the acquiescence of the Marquis of Huntly. What are the facts in regard to that? The pursuers here representing the Marquis of Huntly demand the proceeds of this wood from 1855 to 1878, a period of twenty-two years, while for eleven years the trust affairs were the subject of a judicial process in which the Marquis of Huntly was a party, and the very subject of this annual cutting of wood and appropriating the proceeds was prominently brought before the parties, and particularly by the reports of the Auditors of this Court, to whom the case was remitted, one of these being by the late Mr Hunter, and another by the present auditor Mr Baxter, who had succeeded to that office. I do not need to go into the details of these reports. It is sufficient to say that the Marquis of Huntly was a litigant in the cause, and allowed them to be approved of. The heir was thus entitled to assume that his right was recognised, and great injustice would be done to him and his representatives if, after having acted with the consent and acquiescence of all interested, the Marquis of Huntly should afterwards be entitled to come and demand that the proceeds of all of these wood cuttings should be repaid, and not merely for the last period of eleven years, but for the first period of eleven years, when the trust matters were in Court and were approved of, and which approval plainly authorised the heir to go on as he had been doing. Upon these grounds I am of opinion that the interlocutor of the Lord Ordinary should be recalled and the defenders assoilzied.

The Court pronounced judgment recalling the interlocutor of the Lord Ordinary, assoilzieing the defenders, and finding them entitled to expenses.

Counsel for Pursuers (Respondents)—Kinnear—Robertson. Agents—Henry & Scott, S.S.C.

Counsel for Defenders (Reclaimers)—Asher—Mackay. Agents—Lindsay, Howe, Tytler, & Co., W.S.

Saturday, November 6.

SECOND DIVISION.

[Sheriff of Midlothian.

MEIKLE & WILSON *v.* POLLARD (SMITH'S TRUSTEE).

Lien—Retention.

A firm of accountants was employed by a party—who subsequently became bankrupt—to do certain professional work for him. To enable them to execute this work the business books of the bankrupt were put into the accountants' hands. *Held*, in a question with the bankrupt's trustee, that the accountants were entitled to retain the books until paid for the work they had done.

In the month of January 1880 Mr James Smith, merchant, Kirkliston, employed Messrs Meikle & Wilson, accountants and business agents in Edinburgh, to collect certain outstanding debts which were due to him, and to negotiate for the sale of his Kirkliston business. To enable his employees to carry out these instructions, Mr Smith handed over to them a list of the debts to be recovered and two business books. Messrs Meikle & Wilson thereupon proceeded to examine the business books, to write letters to the debtors, and to effect the sale of the Kirkliston business. A sum of £2, 15s. due to Mr Smith was in this way recovered, and the sale of the business was completed.

On the 6th of February 1880 Mr Smith, who had become insolvent, granted a trust-disposition of his whole means and estate to Mr James Pollard, chartered accountant, Edinburgh, for behoof of creditors. At the meeting when the disposition was agreed to be granted by Mr Smith, Mr Meikle was present, but did not accede to the disposition. At this time Messrs Meikle & Wilson had an account against Mr Smith for the above-mentioned transactions. A balance of £16, 1s. 10d. was claimed as still due. In order to enforce payment of this debt Messrs Meikle & Wilson retained possession of the business books which had come into their hands.

Shortly after the trust-disposition was granted Mr Pollard requested Messrs Meikle & Wilson to deliver up to him, as the trustee on Smith's estate, the business books in their possession. Messrs Meikle & Wilson refused to do so, on the ground that they had a right of retention over the books until payment of their account. Mr Pollard thereupon petitioned the Sheriff to ordain Meikle & Wilson to deliver to him, as trustee on Smith's estate, the whole vouchers, writs, title-deeds, lists of book debts, and in general the whole documents in their possession relating to or forming any portion of Smith's estate. The petitioner pleaded, that being in right of the whole means and estate of the said James Smith in virtue of the disposition in his favour, he was entitled to delivery of the documents sued for. The defenders replied, that having acquired actual possession of the documents from the owner thereof to carry out his instructions to them as accountants and business agents, and having done so, they had a right of lien or retention over them for their charges.

The following interlocutor and note were issued by the Sheriff-Substitute (HALLARD):—"Having heard counsel on the defenders' plea of retention, repels said plea."

"*Note.*—The authorities to which the Sheriff-Substitute was referred at the debate in support of the proposition that an accountant has the same lien over his employer's writs as a law-agent are not sufficient to support that plea. In *Stewart* v. *Stevenson*, Feb. 23, 1828, 6 Shaw 591, the accountant who successfully pleaded the lien was an officer of Court. In *Bruce* v. *Irvine*, Feb. 7, 1835, 13 Shaw 437, the point was reserved, although it is true that in the Lord Ordinary's interlocutor there is an important observation on the case of *Stewart*. The case of *Renny and Webster* v. *Myles and Murray*, Feb. 8, 1847, 9 Dunlop, New Series, 619, is not in point, except as illustrating the disinclination of the Court to extend the writer's lien beyond the limits assigned to it by previous authorities—Lord Mackenzie quoting the pithy maxim, *quæ contra tenorem juris fiunt non sunt trahenda ad consequentias.*

"If, therefore, the defenders' plea has any valid foundation, it must be identical with that of the artificer who retains the article he has made or repaired in security of the sum due as

remuneration for his work. The writs and papers of which delivery is sought in the present process are not in that position. On none of them have the defenders executed any operation which can be assimilated to an act of manufacture or repair. They are mere instruments handed over for a certain purpose, and of these the petitioner, as trustee for the insolvent's creditors, now demands restitution.

"An order for delivery as prayed for would at once have been made, but it appears from the record that parties are not at one as to the precise list of papers and documents in question. That matter therefore remains over."

On appeal the Sheriff (DAVIDSON) affirmed the Sheriff-Substitute's interlocutor, and added the following note:—

"*Note.*—The defenders call themselves 'Accountants and Business Agents.' They belong to no established or known body of authorised legal practitioners. That was admitted at the bar. If the defenders are entitled to claim the right of lien, any person whatever who chooses to assume a designation to which he is not legally entitled might equally claim privileges belonging only to recognised bodies. But, further, there is no authority for holding that an accountant can plead the hypothec of a law-agent. That right is a special rule against the general rule of law; and for some years there has been a strong feeling against extending the privilege beyond the strict rules which practice has allowed to certain persons. It certainly cannot be extended to persons in the assumed position of the defenders."

The defenders then appealed to the Second Division of the Court of Session.

The authorities quoted to the Court are all referred to in the Sheriff-Substitute's note.

At advising—

LORD JUSTICE-CLERK—I do not think this is properly a question of lien or retention in the sense of the cases we were referred to. It is certainly not a case of law-agent's retention, which extends to the general balance the client is due. The real question is, whether when documents or any other article is put into the hands of a professional man to enable him to do any particular piece of business, he is bound to part with those documents or articles until he is paid for having done the work? and that is a question with the person who employed him. The possession is not passed without doubt, but the articles and documents come under the term of a special contract, and the obligation on the one party is as strong as the obligation on the other. The question of property does not arise. The man was simply employed to do a piece of work for which the possession of these documents was necessary, and we have to say whether when he had done the work he was bound to hand back those documents before he was paid for the work. I do not think these circumstances raise a general question of lien. It is a plain case of counterpart of employment.

LORD GIFFORD—I concur on the special ground your Lordship has stated. If I thought that the decision would extend the general doctrine of lien or retention, I would require a great deal more argument and consideration before agreeing to it. This is not a case of lien proper. It is a case of delivery of books under a special contract—the one party is not bound to restore the books till the other party pays.

LORD YOUNG—I concur. There is here no suggestion of a general lien. It is, as I am disposed to call it, a special lien. All lien arises out of contract, and is the right of one to retain till his claims under the contract are satisfied. I do not even follow the views of the Sheriff. They appear to go on a misconception of the question. The right to retain possession of what has come into your hands by contract does not depend on designation, but on the terms of the contract. I am not disposed to speak slightingly of accountants. They are carrying on lawful business, although they do not belong to any established or known body of persons. All people carrying on lawful trade in the course of which the property of others comes into their possession are, in accordance with common law, entitled to retain possession until paid what is due to them under the contract. This is a case of that kind. The parties here are not bound to part with the possession of the books which they got under the contract until their claim under the same contract is satisfied. There is a counterpart to this—the men of business would not be entitled to get their money until they delivered the books. These are the obligations *hinc inde*.

The Court sustained the appeal and assoilzied the defenders.

Counsel for (Pursuer) — Guthrie. Agent — James F. Mackay, W.S.

Counsel for (Defender)—Rhind. Agent—A. Nivison, S.S.C.

Saturday, November 6.

FIRST DIVISION.

[Sheriff of Midlothian.

LATTIMER *v.* WIGHT AND OTHERS.

Multiplepoinding—Double Distress—Competency.

L. owed £150 to A., who had agreed to pay him on 23d June. On 23d March a bill for £100, dated three days previously, and bearing to be drawn by A. on L. in favour of W., payable three months after date, was presented to L. for acceptance. He refused to accept it lest he should endanger his rights, W. on the one hand representing that the bill operated as an assignation in his favour of the sum due by L., while A., whose estates had been sequestrated, and who had subsequently agreed with his creditors to wind up the estate by arrangement, reserved in that deed of arrangement his right to challenge the bill on the ground that it had been improperly filled up. In these circumstances L. raised a multiplepoinding in the Sheriff Court. *Held* that he had shown a relevant case of double distress, and that the action was competent.

Henry Lattimer, butcher, raised a multiplepoinding in the Sheriff Court of Midlothian, as pursuer and real raiser, against Peter Anderson,