the other provisions only apply to parochial and burgh schoolmasters. (3.) The Interpretation Clause of the Act of 1861 defines 'parochial school' as meaning and including 'every school established or to be established, or provided for under the said recited Act.' Now, the only recited Act is the Act of 1803, and this definition of parochial school seems to exclude Parliamentary schools. It was admitted on both sides of the bar that the Parliamentary school of Oinich does fall not under the definition of a burgh school. (4.) The main ground on which the Lord Ordinary proceeds is, that when the Act of 1861 intends its provisions to apply to Parliamentary schools and schoolmasters, it expressly says so, and the Lord Ordinary cannot resist the inference that when not expressly mentioned, parochial schoolmaster, or schoolmaster of a parish, means only, in terms of the interpretation clause, schoolmasters established under the Act of 1803. It is plain that all the provisions about salary and additions thereto can have no application to Parliamentary schoolmasters, for the heritors have nothing whatever to do with their salaries, and have no power to fix, to increase, or to assess therefor.

"The pursuer at first attempted to show that the provisions about side schools, and the resignations of, and retiring allowances to schoolmasters, do not apply to Parliamentary schools. Such schools cannot be discontinued by the heritors, and the heritors cannot give retiring allowances to Parliamentary schoolmasters, or compensation for house and garden, for they have no power to assess therefor. The first time the Parliamentary School Act of 1838 is mentioned is in section 9 of the Act of 1861, sub-section 5, where Parliamentary schoolmasters, especially described as schoolmasters under 1st and 2d Vict, c. 87, are made subject to the same examination as 'parochial schoolmasters.' So in section 12, already alluded to, the enactment is expressly made applicable to Parliamentary schoolmasters—the Act 1 and 2 Vict, c. 87, being expressly cited. It may be that section 13 may be read as a pendant to section 12, and may possibly apply to Parliamentary schoolmasters, but this would not warrant an extended interpretation of the other sections of the Act.

"The next section which expressly mentions the Parliamentary Schools Act is the 17th, where the title of the Act of 1838 is quoted, and Parliamentary schoolmasters expressly brought under the provision. Now it is one of the best established canons of construction that when in special cases particular clauses of a statute are expressly made applicable to a particular person or class, the absence of such express reference exempts that person or class from the operation of other clauses. If the whole Statute, and in particular clauses 19 and 20, applied to Parliamentary schoolmasters, what was the use of expressly providing that sections 9, 12, and 17 should apply to such schoolmasters? The express enactment in these sections seems to exclude Parliamentary schoolmasters in all other sections.

"(5.) A further difficulty occurs, which seems nearly conclusive against the defenders. Sections 19 and 20 empower the heritors in some cases, and compel them in others, to provide retiring or resigning schoolmasters with a retiring salary, and with compensation for their dwelling-houses. But plainly the heritors cannot do this out of the Parliamentary fund, which is not theirs, and which is not under their control; and is equally plain that they could not assess for the retiring allowance, for in no case can they assess for a Parliamentary school salary. Now, if section 19 does not apply to resignations compelled on account of incapacity, it is difficult to hold that it applies to resignations compelled through fault.

"On the whole, the Lord Ordinary thinks it the safe construction to limit the Act of 1861, in the case of Parliamentary schoolmasters, to those clauses in which they are expressly mentioned. To attempt to apply the other clauses would lead in many cases to difficulties almost inextricable.

"The above view makes it unnecessary to consider the objections to the procedure of the heritors and Presbytery. The Lord Ordinary may say however that, assuming the heritors to have jurisdiction or power to proceed under the Statute of 1861, he does not think there are such irregularities as would be fatal to the proceedings."

The defenders reclaimed.

The Court adhered, with additional expenses.

Counsel for Reclaimers—Asher. Agents—Tods, Murray & Jamieson, W.S.

Counsel for Pursuers—Robertson and Mackintosh. Agents—Gifford & Simpson, W.S.

Wednesday, January 22.

SECOND DIVISION.

[Sheriff of Lanarkshire.

CASSIDY *v.* NORTH BRITISH RAILWAY CO.

Railway Company—Damages—Negligence.

Where a party had sustained injuries by falling out of the door of a railway carriage, and it was proved that no one in the carriage had opened the door,—*held* the Railway Company liable in damages.

The summons in this suit, at the instance of Francis Cassidy, moulder, Kirkintilloch, against the North British Railway Company, concluded for £1000 sterling, "being damages sustained by the pursuer, and as solatium due to him by and through the culpable negligence and gross carelessness of the defenders or of their servants, for whom they are responsible, inasmuch as the pursuer having paid his fare as, and having been, a passenger to Kirkintilloch in the train which left Glasgow for Kirkintilloch on the evening of Wednesday, the 20th day of July 1870 years, at a quarter before eight o'clock; and the defenders or their servants, for whom they are responsible, in violation of the legal obligations incumbent on them as carriers of passengers for hire, as well as in violation of the rules of the said railway company, having failed to keep the door on the off-side from the Glasgow platform, in the compartment in which the pursuer had taken his seat, locked and fastened; and the pursuer, while the said train was proceeding between the Bishopbriggs and Lenzie Junction Stations of the said railway, having risen from his seat for the purpose of looking out of the open window in the said door, and when he was in the act of leaning with his elbow on the said door, it suddenly flew open, and the pursuer fell out upon the line, whereby he sustained severe bodily injuries, necessitating the amputation of his left arm, and so severely injuring his health and physical

system that he has been permanently disabled and rendered unable for life to earn a livelihood, with expenses."

The pleas in law for the pursuer were—"(1) The defenders being carriers of passengers for hire, and the pursuer having been a passenger, and having paid his fare as such by the train in question, the defenders were legally bound or came under an implied contract to exercise due and proper care and skill for his safety, while he was being carried by them, and having failed to exercise such care and skill, and the pursuer in consequence of such failure having received the said injuries, he is entitled to decree as libelled, with expenses. (2) The defenders being carriers of passengers for hire, and the pursuer having been a passenger, and having paid his fare as such by the train in question, the defenders were legally bound or came under an implied contract to provide a vehicle properly equipped and furnished for the journey, and having failed to provide such a vehicle, and the pursuer in consequence of such failure having been injured as stated, he is entitled to decree as libelled, with expenses. (3) The defenders or their servants, for whom they are responsible, having been guilty of gross carelessness and culpable negligence on the occasion in question, whereby the pursuer received the said injuries, he is entitled to decree as libelled, with expenses. (4) The defenders or their servants, for whom they are responsible, having through carelessness and negligence failed to observe the rules of the said railway company, and the pursuer, in consequence of such failure, having been injured as stated, he is entitled to decree as libelled, with expenses. (*Additional*) The fact of the accident is *prima facie* evidence of negligence, and the defenders having failed to show that the accident was inevitable, or that it arose from the act of a stranger, for whom they are not responsible, the pursuer is entitled to decree as libelled, with expenses."

The pleas for defenders were—"*Preliminary* (1) The pursuer's statements are not warranted by and go beyond the limits of his summons, the averments in which are irrelevant and insufficient in law to support the conclusions of the action. *On the Merits* (2) No valid contract being libelled in the summons between pursuer and defenders, the defenders ought to be assoilzied, with expenses. (3) The defenders having, by themselves and their servants, exercised all possible care and caution, and the plant employed by them having been in good order and condition, and in every way fit for the use to which it was applied, the defenders are not liable in damages for the alleged injuries. (4) The pursuer himself, or along with others, for whom the defenders are not responsible, having caused the said accident, or at all events having been guilty of contributory negligence, the defenders ought to be assoilzied, with expenses. (5) The pursuer not having met with the alleged injuries through any fault of the defenders, or those for whom they are responsible, they are not liable in damages, and are entitled to absolvitor, with expenses. (6) In any event, the damages claimed are grossly excessive."

The Sheriff-Substitute (DICKSON), after a lengthened proof, pronounced the following interlocutor, which fully details the circumstances of the case:—

"*Glasgow, 13th March* 1872.—Having heard parties' procurators on the proof, and made avizandum, finds that on 20th July 1870 the pursuer was a passenger in a third class carriage in a train on the defenders' railway from Glasgow to Kirkintilloch at 7·45 P.M., having duly booked himself and paid for his ticket for the journey; finds that when the train was between Bishopbriggs and Lenzie Junction the pursuer leant for a second or two on the door of the compartment in which he was (being on the right side of the train, looking towards the engine), whereupon the door flew open, and he fell upon the line, and part of the train ran over his left arm and lacerated it so that it had to be amputated, and he suffered other, but slighter, injuries from the same cause; finds that the door flew open in consequence of the sneck not having been properly fastened at the time; finds it not proved that there was any defect in the door or the sneck or handle thereof, or in the carriage; finds it not proved that the defenders' servants, whose duty it was to see that the door was properly snecked, neglected that duty; finds that the pursuer was the worse of drink at the time, that a few minutes previously he put his head and shoulders out of the said door, and leaned upon it for a few minutes; finds it not expressly proved that at that time he turned or touched the handle of the door, but finds that he might have done so unintentionally, and that it is fully more probable that he did so than that the defenders' servants neglected to have the door duly fastened; finds that, in these circumstances, and with reference to the observations in the Note, it is not proved that the injuries to the pursuer arose from the fault of the defenders or of their servants; therefore sustains the defence to that effect; assoilzies the defenders from the conclusions of the Summons; but, in respect the pursuer sues on the Poors Roll, finds him not liable in expenses, and decerns.

"*Note.*—The nature and extent, and also the immediate cause, of the injuries in question, are clearly established, and it is proved that there was no defect in the carriage door, the flying open of which occasioned the pursuer's fall.

"The only question is whether the door was properly fastened by the defenders' officers, and was opened by the pursuer; or whether these officers neglected their duty to fasten it.

"The pursuer at first attempted to show that the door on the side from which he fell ought to have been not only snecked, but also locked (which it was not) according to the defenders' rules. But that ground was abandoned at the debate, because the locking of the doors on one side is not intended for protection of the passengers but to prevent their leaving without their tickets being collected, and because it would be absurd that there should be different obligations and consequent responsibilities on the defenders according to the side of the carriage on which the accident occurred,—as the doors on only one side are ever locked.

"The question is, whether the sneck of the door out of which the pursuer fell was in its place as the train left the previous stations; since, if it was, it must consequently have been opened unauthorisedly by the pursuer or some other person for whom the defenders are not responsible.

"The defenders' officers who have been examined on the point swear that before or as the train left Cowlairs (where the doors on that side were last opened) they were shut, and the handles turned with the snecks duly in their places. It is proved (and is well-known) that the handles stand hori-

zontally when the snecks are properly home, so that any one looking along the train can see if any one is not properly turned. It is possible, however, that a door might be shut nearly, although not quite close, and the handle turned horizontally outside of the catch whithout entering it—that might have occurred in the present case without any of the defenders' servants observing it. If it had, the pursuer might, as he leant on the door, have made fly open.

"But that is improbable for the following reasons:—

"(1) As it was summer, the door would have fitted rather loosely from the wood being dry (evidence of M'Meiken) and so it is unlikely it would not have gone close-to when shut by the defenders' officers.

"(2) The passengers (of whom there were several in the compartment) would probably have noticed if the door had not been fully shut.

"(3) If the door was not properly shut and snecked when the pursuer, shortly before the accident, leaned on it in safety with his head and shoulders out for some little time, it is difficult to understand how, on his doing little more than touching it a minute or two afterwards, it should have flown open, unless there was some change of circumstances. It is more likely that between the heavier and the lighter leaning something was done to the handle which could account for the remarkable difference in consequence between the two.

"(4) The door opened from before backwards; so that the vibration of the train, and the current of air caused by its motion, were against its remaining shut unless properly closed and fastened. This was especially the case about Cowlairs, where there are several crossings which cause considerable jolting, and where there are two curves and a narrow cutting through rock with considerable draught or current of air; all of which would have increased the tendency of the door, if not properly fastened, to fly open before the pursuer commenced to lean on it. The defenders' witnesses, M'Laren, Robb, and M'Meiken, skilled in such matters, consider that the door, if not properly shut and snecked, must have opened from these combined causes. Their evidence is uncontradicted, and is consistent with probability. It ought not to be disregarded merely because they are the defenders' servants.

"On the other hand, the accident may be accounted for by the defender having unconsciously turned the handle when leaning with head and shoulders out of the door a few minutes before. Upon this the evidence of his condition must be considered. He had been making holiday during the Glasgow Fair Week, and for at least two days before had been drinking a good deal. It is proved that a few hours before the accident he had a dram of whisky, that a hour or two before it he had a glass of rum, which immediately caused him to vomit (a suspicious circumstance, although it might have arisen from deranged stomach rather than from intoxication) that immediately before entering the train he had a glass of whisky from O'Hara, as he acknowledges, although O'Hara (whose evidence is biassed in pursuer's favour) says he only took half a glass. He appears to have had no food since breakfast, and it is highly probable that the dram drinkings on an empty stomach would produce considerable intoxication.

"Accordingly Mr Stewart depones—'When on the platform at Glasgow Station pursuer knocked against three of the posts and almost fell. He was so drunk that if it had not been for the posts he would have fallen on the rails. He was staggering about. He was not fit to take care of himself. He was not noisy. He seemed to be stupid. I think he was not fit to have observed and remembered what took place on the journey.'

"Again, Mr Menzies states—'He spoke to me, and asked me to come with him for a dram. I declined, because I thought he had had enough liquor. He had been drinking, but was not incapable.'

"The pursuer admits that his head felt light; and Misses M'Kechnie and Donnell also speak to his having been a little the worse of liquor. From their having merely seen him in the carriage, they were not so well able to judge of his state as Stewart and Menzies. The evidence of Doctors Stewart and Whitelaw corroborates this pretty strongly. That of O'Hara and Mrs Clelland, to the contrary, is not nearly as trustworthy.

"It thus appears that the pursuer, although 'not drunk and incapable,' was decidedly intoxicated at the time, and in such a state that, believing he had come to his journey's end, or wishing to leave the carriage for some other reason that struck his half-drunk fancy, he might have turned the handle of the door when he first looked out. The fact that he went to the window to light his pipe favours the same view. Against it is the pursuer's oath that he did not turn the door handle or put his hands outside, corroborated by the circumstance that none of the witnesses in the compartment appeared to have observed him doing so. But his evidence on the point is of very little value on account of his condition, while theirs, also, is merely negative, for they were not noticing particularly where his hands were, or what he was doing.

"In the whole circumstances, therefore, the Sheriff-Substute considers it more probable that the accident occurred from the cause thus explained than from the door not having been properly snecked at Cowlairs station. It is less likely that the defenders' servants, when quite sober, and apparently steady and qualified men, would have failed to shut and sneck the door, and that neither any railway official nor any one in the compartment would have observed its dangerous condition, than that a half-drunk passenger, when leaning out of the door, with the opportunity of meddling with the handle, should have done so. The whole circumstances, as above explained, moreover, supporting the latter, and being consistent with the former, alternative."

The pursuer appealed to the Sheriff, who pronounced the following interlocutor:—

"*Glasgow, 11th June* 1872.—Having heard counsel for both parties on the pursuer's appeal, and made avizandum with the proof, productions, and whole process, Finds that the interlocutor appealed against correctly sets forth the time when, the place where, and the circumstances under which the pursuer sustained the injuries for which he now seeks reparation against the defenders; as also the general nature and extent of said injuries.

"But, *quoad ultra*, and in as far as said interlocutor finds that the defenders are not responsible to the pursuer for said injuries, and assoilzies them from the conclusions of the summons; recalls the same; and finds, on the contrary, that it is proved that the defenders, in violation of the legal obligation incumbent on them as carriers of passengers for hire, as well as in violation of the rules of their Company, failed to keep the door on the off-side

from the Glasgow platform, in the compartment of the railway carriage in which the pursuer was travelling, properly shut and fastened, in consequence of which, while the train was proceeding between the Bishopbriggs and Lenzie Junction Stations, and while the pursuer was in the act of leaning with his elbow on the said door, it suddenly flew open, and the pursuer fell out upon the line and sustained the injuries which necessitated the immediate amputation of his left arm, besides severely impairing his health and physical system: Finds that the pursuer, who wrought as a moulder, had been earning wages which averaged about 35s. a-week, but he cannot now work as a moulder, and is not able to earn more than from 10s. to 12s. a-week: Finds, in these circumstances, and under reference to the annexed Note, the defenders liable to the pursuer in the sum of £150 sterling in name of damages and solatium: Finds them also liable in expenses; allows an account thereof to be given in, and remits the same to the Auditor of Court to tax and report; and decerns.

"*Note.*—It is not without hesitation that the Sheriff has differed from the view taken by the Sheriff-Substitute of this case; but after mature consideration he cannot help being of opinion that the facts are such as throw responsibility on the defenders. One thing is certain, to begin with, and is not disputed, that when the pursuer fell out of the carriage in which he was travelling the door through which he fell was open. Now, although the mere occurrence of an accident may not always afford *prima facie* evidence of negligence, in some cases *res ipsa loquitur*, and the accident may be of such a nature that a presumption of negligence arises from its occurrence—(See Hodges on Railways, 4th Ed., p. 532). Here the door should have been securely fastened, and it was open, and the defence is that it was fastened when the train started, and that it must have been subsequently opened by the pursuer himself. The *onus* of proving this lies, it is thought, with the defenders. In *M'Aulay*, Dec. 9, 1846, Lord Jeffrey said—'I concur in the view of Lord Fullerton, that, in all cases of this kind, the proprietor is entitled to no presumption of innocence. He must prove that it was an accident, and failing his proving that, the pursuer is entitled to her verdict.' The defenders' leading witness, Walter M'Taggart, the sole guard on the train, cannot be said to be an entirely neutral party, for he was guilty of a serious breach of duty if the door was not fastened. He swears, 'before the train started from Glasgow I satisfied myself that all the carriages had their doors on the right side going from Glasgow shut and locked. That is the off-side under the defenders' regulations;' and again, 'I locked every one of the doors on the right side at Glasgow before the train started. The train had 10 carriages and 2 break vans, being 1 carriage more than usual for the train at that hour.' The first observation upon this is, that if it is true, then the off-side door, not only of the compartment in which the pursuer travelled, but of various other compartments, must have been unlocked, and not again locked, as they should have been, at Cowlairs, because it is proved beyond all doubt that when the pursuer fell out and the train was brought to a stand, a number of passengers turned the handles of the doors on the off-sides of their carriages, and not finding them locked, walked out on to the line to see what had happened. The train had stopped before this only at Cowlairs and Bishopbriggs, and the doors could not have been interfered with at the latter place, because they were not on the side next the platform at which the train drew up. There were 3 third class carriages in front, and the pursuer was in the one next the engine. Peter Ferguson, one of the defenders' porters at Cowlairs, says that he there unlocked and then relocked 2 of these carriages. But this cannot be true if he means that he relocked all the off-side doors of these 2 carriages, because it is proved that persons who were travelling in them found them unlocked after the accident happened; and if Ferguson did not unlock them then they cannot have been locked by M'Taggart at Glasgow. William Hay, the defenders' other porter at Cowlairs, says he unlocked some of the doors there, but that he shut and locked all that he had unlocked. This is a vague statement, which does not much affect the case. The important fact is, that whilst the defenders may not have been under any obligation to the public to keep the doors locked, their rules (see rule 290 of No. 13) made it a part of the duty of their guards and porters to keep the off-side doors locked, and, in point of fact, this duty must have been neglected on the present occasion. If so, it becomes less impossible that the duty to the public of keeping the doors properly fastened may also have been neglected. The guard M'Taggart admits that he did not personally fasten the doors at Cowlairs, but he says the porters stated to him that they were all right, and that he saw by taking a glance along the train that the handles were in a position which indicated that they were turned so as to keep the doors closed. This is very loose evidence, and cannot be regarded as sufficient to establish the fact. What is much more material is, that it is proved by the distinct depositions of several witnesses that the off-side door of the compartment in which the pursuer was, which was on the near side at Cowlairs, but nowhere else, was not opened there, that the handle of the door was never touched, and that no one either went in or out of the compartment, which was already full, either at Cowlairs or Bishopbriggs. The door therefore must have been in the same condition at both of these places as it was when the train left Glasgow. Some evidence has been led with the view of showing that if the handle had not been properly down in the sneck the motion and jolting of the carriage as it proceeded must have caused the door to fly open long before the pursuer fell out. But this is hypothetical. The door may have been jammed pretty stiffly in its place, and may have required a certain pressure from within before it opened. The defenders' own witness James M'Laren, their General Superintendent, says, 'It is possible that a door might be shut nearly close, but not quite close, and that the sneck should not have been in its place, and that in this case the handle should have been horizontal and apparently all right;' and the witness adds, 'The doors when closed are flush with the outside line of the carriage, but there is a thin strip of iron or wood beading, about a quarter of an inch thick or less outside, to keep the carriage watertight.' Up to this point, then, it seems impossible for the defenders to escape from the dilemma that, if the door had been properly fastened, it would not have flown open, and that if it did fly open, it had not been properly fastened. The defenders' final suggestion therefore is, that the pursuer must have put his arm out and turned

the handle himself. Now as to this, it is not, in the first place, to be denied that the pursuer when he entered the train was to a certain extent under the influence of liquor; but it is not proved that he was in such a condition as not to know perfectly well what he was doing, and it is proved that his conduct in the carriage was in no way offensive. The pursuer himself says, 'I was quite capable at the time, but might have felt the drink in my head. . . . I was not the worse of liquor at all. My head might have been a little light with drink.' His fellow passenger, Agnes M'Kechnie, says, 'He had been drinking, but seemed able to take care of himself;' and another passenger, Mrs Janet M'Lean or Clelland, says, 'He had got a glass of spirits, but nobody would have thought there was anything wrong with him, either in talking or walking.' The account which the pursuer gives of what occurred in the carriage immediately before the accident happened is corroborated by other witnesses, so that his recollection must have been pretty correct. What he swears is, that no one entered or left the compartment at Cowlairs; that after passing Bishopbriggs he rose to look out at the window and lit a match, but it went out, and immediately afterwards he lit another, and lighted his pipe with it; that he then went with the pipe in his mouth to look out at the window; that he had his elbow on the ledge of the door, and was going to look out, but that before he got out his head the door opened and he fell out; that the door had not been opened by any one before that, and that neither he nor any one inside the compartment had touched the handle of the door. Various persons who were in the same compartment confirm this. James O'Hara, moulder, says, 'No one that I saw touched the handle of the door on the right side. I must have seen if any one did so.' He then describes, as the pursuer does, how the latter went twice to the window and leant his arm on it; and adds, 'The next thing I saw was the door opening and him falling out. I was observing him all the time. I must have seen if he had leant his hands out of the space above the door.' He farther states, what seems important, 'I account for the door opening the second time and not the first, from the train having been going at full speed when it opened, and so the carriage was not smooth at the time. When pursuer first leant out it was not going so fast.' Peter Connolly says, 'As the pursuer was putting his head out of the window I saw the door fly open and him fall out. He did not put his hands outside so far as I saw. He could not have done so without my seeing him at the time. He had not time to lean heavily against the door before it flew open.' Mrs Clelland swears—'The door flew open immediately on the pursuer going to it, and from his body going against it. It seemed all right before that.' Miss Agnes M'Kechnie, one of the defenders' witnesses, says,—'The pursuer put his head on the door, but did not look out of it. The door thereupon gave way. Pursuer did not threaten to leave the carriage before he fell out.' Finally, Mary Donelly, another witness for the defenders, says,—'Pursuer when he looked out was able to stand without any support. I thought him able to take care of himself. He was quiet in the train. There was no quarrelling. . . . I did not see his hands outside the door. I think I would have observed if his hands had been outside. I did not see any one touch the door handle from leaving Glasgow till the accident.' There is not one particle of evidence contradictory of all this, which not only does not support, but goes directly to subvert, the theory that the opening of the door was an act of the pursuer's own. The simple fact, therefore remains, that through the negligence of some one for whom the defenders are responsible there was an unsecured door, through which, on its unexpectedly opening, the pursuer fell and got himself maimed for life, and there is nothing to show that he was contributory in any way to this misfortune, or that the defenders are entitled to be relieved on any other ground from the liability resulting from sending a passenger carriage in an unsafe condition along their line."

The defenders appealed to the Court of Session.

At advising—

LORD PRESIDENT—I think the Sheriff-Principal is right in the view he takes of the proof, and that the accident did occur from negligence on the part of the Railway company. The door was not locked when the accident happened, and I think it is proved that it had never been fastened, and that no one in the carriage had opened it.

The other Judges concurred.

The Court adhered.

Counsel for Pursuer — Lang and Macdonald. Agents—Hill, Reid, & Drummond, W.S.

Counsel for Defenders—Balfour and Solicitor-General (Clark). Agents—

Saturday January 25.

FIRST DIVISION.

[Sheriff of Dumfries.

DONALDSON *v.* DONALDSON'S CREDITORS.

Husband and Wife—Revocation—Cessio bonorum.

> In a petition for *cessio bonorum*, where a husband had granted a conveyance of certain subjects to his wife.—*Held* that his declining to revoke the conveyance as a condition of obtaining his *cessio* is not a sufficient reason for refusing it.

This was an appeal from the Sheriff-court of Dumfries-shire in an application by Robert Donaldson, joiner, Lockerbie, for the benefit of *Cessio Bonorum*.

A state of affairs under the statute was made by the petitioner and signed by him on 11th October 1872, in a note to which he stated that his wife was proprietrix of a house in Lockerbie presently occupied by him. This property was purchased at the price of £200 from the Lockerbie Building Society in or about the year 1867. When the purchase was effected only £50 of the purchase money was paid, a bond being then granted to the society for the remaining £150. The portion of the purchase-money actually paid was advanced by the petitioner's wife and daughter, who had saved that sum in keeping lodgers in the house, and it was intended that on this account the conveyance should be taken in name of his wife. By an oversight, however, this was not done, but it was taken to the petitioner, and the property remained in the petitioner's name down till March 1871, when, in conformity with the original ar-