absence. The Act of Parliament 1 and 2 Geo. IV. cap. 38, sec. 33, makes this special provision in reference to such expenses—'In all cases in which decree is pronounced in absence of the defender or defenders, an account of expenses shall be lodged in process and taxed by the Auditor, and report thereon by the Auditor shall be a sufficient warrant and authority to the extractor to fill up the amount of expenses to be awarded against the defender or defenders in the extracted decree without the said report being brought under the consideration of the Lord Ordinary, unless by his own direction or that of the Auditor, or on the motion of any party interested.' But the extractor could not merely, upon the report of the Auditor, have inserted in the decree the amount of the business account here sued for. That report required to be presented to the Lord Ordinary and approval thereof moved.

"In the note of objections there is another item to which what has just been stated does not apply, in the following terms—'attending calling decree pronounced against defender with expenses, 6s. 8d.—5s. allowed.' The Auditor has here taxed off 1s. 8d.; he has apparently proceeded, in doing so, upon one rule in the table of fees authorised by the Act of Sederunt of 15th July 1876 to the following effect—'attendance, inquiring for, or obtaining decree in absence, 5s.' This is not the part of the section of the table of fees which the Lord Ordinary thinks applicable. The attendance was not merely to obtain decree in absence, but to obtain approval of the Auditor's report, and to give any explanation to the Lord Ordinary on that report which might be required; and therefore it is thought that the rule of the table of fees applicable to the case is attendance at calling in motion roll not exceeding half an hour, 6s. 8d. Therefore the objection to the Auditor's report dealing with this item must also be sustained."

Counsel for Pursuer—D.-F. Macdonald, Q.C. —Hay. Agents—J. & J. Galletly, S.S.C.

Thursday, May 25.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

TAYLOR *v.* MACKNIGHT.

Lease—Process—Sequestration for Rent—Sheriff-Officer Visiting the Ground to Prepare Inventory—Suspension and Interdict.

Warrant was granted in a sequestration to inventory the whole stock on a farm. The sheriff-officer who visited the land through inadvertence inventoried the crop. From information supplied by the tenant, and without revisiting the farm, the officer prepared an inventory of stock, substituting it for the inventory of crop, which he withdrew. *Held* that in the special circumstances of the case the officer was justified in preparing a new inventory without previously revisiting the lands.

The complainer James Taylor was for some time prior to Martinmas 1880 tenant of the farm of Dalraith, in the county of Ayr. He presented a note of suspension and interdict in the Court of Session against Mrs Helen Macknight and others, the accepting and acting trustees of the deceased Mr Macknight, Writer to the Signet in Edinburgh, to suspend proceedings which were being brought at their instance against him. It was stated on record that on the 17th October 1881 warrant had been granted in the Sheriff Court of Ayrshire at Kilmarnock to sequestrate the whole stock on the said farm of Dalraith, and that a sheriff-officer had proceeded to the lands and had served upon the complainer an inventory of the crop alleged to have been sequestrated by him, as if by virtue of the said petition and warrant. It appeared that on the following day, the 19th of October, it was pointed out to the officer that crop had been sequestrated, whereas the warrant only authorised the sequestration of stock, who thereupon intimated to the complainer that the inventory served upon him the previous day was withdrawn and departed from. The officer thereafter, and without revisiting the lands, and from information supplied to him by the complainer, who happened to be present, proceeded to make out an inventory of stock, which he substituted for the one he had previously withdrawn. The complainer thereupon presented this note of suspension and interdict, craving the Court to prohibit the respondents from selling the crop or removing the stock upon the said farm, and pleading that both sequestrations were invalid.

The Lord Ordinary on 18th March repelled the reasons of suspension on the grounds stated in the following section of his Lordship's note:—"The suspension was supported on two grounds —(1st) That the respondents have lost their right of hypothec by reason of their having sold the lands; and (2dly) that if the right of hypothec still subsisted, the sequestration was invalidated by irregularities in the execution of the warrant to sequestrate.

"The lands were sold, with entry as at Martinmas 1880 and Whitsunday 1881. But it is not disputed that the second half of the rent for crop and year 1880 was payable to the respondents at Lammas 1881; and it is settled law that the hypothec over crop and cattle subsists for three months after the lapse of the last conventional term in each year. The petition for sequestration was presented on the 17th October, within the three months; and it is not disputed that at that time, if there had been no change of ownership, the stock and cattle would still have been subject to hypothec for the rent payable at the previous Lammas. It was not, as I understand the argument, maintained that when a property is sold, the right of hypothec for rents still current, but which are not assigned to the purchaser, but are payable upon the arrival of the term to the seller, is immediately extinguished by force of the change of ownership. But it is said that the right expires three months after the purchaser's entry, notwithstanding that the term of payment may not yet have arrived. No authority was cited for this distinction, and there is no reason for it. If the stock is hypothecated for rents which do not become payable until after the change of ownership, the hypothec must subsist, at least until the term of payment. It is a different question whether, after the entry of a purchaser, the practice which allows the hypothec to be enforced within three months after the term of payment

is still available to the landlord who has sold. But the point is in substance decided in the case of *Christie* v. *M'Pherson*, Dec. 14, 1814, F.C.; and following that decision, I am of opinion that the respondents were still entitled to enforce their hypothec over the stock at the date when they applied for sequestration.

"The second objection is of a different kind. On the 18th October the sheriff-officer served upon the complainer an inventory of the crop, and it is conceded that he did so without warrant, the respondents having neither asked nor obtained sequestration of the crop, but only of the stock of cattle. On the 19th, the error having been pointed out to him, he intimated to the complainer that the inventory was withdrawn, and substituted for it a correct inventory of the stock. It was maintained, in the first place, that this proceeding was illegal, and that the sequestration is invalid, because the warrant was exhausted and the sheriff-officer *functus officio* by his delivery of the first inventory. But so far from being exhausted, it appears to me the warrant had not been put in force to any effect whatever. The inventory of crop was a mere nullity, and the warrant to inventory and secure the stock still remained perfectly effectual, nothing having been done to put it into execution."

The complainer reclaimed, and argued in support of the second objection—The whole proceedings in the sequestration were grossly irregular and therefore invalid. The officer sequestrated crops, whereas he was only entitled to sequestrate stock. The substituted inventory was bad, because the officer omitted to revisit the lands, and made up his inventory from information supplied by the tenant. No argument was offered in support of the first ground urged in the Outer House.

Authorities—*Horsburgh* v. *Morton*, February 26, 1825, 3 S. 409; Bell's Com., vol. ii., p. 33.

Counsel for the respondents were not called on.

At advising—

Lord President—I think that the Lord Ordinary is right in the decision which he has arrived at in this case.

There can be no doubt that a mistake was committed by the officer, who, when he went to the farm in obedience to the Sheriff's warrant, executed an inventory of crops, whereas the warrant only authorised him to make an inventory of the stock. As soon as the officer discovered the mistake which he had made, he withdrew the inventory of the crop, and intimated the fact to the complainer. After a conference with the tenant, there was substituted for the inventory of the crop an inventory of the stock, which inventory was made up from information supplied by the tenant.

There is no dispute that the information thus obtained was correct, or that the officer was on the lands the previous day when making an inventory of the crops. He had an opportunity of observing the stock which was on the farm, but it is to be observed that the information upon which the substituted inventory was prepared was given by the tenant himself, and the accuracy of the information thus supplied is not called in question by either party. I am not prepared to say that an inventory thus made up is a bad inventory, and am accordingly for adhering to the Lord Ordinary's interlocutor.

Lord Deas—There is no general question to be settled in this case. The messenger went to the ground for the purpose of making an inventory of the crops, which he did without any warrant, as it is conceded that sequestration was obtained only of the stock of cattle. I think that the grounds of the Lord Ordinary's judgment are clear and plain. The tenant supplied the information, his representations were admittedly accurate, and the new inventory was made up according to the information so supplied. In these special circumstances I am satisfied that the proceedings in this case were sufficient, and agree with your Lordship in adhering to the Lord Ordinary's interlocutor.

Lord Mure concurred.

Lord Shand — This is a special case, and nothing which we may now decide will supersede the necessity of the officer in the ordinary case being required to visit the lands preparatory to making up his inventory. This is the invariable practice, and it must be followed. In this case the tenant dispensed with the officer revisiting the lands, by himself supplying him with what really was a true return of his stock. It is impossible for the tenant now to raise any objections to the proceedings, as he must be held to be barred by his own actings in the matter.

Their Lordships refused the reclaiming note, and adhered.

Counsel for Complainer and Reclaimer—Brand—Ure. Agent—Thos. Carmichael, S.S.C.

Counsel for Respondents — D.-F. Macdonald, Q.C.—Darling. Agent—James Gow, S.S.C.

Thursday, May 25.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

WILLIAMSON *v.* ALLAN.

Bankruptcy — Acknowledgment of Debt Granted after Insolvency—Proof—Proof of Loan—Writ—Delivery—Fraud.

A father advanced a sum, which amounted to nearly the whole of his means, to assist one of his sons in stocking a farm, and took no receipt or other acknowledgment at the time. The sum was contained in two deposit-receipts which were endorsed by the father at the date of the advance. After the lapse of three years his son, being in pecuniary difficulties, granted an I.O.U. for a sum in excess of that which had been advanced, antedating the I.O.U. to the date at which he had received the advance, and placing it in the hands of his own agent to hold for his father. A year thereafter he was sequestrated, and his father claimed for the amount. *Held* (1) that the I.O.U. was not null either under the Statute of 1621, c. 18, or under the Statute of 1696, c. 5, and was not in the circumstances reducible as fraudulent, it being shown that it was owing to an innocent mistake that it had been granted for a sum in excess of the advance. (2) That it had been delivered. (3) That