of practice like this I think it better to adhere to these decisions, and to hold that the reclaiming-note has not been presented in time.

The Court sustained the objection.

Counsel for the Reclaimers—J. Galbraith Miller. Agent—W. G. L. Winchester, W.S.

Counsel for the Respondents—W. Campbell. Agents—Welsh & Forbes, S.S.C.

Tuesday, January 21.

OUTER HOUSE.

[Lord Kincairney.

M'KECHNIE AND OTHERS, PETITIONERS.

Process — Petition for Appointment of Curator Bonis to Lunatic—Personal Service on Lunatic dispensed with.

In a petition for the appointment of a *curator bonis* to Robert M'Kechnie, a gentleman certified to be of unsound mind and incapable of managing his affairs, presented by his wife and the whole of his next-of-kin, two medical certificates were produced, "that to serve the petition for the appointment of a curator upon him personally would have a bad effect on his mind as he is apt to become very violent," and another from the physician superintendent of the asylum in which he was confined, "that he might be excited and seriously injured by the personal service upon him of a petition for the appointment of a *curator bonis*." In the special circumstances of the case personal service was dispensed with.

Counsel for the Petitioners — Gloag. Agents — Macritchie, Bayley, & Henderson, W.S.

Wednesday, January 22.

SECOND DIVISION.

[Sheriff of the Lothians, and Peebles.

STENHOUSE *v.* TOD.

Cautioner—Co-cautioner—Communication of Benefit—Appropriation of Payment to Particular Debt—Security.

Tod was cautioner along with Gilmour for a cash account for £500, and also along with Stenhouse for a cash account for £150, both for behoof of Ritchie.

Tod and Ritchie together borrowed £600, and Tod obtained possession of the money and applied it to extinguish the first debt. He then paid the second debt and sued Stenhouse for half of the amount.

The defender maintained that Tod was bound to apply the £600 rateably in payment of the two bonds.

The Court repelled the defence, *holding* (1) that there was no agreement that the money should be so applied; and (2) that the facts of the case did not impose any obligation on Tod so to apply it.

In October 1885 James Tod, engraver, Edinburgh, and John Stenhouse junior, stockbroker, Edinburgh, for behoof of William Ritchie, stationer, Edinburgh, Tod's nephew, became joint obligants with him in a cash-credit bond to the Commercial Bank for the principal sum of £150 and interest, with the proviso that the liability of the pursuer and defender for principal and interest should not exceed £172, 10s. On this security the bank, prior to 1st November 1886, advanced to Ritchie £150 exclusive of interest. Tod in 1888 paid to the bank the sum of £172, 8s. 6d. due under the bond, and raised this action against Stenhouse for £86, 4s. 3d., the half of the sum for which he alleged they were equally bound.

The defender alleged (1) that he consented to sign the bond on the undertaking of the pursuer to relieve him of all liability thereunder. (2) It is further believed and averred that the said William Ritchie, sometime in the summer of 1888, provided funds for payment, *inter alia*, of the whole debt due under the cash-credit bond which the defender signed, and handed the same to the pursuer to pay to the bank. The defender believes and avers that the funds so provided amounted to £600, and that the said William Ritchie instructed the pursuer to apply any balance over after paying the debt for which the defender was co-cautioner towards payment of another cash-credit bond for £500 or thereabouts of his to the Commercial Bank, under which the pursuer and another party were cautioners.

He pleaded—"(1) The pursuer having agreed to keep the defender free of all liability under the cash-credit bond referred to in the condescendence, is thereby barred from insisting in the present action. (3) The pursuer having received from the principal debtor in the said cash-credit bond the sum necessary to pay the debt due thereunder, with instructions, or at least on the understanding that it was to be applied primarily to that purpose, was bound so to apply it. (4) *Separatim*, and even if the principal debtor gave the pursuer no instructions as to the application of the fund primarily to payment of the amount for which the defender was security to the bank, still the pursuer having received a sum from the principal debtor to pay to the bank on account of his indebtedness, was bound to apply it equitably so as to relieve those who were his co-cautioners proportionately, and to that extent the defender is entitled to relief."

On 11th February 1889 the Sheriff-Substitute (RUTHERFURD) found that the first ground of defence could not competently be proved *pro ut de jure*, but allowed a