Another case was mentioned to us in argument which does not require decision here. That is the case of a pauper who has become chargeable under section 70, and who leaves the parish where he has become so chargeable for some merely temporary purpose, or it may be owing to some mistake, and while so absent is found destitute and obtains relief in another parish. I do not give any opinion that in such a case the chargeability to the parish within which he became a pauper and was receiving relief, would cease. The pauper would be still a pauper on the roll of that parish. But this case is not one of that description. This woman appears to have given up her ticket, and there is no proof that she left otherwise than voluntarily, although she appears to have had a mistaken idea that the allowance would be continued by the City Parish. The obligation imposed by the 70th section to continue relief does not interfere with the pauper's right to remove to another parish.

The Court refused the reclaiming-note and adhered to the judgment of the Lord Ordinary.

Counsel for the Pursuer—Guthrie Smith. Agents—J. L. Hill & Company, W.S.

Counsel for the Defender — Dickson. Agents—W. & J. Burness, W.S.

Friday, December 20.

FIRST DIVISION.

BRUCE *v.* HENDERSON AND OTHERS.

Process—Special Case—Competency—Value of Cause—Court of Session Act 1868 (31 *and* 32 *Vict. cap.* 100), *sec.* 63—*Jurisdiction—Crofters Holdings Act* 1886 (49 *and* 50 *Vict. cap.* 29).

A landlord and three crofter tenants applied to the Court by special case to determine which of certain alternative sums were due by each of the tenants respectively as rent under a decision of the Crofters Commissioners.

As none of the sums in question exceeded £25 the special case was *dismissed* as incompetent.

William Arthur Bruce of Symbister was proprietor of certain crofts in the crofting parish of Dunrossness, in the county of Zetland, of which Henry Henderson, John Sinclair, and Alexander Shewan were tenants. The tenants each lodged with the Crofters Commission an application to fix a fair rent.

The Commission on 6th November 1889 dealt with the application as follows:—

	Present Rent.	Fair Rent.	Total Arrears	Arrears Cancelled.	Ordered to be paid up.
Henry Henderson, South Scousburgh,	£6 10 0	£5 0 0	...	...	...
John Sinclair, North Scousburgh,	6 0 0	4 4 0	£6 3 6	£4 3 6	£2 0 0
Alexander Shewan, Scatness,	8 15 0	6 15 0	5 0 0	5 0 0	...

The arrears were dealt with as at Martinmas 1888. In Shetland it is the custom to pay rent yearly at Martinmas.

The parties disagreed as to the date when the above decision began to take effect, and a special case was presented for the opinion of the Court as to whether the rent in each case payable at Martinmas 1889 was subject to abatement, and also whether the rents were made payable half yearly by the Crofters Holdings (Scotland) Act.

When the case was moved in Single Bills the Court sent it to the summar roll in order that its competency might be determined.

Argued for the parties—The questions between the first and second parties could be most cheaply determined under the present special case, nor was there anything against the competency of such a proceeding, for the Act of 1868, sec. 63, did not fix any pecuniary limit below which a special case was to be incompetent. Though the questions between the parties might be determined in an Inferior Court, yet as they had selected the Court of Session there was no incompetency in the matters in dispute being determined by means of a special case—*Morton* v. *Gardner*, February 24, 1871, 9 Macph. 548.

At advising—

LORD PRESIDENT—This is just an attempt to get the Court to exercise jurisdiction in a case where it has none.

The three crofters mentioned in this proposed special case were owing certain rents to the first party, their landlord as at Martinmas 1889, and the question between the parties is of very small amount.

In the case of Henderson the question is whether he is to pay £6, 10s. or £5; with Sinclair, £6, or £4, 4s.; and with Shewan, £8, 15s. or £6, 15s. Now, these sums can be recovered in the Court of ordinary jurisdiction but certainly not in this Court, and the proposal that we should decide whether the larger or smaller sum is to be paid is just to ask this Court to determine three small-debt litigations.

It is clear on the Statute of 1868 that nothing was intended to be made the subject of a special case except questions which could be raised by some other form of process in this Court, and this is not such a case.

LORD ADAM—I am entirely of the same opinion. The Statute of 1868 when introducing special cases did not comtemplate extending the jurisdiction of this Court to a class of cases which prior to that date it could not competently have dealt with.

Here we have three small-debt actions by a landlord against his tenants, and it is proposed by grouping the three together to render competent a proceeding which could not for a moment have been entertained if any one of these actions had been brought separately. It would not in my opinion have made matters any better if twenty tenants had been grouped together, and I accordingly think that this special case should be dismissed as incompetent.

LORD M'LAREN—I concur. The difficulty in dealing with these cases arises from the Act of Parliament limiting our jurisdiction. The Act is 50 Geo. III., c. 112, and clause 28 enacts that "all causes not exceeding the value of £25, shall from and after the passing of the Act be carried on in the first instance before the inferior judges in the manner directed, and with the exceptions specified in the Act passed in the third session of the second Parliament of His Majesty King Charles the Second, entitled "Act concerning the Regulations of the Judicatories."

These relate to actions which but for those provisions could not have been instituted except in this Court.

Now, this is a cause not exceeding £25, and while there is no express restriction of jurisdiction in the clause quoted in the form of procedure by way of special case, I concur in the opinions which have been expressed in previous cases, and in the present case by your Lordships, that it must be dealt with under the same limitation as all other causes.

LORD SHAND was absent.

The Court dismissed the special case as incompetent.

Counsel for the First Party—Salvesen. Agent—S. Greig, W.S.

Counsel for the Second Parties — C. N. Johnston. Agent — William Balfour, Solicitor.

Saturday, December 21.

FIRST DIVISION.

[Lord Trayner, Ordinary.

GEDDES *v.* QUISTORP.

Bankruptcy—Trustee—Discharge—Radical Right of Bankrupt in Estate after Discharge without Composition—Claim not Inserted in State of Affairs—Title to Sue.

A bankrupt, after he had been discharged but not re-invested in his estates, and after the trustee in his sequestration had been discharged, raised an action for a debt which had existed prior to his sequestration, but which he had not mentioned in the state of affairs made up by him in the sequestration. *Held* (following *Whyte* v. *Murray*, November 16, 1888, 16 R. 95) that he had a good title to sue.

This was an action at the instance of Robert Geddes against Mrs Emma Lumb or Quistorp for payment of a sum of £300 alleged to have been lent by the pursuer to the defender on 9th March 1878. The record contained, *inter alia*, the following averments—"(Cond. 3) For some years subsequent to the said loan having been made the defender was not in a position to repay the same, and the pursuer did not press her for repayment. She has latterly, however, succeeded to considerable means, and the pursuer has repeatedly requested her to repay the said loan, but she refuses or delays to do so, and the present action has become necessary. Explained that both the pursuer and the trustee in his sequestration have been discharged. (Ans. 3) Admitted that the pursuer did not press the defender for payment of the said sum, and that she refuses to pay it. *Quoad ultra* denied. Although the defender lived in the pursuer's house for nearly two years from June 1887, he never even suggested until she had given him notice that she was leaving that said sum was a loan to her. The defender on two occasions advanced considerable sums to the pursuer, and he repaid both loans to her without making any demand whatever for payment of the sum now sued for. Explained further that the pursuer's estates were sequestrated under the Bankruptcy Statutes on 1st December 1886. In the state of affairs made up by him no mention whatever is made of the present claim. The pursuer was discharged without composition on 18th August 1887. In these circumstances he is now in any event precluded from maintaining the present action."

The defender pleaded, *inter alia*—"(1) No title to sue. (2) The pursuer's statements are irrelevant and insufficient to support his pleas."

The Lord Ordinary (TRAYNER) on 6th December 1889 pronounced the following interlocutor—"Repels the first and second pleas-in-law for the defender, and before further answer allows the parties a proof *habili modo* of their respective averments on a day to be afterwards fixed: Finds the defender liable in expenses, &c.

"*Opinion.* — The pursuer was sequestrated in 1886, at which time the debt now sued for was due to him if due at all. He did not state his present claim as one of his assets in the state of affairs given up by him in the sequestration. He has been discharged, and so was his trustee. In these circumstances the defender pleads that the pursuer has no title to sue the present action. On the authority of the case of *Whyte* v. *Murray*, 16 R. 95, I think the defender's plea must be repelled. Assuming that the sum sued for is a debt due to the pursuer or to his sequestrated estate, there must be a title in someone to recover it. The trustee having been discharged no one has such a title but the pursuer. The mere fact of his having failed to state this claim as an asset or his having concealed it from his creditors is no reason why it should not now be recovered. His failure to state or his concealing the debt does not discharge the debtor, and the creditors of the pursuer will have their remedy if decree should be pronounced by reviving the sequestration and claiming the fund recovered. I was referred to the case of *Kerr* v. *Moody*, 13 S.L.R. 480, as an authority for the proposition that when a bankrupt under sequestration conceals or fails to disclose to his creditors an asset due to him, and is thereafter discharged, he cannot sue for that asset. But *Kerr* v. *Moody* is not an authority for such a proposition. In that case