LORD CURRIEHILL, in giving the judgment of the Court, remarked that the bankrupts (who had applied for sequestration on the 15th of August, after previous application for sequestration had been made by Messrs Jarvie as creditors) had no right to take any step which might endanger the rights which the creditors had already acquired. He did not think that, had the facts been fully known to the Lord Ordinary, he would have granted the bankrupts' petition, because matters were in that position that the estate had already been rendered litigious by the presentation of the original petition of the creditors. He only proposed that the recall of the interlocutor should be *hoc statu*, and he did not propose that the petition should be dismissed, seeing that it contained a most emphatic consent on the part of the bankrupts to the sequestration being awarded. The proper course was to conjoin the petitions, and to grant sequestration on a conjoint view of both.

The interlocutor of Lord Mure, who refused to recall the sequestration of 15th August, was therefore altered, with expenses since the date of the Lord Ordinary's interlocutor.

Wednesday, Nov. 22.

JACKSON *v.* SMELLIE.

Counsel for Suspender — Mr Fraser and Mr Orphoot. Agents — Messrs Jardine, Stodart, & Fraser, W.S.

Counsel for Petitioner and Respondent—Mr Shand and Mr W. A. Brown. Agent—Mr Alex. Morison, S.S.C.

This was a suspension and liberation presented by Arthur Jackson, Barnhill, in the parish of Blantyre, and at present a prisoner in the prison of Hamilton, under a warrant granted on the application of Elizabeth Smellie, High Blantyre. The ground of the application was that Jackson was the father of an illegitimate child of which Smellie was delivered in July 1862, and that he was *in meditatione fugæ* without paying the child's aliment. Lord Mure refused the note; and to-day, after a discussion on a reclaiming note, the Court adhered.

The LORD PRESIDENT, who delivered the judgment of the Court, said — There are two grounds on which it has been argued that the suspender should be liberated. In the first place, it is said that the original application did not contain a relevant statement that the suspender intended to leave Scotland for the purpose of evading payment of the respondent's claim against him. The object of his intending to leave is not expressly stated either in the application or in the applicant's oath of verity. It is now, however, settled in practice that it is not necessary to state this in express terms. I have no hesitation, therefore, in saying that this objection is not well founded. But, in the second place, it has been urged that, even assuming the relevancy of the application, the allegations made have not been sufficiently supported. In any view of this question it is as narrow as any case I have ever seen. The petitioner depones to the birth of the child in 1862, that Jackson left Blantyre shortly thereafter, that he has only recently returned, that she believes he intends immediately to proceed to sea, and that she has received that information from two persons, whom she names, one of whom, she says, told her that he had received his information from Jackson himself. Jackson, when examined, says he does not intend to leave Scotland, and that he never said so to anyone. A proof was thereupon allowed to both parties. The petitioner adduced the two persons on whose information she says she acted, Neither of them supports her statement. The first says he had not spoken to Jackson till the night before his examination, being a time subsequent to that alleged by the petitioner. He has some recollection of having been in the petitioner's house, but he was then in such a condition that he could not remember, and he does not remember anything about what he then said. It is difficult to deduce from his evidence whether he said anything or not, but certainly it does not prove that he told the petitioner what she says he told her. The other witness does not confirm the petitioner either. He says that Jackson told him that he had been away at the sea, but he said nothing about going back again. But although this is the state of the evidence, there are several matters clear enough. When the child was born in 1862, Jackson was alleged to be the father, and a demand was made on him for aliment. Soon afterwards he left that part of the country. This is admitted by Jackson himself. He says he went to Liverpool, and took employment in a steamer trading between Liverpool and America. After an absence of some years he reappears in Blantyre. He says he means to remain in Scotland. He gives no explanation as to his intended change in his mode of life. A proof was allowed to him as well as to the petitioner; and if it be the case that he had come back here *animo remanendi*, he could easily have proved that fact, and shown that he was not in Blantyre simply as a sailor visiting his friends. The question, then, is this—Do the whole facts impress one's mind with a belief that Jackson was here merely on a visit or *animo remanendi?* I don't think there is any presumption that he intended to change the mode of life which he had been leading for some years, and he has led no proof on the subject. As I have said, the case is a narrow one, and it has not been very thoroughly expiscated in proof; but on the whole we have come to the conclusion not to interfere with the judgments of the Sheriff-Substitute and of the Lord Ordinary.

SECOND DIVISION.

KIRK *v.* BROWNS.

Counsel for the Pursuer — The Lord Advocate and Mr W. A. Brown. Agents—Messrs Murray & Hunt, W.S.

Counsel for the Defenders—Mr Gordon and Mr Johnstone. Agent—Mr Galletly, S.S.C.

This is an action of declarator and removing at the instance of a landlord against certain parties who claim to be tenants of one of her farms. The question is one of pure fact. The main facts relied upon were these. In 1858 a lease was granted for ten years, with the proviso that the landlord should survive so long, to a party named and his heirs, with a clause excluding assignees and sub-tenants. Under this lease the tenant possessed for two years. He died in 1860; but previous to his death he made a trust-deed assigning the lease to his sisters, the defenders of the present action. Both the trust-deed and the lease were prepared by the same agent, who was the landlord's private agent. The defenders pleaded to the action of declarator that this assignation had been intimated to the landlord, and that she had consented to receive them as tenants in various ways, in express terms, by the receipt of rents and otherwise. The Lord Ordinary (Jerviswoode) held that the right in the lease was one personal to the landlord, which she might waive, and as matter of fact had done so. The Court to-day unanimously adhered. The Lord Justice-Clerk expressed a very strong opinion that the case should have been tried by a jury. After stating in a single sentence the question at issue, his Lordship said—We are all satisfied that this case should have been disposed of by a jury. But as the duty has been forced upon us of applying our minds to the evidence as jurymen, we shall avail ourselves of the privilege of jurymen and of the short method in which they deal with evidence, and simply say that we find for the defenders.