is very different from that of *Mackenzie*, where the decree sought to be reduced was pronounced in the Court of Session, and where there had occurred a most material change of circumstances between the date of the decree by default complained of and the action of reduction. The interlocutors or decrees complained of by the pursuer were pronounced in the Sheriff-court, and have been extracted, so that reduction is a competent mode of reviewing them. There has been no change of circumstances since the date of these interlocutors or decrees, and the object of the reduction is to set aside these interlocutors or decrees, on the ground that they are erroneous and contrary to law, so as to enable the pursuer, on the ground of fraud, to challenge a pretended settlement of a trading adventure between him and the defender, and to obtain a true count and reckoning of the profits of the joint adventure.

"As the pursuer has obtained a discharge in his sequestration, the Lord Ordinary considers that he is not bound to find caution for expenses."

The defender reclaimed.

TRAYNER for him.

BUNTINE in answer.

Their Lordships were of opinion that the interlocutor of the Sheriff-Substitute was correct in law, and also that it was not *res judicata* of the present action; and accordingly they dismissed the action of reduction as unnecessary. They considered that in the circumstances' the Lord Ordinary had taken the proper course in calling a meeting of the creditors of the estate—and they sustained that part of his interlocutor. Their Lordships held that a bankrupt who had not been re-invested in his estate had no title to pursue claims falling under the sequestration until he had obtained a retrocession from his creditors; but that in the present case, from the time which had elapsed (nineteen years), the creditors might be presumed to have abandoned the claim.

Agent for Pursuer—James Barclay, S.S.C.

Agent for Defender—W. R. Skinner, S.S.C.

Tuesday, June 6.

EVANS *v.* CRAIG.

Trust, Declarator of—Proof—Writ or Oath—Delivery. A having disponed of his whole property to B, his nephew, and C and D, his nieces, including a bond and disposition in security over certain house property, the house property was afterwards sold in virtue of the powers contained in the bond, and purchased by B. B afterwards granted duplicate holograph documents to C and D in the following terms:—"This is to certify that I do hereby renounce all claim upon that property . . . which formerly belonged to my uncle, . . . and which was bought in my name." He, however, continued in possession of the property. *Held*, in an action of declarator of trust at the instance of C after A's death, that said writ was not sufficient to instruct a trust over said property in the person of B for the benefit of A.

By a disposition and settlement executed in 1835, the late David Miller conveyed to his nephew, Mr Alexander Craig, and to his two nieces, Mrs Patrick and Mrs Evans, equally between them, and the survivor of them, his whole estate, heritable and moveable, and in particular a sum of £340 secured over certain house property in the New Wynd of Hamilton, by bond and disposition in security; and for the more sure payment of this sum to the testator's said nephew and nieces, the settlement contained a conveyance of the subjects themselves over which it was secured. In 1837 Miller, in virtue of the powers contained in the bond, exposed the subjects to sale, and they were bought at the price of £180 by his nephew Craig, who obtained a disposition from Miller, on which he was infeft. In 1839 Craig granted to Mrs Patrick and Mrs Evans documents in these terms:—"*Hamilton, March* 12, 1839.—This is to certify that I do hereby renounce all claim upon that property in New Wynd of Hamilton, which formerly belonged to my uncle, David Miller, and which was bought in my name upon May 5, 1837. (Signed) ALEX. CRAIG." Thereafter, on 24th December 1839, Miller executed a codicil to his settlement, which he so far altered as to give his niece, Mrs Patrick, a liferent of his whole estate, but on the expiry of her liferent the fee was to go to Mrs Patrick, Mr Craig, and Mrs Evans, and the survivors of them equally.

In 1842 Mr Miller died, having remained in possession of the subjects in the New Wynd of Hamilton down to his death, when Mrs Patrick took possession, and continued to uplift the rents until she died in 1854. At that time Mrs Evans was in America, but she returned to this country in 1859. Mr Craig, after Mrs Patrick's death, took possession, and drew the rents of the New Wynd property until his death in 1869. Mrs Evans then raised the present action against Mr Craig's representatives, to have it declared that the disposition to him by Miller in 1837 was a conveyance in trust only, and that, under Miller's settlement she (Mrs Evans) was entitled to one-half of the subjects and the rents thereof from Mrs Patrick's death in 1854.

The Lord Ordinary (JERVISWOODE) having allowed a proof at large, thereafter pronounced this interlocutor:—"*Edinburgh, 28th March* 1871.—The Lord Ordinary having heard counsel, and made avizandum, and considered the debate, with the proof, productions, and whole process—Finds that the writing, No. 6 of process, and which is set forth in article 3 of the condescendence for the pursuer, is holograph of the deceased Alexander Craig, and that the same has relation to the heritable subjects to which the conclusions of the summons refer; finds that the true intent and meaning of the said writing is, that the granter thereof thereby renounced all claim upon the property of the said subjects, to the same extent and effect as if he had purchased the same for the direct behoof of his uncle, David Miller, named in the said writing; and finds as a consequence that the succession to the said subjects is regulated by the disposition and settlement executed by the said David Miller on 29th June 1835, and codicil thereto, dated 24th December 1839, both of which are set forth on the record; therefore sustains the pleas in law stated on the pursuer's behalf, and finds, declares, decerns, and ordains in terms of the conclusions of the summons; but as respects the conclusions for accounting, finds that the defenders are not liable to account for any sum or sums of interest under the same prior to the date of citation in the present action, and supersedes in the meantime consideration of the alternative conclusion in the event of the failure of the defenders to produce an account

of intromissions; and further, reserves *in hoc statu* the question of expenses.

"*Note.*—Questions of considerable difficulty have arisen here, as the Lord Ordinary anticipated as probable when he allowed proof under the terms of the interlocutor of 1st February last; but although the Lord Ordinary is still conscious of the delicacy of the matter in point of law, he has come with some confidence to the conclusion that the judgment now pronounced is in accordance with the true intent and purpose of the deceased Mr Craig in making the written renunciation set forth in the third head of the condescendence."

The defenders reclaimed.

WATSON and GUTHRIE, for them, contended that the proof allowed by the Lord Ordinary was incompetent, except to the extent of proving the authenticity of the document founded on by the pursuer. A declaration of trust could only be proved by the trustee's writ or oath; and although the document in question was in Mr Craig's handwriting, it did not amount to an acknowledgment that the subjects were held by him in trust either for David Miller or anyone else.

SOLICITOR-GENERAL (CLARK) and RUTHERFORD, for the pursuer, maintained that the granting of the documents to Mrs Patrick and herself could only be explained consistently with the existence of a trust in Mr Craig for behoof of Miller during his life, and on his death for their behoof as beneficiaries under his settlement. The reason of the title being taken in Craig's name was that Miller as bondholder could not lawfully purchase the property after having exposed it to sale in virtue of the powers contained in the bond, but it was not proved that Craig paid the price alleged. Cases referred to—*Duncan* v. *White*, M. 12,761; *Robson* v. *Bywater*, 19 March 1870, 8 Macph. 757; *Taylor* v. *Watson*, 8 D. 400; *Macfarlane* v. *Fisher*, 15 S. 978, 23 May 1837.

The Court unanimously recalled the Lord Ordinary's interlocutor, and dismissed the action.

Their Lordships were of opinion that as this was an action of declarator of trust, the conclusions could only be proved by the writ or oath of the trustee. The writ here produced, though sufficient to meet the requirements of the statute, did not sufficiently instruct a trust for behoof of Miller. Lord Benholme was of opinion that a writ of declarator of trust must be delivered by the trustee to the person in whose favour it was intended to operate. In the present case the document had not been delivered to Miller, but to his two nieces.

Agents for Pursuer—Hill, Reid, & Drummond, W.S.

Agents for Defenders—M'Ewen & Carment, S.S.C.

Tuesday, June 6.

DUFFY *v.* MUNGLE.

Landlord and Tenant—Sub-tenant—Injury—Damages. A having purchased a house and adjacent ground, proceeded to erect an adjoining house, and made use of the gable of the first house for this purpose, to the injury of a sub-tenant, who occupied it. In an action at the instance of the sub-tenant, plea *repelled* that the landlord had bargained with the principal tenant for the injury done, and that it was *jus tertii* of the sub-tenant to object, although he might have an action against the principal tenant who had granted him his sub-lease; and action sustained and decree for damages granted.

This was an action brought by Mrs Duffy, draper and general merchant, Mid-Calder, against Alexander Mungle, farmer, Muirhouse Mains, concluding for damages in respect of injury sustained by the pursuer through certain operations of the defender upon the house and shop occupied by the pursuer, and of which the defender was the landlord.

The circumstances of the case sufficiently appear from the following interlocutor and note of the Lord Ordinary (ORMIDALE):—

"*Edinburgh, 20th March* 1871.—The Lord Ordinary having heard counsel for the parties in the case, and considered the argument and proceedings, including the proof,—Finds, as matter of fact, that the defender, in or about the months of October and November 1870, wrongously executed certain operations on the west gable of the house in West Calder then in the lawful possession and occupation of the pursuer, as sub-tenant thereof, to her loss, injury and damage: Finds therefore, in point of law, that the defender is liable in damages to the pursuer; assesses said damages at the sum of £40; and decerns therefor against the defender: Finds the pursuer entitled to expenses; allows her to lodge an account thereof, and remits it, when lodged, to the Auditor to tax and report.

"*Note.*—Although the proof in this case is somewhat voluminous, the circumstances necessary now to be noticed may be shortly stated.

"The defender, in the course of last year, purchased the house in question, which was then in the possession and occupation of the pursuer, as sub-tenant thereof under the principal tenant, Mr Hunter. Her right as sub-tenant extended to Whitsunday next 1871. The house consisted of two apartments, one to the front and one to the back. The front apartment was occupied by the pursuer as a shop, and she kept in it her stock of goods, consisting of clothes of various kinds and ironmongery. The pursuer's back apartment was used by the pursuer and her family as their dwelling place, and it is alluded to in the proof as the kitchen.

"The defender also purchased some ground adjoining the pursuer's house, and on that ground he took measures for building another house, a storey higher than the pursuer's; and he proposed to avail himself of the existing west gable of the pursuer's house by making it answer as one of the ends or gables of the new house. He accordingly obtained from Mr Hunter, the principal tenant, the missive No. 7 of process, whereby that individual agreed, for the consideration therein stated, to the defender 'building upon the wester gable' of the pursuer's house. But in this missive no mention is made of any intention on the part of the defender to break into the existing gable of the pursuer's house, or otherwise to interfere with it, further than to build upon it. Nor did Mr Hunter, either by the missive or otherwise, undertake anything for the pursuer. It does not appear, indeed, that Mr Hunter had any right to authorise operations injurious to the pursuer, or inconsistent with the right of possession vested in her as sub-tenant; and he did not do so. The defender was, for anything disclosed in the proof, left to make his own terms with the pursuer.