There is no case in the leading provisions of the 78th section of any parish other than that in and from which the party is sent to the asylum, and therefore it is impossible to limit the meaning of this proviso so as to restrict its application to the 78th section. It must apply to the preceding sections as well, and in particular to the 76th. Thus the Act is made harmonious, and any difficulty in the 76th section is obviated. I think, therefore, that this is a good action at the instance of Monifieth, authorised by the 76th section, but properly limited to recovery of expenses incurred for one year preceding the statutory notice, all the subsequent expenses having been paid.

The only other point is, that there is a want of any certificate by the Sheriff of the amount of expenses sought to be recovered. No doubt it is provided by the 76th section that it shall be competent for the Sheriff of the county in and from which such lunatic was taken and sent, to ascertain and fix the amount of the same, and the expense so fixed shall be recoverable by summary process from the parish of the settlement of the lunatic before the Sheriff of the county in which such parish is situated; and similarly in the 76th section. But I do not read that as importing that the ascertainment of the amount of expenses by the Sheriff is an indispensable pre-requisite to any action for reimbursement of the amount of expenses. I think it is a privilege of a party disbursing to go to the Sheriff of his own county to get from him a certificate which will relieve him from having to prove the amount when he goes to another county for recovery of them, and therefore the absence of the certificate is not material. In this case there can be no difficulty, for there is no dispute as to the amount.

I am therefore for refusing this appeal.

Lord Deas said that the pleas of the defender were these—(1) That the claim was not made by the proper party; and (2) that there was no statutory certificate. As to the first point, the action was at the instance of John Methven, residing in Brook Street, Broughty Ferry, inspector of the poor of the parish of Monifieth, for and on behalf of the parochial board of the said parish of Monifieth, with the consent and concurrence of James Craig, inspector of the poor of the parish of St Cuthbert's, for and on behalf of the parochial board of that parish, for all right, title, or interest competent to said board in the premises. There was no doubt that that concurrence was the same as the instance of the inspector of St Cuthbert's. Even in the case of a disposition of heritage, a consenter had been held to be a disponer, and unquestionably a party consenting in an action was held to be a pursuer. There were, therefore, two pursuers, to one or other of whom the money was due. It was quite settled that where there were several pursuers it was competent to conclude that payment should be made to any one of them. Even payment to some one else might be concluded for. Any difficulty of construction could have no effect on the result of the case. On the other matters he concurred.

Lord Ardmillan and Lord Kinloch concurred.

Agents for Appellant—Adam & Sang, S.S.C.

Agents for Respondent—Leburn, Henderson, & Wilson, S.S.C.

Thursday, February 4.

BURNS *v.* CRAIG.

Bankrupt—Bankruptcy Act 1856, *sect.* 142—*Count and Reckoning—Petition.* An action of count and reckoning by a discharged bankrupt against his trustee, also discharged, *held* incompetent, the bankrupt's remedy in such case being by petition under section 142.

Burns, a bankrupt discharged on composition, brought an action of count and reckoning against Craig, trustee in his sequestration, now also discharged. The defender pleaded that the action was incompetent, in respect that the Bankrupt Act 1856, section 142, provides that the proper method in such cases is by petition to the Lord Ordinary or the Sheriff.

The Sheriff-substitute (A. E. Murray) sustained the plea, and dismissed the action.

The Sheriff (Bell) adhered.

The pursuer appealed.

Scott for appellant.

Watson and Brand for respondent.

At advising—

Lord President—I think the Sheriffs are right. The sequestration of the pursuer's estates had come to an end, the trustee had been discharged, and, as I understand, the bankrupt himself had been discharged on a composition. In these circumstances, before the trustee can obtain his discharge, there must have been the proceedings provided in the bankruptcy Act. But all this is to be subject to the review of the Lord Ordinary or the Sheriff, if complained of by the trustee, the bankrupt, or any of the creditors. Now, the question as to the sufficiency of the trustee's accounts, as to any balance due to or by him, and as to the remuneration for his services, are all made matter of adjudication by the commissioners in the first instance, and by the Lord Ordinary or the Sheriff in the second place, and the bankrupt is a necessary party to these proceedings. After all that the trustee obtains his discharge. That discharge is a deliverance by the Lord Ordinary or the Sheriff which exoners and discharges him of his whole intromissions as trustee in the sequestration—trustee, not only for the creditor, but also for the bankrupt. If it were not for the somewhat singular provision at the end of the 142d section, there is no doubt that there could be no action by the bankrupt against the trustee to call him to account for his intromissions, of which he is formally discharged. It must be observed that, in the case of a balance being in the hands of the trustee after satisfying the creditors, or after providing for all he was bound to provide for, the trustee will not get his discharge until he has paid over any such balance to the parties to whom it belongs. That was found so long ago as in 1810, in the case of *Ballantine.* Therefore it is clear that, if it were not for this provision in the 142d section, the bankrupt would have had no opportunity of calling the bankrupt to account for his actings as trustee. But this section certainly does nevertheless give the bankrupt a right to present a petition to the Lord Ordinary or the Sheriff against the trustee and his cautioners, to account for his intromissions as trustee. It is a remarkable remedy, and one that must be strictly followed, and as the statute says it is to be by the form of a petition, I do not think we can allow it in any other form.

The other judges concurred.
Agent for Appellant—A. K. Mackie, S.S.C.
Agents for Respondent—Neilson & Cowan, W.S.

Friday, February 5.

MITCHELL *v.* CANAL BASIN FOUNDRY COMPANY.

Compensation — Partnership — Bankrupt — Assignation. A debtor incurred a debt to the firm of D. & W., of which firm D. and W. were sole partners. D. and W. were at the same time the partners, along with another, of the U. S. Company. The U. S. Company, and D. and W., its partners, individually, were sequestrated, the firm of D. & W. remaining solvent. The trustee on the sequestrated estates of the U. S. Company, and of the partners, having obtained an assignation of the debt due to the firm of D. & W., sued the debtor for payment. *Held* that the debtor was entitled to plead compensation in respect of a debt due to him by the U. S. Company, on the ground that the trustee, in seeking to recover the original debt, truly represented the private estates of D. and W., and these persons were, as partners of the U. S. Company, liable to the debtor in payment of the debt on which he pleaded compensation.

This was an action at the instance of Moncrieff Mitchell, accountant in Glasgow, trustee on the sequestrated estates of the Union Shipbuilding Company, shipbuilders in Glasgow, and individual partners thereof, conform to act and warrant of confirmation in his favour by the Sheriff of Lanarkshire, dated the 23d day of March 1865, assignee of Davidson & Wood, boiler-makers in Glasgow, and the individual partners of the said firm, in and to the debt aftermentioned, against the Canal Basin Foundry Company, founders, engineers, millwrights, and boiler-makers in Glasgow, and John Turnbull, Robert Adie, and Richard Robb Grant, all founders, engineers, millwrights, and boiler-makers in Glasgow, the individual partners of the said Canal Basin Foundry Company, as such partners and as individuals, concluding for payment to the pursuer of the sum of £461, 4s. 6d., being the balance (less a contra account of £3, 1s. 7d.) of the amount of an account incurred by the defenders to the said Davidson & Wood, for goods furnished and supplied to, and work performed for them by the said Davidson & Wood, conform to account commencing the 20th day of July 1864, and ending 23d February 1865.

The defenders pleaded compensation, in respect of a debt of £510, 11s. 4d. due on a bill, dated 25th November 1864, granted to the defenders by the Union Shipbuilding Company, of which firm Davidson and Wood were partners, along with another.

The Lord Ordinary (BARCAPLE) repelled the defender's plea.

The Court recalled, and allowed a proof.

Thereafter the Lord Ordinary pronounced this interlocutor:—"The Lord Ordinary having heard counsel for the parties, and considered the closed record, proof, productions, and process: Finds that the defenders do not dispute that the debt sued for is due by them to the firm of Davidson & Wood, the cedents of the pursuer, except in so far as they may be entitled to plead compensation against the same: Finds that the debt on which the defenders plead compensation is constituted by a bill dated 25th November 1864, accepted by the Union Shipbuilding Company to the defenders for £510, 11s. 4d., being the second instalment of the price of a pair of marine engines furnished by the defenders to the Union Shipbuilding Company in September and October 1864: Finds that the said engines were made and delivered by the defenders under a contract proceeding upon a specification, dated 10th December 1863, signed 'Union Shipbuilding Company, W. H.,' and constituted by an offer, dated 11th December 1863, by the defenders, addressed to Messieurs Davidson & Wood, Union Shipbuilding Yard, and acceptance thereof, dated 17th December 1863, signed Union Shipbuilding Company, W. H.: Finds that at and prior to said 10th day of December 1863, David Davidson and John Wood, the sole partners of the firm of Davidson & Wood, boiler-makers, Union Foundry, Union Place, Glasgow, as individuals, and George Robinson Andrews, were carrying on business as ship and boat builders in partnership, under the firm or designation of The Union Shipbuilding Company, at the Union Shipbuilding Yard, Kelvinhaugh, being premises separate and at some distance from the said Union Foundry: Finds that in May or June 1864 the defenders were aware that the said George Robinson Andrews was a partner of the Union Shipbuilding Company: Finds that the defenders, in the knowledge that the Union Shipbuilding Company was a separate Company, with different partners, from the firm of Davidson & Wood, furnished the said pair of engines to the Union Shipbuilding Company, and took from them in settlement of the price thereof two instalment bills, the second of which is the bill constituting the debt on which compensation is pleaded: Finds that the first of said bills was duly retired by the Union Shipbuilding Company: Finds that the Union Shipbuilding Company has become bankrupt, and been sequestrated, and the pursuer is trustee in their sequestration: Finds that the firm of Davidson & Wood have assigned to the pursuer the said debt due to them by the defenders: Finds that the defenders are not entitled, in defence against this action, for payment of the said debt due by them originally to the firm of Davidson & Wood, and now to the pursuer as their assignee, to plead compensation in respect of their claim for the amount of the said bill for £510, 11s. 4d., granted to them by the Union Shipbuilding Company in settlement of the price of the said engines furnished to said Company: Repels the defences, and decerns in terms of the conclusion of the libel: Finds the defenders liable in expenses."

The defenders reclaimed.

After argument, the Court pronounced this interlocutor:—

"*Edinburgh, 17th December* 1868.—The Lords having heard counsel on the reclaiming note for the defenders against Lord Barcaple's interlocutor of 30th June 1868, recall the said interlocutor: Find that the defenders are owing to the firm or company of Davidson & Wood, and to the pursuer, as the assignee of the said firm or company, the sum of £461, 4s. 6d. sued for, as the balance of an account for furnishing made and work done for the defenders by said firm or company between 20th July 1864 and 23d February 1865: Find that the Union Shipbuilding Company are owing to the defenders £510, 11s. 4d., being the amount of a bill drawn by the defenders and accepted by the said Union Shipbuilding Company, dated the 25th