but I do not think that the relative importance of the part which has been omitted makes any difference on the question whether the Act of Sederunt has been violated or not. The Act equally requires both the note of appeal and the proof to be printed, and if the omission here is fatal it must equally be fatal whatever the omitted portion may be. The circumstance that one part is of more use in the ultimate discussion of the case makes no difference, for the note of appeal must be here just as much as the proof before the Court can consider the case.

Lord Mure and Lord Shand concurred.

Lord Deas was absent.

The Lords repelled the objection to the competency of the appeal, and sent the case to the roll, finding the appellant liable in three guineas of expenses.

Counsel for Appellant — Brand. Agent—D. Turner, S.L.
Counsel for Respondent — Campbell Smith. Agents—Horne, Horne, & Lyell, W.S.

Tuesday, December 20.

FIRST DIVISION.

[Lord Adam, Ordinary.

FERRAL OR M'WILLIAM AND OTHERS *v.* SOUTAR AND OTHERS (MILNE'S TRUSTEES.)

Process—Jury Trial—Notice for Trial—Lead.

Where a case was called in May, but issues were not adjusted till the end of November, and although the pursuers had not lost their lead, there was no mode by which, in accordance with the ordinary course of procedure, they could take advantage of it, or obtain a trial earlier than the ensuing Spring Sittings —the Court (*diss.* Lord Shand) *appointed* the trial to take place at these sittings, in terms of a notice given by the defenders, holding that there was nothing in the circumstances of the case to take it out of the ordinary course of procedure.

In this case, which was an action of reduction of a trust settlement, the summons was dated in May 1881, but issues were not adjusted till November 30 following. December 9 was the last day for giving notice for trial at the ensuing Christmas Sittings, but the pursuers took no step within that period, or within ten days after the adjustment of issues, which expired on December 10. The defenders then gave notice for the Spring Sittings. When this notice came before the Lord Ordinary (Adam) on December 13, the pursuers moved the Lord Ordinary to fix a day for trial, but his Lordship was unable, owing to the state of his roll, to give a day within the three weeks specified in the 40th section of the Act of 1850, the earliest vacant day being February 21. The pursuers thereafter moved the Lord President to fix the trial to proceed before the Lord Ordinary, or before another Judge, on an earlier day than at the Spring Sittings. They stated that they had a number of witnesses of a very advanced age, with reference to whose evidence it would be prejudicial to have the trial delayed till Spring. The defenders contended that the pursuer had lost his lead by having taken no step within ten days after the issues had been adjusted, and that in any case there was no ground for taking this case out of the ordinary course. Lord Mure referred to *M'Neill* v. *Caldwell and Shedden*, March 23, 1853, 15 D. 582.

At advising—

Lord President—In the circumstances of this case I think it is better to let it stand on the notice for the trial at the sittings.

Lord Mure—I am of the same opinion. But I do not go upon the ground that the pursuers have lost their lead. For although they did not give notice of trial till after the expiry of the ten days allowed by the Act of Sederunt for that purpose, they have, as I understand, been endeavouring to get the Lord Ordinary to fix a day for the trial under the 40th section of the Act of 1850, and that, under the rules laid down in *M'Neill* v. *Caldwell*, 15 D. 582, is sufficient to preserve their lead. But the difficulty is that the Lord Ordinary is not able to fix a day till the beginning of March, or even later, and the result, I am afraid, is that this case must stand over to be tried at the sittings at the close of the Winter Session under the notice of trial which has been given by the defenders. The pursuers, however, ask that it shall be appointed to be tried earlier before a Lord Ordinary other than Lord Adam, whose roll is filled up. Whether some arrangement to that effect might not be made of consent I do not give any opinion. But the provisions of the Distribution of Business Act (20 and 21 Vict. c. 56) do not seem to me to cover such a case.

The question therefore for consideration is, Whether there is anything so pressing in the circumstances of this action as to make it desirable that we should endeavour to stretch the provisions of that or of some other Act in order to have the case tried before another Lord Ordinary out of the usual course? I am unable to see anything in the position of this case to render that necessary. The parties have been in Court since the end of May, and yet the issues are not adjusted till the end of November. Notice of trial is not given for this Christmas Sittings, and the pursuers make no motion before the Lord Ordinary to have a day fixed till the 10th of December, being about the time when the defenders gave their notice for the Spring Sittings. The case therefore does not seem to me to be one in which the Court are called on to go out of the usual course, and to make some extraordinary arrangement for a particular case. For I do not see that the pursuers can in the circumstances suffer much hardship by the delay till the sittings in March, as it is quite open to them to have the evidence of the aged witnesses, whose evidence they are afraid of losing, taken upon commission.

Lord Shand—I cannot agree in the result at which your Lordships have arrived. Indeed, I may say that I differ decidedly. Issues were adjusted on the 9th of December, and the pursuers, in asking the Lord Ordinary to fix a time of trial, might fairly expect to have the case tried within

three weeks from that date, or failing this, of consent, as soon thereafter as the Lord Ordinary could give a day, and at the latest by the end of January or the beginning of February. The result of your Lordships' judgment will be that this case will still be hung up for about four months, while according to the statute of 1850 cases should be tried within three weeks unless there be some good reason for delay, if either party desires it. Before the trial can now take place ten months will have elapsed from the date of the summons, and this is much too long a time. There is a difficulty in the way, from the fact that the rolls of the Lord Ordinary before whom the case depends are filled up, but I think that this difficulty might quite well be obviated by remitting the case to the Lord Ordinary, and thereafter having it transferred by the Lord President, in terms of the statute, to a Lord Ordinary who could give an early day.

LORD DEAS was absent.

The Lords refused the motion for trial before a Lord Ordinary, and appointed the cause to be tried at the Spring Jury Sittings in the ensuing year.

Counsel for Pursuers—J. P. B. Robertson. Agent—A. Morrison, S.S.C.

Counsel for Defenders—Mackintosh. Agents—Stuart & Cheyne, W.S.

Saturday, December 24.

FIRST DIVISION.

[Sheriff of Lanarkshire.

MONKHOUSE *v.* MACKINNON.

(*Ante*, January 28, 1881, vol. xviii. p. 284, 8 R. 454.)

Bankruptcy—Ranking—Double Ranking—Extra-judicial Settlement.

Held (*diss.* Lord Shand) that the rule which forbids a double ranking of securities for the same debt on a bankrupt estate applies only where the debtor has been properly divested of his estate in favour of a trustee for behoof of creditors, and not to cases in which he has merely made an extra-judicial settlement.

In this case the following were the facts as they were understood by the parties when in the Sheriff Court, and by the Sheriff-Substitute (ERSKINE MURRAY), from whose judgment this was an appeal:—Hannay & Sons, ironmasters, Glasgow, had a number of transactions with D. L. M'Allum & Company, iron merchants, Newcastle-on-Tyne. Among other transactions there were large contracts for the delivery by M'Allum & Company to Hannay & Sons of pig iron and puddled bars. A portion of these contracts was fulfilled, and bills were granted by Hannay & Sons to M'Allum & Company to the extent of £9106, 3s. 6d., which were discounted by M'Allum & Company in the National Provincial Bank of England and the Bank of England, Newcastle, with the exception of a bill for £326, 9s. 10d., which was retained by M'Allum & Company; and an arrangement was come to between the parties by which 4434 tons still undelivered were repurchased by Hannay & Sons at a difference of price of £6673, 19s. 6d., which therefore became a debt due by Hannay & Sons to M'Allum & Company. On the other hand, Hannay & Sons sold to M'Allum & Company two smaller quantities of iron. For the greater of these M'Allum & Company granted Hannay & Sons bills to the extent of £4541, 4s. 2d., which Hannay & Sons discounted in the National Bank. The price of the smaller lot, 100 tons, being £692, 10s. 7d., remained due by M'Allum & Company to Hannay & Sons.

Both Hannay & Sons and M'Allum & Company became bankrupt. The banks holding the bills claimed on the estates of both parties, were ranked on these estates in respect of the bills (in some cases with rebate of interest), and drew dividends. On the bills by M'Allum & Company the National Bank drew dividends from Hannay & Sons' estate to the amount of £1730, and from M'Allum & Company's estate to the amount of £1362, 7s.

The present case arose out of a claim by G. B. Monkhouse, trustee or assignee on M'Allum & Company's estate, to be ranked on Hannay & Sons' estate for £6303, 3s. 2d., being £6673, 19s. 6d. for the difference in the repurchase, and £321, 14s. 3d. for the bill retained by M'Allum & Company (under deduction of rebate of interest amounting to £4, 15s. 7d.), credit being given for £692, 10s. 7d., the price of the 100 tons of unpaid puddled bars bought by M'Allum & Company from Hannay & Sons. Hannay & Sons' trustee formerly admitted this claim in full (see *ante*, January 28, 1881, vol. xviii. p. 284, 8 R. 454), but by the deliverance at present in question he admitted it only under deduction of £4436, 1s. 5d., the amount (rebate having been deducted) for which the National Bank had been ranked on Hannay & Sons' estate for the bills accepted by M'Allum & Company to Hannays, *i.e.*, he ranked Monkhouse for £1867, 1s. 9d.

Monkhouse appealed.

The Sheriff-Substitute pronounced the following interlocutor:—"The parties having agreed that, in respect of the joint minute of admissions no proof is required, sustains the appeal, and ordains the respondent to rank the appellant on the sequestrated estate of Hannay & Sons for the sum of £6303, 3s. 2d., as craved in the note of appeal."

In his note, after narrating the circumstances as set forth above, the Sheriff-Substitute proceeded:—"The grounds on which Hannays' trustee bases his deliverance are, that these acceptances being the true obligations of M'Allum & Company, the appellant is bound to relieve the respondent thereof; and not having relieved the respondent by taking up the acceptances from the bank, the respondent is entitled and bound to deduct the ranking of said bank in respect of said acceptances from the appellant's claim.

"Though the rules of double ranking seem at variance with the respondent's contention, the question is a somewhat nice one. There is, however, a direct authority in point, viz., the recent case of *Anderson* v. *M'Kinnon*, March 17, 1876, 3 R. 608. The second branch of that case was as follows—Crawford had granted Watson & Campbell acceptances for £4000. These accept-