a special property in what he seeks to recover. If he has not such a property, it may be shewn on the plea of non detinet. But at all events the fourth plea in this case has been clearly established. The Plaintiff had no property whatever in these deeds at the time of the action: it was all gone by the operation of the fine: if so, the case in Viner is in terms the same as the present. The Plaintiff here had conveyed the property to his son; and he, therefore, might have sued for the deed, although he had never been in possession of the property. Roll. Abr. Detinue. Therefore, without entering on the Defendant's right to detain, it is clear the Plaintiff had no right to sue.

BURROUGH J. In detinue the Plaintiff may recover either the specific thing detained, or the value of it. But what value could the jury find for the Plaintiff in the present case? I am clearly of opinion that this was an answer to the action upon non detinet. The province of the jury in this respect, cannot be supplied by a writ of enquiry. But in order to establish that the deeds are of any value to him, the Plaintiff must shew that he has a right to them. In Co. Lit. 283, it is laid down; "If the defendant plead non detinet, he may give in evidence a gift by the plaintiff, for that shews he does not detain his goods." At the time of this action the Plaintiff had no interest in these deeds; they were of no value to him; and, therefore, the nonsuit was right.

[112] GASELEE J. I had some doubts at first whether want of property in the Plaintiff might be given in evidence on non detinet, but the passage from Lord Coke renders that point clear. If the Defendant relies on a lien, that must be specially pleaded; but he may give in evidence, under non detinet, that the Plaintiff has no property in the thing sought to be recovered. The circumstance that the Plaintiff delivered the deeds to the Defendant will not avail him, since he himself has subsequently executed a conveyance which carries the deeds with it.

Rule discharged.

EYLES *v.* ELLIS. May 7, 1827.

[S. C. 12 Moore, 306; 5 L. J. C. P. (O. S.) 110. Adopted, *In re Land Development Association, Kents' case*, 1888, 39 Ch. D. 271.]

The Plaintiff, in October, authorized Defendant to pay in at certain bankers money due from the Defendant. Owing to a mistake it was not then paid; but Defendant, who kept an account with the same bankers, transferred the sum to the Plaintiff's credit on Friday the 9th of December.—The Plaintiff being at a distance, did not receive notice of this transfer till the Sunday following, and on the Saturday the bankers failed:—Held, that this was a sufficient payment by the Defendant.

Covenant for rent due from the Defendant to the Plaintiff.

At the trial before Onslow Serjt., last Kent assizes, the Defendant put in the Plaintiff's receipt for the amount claimed.

The Plaintiff then shewed that he had given the receipt, upon hearing from the Defendant that he had paid the amount to the Plaintiff's banker at Maidstone, to whom the Defendant had, in October 1825, been requested by the Plaintiff to pay it. The Defendant, who kept an account with the same banker, ordered the amount to be transferred from his account to the Plaintiff's credit: it was discovered, however, that owing to some mistake this had not been done at the time when the Plaintiff's receipt came to the Defendant's hands; **[113]** but upon the Plaintiff's complaining, the Defendant, on the 8th of December, ordered the mistake to be rectified, and on Friday, the 9th of December, addressed a letter to the Plaintiff, announcing that the mistake had been rectified: this letter the Plaintiff, being at a distance, did not get till the ensuing Sunday. In the interval the bankers failed, and never opened their bank after the Saturday. The transfer in the banker's books, from the Defendant's account to the Plaintiff's, appeared to have been made on the 8th, at which time the Defendant's account was overdrawn about 900l. The learned serjeant thought that this transfer amounted, under the circumstances, to payment, and a verdict having been found for the Defendant,

Taddy Serjt. moved for a new trial, on the ground that no actual payment had

been made to the Plaintiff; that he could not be satisfied by a mere transfer in the banker's book, and that not having received the letter till the Sunday, when the bankers had suspended payment, he had no opportunity of drawing the amount out of their hands: the verdict might have been acquiesced in if he had received notice of the transfer on the Friday. The Defendant had no general directions to pay to the Plaintiff's bankers, and an authority to deposit money with them in October did not warrant making a transfer in December.

BEST C. J. The learned serjeant was right in esteeming this a payment. The Plaintiff had made the Maidstone bankers his agents, and had authorized them to receive the money due from the Defendant. Was it then paid, or was that done which was equivalent to payment? At first, not; but on the 8th a sum was actually placed to the Plaintiff's account; and though no money was transferred in specie, that was an acknow-[114]-ledgment from the bankers that they had received the amount from Ellis. The Plaintiff might then have drawn for it, and the bankers could not have refused his draft.

The rest of the Court concurring, Taddy
Took nothing.

M'TAGGART *v.* ELLICE. May 8, 1827.

Affidavit to hold to bail; what, insufficient.

The affidavit to hold to bail, stated the Defendant to be indebted to the Plaintiff upon a promissory note for 10,000l., drawn in favour of Inglis, Ellice, and Company, and duly indorsed to the Plaintiff.

Taddy Serjt. obtained a rule *nisi* to set aside the bail-bond and enter a common appearance, on the ground that the affidavit did not state an indorsement or debt from Ellice to the Plaintiff.

Wilde Serjt., who shewed cause, urged that an indorsement by Ellice was implied in the word duly.

But the Court held the affidavit insufficient, and made the rule
Absolute.

[115] GRAHAM AND ANOTHER, Assignees of Thomas Wilkinson and James Mulcaster, Bankrupts, *v.* MULCASTER. May 8, 1827.

[S. C. 12 Moore, 327; 5 L. J. C. P. (O. S.) 118.]

Assignees under a joint commission against two partners, may recover in the same action debts due to the partners jointly and debts due to them separately.

Assumpsit. In the first, second, third, and fourth counts, the Plaintiffs declared as assignees of Wilkinson and Mulcaster, upon promises by Defendant to Wilkinson and Mulcaster before their bankruptcy, in respect of debts due to them before their bankruptcy:

Breach, non-payment to Wilkinson and Mulcaster before they became bankrupt, or to Plaintiffs as assignees as aforesaid, since.

Fifth count, that Defendant after Mulcaster became a bankrupt, and before Wilkinson became a bankrupt, being indebted to Plaintiffs as assignees of Mulcaster as aforesaid, promised the Plaintiffs as assignees of the said Mulcaster as aforesaid.

Sixth and seventh, that Defendant being indebted to Plaintiffs as assignees as aforesaid, promised them as assignees as aforesaid to pay. Breach, as to the three last promises, non-payment to Plaintiffs as assignees as aforesaid.

Demurrer, for that Plaintiffs by the four first counts of their declaration, had declared against the Defendant in respect of divers causes of action therein mentioned to have accrued to Wilkinson and Mulcaster before they became bankrupts, and have, in the fifth count, declared in respect of a cause of action alleged to have accrued to them as assignees of Mulcaster only; and in the sixth and seventh counts have declared in respect of causes of action alleged to have accrued to them as such assignees as aforesaid, without shewing whether such causes of [116] action accrued to them as assignees of Mulcaster or of Mulcaster and Wilkinson, thereby including in the declaration causes of action which cannot by law be joined. Joinder.