

rule was made on the 17th May, two days from the end of the period during which it was competent. Had it not been made, the verdict might have been applied upon the 19th, and from that day I think interest should run. I think, moreover, that this petition ought not to have been presented. There was really very little ground for apprehension on the part of the defender; but I am willing to give them credit so far, that they were desirous of making very sure that no other sufferers from the collision were going to make claims upon them. But they were not entitled to secure their own safety at the expense of another party. I am not, therefore, for allowing the presentation of that petition to stop the currency of interest upon the sum found to be due.

The other Judges concurred.

The Court accordingly applied the verdict, and decerned in favour of Mr Seligmann for the full amount of damages found by the jury.

Agents for Mr Seligmann—Webster & Will, S.S.C.

Agents for the Flensburg Steam Shipping Company—Mann & Duncan, S.S.C.

Tuesday, July 18.

DUFFY V. RITCHIE, MENZIES & CO.

*Cessio Bonorum—Interim Liberation.* *Cessio* and liberation refused, in respect of the vagueness and unsatisfactoriness of the debtor's statements.

The pursuer was incarcerated on 3d May, in default of payment of a bill for £20, £19 of which was still due. Having made a claim for alimony, he deponed he was possessed of no assets: but in a summons of *cessio*, raised on 13th June, he stated he had assets to the amount of £68, 10s. His liabilities, he alleged, amounted to £336, 18s, one debt being for £150 to his father-in-law, and one for £120 to his brother-in-law. No statement was made of how the debts were incurred, nor any proof given of their reality, and the only account he gave of his embarrassments was to the effect that he was a general dealer, and from his inexperience in business had got into difficulties. He also presented a petition for interim liberation, offering caution *de judicio sisti*. The incarcerating creditors objected to *cessio* or interim liberation being granted, and alleged their belief that he was in possession of further funds, and also of furniture.

When the petition was moved, the Court directed it to be heard along with the *cessio*.

MORRISON for the pursuer.

LEES in answer.

The Court *hoc statu* refused the *cessio*, and also to grant liberation. There was no information here on which *cessio* could be granted. Practically it amounted to this—the pursuer was in prison and wanted out. But before that could be granted there must be some information given of how he contracted debt, or what he lived on, and generally as to the circumstances. The only information given was very unsatisfactory.

Agent for Pursuer—J. Macqueen, S.S.C.

Agent for Defenders—W. K. Thwaites, S.S.C.

Tuesday, July 18.

## SECOND DIVISION.

DUKE OF BUCCLEUCH V. TOD'S TRUSTEES.

*Landlord and Tenant—Fences.* Subdivision fences were put up by a tenant without the sanction of the landlord. Held that, as these fences were not necessary for the cultivation of the farm, and had been intended only for the tenant's use, they were the property of the tenant, who was entitled to remove them at the expiry of his lease.

This appeal arose out of a petition at the instance of the Duke of Buccleuch against the trustees of the late Mr Tod, who had been tenant of the farm of Cleuchfoots, presented to the Sheriff of Dumfries, and prayed to have the trustees ordained to restore certain fences which they had caused to be removed after Mr Tod's death. The facts are fully set out in the following interlocutor of the Sheriff-Substitute (HOPE):—

“Finds that the petitioner is heritable proprietor of the farm of Cleuchfoots, mentioned in the petition: That the respondents are the trustees of the deceased Walter Tod, sometime tenant of the said farm: That the said Walter Tod entered into a nine years' occupation of said farm at Whitsunday 1857, in virtue of a lease between him and the petitioner: That the said lease contained *inter alia* the following clause—‘And the said tenant accepts the fences on the farm, whether dykes, ditches, or hedges (except the fences round the plantations) as in fencible condition, and binds himself to keep them in thorough repair, and to leave them in that condition at his removal;’ and also the following clause—‘And in case of the erection of new sub-division fences, the whole cost of constructing and repairing the same shall in every case be paid by the tenant, but no such sub-division fences shall be constructed until the lines of them are approved of by the proprietor or his chamberlain:’ That at the time when said lease was entered into there was no wire fences on the farm: That, in the years 1861 and 1862 the said Walter Tod erected at his own expense the wire fences, wooden paling, and folds: That there is no evidence to show that said fences were erected with the approval of the proprietor or his chamberlain, but that no objection was made thereto by either of them: That, at the expiry of said lease, a new lease of said farm was entered into between the parties, to endure during the life of the said Walter Tod, but not exceeding fifteen years from Whitsunday 1866: That said lease contained clauses as to fences exactly similar to those contained in the previous lease: That it contains no reference by name to wire fences or palings: That the said Walter Tod died on or about the 25th of June 1869: That the respondents, as his trustees, caused to be taken down the wire fences, &c.: Finds in law—(1) That on a sound construction of the lease first mentioned, the deceased Walter Tod would not have been entitled as outgoing tenant at the expiry of the same to remove from the farm the wire fences and wooden paling and folds mentioned in the petition: (2) That the second lease confers no power on the said Walter Tod to remove said fences, which were on the farm when it was entered into: (3) That, therefore, the respondents are in no better position than their author would have been as outgoing tenant