of the pursuer who had not been examined before the Sheriff-Substitute.

Without expressing any opinion on the credibility of this witness's testimony, if the adducing her as a witness had been sustained, I have no alternative but to leave her testimony out of consideration.

So viewing the case, I think that we should adhere to the decree of absolvitor pronounced by the Sheriff-Substitute.

Lord Mure concurred.

The Court pronounced the following interlocutor:—

"Recall the interlocutor of the Sheriff of 8th April 1875; refuse the prayer of the petition for the pursuers, No. 5 of process, and appoint the evidence of the witness Elizabeth Welsh to be withdrawn from process; further recall the Sheriff's interlocutor of 15th May 1875; find it not proved that the defender (appellant) is the father of the child mentioned in the summons; therefore assoilzie the defender, and decern; find the pursuers liable in expenses, both in the inferior Court and this Court; allow accounts thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for the Pursuer—J. C. Smith. Agents M'Caul & Armstrong, S.S.C.

Counsel for the Defender—Rhind. Agent—Thos. Lawson, S.S.C.

Friday, October 29.

FIRST DIVISION.

[Lord Shand.

SPENS *v.* MONYPENNY'S TRUSTEES.

Trust—Succession—Vesting.

A testator directed his trustees to invest the residue of his estate in the purchase of lands, leaving the time of purchase to their absolute discretion. The fund being wholly or within £300 invested, a disposition was to be executed in favour of A in liferent, and B and the heirs whomsoever of his body in fee; whom failing, in favour of C and her heirs whomsoever; whom failing, to D and her heirs whomsoever; whom failing, his own nearest heirs and assignees. The trustees had partially invested as directed, but there still remained about £20,000, or one-third of the whole fund, in their hands. A having died, B raised a declarator that the trustees were bound to make payment of this balance to him as absolute fiar, and further concluded for payment. *Held* that, the fee having vested in B, he was entitled to decree of declarator and payment as concluded for.

Observations on the case of *Gordon* v. *Gordon's Trs.*, March 2, 1866, 4 Macph. 501.

By trust-disposition and settlement, dated 11th February 1869, and, with various codicils thereto, recorded 19th May 1873, Mrs Hannah Spens or Monypenny, widow of the deceased William Tankerville Monypenny, Esq. of Pitmilly, disponed to John Alexander Spens, Lawrence Dalgleish, and Nathanael James Spens, and to the deceased Nathanael Spens of Craigsanquhar, her brother, as trustees, her whole means and estate, heritable and moveable, under exception of certain heritable estate disponed by separate deeds. The trustees were directed to pay various legacies and annuities; and after other purposes were set forth, the deed further narrated—"In the sixth place, in order that the said trustees or trustee may, and I hereby direct them or him, as soon after my death as may be convenient, to make up a state exhibiting the amount of the residue and remainder of the means and estate hereby conveyed after answering the foregoing purposes of this trust. In the seventh place, in order that the said trustees or trustee may, and I hereby direct them or him, so soon after my death as may be convenient, and as they may think proper, to invest the said whole residue and remainder of my means and estate in the purchase of lands in the county of Fife, and adjacent to or near the estate of Craigsanquhar, belonging to the said Nathanael Spens, or the said portions of the estate of Ardit, if in their opinion a suitable purchase can be effected in the said locality, or if not, then in some other part of the said county, or if not, then in some other county in Scotland: Declaring that the said purchase may be made by my trustees of such lands at such prices, and from time to time as they may consider to be most eligible, according to the state of the trust funds and the opportunities which may occur of making suitable and convenient purchases, and that they shall be the sole and exclusive judges of the lands which, and the period when these should be purchased, free from the control of any of the heirs who may be interested therein. In the eighth place, in order that the said trustees or trustee may, and I hereby direct them or him, on the said residue or remainder of my means and estate, or sums, being wholly or within three hundred pounds thereof, invested in the purchase of lands as aforesaid, to execute a valid disposition thereof in favour of the said Nathanael Spens, my brother, in liferent for his liferent use only, and to the said Nathanael James Spens, and the heirs whomsoever of his body in fee, whom failing, the said Miss Jessie Hannah Elizabeth Spens, and the heirs whomsoever of her body, whom failing, the said Miss Mary Margaret Roberta Spens, and the heirs whomsoever of her body, the eldest heir-female excluding heirs-portioners, and succeeding always without division throughout the whole course of succession; whom failing, to my own nearest heirs and assignees whomsoever, under the real burden of the said annuity of £100 to William Thomas Thornton, Esq., if he shall be then alive, and under the real burden of an annuity of £500 to the said Mrs Janet or Jessie Law Spens, in the event of her being then alive. In the ninth place, in order that the said trustees or trustee may, and I hereby direct them or him to pay over the annual interest and produce of the said residue and remainder of my means and estate, previous to its being invested in the purchase of lands as aforesaid, and the rents of the said lands, after they are so purchased, which shall accrue or become payable between the first term of Whitsunday or Martinmas which shall happen six months after my death, and the date of entry under the

said disposition to be granted by them or him as aforesaid, to the heir who would have been entitled to the rents of the lands to be purchased as aforesaid, if they had been so purchased, and the disposition thereto been executed, that is, to the said Nathanael Spens during his life, and after his death, to the said Nathanael James Spens, and the heirs whatsoever of his body, whom failing as aforesaid."

In carrying out the purposes of the trust, the trustees, after paying the legacies, purchased the lands of Cruivie for £28,500, and of Cluplahills for £11,000, intending to have them conveyed in terms of the trust-deed, and under burden of the annuity of £500. After this investment, there still remained a sum of £20,000 in the hands of the trustees.

The above-named Nathanael Spens, the truster's brother, died on 22d November 1869; and his son Nathanael James Spens, as institute in the disposition of the lands which the trustees were directed to purchase, raised an action of declarator, and claimed payment from them of the balance of the residue of the estate. The trustees defended the action, the summons in which concluded as follows:—"That the defenders are bound to make payment to the pursuer upon his simple receipt and for his own absolute use, of the whole balance in their hands of the residue of the means and estate of the said Mrs Hannah Spens or Monypenny, the truster, not invested in land in terms of the 7th purpose of the said trust-disposition, and that the pursuer is entitled to the said balance as his own absolute property; and the said defenders, trustees foresaid, ought and should be decerned and ordained to make payment to the pursuer of the sum of £20,000, or such other sum as may be found to be the amount of the said balance, with interest," &c.

A minute was put in process by the parties, whereby the pursuer offered to secure the surviving annuitants under the trust in their provisions, and the defenders declared their satisfaction with the security proposed.

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 6th April* 1875.—Having considered the cause, finds that in the existing position of the trust-estate of the late Mrs Hannah Spens or Monypenny, widow of the deceased William Tankerville Monypenny of Pitmilly, in the course of administration thereof under the trust-disposition and settlement, dated 11th February 1859, and relative codicils, the pursuer is not entitled to the decree of declarator and payment in reference to the sum of £20,000, or such sum as may be found to be the residue of the trust-estate concluded for in the summons; and therefore assoilzies the defenders from the conclusions of the summons, and decerns: Finds the defenders entitled to expenses; allows an account thereof to be given in, and remits the same when lodged to the Auditor to tax and to report.

"*Note.*—The pursuer claims to have it declared that the defenders, the trustees of the late Mrs Spens or Monypenny, are bound to make payment to him, on his simple receipt, and for his own use, of the residue of her trust-estate, estimated as amounting to £20,000, and to have decree of payment in his favour accordingly. The claim is resisted by the defenders, Mrs Monypenny's trustees, and Miss Jessie Hannah Elizabeth Spens and Miss Mary Margaret Roberta Spens, and I am of opinion that the pursuer is not entitled to succeed in his demand. The question does not appear to me to be attended with any real difficulty. I think the pursuer's claim is founded on a mistaken view as to the nature and present extent of his rights under the trust-disposition and settlement of his aunt, the late Mrs Monypenny.

"Mrs Monypenny died in May 1875, leaving personal estate to the extent of upwards of £20,000. By her trust-disposition and relative codicils executed in February 1869, and subsequently, after providing for payment of her debts and certain legacies and annuities, she directed her trustees, as soon after her death as might be convenient, to make up a state exhibiting the amount of the residue of her means and estate; and by the seventh purpose of her trust-deed she directed her trustees, so soon after her death as might be convenient, and as they might think proper, to invest the residue in the purchase of lands in the county of Fife, and adjoining to or near the estate of Craigsanquhar, belonging to her brother, Nathaniel Spens, or to portions of the estate of Ardit therein mentioned, if in their opinion a suitable purchase could be effected in that locality, or if not, then in some other part of the said county, or if not, then in some other county in Scotland; adding a declaration that the purchase of land should be made by the trustees from time to time as they might consider most eligible, according to the state of the trust-funds and the opportunities which might occur of making suitable and convenient purchases, and that the trustees should be the sole and exclusive judges of the lands which, and the period when, these should be purchased, free from the control of any of the heirs who might be interested therein. The eighth purpose of the trust directs the trustees, on the residue being thus entirely or within £300 invested in the purchase of lands, to execute a disposition thereof in favour of Nathaniel Spens, her brother, in liferent, for his liferent use only, and to the pursuer and the heirs whomsoever of his body, whom failing, Miss Jessie Hannah Elizabeth Spens and the heirs whomsoever of her body, whom failing, Miss Mary Margaret Roberta Spens and the heirs whomsoever of her body, the eldest heir-female excluding heirs-portioners and succeeding always without division, throughout the whole course of succession; whom failing, to her own nearest heirs and assignees whomsoever, under the real burden of the annuities therein mentioned. By the ninth purpose of the deed Mrs Monypenny directed her trustees to pay over the annual interest and produce of the residue of her estate, previous to its being invested in the purchase of lands, and the rents of lands after they were purchased, which should become payable between the first term of Whitsunday and Martinmas which should happen six months after her death, and the date of entry under the disposition to be granted by them 'to the heir who would have been entitled to the rents of the lands to be purchased as aforesaid, if they had been so purchased, and the disposition thereto had been executed, that is, to the said Nathaniel Spens during his life, and after his death to the said Nathaniel James Spens, and the heirs whatsoever of his body, whom failing, as aforesaid.'

"The truster's direction by this deed there-

fore was, that the residue of her estate should be invested in land when suitable opportunities occurred, and that after the whole, or the whole except £300, had been so invested, the trustees should execute a conveyance of the estate, with a destination which she herself prescribed in favour of her brother in liferent, and to her nephew and the heirs whatsoever of his body in fee; whom failing, in favour of her nieces in the order above mentioned, and the heirs whomsoever of their bodies respectively, excluding heirs-portioners. It was not the intention of the truster that any portion of the residue should be paid away to any of the beneficiaries, as the pursuer now asks should be done.

"Since Mrs Monypenny's death, about two years ago, the trustees, after providing for the other purposes of the trust, have out of the residue purchased certain lands in the county of Fife, at prices amounting to about £40,000, and the balance of the residue, as appears from the State No. 8 of Process, amounts to about £20,000, and, so far as the annuitants are concerned, no obstacle is raised to prevent the pursuer obtaining decree, for the lands purchased will amply secure them. The pursuer, in claiming payment of the residue not yet applied in the purchase of lands on his own receipt, explains that his purpose is to erect a mansion-house on the lands already purchased, but his right to the money must be determined on the footing that he is entitled to apply the money entirely to his own use, and on that footing it is claimed.

"The claim is made on the assumption that the pursuer has the sole interest in the residue of the trust-estate. He pleads that the truster's directions being that the residue of her estate 'should be invested in the purchase of lands, to be conveyed with a simple destination to the pursuer as institute, and the substitutes specified, the pursuer, as absolute fiar of the residue, is entitled to decree in terms of the conclusions of the summons.' If the pursuer be not the absolute fiar, he is not entitled to succeed in the action.

"I am of opinion that the pursuer is not absolute fiar, and is not in the position of having the sole interest in the residue of the estate. His immediate and present interest and right, in terms of the ninth purpose of the trust-deed, is, so long as he survives, to receive the interest of the residue and the rents of such lands as have been purchased out of the residue, but he has no present right to the annual proceeds of the residue beyond his own life, or to the lands already purchased or to be purchased. His right to these lands, as it appears to me, will arise only in the event of his surviving until the trustees shall have fulfilled the directions of the truster by the purchase of lands exhausting the residue, and by granting a conveyance in terms of the destination in the truster's deed of settlement. If a right of fee in the lands be now vested in the pursuer, it follows that he could now dispose of that right with the effect of defeating the directions of the truster and the rights of the other parties mentioned in the destination prescribed by the truster. This, I think, having regard to the plain terms of the deed, which provide otherwise, he cannot do. It is not in his power, or in that of any one of the other heirs mentioned in the destination, to accelerate the period when the conveyance of the lands shall be executed, for the trustees are declared to have the sole discretion as to the time when the lands shall be purchased, and, so long at least as they act in *bona fide*, no one of the persons interested under the destination has any right to interfere with them. A consideration of the various provisions of the trust-deed shows that the truster contemplated that a considerable time might elapse before the trustees could satisfactorily carry out her directions to purchase the lands, for the deed gives the trustees power to grant leases for nineteen years, to invest the residue in heritable security, as well as Government stock and debentures, a power to resign and assume new trustees, and a provision for an annual audit of accounts. I see no good reason for holding that the pursuer, as the first of the persons in whose favour a conveyance of the lands is to be executed when the trust has been fulfilled by the exhaustion of the residue in the purchase of lands, has right at his own will to accelerate the date of granting the conveyance, or to dispense with it altogether, and demand the residue of the estate in money. There are other persons having an interest who are entitled to say this shall not be done.

"The persons named in the destination after the pursuer, including his own descendants, are expressly favoured by the truster under her trust-deed. It is true that there is no direction to settle the estates by a deed containing the fetters of a strict entail, and consequently, after the pursuer obtains a conveyance, if he should survive the time when it comes to be granted, he will then be in a position by a new deed to evacuate the destination, and to dispose of the lands as he thinks fit. But in the meantime the parties interested under the destination after the pursuer, including his own possible descendants, are conditional institutes as well as substitutes; and if the pursuer should predecease the granting of the conveyance, the estate must be conveyed to a descendant of the pursuer in the event of his leaving lawful issue, and failing such descendants, then to the pursuer's sisters respectively, whom failing, to their respective issue, as the destination provides. For these reasons I am of opinion that the pursuer has not that sole interest in the fee of the residue of the trust-estate, or in the lands purchased or to be purchased with that residue, which alone could give him right to the decree he asks. He has a present limited interest in the annual return from the residue, but his right to the residue itself appears to me to depend on his survivance of the date when the conveyance, in the ordinary execution of the trust, shall come to be executed.

"Even if the whole residue had been exhausted in the purchase of lands, I am not prepared to say that the pursuer would be entitled to a conveyance to himself and his heirs and assignees in fee-simple. It appears to me that the heirs named after the pursuer in the destination to be inserted in the conveyance have an interest, and are entitled to require the trustees to insert a destination in their favour in the deed, leaving it to the pursuer, if he think fit, after the lands have been conveyed in that way, to execute a deed defeating that destination; but it is unnecessary, and would be premature, to decide that question now.

"The only authority to which the pursuer's counsel referred in support of his claim was the Cluny case, *Gordon*, 4 Mac. 501. That case appears to me to differ entirely in all essential respects from the present. Even there a considerable minority of the Judges were against granting the decree bringing the trust to an end and declaring that Mr Gordon had right to the residue on his own receipt, but the majority of the Court proceeded on the ground that as there was no direction to insert a destination in the conveyance of the lands to be purchased, which would have given rights to a particular line of heirs, or a series of persons named, in succession to Mr Gordon, and as it was clear that he had the present and sole right of fee in the residue of the trust estate, he was entitled to dispense with the purchase of lands and receive the residue in money. In this respect, which was vital to the decision, the case of *Gordon* appears to me to differ entirely, and the difference makes all the difference in the result."

The pursuer reclaimed, and argued—(1) The disposition when executed in terms of the trust deed would give the absolute fee to him as institute, and no indefeasible right to the substitutes named. (2) Heirs whatsoever of the body were substitutes, and their rights were defeasible at institute's instance. (3) If so, the rule laid down in Gordon of Cluny (4 Macph. 501) applied.

The defenders argued—(1) The fee was not intended to vest *a morte testatoris*, as shown by general structure of the deed, and by the fact that the substitutes were *personæ predilectæ*. (2) The destination was a simple entail. (3) Even if the fee had vested, the explicit directions of a testator were not to be disregarded. (4) This differed from Gordon's case, where no one could have served heir of provision.

Authorities — *Dickson* v. *Porteous*, Nov. 12, 1852, 15 D. 1; *Thorburn* v. *Thorburn*, Feb. 16, 1836, 14 S. 485; *Wilkie* v. *Wilkie*, Jan. 27, 1837, 15 S. 430; *Howat's Trustees* v. *Howat*, Dec. 17, 1869, 8 Macph. 337; Jarman on Wills I. 569; *Grieve* v. *Bethune*, June 9, 1830, 8 S. 896; *Pretty* v. *Newbigging*, March 2, 1854, 16 D. 667 (H. of L. 2 Macq. 276); *Robertson* v. *Davidson*, Nov. 24, 1846, 9 D. 152; *Kinnear* v. *Kinnear's Trs.*, June 4, 1875, 12 S, L. R., 463; *Gordon* v. *Gordon's Trs.*, March 2, 1866, 4 Macph. 501.

At advising—

Lord Ardmillan—This case really turns upon the question of vesting. If there had been no trust, I do not think that it can be doubted that the conveyance to "Nathaniel Spens, my brother, in liferent for his liferent use only, and to Nathaniel James Spens, and the heirs whomsoever of his body in fee, whom failing the said Miss Jessie Hannah Elizabeth Spens, and the heirs whomsoever of her body," &c., would have conferred upon Nathaniel James Spens, the pursuer of this action, a right of fee, and that such right of fee would have been now vested in him. There is a trust of which I think the main purpose is to protect the liferent interest of Nathaniel Spens, the brother of the truster, and to secure the administration of the estate, so as to benefit Nathaniel Spens in liferent, and Nathaniel James Spens in fee. It appears from the trust deed that the truster had a great regard for Nathaniel James Spens; and this is yet more abundantly proved by other deeds before us, by which she conveyed to him other landed estates. There is nothing to limit or qualify the right of fee conferred upon the pursuer, and there is no indication of the intention of the truster to limit that right. His father's right was a right of liferent only, burdening but not destroying or postponing the right of fee conferred on the pursuer. The existence of a liferent is not unfavourable to the vesting of the fee. The fee vests under burden of the liferent. No entail was directed or contemplated. If a deed were executed conveying the lands purchased by the trust funds in the exact terms directed, that deed would confer a title to the lands in fee simple. He could dispose of these lands at once. No one could challenge his act, or dispute his power. I need not refer to authorities to support this proposition, that the right vested in the pursuer. It is abundantly clear—more clear than in similar cases of vesting which have been mentioned.

But the next question which arises is, Can the pursuer, having a vested right to the lands already purchased, and to the trust-fund remaining as yet uninvested, now obtain payment of the balance of the fund, or must he await the prolonged administration of the trust, involving the selecting and the purchasing and the ultimate conveyance of the land? On this point I am of opinion that if the trustees are—as I think they are—bound without undue delay to purchase land and convey it to the pursuer, so as to confer on him a fee-simple title with full and immediate power of disposal, and if there is no person whose interests adverse to the pursuer's right the trustees are bound to protect, then they cannot withhold the trust-funds from the pursuer. On this part of the case the decision in the case of *Gordon of Cluny* is applicable and important, and I retain the opinion which I expressed in that case. Looking to the older authorities, I think that the decisions in *Routledge* v. *Carruthers*, in *Rainsford* v. *Martin*, 1852, and *Pretty* v. *Newbigging*, 1854, all well known authorities, confirm the view which I have now expressed.

I do not doubt that the trustees have acted with prudent caution in refusing payment without judicial determination. But the words of the deed conferring a right of fee,—the manifest preference and favour shown by the truster to the pursuer in this deed and in her other conveyances, the selection of the locality for the purchase of land, and the effect of a conveyance in the words directed by the deed, afford, when taken in combination, clear grounds, to my mind, for holding the pursuer's right to be vested; and if vested, and vested in the manner and to the extent contemplated and directed by the trust-deed, I can perceive no good reason for refusing his demand for transference of the remaining trust-funds.

Lord Mure—I concur in the opinion which has already been expressed with regard to the important question raised in this case. In the first place, I am disposed to think that the fee of this estate has vested in the pursuer of the action. That question alone is perhaps hardly sufficient to solve the point at issue, because I can quite conceive cases where the directions of the

truster may be so worded as that, though the fee has vested, the money which it is directed shall be expended on the purchase of land cannot legally be paid over to the beneficiary under the destination until a time specified by the truster has arrived, or a condition attached has been purified. But this restraint would require to be indicated by some special and peculiar provision in the trust-deed. The whole Court in *Gordon's* case decided that though the intention shown by the truster was that the trustees should hold the fund to be invested in the purchase of land until the investment had been made, yet if the terms in which the directions were given were such as to put it in the power of the beneficiary to take the fund antecedently to the purchase, then the law would permit him to do so.

The question raised here is under the eighth power of the trust-deed, and I apprehend that in this case we find almost all the elements which in *Gordon's* case induced the Court to disregard the indications of intention that the bequest should not be made over until the purchase of land was effected. Under this power the testator wills a gift of the entire residue to the pursuer, and the primary object seems to have been to favour him in preference to the other beneficiaries under the deed. He has a *jus crediti* vested in him to demand a conveyance of heritage in the particular terms of that eighth purpose, and the circumstance that the trustees have a discretion, and that there is an indication of an intention that there is to be no conveyance until the whole fund is invested, is not a condition that is to interrupt the vesting. The time must necessarily come when the fund must be made over to the pursuer. Against this conclusion an argument was offered that this is a continuing trust, with a provision that the trustees are not to be interfered with, but I think it is impossible to read *Gordon's* case without seeing that there was a similar direction there. It is only after the whole money has been invested that the trustees are authorised to denude. All the clauses which seem to imply a continuing trust—for example, those with regard to the management of the estate—may all be accounted for by the fact of the age of the truster's brother, who was to liferent the property.

That being the case, the only question is, whether the intention is of such a character as to make the defence to this action well founded. As I read the opinions in *Gordon*, and especially that of Lord Barcaple, which was concurred in by Lords Cowan and Benholme in the Second Division, in circumstances where it is open to a beneficiary to dispose next day of the estate bequeathed to him, he is entitled to demand an immediate payment of the fund which the testator directs is to be appropriated to the purchase of land. A minority of the Court held adverse views, and in the opinions of Lords Neaves and Kinloch are found the fullest expositions of the grounds on which the truster's apparent intentions were sought to be upheld. I think the interlocutor of the Lord Ordinary should be recalled.

Lord Deas concurred.

Lord President—As I was not present at the discussion of this case, I offer no opinion upon it.

The Court recalled the interlocutor of the Lord Ordinary, and gave decree in terms of the conclusions of the summons.

Counsel for the Pursuer — Solicitor-General (Watson) — Keir. Agents — Dalgeish & Bell, W.S.

Counsel for the Defenders — Lee — Moody Stuart. Agents—Wilson & Dunlop, W.S.

Saturday, October 30.

SECOND DIVISION.

[Sheriff of Edinburgh.

WRIGHT *v.* WIGHTMAN.

Landlord and Tenant—Sheriff—Jurisdiction—Lease.

The Sheriff in a petition at the instance of a landlord ordained a tenant during the currency of a lease of an urban subject to stock and plenish her premises with furniture sufficient in value to afford security for the current rent, otherwise to find caution for payment, and upon failure to implement this order he granted a further warrant summarily to eject her—*Held* that as these proceedings were for the purpose of enforcing, and not of rescinding the lease, they were competent.

This was an appeal in a petition presented in the Sheriff-court of Edinburgh by Mr Charles William Wright against his tenant Mrs Helen Wightman. It appeared that the petitioner had, at the term of Whitsunday 1874 let to the respondent his house in No. 16 Greenside Place, Edinburgh, upon a lease of three years, and at an annual rent of £30. There was in addition payable yearly, along with the rent, a further sum of £2 for the use of certain fixtures and fittings. That at Whitsunday 1875 there was due to the petitioner by the respondent for rent and use of fixtures a sum amounting with interest to £23, 5s. 8d. The petitioner at that time obtained a warrant of sequestration, under which he sold the whole of the respondent's furniture. The proceeds of this sale reduced the debt due to him to £17, 3s. 3d. The petition further stated "that the respondent is still in possession of the said house, and at the present time there is not sufficient household effects and plenishing to pay the current rent, amounting to £32, exclusive of the balance of £17, 3s. 6d. still due to the petitioner."

The petitioner accordingly craved the Sheriff "to ordain the said respondent to plenish the said dwelling-house with furniture and other effects, so as to afford security sufficient in value equal to the sum of £32 sterling, and of the foresaid balance of £17, 3s. 3d., at the sight and to the satisfaction of a licenced appraiser to be named by your Lordship; and failing her doing so, or finding caution for said rent acted in your Lordship's Court, to grant warrant summarily to eject the respondent, her servants and dependants, goods, gear, furniture, and other effects, furth and from said dwelling-house and pertinents, and convey any furniture or other effects belonging to the respondent to a place of safe custody, there to remain subject to the peti-