the entailed estate of which he had not acquired the property by purchase, but had succeeded to as heir-substitute of entail? On this branch of the argument the views I entertain are the same with those held by all your Lordships. It is clear to me that the object and purpose of the granter of the deed was to convey to his trustees all the property that it was in his power to convey, with a view to that new entailed settlement upon the family of the barony and estate of Lochbuy, for which his deed provides. The ground on which the Lord Ordinary proceeds in pronouncing the interlocutor under review is explained in the Note, is that Donald "had no intention whatever of effecting a conveyance of the entailed estate, or of the portions thereof," which are the subject of this action, *i.e.*, not Scallastle only, but all the rest of the lands vested in him under the old entail, and to which he had right as heir of entail, and not as purchaser. I cannot so view the intended effect of this deed. Throughout its provisions reference is made to parts of the entailed estate other than those which he had purchased. The entail was no longer in existence as a bar to his dealing with the lands, as a fee-simple estate in his person. He had power to execute a gratuitous deed, regulating the succession to those lands. Then why is he to be held to have left the old entail to regulate the succession to one portion of his lands, over which he had power—while he made provision for a new entail as to the rest of his estate? I cannot think this at all probable. But, at all events, to exclude the operation of the general conveyance in the trust-deed of his whole lands, some evidence must be shown that such was his intention. But no such evidence exists. For I cannot think that subsequent bonds of provision can be viewed as demonstrative that the lands of Scallastle were not intended by Donald to be disponed to his trustees. The object of their execution appears to be to provide for the contingency of his not having succeeded in vesting himself with such a title to the lands, as would support his conveyance of them with the rest of the entailed estate and his other estates; and this is corroborated by the reduction provided to be made from the provision settled on his wife and family by the trust-deed in the event of bonds such as those in question being subsequently executed in their favour. Assuming that his general conveyance of "all and sundry lands and heritable estate of whatever kind" belonging to him at his death, were effective to carry these entailed lands, the full annuity and provisions which he intended to give to his family were provided for. And it may be remarked that the designation he assumes in these bonds of "heir of entail in possession of the entailed lands" of Scallastle, demonstrates that he himself held, whatever difficulties there might be from the state of the title as regarded his power to convey, that a full and complete feudal title to these lands had been vested in his person.

On these grounds, I am of opinion that this action of adjudication cannot be sustained, and that the defenders are entitled to be assoilzied.

LORDS NEAVES and BENHOLME concurred.

Agents for Pursuers—Tods, Murray, & Jamieson, W.S.
Agent for Defenders—John Martin, W.S.

Thursday, January 25.

BAILLIE *v.* CAMPBELL.

Process—Decree in name of agent—Expenses.

A defender who had been found entitled to his expenses died before the account was audited. The agent then moved for expenses in his own name, and no appearance was made for the pursuer. The Court refused the motion, holding that the representatives of the defender must be sisted before the agent was entitled to decree.

Friday, January 26.

FIRST DIVISION.

BAIRD & BROWN *v.* SELKIRK (HUGH STIRRAT'S TRUSTEE).

Bankrupt—Inhibition—Ranking of Creditors.

Held (*dubit* Lord Deas) that the proper order of ranking a body of creditors on the proceeds of the heritable estate of a bankrupt, where one of the creditors had used inhibition on his debt three months before the sequestration,—the debts of some of the creditors having been contracted *before*, and of others *after* the inhibition,—was, first, to rank all the creditors *pari passu*, and then to give the inhibiting creditor the difference between the dividend arising thereby, and what he would have drawn had no debts been contracted subsequent to the use of the inhibition, by way of drawback from the dividends of the creditors whose debts were contracted after the inhibition.

Bankruptcy Act 1856, *sec.* 127.

The trustee in a sequestration issued a deliverance, in which he explained the scheme of ranking, and addressed a copy to each creditor, stating the class in which he had placed his claim. *Held* that an appeal by a creditor against the deliverance on his own claim competently brought under review the whole scheme of ranking, and that it was not necessary for him to appeal against the deliverance on any other claim.

This was an appeal under section 170 of the Bankruptcy Act 1856, against an interlocutor of the Sheriff of Lanarkshire, affirming a deliverance of the trustee in the sequestration of the estates of Hugh Stirrat & Son, wrights and tun builders, Glasgow; and of Hugh Stirrat, the sole partner of the said firm, which were sequestrated on the 22d May 1871.

On the 22d February 1871 Robert Melville & Co. used inhibition on a debt due to them by the bankrupt. The debts due to the other creditors were not secured by inhibition. Some were contracted before, and others after the inhibition. Part of the bankrupt estate consisted of heritable properties, which were realised by the trustee.

On the 4th September 1871 the trustee issued and addressed to each creditor a deliverance, in which he explained the scheme of ranking which he adopted—"With reference to the rankings, I have to explain that an inhibition was used against the bankrupts on 22d February last, the effect of which is to separate the creditors into two classes: those whose claims existed at the date mentioned