delivery to be taken of the whole in three weeks. This is the first reference to the bargain subsequent to January, and it is made obviously by the defender's agents to induce the pursuer to discharge his claim for damages in respect of wrongous arrestment which he had reserved in his defence. It cannot, I apprehend, be held to indicate that the defender still held the original bargain binding; and the proposal of the agents rather points to the opposite inference. But, however this may be, it was not agreed to, and on 4th of April 1862 the pursuer reverts to the bargain as if still entire, and intimates his intention now to take delivery of the remainder of the potatoes. Possibly the reference to the undelivered potatoes in Messrs Clark & Boyd's letter of 27th March led to this intimation of 4th April, for the price of potatoes is proved to have then greatly risen. But, whether so or not, the pursuer's continued silence from the end of January until April, and his total inaction in the matter, affords powerful confirmation of the evidence that exists of the bargain having been mutually departed from as alleged by the defender in the record.

Entertaining these views, I am of opinion that in addition to the findings in fact contained in the interlocutor, there ought to be a finding that the proof establishes that the bargain was departed from by mutual consent at a meeting of the parties towards the end of January. With this addition and a corresponding alteration on the finding in law, so that the legal ground on which the Court has proceeded may not be misunderstood, I am of opinion that the interlocutor of the Lord Ordinary should be affirmed, and the reclaiming note refused.

The other Judges concurred, and the interlocutor of the Lord Ordinary was therefore substantially adhered to.

Agents for Advocator—J. & J. Gardiner, S.S.C.
Agent for Respondent—D. F. Bridgeford, S.S.C.

Wednesday, March 20.

FIRST DIVISION.

PET.—SCOTT AND ANOTHER.

Trustee—Removal—Resignation. A petition having been presented for the removal of a trustee, who put in a deed of resignation, *Held* that this rendered it unnecessary to consider the application.

This was a petition by a trustee and beneficiary and another beneficiary, under a voluntary trust-deed, for the removal of another trustee under it on the ground of alleged misconduct. It was ordered to be served and answered.

When the petition again appeared in the roll,

FRASER, for the respondent, stated that the allegations in the petition were denied, but he put in a deed of resignation of his office, which had been executed by the respondent under section 1 of the Act 24 and 25 Vict., c. 84.

M'LAREN, for the petitioners, asked an order upon the respondent to deliver up the whole books, papers, and documents, belonging to the trust-estate in his possession.

LORD PRESIDENT—There is no prayer for such an order.

M'LAREN—Then I ask leave to amend the petition by adding it.

FRASER—I can't consent to that.

LORD PRESIDENT—We cannot allow any amendment except of consent.

M'LAREN then submitted he was entitled to the order without a special prayer for it.

The LORD PRESIDENT—We appointed this petition to be served and answers to be lodged. But a deed of resignation has been put in which seems to me to put an end to the petition; for the prayer is simply to remove the respondent from the office of trustee, and the only other prayer is for such interim order as may be necessary pending the consideration of the application. There is no prayer for delivery of trust papers. The sole object of the application is removal, and that having become unnecessary, the petition just drops.

The other Judges concurred.

Agents for Petitioners—White-Millar & Robson, S.S.C.

Agent for Respondent—J. F. Wilkie, S.S.C.

PET.—SHEARD.

Proof—Deposition of Aged Witness to lie in retentis. Commission granted to take the deposition of an aged pursuer of an action, without deciding whether it could ever be used as evidence.

The petitioner is pursuer of an action in which defences have not yet been lodged. She now, in respect of her old age, applied for a commission to take her deposition as a witness to lie *in retentis*.

ASHER for the petitioner.

The Court granted the commission without expressing any opinion at present as to whether the deposition could be used in evidence, or whether, in any circumstances, a pursuer of an action can make his own deposition, when taken on commission, evidence.

Agents for Petitioner—Murdoch, Boyd & Co., S.S.C.

DIXON AND OTHERS *v.* CAMPBELL.

Bankruptcy — Discharge of Bankrupt — Trustee's Report. A bankrupt's discharge refused in respect he had been engaged in reckless speculation which had caused his bankruptcy. Observations (per Lord President) as to what a trustee's report under sec. 146 of the Bankruptcy Act should consist of.

This was an appeal by the trustees of Mr Dixon, of Govan Colliery, and the Commercial Bank against an interlocutor pronounced by Sheriff-Substitute Galbraith, of Glasgow, finding John Campbell, junior, of the firm of Campbell Brothers, entitled to his discharge. The interlocutor proceeded upon a report by Mr Wylie Guild, the trustee on the estate, that Mr Campbell had complied with all the provisions of the statute; that he believed he had made a fair discovery and surrender of the estate, and had not been guilty, so far as known to the trustee, of any collusion; and that his bankruptcy had arisen from innocent misfortunes, and not from culpable or undue conduct. There was also a minute of concurrence in the application for discharge by a majority in number and four-fifths in value of the creditors who had produced oaths in the sequestration.

According to the state of affairs given up by the bankrupts, the amount of their assets was £4925, 4s. 6d., and of their liabilities £187,225, 7s. The appellants, Dixon's trustees, have lodged claims to the amount of £80,098, 6s. 10d.; and the Commercial Bank for £10,840, 17s. 8d.; but the claim of Dixon's trustees to the extent of £73,137, 10s. was not lodged till after expiry of six months from the date of the sequestration.