this lot that all the complaining parties here, with the exception of the two previously laid out of sight, hold their feus. The only deed granted by Stobo which we have in full is the feu-contract between him and Taylor, by which Stobo lays him under all the conditions, &c. contained in his own feu-disposition, and provides that these conditions, &c. are to operate as servitudes over the ground disponed in favour of the neighbouring feuars of the land of Hillhead. Now I am strongly of opinion that that lays Taylor and his singular successors under the restrictions, and, among others, under the restriction that they shall not erect buildings over four square storeys in height. That is rather a peculiar restriction, as one man might build his storeys twice as high as those of another, and still not transgress the restriction. But I do not find, in the disposition by Kerr to Stobo, and the feu-contract between Taylor and Stobo, anything which confers a right on Taylor to enforce that or any other restriction on another estate, which is the case we have to deal with here. There is no such thing said, and there ought to be no such thing implied. In the case of *M'Gibbon*, the different feus were held from one proprietor, who got the land under one deed, and the holdings were the same. But how can parties on one estate claim to enforce restrictions upon parties who have their holdings on another estate? I do not see anything in what was urged that the deeds were dated on the same day. The deeds are different, and belong to different progresses of titles. But that is not what we have here. The feu-disposition, I have already mentioned, is dated 8th December 1852, and the other deed, the feu-contract between the same parties under which is disponed the ground on which the house complained of is built, is dated 8th December 1852 and 18th March 1853. Now a mutual deed signed by one of the parties only is no deed till it is signed by the other. In a competition with a creditor, for instance, could Stobo have said, "the deed having been signed four months ago by Kerr, and though I have not signed it, still I am entitled to the property?" This is clearly then not a case of both deeds being signed on the same day.

It is, as I have said, on a part of the estate of 2378 yards disponed by the feu-contract that the house complained of is built, and on which the restrictions are endeavoured to be put by parties who have houses on the other estate of 8125 yards. The proprietor under the feu-disposition may do as he likes, but under the feu-contract he is in a very different position; every steading is to be held of the superior, sub-infeudation is forbidden, and any act in contravention thereof is to be null. Of course, also, the feuars under the contract are in a very different position from those who are under the disposition. The one property may come back to Ker, while the other cannot. The whole progress under the contract may be evacuated, and the land revert to the superior, but it is not so under the disposition. Is there here then any community of title or community of holding? There is no contract between the parties holding in the lot consisting of 8125 yards and those holding in that which consists of 2378 yards; and if there is no contract, I am of opinion that there can be no title to enforce the restrictions. Though the distinction I have pointed out is narrow enough, still I think it sufficient to free the appellant from the conclusions of the petition.

LORD PRESIDENT — I concur entirely in the opinion delivered by Lord Ardmillan.

Agent for the Pursuers—Morton, Whitehead, & Greig, W.S.

Agents for the Defender, Stobo—M. Lawson, S.S.C.

Agent for the Defender, Miller—Wm. Mitchell, S.S.C.

Friday, March 3.

DARGAVEL *v.* GRAY.

Process—Reclaiming Note. Reclaiming note refused in respect of no appearance.

When the case was called,

KERR, for defender and reclaimer, stated that his client had become notour bankrupt, and had absconded, and craved the Court to sist process till a trustee should be appointed on his estate.

R. V. CAMPBELL, for respondent, submitted that the reclaiming note should be refused, as there was no appearance in support of it, the counsel and agent on the other side no longer representing any one.

The Court, in respect of no appearance, refused the reclaiming note.

Agents for Defender—Philip & Laing, S.S.C.

Agent ror Respondents—R. Pasley Stevenson, S.S.C.

Saturday, March 4.

FILSHIE *v.* LANG AND OTHERS.

Sequestration—Meeting of Creditors—Removal of Trustee—Title to Vote—Bankruptcy (Scotland) Act 1856, § 64. At a meeting of creditors on a sequestrated estate, a motion for removal of the trustee was brought forward, and objections to the votes of several creditors were taken. *Held*, with regard to the objection—(1) That the son and heir-at-law of the bankrupt, who was proprietor of heritable property, had a legitimate interest to come forward and offer payment of the debts, and that a creditor refusing such offer of payment of the only debt on which he could make a valid claim, because he considered he had others claims for which he neither had been nor could be ranked, was no longer entitled to vote. (2) That § 64 of the Bankruptcy Act was to be strictly interpreted, and applied only to voting in the election of the trustee, and did not apply to voting as to the removal of the trustee, or as to other business.

This was an appeal to the Lord Ordinary on the Bills, in the sequestration of the deceased George Lang, brought under sect. 169 of the Bankruptcy Act. The matter at issue was the removal of the present trustee in the sequestration, Mr James Wink. At a meeting of creditors held on 15th June 1870, there voted for the removal of the trustee James Filshie, John Cameron, and John Hall. Against the removal there voted Robert Lang and James Wink. Each of these votes was objected to severally by the opposite party. The subject of the present appeal was these different objections.

James Filshie claimed in right of three bills;