

mutual gable, I agree with your Lordships in thinking that the expenses thereby occasioned must be disallowed.

The Court altered the interlocutor of the Lord Ordinary by disallowing the expenses of the proof, on the ground that the pursuer had failed to make out his averments, and by varying the date from which interest was to run on the sum found due from 5th March 1879 to 8th November 1880, at which latter date the defenders' title was completed.

Counsel for Reclaimers—Keir—Shaw. Agent—George Andrew, S.S.C.

Counsel for Respondents—J. P. B. Robertson—Young. Agents—Nisbet & Mathison, S.S.C.

Thursday, October 19.

SECOND DIVISION.

ORR, PETITIONER.

Bankruptcy—Petition for Sequestration—Mandate—Recall of by Death of Mandant—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79).

A mandate granted by an insolvent authorising his mandatory to apply for sequestration of his estates under the Bankruptcy Acts, falls by the death of the mandant before the deliverance of the Sheriff awarding sequestration is pronounced. A sequestration therefore declared void where the mandant had died previous to the deliverance awarding sequestration.

Alexander Brown Arthur granted a mandate, dated 4th October 1882, in favour of William Veitch Orr, the present petitioner, authorising him to apply for the sequestration of his estates in terms of the Bankruptcy Acts. Mr Orr having obtained the consent of certain concurring creditors, prepared a petition at the instance of the insolvent for sequestration of his estates, which was lodged with the Sheriff-Clerk of Lanarkshire at Glasgow on Tuesday, 10th October current. A deliverance in usual form sequestrating the insolvent's estates, and appointing the meeting of creditors for the election of trustee to be held on 23d October, was pronounced by the Sheriff-Substitute on the following day, Wednesday the 11th. Thereafter the usual *Gazette* notice was inserted, and an abridge of the sequestration was recorded in the Register of Inhibitions as required by the statute. Upon the following day, Thursday the 12th, the petitioner learned that the body of a man which had been discovered in Leith Docks upon the said Tuesday, 10th October, had been identified as that of the said Alexander Brown Arthur. It thus appeared that the mandate granted by the deceased had fallen by his death previous to the date of the said deliverance, although this was not known to the petitioner at the time. It had been discovered that the estate was not only hopelessly insolvent, but that the insolvent had for some time been in the habit of pawning and appropriating to his own uses goods supplied to him on sale and commission by certain of his creditors.

Mr Orr thereupon presented this petition to the

Second Division of the Court of Session. The prayer of the petition craved the Court "to pronounce a deliverance confirming the deliverance of the Sheriff-Substitute, and all that has followed thereupon, and sequestrating the estates of the said Alexander Brown Arthur, and declaring the same to belong to his creditors for the purposes of the Bankruptcy (Scotland) Act 1856, and Acts explaining and amending the same; and to appoint the creditors to hold a meeting on the 23d October, at the hour and place fixed by the Sheriff-Substitute; and to remit the sequestration to the Sheriff of Lanarkshire at Glasgow."

The Court, after hearing counsel on the competency of the petition, pronounced this interlocutor:—

"The Lords having considered the petition, and heard counsel for the petitioner thereon, in respect that it appears that the bankrupt Alexander Brown Arthur was not in life when the deliverance awarding sequestration was pronounced, and that the sequestration was therefore void, Refuse the prayer of the petition."

Counsel for Petitioner—G. Burnet. Agent—R. C. Gray, S.S.C.

Saturday, October 21.

FIRST DIVISION.

[Lord M'Laren, Ordinary.]

THOMSON v. MUNRO.

(Sequel to *Thomson v. Munro, ete contra*, reported *ante*, 28th June 1882, vol. xix. p. 739.)

Arbiter—Corruption—Process—Reduction of Decree-Arbitral—Jury Trial—Discretion of Court in allowing Proof or Jury Trial.

The pursuer of an action of reduction of a decree-arbitral averred that the arbiters whose award he sought to reduce had acted in a manner inconsistent with their duty as arbiters in refusing to him as one of the parties to the submission a hearing upon various points connected with the case, and in taking certain evidence outwith his presence, and in determining by lot various points on which they had differed. He pleaded that these acts and omissions amounted in law to corruption. He moved the Court to appoint the cause to be tried by jury as being a question of fact. *Held* (*aff. judgment of Lord M'Laren*) that the mode of trial being in the discretion of the Court, and the question for decision depending on the legal import of the facts which might be proved, the case was unsuited for jury trial, and ought to be sent to proof before the Lord Ordinary.

In the previous actions between these parties (reported *ante*, vol. xix. p. 739) the First Division of the Court on 28th June 1882 adhered to the interlocutor of the Lord Ordinary (M'LAREN) in so far as it dealt with and contained findings in regard to expenses, but *quoad ultra* superseded consideration of the reclaiming-note for Thomson (the pursuer in the present action), in order that