liamson, and was personally present when he made the statements complained of. But these facts do not import a wrong in themselves, nor do they imply that he took part with Williamson in the statements which he made, and nothing else is alleged against David Agnew individually."

The pursuer reclaimed, but before his reclaiming note came to be advised, his estates were sequestrated, and the trustee having, after intimation made to him, failed to sist himself as pursuer, the reclaiming note was refused.

Counsel for pursuer—Mr Watson. Agents—Graham & Johnston, W.S.

Counsel for defender Wallace—Mr Pattison and Mr Burnet. Agent—William Mason, S.S.C.

Counsel for the defenders Agnew—Mr Young and Mr Burnet. Agents—M'Ewan & Carment, W.S.

Counsel for defender Williamson—Mr Asher. Agents—Maconochie & Hare, W.S.

Friday, February 14.

HUNTER *v.* M'GREGOR.

Bill—Charge—Joint-Adventure—Signature of Firm. Charge on bill alleged to have been granted by a firm for money advanced to them for purposes of a joint-adventure, *suspended,* in respect of want of proof that the money was really so advanced.

This was a suspension by William Hunter junior, of a charge at the instance of John M'Gregor, on a bill dated 20th November 1865. The bill bore the signature of the firm of Hunter & Dick, of which firm it was said Hunter was a partner, and the charger alleged that it was granted to him by Dick in respect of advances made by the charger to the firm, in order to enable them to carry on a joint-adventure into which Hunter and Dick had entered. The suspender, on the contrary, alleged that the bill was not signed by him, or with his knowledge or consent, or for any debt contracted in reference to the joint-adventure.

The Lord Ordinary (Mure), after a proof, found it not proved that the money for which the bill was granted was applied for the purposes of the joint-adventure, and accordingly suspended, and found the charger liable in expenses.

The charger reclaimed.

Cattanach (Scott with him) for reclaimer.

Trayner, for respondent, was not called on.

Lord President—The question here is, whether the money was advanced for the purposes of the joint-adventure; the Lord Ordinary has found in the negative, and I think rightly. It seems to me that the evidence makes this perfectly clear, but it is enough that the charger has failed to prove the affirmation. The joint-adventure is said by the charger to have commenced in June 1865. On the other hand, the suspender says it was not till he removed the machine from Hillington Farm on 30th August. It is alleged by the charger that the two persons, Hunter and Dick, entered into an agreement by which they became to a certain extent partners in June, agreeing that they should be bound by the firm of Hunter & Dick. It is said by the suspender that this was not agreed on until November. It seems to me that the suspender is right and the charger wrong. Dick had been in this line of business before communicating with Hunter; and after the machine was bought from Robertson, with an engine ready to work, Dick took the use of the machine during August. During that time Dick used the form of receipts he had used formerly, and used it down to September, when a new form of receipt with "Hunter and Dick" was used, indicating the point of time when the change took place. During June, July, and August, Dick reaped the profits, paid the wages, kept the receipts, and did not communicate with Hunter as to the position of thecharger. I cannot say that the charger stands very favourably. His whole conduct shows that he knew he had no one to look to as his debtor but Dick, and that the signature of Dick to the bill was not an honest proceeding on his part. But it is not necessary to go much on that, for the real question here is, whether it is proved that the money was *in rem versum* of the joint-adventure? I think it was not, and therefore I am for adhering.

The other judges concurred.

Agent for Reclaimer—A. Wylie, S.S.C.

Agents for Respondent—Duncan & Dewar, W.S.

Friday, February 14.

SECOND DIVISION.

STEWART *v.* M'CALLUM.

Sale—Consignation—Condition. On a sale of certain lands, a sum of £1500 was consigned by the purchaser, pending the determination of some disputed points between the superior and vassal, and particularly a right of relief alleged against the former on account of augmentation of teinds, and was to be paid to the seller on his establishing that right. Circumstances in which *held* by a majority of the whole Court, that the condition of the contract of sale had been satisfied, and that the exposer was entitled to uplift the consigned money.

By a feu-contract in 1705, between James Marquis of Montrose and David Graham, the Marquis conveyed the lands of Braco, and the teinds thereof, to Mr Graham in liferent, and his son James Graham, and his heirs therein set forth. The Marquis thereby bound himself, his heirs and successors, to warrant the teinds to be free to the vassals "from all ministers' stipends, future augmentations, annuities, and other burdens imposed, or to be imposed, upon the said teinds," beyond those then payable. The superiority or *dominium directum* of the subjects has descended through the representatives of the Marquis to the present Duke of Montrose. The *dominium utile* has passed through a series of heirs and singular successors to the pursuer, and from him to the defender. In the year 1846, when the pursuer, Sir W. D. Stewart, was the vassal, the superior, the Duke of Montrose, for the first time raised the question whether the right to enforce performance of the obligation of relief had passed to him as a singular successor of the original vassal? In that year a new augmentation of stipend was given to the minister of the parish, and it fell to be localled upon the teinds. The Duke from that time declined to perform the obligation of relief to the vassal, alleging that, although the liability to perform it was still incumbent on him as superior of the subjects, the right to exact performance of it had not been transmitted to the singular successors of the original vassal along with the right of property. On the other hand, Sir William maintained that that right had been trans-