested of his right in the subjects. The holders of the security acquired their right from a lady to whom the bond had been assigned by her husband's trustees. When the assignation was made to her she was an assumed trustee on her husband's estate, but the consideration upon which the assignation was made was paid prior to the date of assumption. Having resolved to call up the money in the bond, she made the necessary intimation and requisition, obtaining a dispensation of these notices from the parties feudally vested in the subjects. She afterwards assigned her right under the bond with the right to the steps of procedure taken by her under it to the respondents. The complainer brought a suspension of the intended sale, on the ground that notice had not been given to the original granter, and that the respondents' title was bad in respect it descended from a party who had illegally acquired it from a co-trustee. *Held* (1) that notice did not require to be given to the original granter, he being fully divested of all interest, and that it was sufficient to give notice to his successor in the proprietary right; (2) that there was no illegality in the transaction between the co-trustees, the conveyance by the trustees to one of their own number being merely in implement of a previous obligation to convey to one who could competently acquire the right; (3) that the debt in the bond was not extinguished by confusion. Terms of consignation which held ineffectual to bar the respondents from claiming expenses.

This case originated so far back as 1865, and arose out of these circumstances:—Andrew Fleming, the brother of Alexander Fleming, cabinet-maker in Kirkcaldy, borrowed a sum of £500 from a Mr Robertson of St Andrews in 1836, to whom he granted a *second* bond over subjects on the south side of the High Street of Kirkcaldy, then his property. Mr Robertson having called up his money in 1842, the late Mr Hutchison, baker in Kirkcaldy, paid the same and acquired right to the bond, to which his trustees at his death succeeded. Those trustees, in the year 1861, having become desirous to wind up the trust-estate of Mr Hutchison, Mrs Jane Hutchison or Tod, at Martinmas of that year, paid the sum in the bond, and obtained an assignation thereto.

In the year 1847 Mr Andrew Fleming conveyed the subjects, over which the present and a previous bond for £1000 extended, to the late Mr Imrie of Haughmill and Bankhead. These bonds were made to form part of the price of the subjects in question. Andrew Fleming was thus in the year 1847 feudally divested, and in the same year was discharged of his personal obligations under the sequestration of his estates. Alexander Fleming continued to occupy a considerable part of the subjects, and to take charge of the remaining portions from 1847 to 1858 on behalf of his father-in-law, Mr Imrie. Of the latter date, Mr Imrie sold the subjects to Alex-