expenses of this process, except such expenses, if any, as have been solely occasioned by the discussion between the claimants." I do not lay stress on the fact that the word "respective" does not occur in the interlocutor in *Burrell* while it does in this, but the true difference lies in the express inclusion of the expenses of the remit and procedure thereunder.

If this matter had been raised when the decree was given I do not think that the interlocutor would have been pronounced in its present form. Where no question is raised as to the right of petitioners to have their liability limited, and where the ship, as it were, tables its stake, then such expenses as are given against the petitioners over and above the limited fund must be strictly restricted to the expenses of lodging the claims and taking decree, and not extended to any expenses incurred in the competition between the claimants. Here the various accounts were given in, and I find from an examination of them that the way they were treated was this—most of them were passed, but some of them were docked, and one I notice was increased. Now, that seems to me to be clearly competition. But I want to say this, and I hope it will be noted and remembered by the profession—where a discussion has taken place and the Court pronounces an interlocutor following on the discussion, the Court is responsible for that interlocutor. But where there has been no discussion, although the Court is of course technically responsible for the interlocutor, in practice it signs whatever interlocutor is handed up to it. Now, of course, the time is long passed when insuperable difficulties would be raised to the alteration of an interlocutor that had once been signed. But when an interlocutor is signed and given out to the parties it must be noted by the profession that if anything is to be said about altering the form of it, it must be said at once. If this question as to the liability for expenses had been brought up at once, I do not think the Court would have allowed this interlocutor to remain in its present form. But it is far too late to raise the question now when the interlocutor has been allowed to stand and the whole matter has been before the Auditor. I am afraid, therefore, that we can do nothing to give the petitioners the relief they ask for.

LORD M'LAREN and LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"The Lords having heard counsel for the parties on the petitioners' objections to the Auditor's reports on the claimants' accounts of expenses, repel the same, approve of said reports, of consent decern against the petitioners for payment to the various claimants for the taxed amounts of their respective accounts."

Counsel for the Petitioners—Dickson, K.C.—Spens. Agents—J. & J. Ross, W.S.

Counsel for the Claimants (The Clyde Shipping Company, and for N. Adshead & Son and Others, cargo owners)—Horne. Agents—Webster, Will, & Company, S.S.C.

Counsel for the Claimant (James Stirling)—Dykes. Agent—Dunbar Pollock, Solicitor.

Counsel for the Claimants (Fletcher, Son, & Fearnall, Limited, and Others)—Murray—F. C. Thomson. Agents—Boyd, Jameson, & Young, W.S.

Saturday, June 6.

FIRST DIVISION.

[Sheriff Court at Edinburgh.

HEMMING *v.* GALBRAITH.

Bankruptcy—Termination of Bankruptcy by Payment of Composition—Action of Accounting at Instance of Bankrupt against Discharged Trustee—Competency — Averment — Relevancy — Bankruptcy Scotland Act 1856 (19 *and* 20 *Vict. cap.* 79), *secs.* 141, 142.

A bankrupt who had been discharged on composition presented a petition, in terms of secs. 86 and 142 of the Bankruptcy (Scotland) Act 1856, against his former trustee, calling on him to account for his intromissions as trustee, and to pay certain sums. At the date of the action the sequestration was at an end and the trustee discharged.

Held that the action must be dismissed in respect (1) that, even assuming that a trustee who had been discharged could be called on to account at the instance of the bankrupt under sec. 142 it was incompetent, under that section, to bring a general accounting as to matters already adjudicated on; and (2) that as it was not averred that the particular items objected to had not been already investigated, the pursuer's averments were irrelevant.

Opinion (*per* Lord M'Laren and Lord Kinnear) that where a bankruptcy has been terminated by payment of a composition, a trustee who has been discharged cannot be called on to account at the instance of the bankrupt under section 142 of the Bankruptcy (Scotland) Act 1856, the meaning of that section being that the bankrupt is entitled to call on him to account before, but not after, his exoneration and discharge.

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79) enacts—section 141—"*Trustee's Accounts to be Audited before Composition be approved of.*—Before the Lord Ordinary or the Sheriff shall pronounce the deliverance approving of the composition, the commissioners shall audit the accounts of the trustee, and ascertain the balance due to or by him, and fix the remuneration for his trouble, subject to the review of the Lord Ordinary or the Sheriff,

if complained of by the trustee, the bankrupt, or any of the creditors; and the expense attending the sequestration and such remuneration shall be paid or provided for to the satisfaction of the trustee and commissioners before such deliverance is pronounced."

Section 142—"*Sequestration to go on notwithstanding offer of Composition.*—Notwithstanding such offer of composition and proceeding consequent thereon, the sequestration shall continue, and the trustee shall proceed in the execution of his duty as if no such offer had been made, until the deliverance by the Lord Ordinary or the Sheriff be pronounced, when the sequestration shall cease and be at an end, and the trustee be exonered and discharged: Provided, nevertheless, that the trustee and his cautioner shall be liable, on petition to the Lord Ordinary or Sheriff by the bankrupt or his cautioner for the composition, to account for his intromissions and other acts as trustee."

Fred Oliver Hemming, hardware merchant, Tolbooth Wynd, Leith, brought an action in the Sheriff Court at Edinburgh against William Brodie Galbraith, C.A., Glasgow, in which he craved the Court "to ordain the defender to produce a full account of his intromissions as trustee on the sequestrated estates of the pursuer, and to pay the pursuer the sum of £100 sterling, or such other sum as may appear to be the true balance due by him, with the legal interest thereof from the 23rd day of May 1907 till payment."

The pursuer's estates were sequestrated on 18th January 1907 and the defender was duly elected trustee. An offer of composition was made and accepted, and after the trustee's accounts had been audited by the commissioners in terms of section 141 of the Bankruptcy Act 1856, and the law agents' account taxed, the trustee was discharged and the sequestration came to an end.

The pursuer averred—"(Cond. 3) At the second general meeting of creditors held at Glasgow on the 15th March 1907 the pursuer made an offer of composition to his creditors of 6s. per £ upon his debts. . . . The pursuer was assured that the expenses would not exceed £350, and it was on the faith of this assurance that said offer of composition was made. The defender's fee was fixed by the pursuer at 250 guineas, and this arrangement was confirmed by pursuer's law agent by letter of 14th March 1907, copy of which is produced. Said fee was to cover all defender's charges, except those of his valuator, which were fixed at £1, 11s. 6d. per day. In particular, the foresaid large fee was to cover all charges for copyings by and expenses of defender's clerks. . . . (Cond. 4) The defender, as trustee foresaid, received and has in his hands the sum of £100 and upwards of funds which belonged to the said sequestrated estate, and which now belong to the pursuer, and for which the defender refuses to account. The pursuer desires that the defender's account of intromissions should be remitted to the Accountant of Court for audit, and that the law agent's account appearing therein should be taxed by the Auditor of Court. The pursuer objects to the defender's accounts in the following respects—(1) Because the defender has, in breach of the foresaid arrangement as to remuneration, charged large sums for clerks' copyings and expenses; (2) the account of his present law agent charged therein, amounting to £42, 11s. 5d., is grossly overcharged, and falls to be taxed. Said account was taxed *ex parte* by the Auditor of the Court of Session. . . .; (3) The valuator's expenses and fees charged in said account are overstated; (4) the excessive charge for postages, viz., £29, 7s. 4d.; (5) sundry other charges which are not authorised or are overcharged. . . . The defender's account of expenses, instead of being £350, amounts to over £500. This petition is brought in terms of the Bankruptcy (Scotland) Act 1856, sections 86 and 142."

He pleaded—"(1) The defender, as trustee foresaid, having in his hands funds belonging to the pursuer, is bound, in virtue of sections 86 and 142 of the Bankruptcy (Scotland) Act 1856, to hold count and reckoning for his intromissions and management with the pursuer as craved."

The defender pleaded, *inter alia*—"(2) The action is incompetent. (3) The pursuer's averments are irrelevant."

On 5th February 1908 the Sheriff-Substitute (GUY) repelled the defender's plea of incompetency, and appointed the trustee to lodge his account.

The defender appealed to the Sheriff (MACONOCHIE), who recalled his Substitute's interlocutor, sustained the second and third pleas stated by the defender, and dismissed the action.

"*Note.*—The plea of no jurisdiction was not maintained before me, and it therefore falls to be repelled. I am afraid, however, that I cannot agree with the finding of the Sheriff-Substitute, under which he remitted the cause to probation. The facts are that, after all the provisions of the Bankruptcy Act 1856 had been duly carried out—an offer of composition accepted, the trustee's accounts audited by the Commissioners, and the law agent's account taxed—the trustee was exonered and discharged, the bankrupt discharged and re-invested in his estates, and the sequestration came to an end, in terms of section 142 of the Act. Against all or any of these proceedings the bankrupt might have appealed under section 141, but no appeal was taken. In these circumstances the pursuer, who was the bankrupt, presents this petition, calling on the trustee 'to account for his intromissions as trustee,' and in condescendence 4 states that 'he desires that the defender's account of intromissions should be audited by the Accountant of Court, and that the law agent's account appearing therein should be taxed by the Auditor of Court.' The first of these accounts has, as I have said, been audited by the statutory auditors, and the second has already been audited by the Auditor of the Court of Session. He states in the same condescen-

dence five objections which he takes to the defender's accounts, but at the hearing before me his counsel gave up objections 3, 4, and 5. The first objection is that the trustee, in breach of agreement, 'charged large sums for clerks' copyings and expenses.' That averment, in the first place, seems to me to be irrelevant on the ground of want of specification. The trustee was entitled to make some charges for such expenses, and this does not say what charges are objected to. But, in the second place, it seems to me that it is for the very purpose of having any such question raised and decided that the appeal under section 141 is given, and at the hearing the pursuer's counsel had to admit that the question might have been brought up by such an appeal, and to argue that in all sequestrations the bankrupt might choose whether he would appeal under section 141 or allow the sequestration to come to an end and then proceed by petition under section 142 to bring up any question he chooses. That virtually renders the right of appeal under section 141 needless. In my opinion it is incompetent to bring under section 142 a general action for accounting relating to matters which have been already adjudicated on by the commissioners, and that the provisions of the last clause of that section are limited to an accounting on the ground of malversation or mismanagement in office. It would lead to endless litigation were persons in the position of this pursuer to be allowed, by bringing such a petition as this, to obtain review of the whole proceedings in the sequestration. This view is, I think, borne out by the dicta of the Judges of the Court of Session in the cases of *Henderson* v. *Henderson's Trustee*, 10 R. 188, and *Duke* v. *More*, 6 F. 190.

"The second objection relates to the law agent's account. The account has already been taxed by the Auditor of the Court of Session, and the pursuer was made aware of that fact. He might have appealed the Auditor's decisions, but did not, and I certainly see nothing in the averment to lead me to hold that at this stage the Auditor should be instructed to tax the account a second time. What I have said on objection (1) as regards the scope of section 142 applies with equal force to this objection.

"I only wish to add that at the beginning of condescendence 4 the pursuer avers that the trustee received and has in his hands the sum of £100 of funds belonging to the estate. Had it been stated that the sum was in the defender's hands when his accounts were audited, and was not entered in them, or that he had somehow got hold of it since that date, I might very probably have held that that was a matter which could properly be raised under this petition, but there is no such averment, and the question is not raised in the detailed objections set forth in the latter part of the condescendence.

"On these grounds I think that the action must be dismissed."

The pursuer appealed, and argued—It was competent to call the trustee to account at any time, even after he had been discharged—Bankruptcy Act 1856, section 142; *Burns* v. *Craig*, February 4, 1869, 7 Macph. 476, 6 S.L.R. 304. The ratio of the proviso in section 142 was clear, viz., that as appeal during discharge on composition would be very inconvenient it was allowed to be taken afterwards. Sections 137 to 145 dealt with composition contracts which involved special considerations. The present objections could not have been dealt with by the commissioners under section 141, for they had not then arisen. Moreover, the bankrupt was not entitled to notice of the commissioners' audit, and that implied he had a subsequent right of appeal. (2) The action was clearly relevant, for the pursuer averred that the trustee's actings were illegal. A trustee who was paid by commission was not entitled to charge for copyings—*Lindsay* v. *Hendrie*, June 15, 1880, 7 R. 911, 17 S.L.R. 651—or for the expense of a law agent—*Wilson's Trustee* v. *Wilson's Creditors*, November 4, 1863, 2 Macph. 9.

Argued for respondent—The Sheriff was right. The action was both incompetent and irrelevant. (1) A claim for a general accounting (such as this) was plainly incompetent where the trustee had already accounted. He had done so under section 141, and the commissioners had audited his accounts. The bankrupt might have appealed under that section either to the Lord Ordinary or the Sheriff, but he had not done so. To give effect to the pursuer's contention would render section 141 nugatory. The trustee was not bound to account twice over—*Duke* v. *More*, December 8, 1903, 6 F. 190, 41 S.L.R. 156. The object of the proviso in section 142 was to enable the bankrupt and his cautioner for the composition (who was not mentioned in section 141) to call the trustee to account for his actings during the interval between the audit of his accounts by the commissioners and his final discharge. It could not have been meant to give a double appeal, for that would be attended with no end of difficulties. The pursuer was not objecting to anything subsequent to the audit, for the items objected to had all been dealt with by the commissioners, and the trustee was prepared to account for all his subsequent actings. (2) The action was also irrelevant, for there were no specific averments that the objections now taken were not such as could have been disposed of under section 141—*Henderson* v. *Henderson's Trustee*, November 22, 1882, 10 R. 188, 20 S.L.R. 145. The bankrupt's remedy was to reduce the whole composition contract if he thought he had been misled.

At advising—

LORD KINNEAR—This is a petition to the Sheriff Court of the Lothians at the instance of a bankrupt, calling on his trustee to produce a full account of his intromissions as trustee and to pay certain sums. It is therefore a petition that the trustee shall

account for his whole intromissions during the sequestration. The Sheriff-Substitute has sustained the petition and ordered a general accounting. On appeal the Sheriff-Principal took a different view, and has sustained the two pleas of incompetency and irrelevance stated by the defender, and dismissed the action, and the question is which of these views is right. I think that taken by the learned Sheriff-Principal is correct, and that we should affirm his judgment.

The question arises on the construction of section 142 of the Bankruptcy Act, but the material facts to be kept in view in considering the application of that section to the present circumstances is that this is a case of the discharge of a bankrupt on payment of composition, that the sequestration is at an end, and that the trustee has been exonerated and discharged from his liabilities as trustee.

"Before the trustee could obtain his discharge it was necessary, under the preceding sections, that a large amount of procedure — what the Lord President in a former case described as a well considered and well digested scheme—should be followed in order to safeguard the interests of creditors and all others concerned. Section 142 is one of a series of sections which provide for the discharge of a bankrupt on composition. The scheme is that the bankrupt may offer a composition, that the offer may be entertained by the creditors, that if it is accepted the bankrupt shall find caution for the amount, and that ultimately the Sheriff, before giving effect to the agreement, shall hear objecting creditors, consider the effect of their opposition, and sustain or reject their votes according to the provisions of the statute. It is only after all that has been done, and the Sheriff has pronounced a deliverance approving of the composition, that the bankrupt is allowed to get his discharge on making a declaration that a full and fair disclosure has been made and the other conditions satisfied.

Section 141 enacts—"Before the Lord Ordinary or the Sheriff shall pronounce the deliverance approving of the composition, the Commissioners shall audit the accounts of the trustee and ascertain the balance due to or by him, and fix the remuneration for his trouble, subject to the review of the Lord Ordinary or the Sheriff, if complained of by the trustee, the bankrupt, or any of the creditors"; and therefore, before the composition is approved of at all the question of the accuracy and sufficiency of the trustee's accounts, and the balance due to or by him, as well as the question of his remuneration in conducting the sequestration, are to be made matters of adjudication by the Commissioners in the first instance, and if any of the creditors are not satisfied, by the Sheriff or Lord Ordinary on appeal, and ultimately, under the general appeal clause, by this Court if the parties are not satisfied. It is only after all that has been done that the statute goes on to say that "the sequestration shall cease and be at an end and the trustee be exonered and discharged."

Now in the present case all that has been done, except that no objection has been taken to the commissioners' decision, and consequently there has been no appeal under section 141, and it is only now, after all the statutory procedure has been followed, that it is maintained by the bankrupt that the trustee is still liable to a general accounting at his instance. It is argued that if sections 141 and 142 are taken together they confer on the bankrupt an option either to appeal in the way prescribed in section 141, or to allow the trustee to obtain his discharge and then to appeal under section 142. I can see some difficulty in construing section 142, but I think it cannot be construed so as to give the bankrupt any such option. The clause does not in terms provide for any appeal whatever. The two supposed appeals between which he is to elect are not commensurate, nor are they given to the same persons. Section 141 says the appeal may be at the instance of the trustee, the bankrupt, or any of the creditors, whereas the remedy given by section 142 is given to the bankrupt alone. The words of the section are—. . . (*quotes, supra*) . . . Now, according to the appellant's contention, the creditors may take an appeal under section 141, in which a decision may be given against them, and then the bankrupt may come forward under section 142 and say he is not satisfied, and go back to the same judge and argue before him the same question that was argued already under the previous section. I do not think that such a construction of this statute is admissible. According to the appellant's argument this right of appeal may be exercised by the bankrupt without limit of time, so that there would be no final discharge short of the negative prescription; and an action might be brought years after the proceedings were at an end for an account of the whole intromissions of the trustee, notwithstanding that he had given a full account at the time prescribed by the statute and had thereupon been judicially discharged. I observed that the argument for the appellant seemed to imply that the bankrupt had his special remedy even although the creditors had challenged the trustee's accounts on the very same grounds and their challenge had failed before all the courts. I think that necessarily follows from his argument on the word "nevertheless," viz., that it relates to the whole provisions of section 141.

I cannot see any reasonable reading of the statute which would support that contention. I agree that the clause in question is difficult of construction, and I am not at all sure that the view I take of it is the view that has been previously taken in this Court. There is no decision on the point, but there is a case in which Lord President Inglis, speaking of the proviso in section 142, referred to it "as a remarkable remedy given to the bankrupt"—(*Burns* v. *Craig*, 7 Macph. 476)—and seems to have assumed

that it might be available against a trustee who had been discharged.

I am, however, rather disposed to think that this remedy is enforceable before and not after the discharge of the trustee. An enactment that a trustee shall be exonered and discharged, and thereafter shall be liable to account for his intromissions, is a contradiction in terms; and I am not prepared to put any such meaning, if it be called a meaning, on an Act of Parliament if the language will reasonably bear another. The proviso must, I think, be read with reference to the whole scheme, and the important thing to observe is that the preceding sections relate to the discharge of a bankrupt on composition, which may be obtained though the whole estate has not been realised and handed over to the creditors. For the creditors by accepting the composition may forego their claims to the remainder. Now that being the purpose of the series of clauses, the procedure adopted is one for the settlement of matters between the bankrupt and his trustee on the one side, and the creditors on the other, and questions between the bankrupt and the trustee on the sequestrated estate may remain to be disposed of after questions between the bankrupt and the creditors have been settled. I think the natural meaning of the series of sections is that the trustee is not to be exonered and discharged without giving the bankrupt an opportunity for investigating his administration and calling him to account, and that the true meaning of the proviso in section 142 is, not that the trustee is to be first discharged and afterwards called upon to account, but that, notwithstanding the provision that when the sequestration shall cease the trustee is to be discharged, the bankrupt may still call him to account for his intromissions although all questions between him and the creditors are determined. But that implies that he is to account before he obtains a discharge, and not that he is to be discharged first and to account afterwards. Were it otherwise, the discharge and exoneration to which the trustee is clearly entitled would be perfectly useless. There can be no judicial discharge and exoneration until the trustee has done everything he was bound to do in the exercise of his office and paid over any balance which may be in his hands, and if a discharge which has followed on that complete accounting is to afford no answer to a new action of accounting, it goes for nothing. I cannot accept a reasoning which would reduce a judicial discharge prescribed by statute to a mere futility.

While that is my own view I do not wish to decide more than is necessary for the disposal of this case, more especially as the view I have stated is not the view taken by the Sheriff or that argued by counsel at the bar. But assuming, against my own impression, that the trustee is still liable to account after he has been judicially discharged, I agree with the Sheriff in thinking that it is incompetent to bring under section 142 a general accounting as to matters which have been already adjudicated on, and that if there is still a liability to account it must be with reference to matters which have not been settled in the course of the prior proceedings. The Sheriff goes on to examine the pursuer's averments, and gives his reasons for holding that these are irrelevant. Without examining them in detail I may say that I agree with the learned Sheriff's judgment with reference to all the objections taken by the pursuer. I think the Sheriff's judgment is right and that it should be affirmed.

LORD M'LAREN—To a right understanding of sections 141 and 142 of the Bankruptcy Act two things have to be kept in mind—first, that the trustee's discharge is really a double discharge, for he is entitled to be discharged in a question with the creditors and also in a question with the bankrupt; secondly, that in the case of a discharge not following on a composition, the interests of the creditors and the bankrupt are practically identical. On looking at section 152 it will be found that very careful provision is made for the satisfaction of the creditors before the discharge can be obtained, for there it is provided that a meeting of creditors shall be held at which the trustee shall produce his books and accounts, and the Sheriff shall hear the creditors thereon before granting the discharge. Now in that matter there is a practical identity of interest between the creditors and the bankrupt. Of course if only a dividend can be paid out of the estate the bankrupt has no real interest, but if the creditors are to be paid in full then he clearly has an interest.

But in the case of the termination of the bankruptcy by payment of a composition, the question of the trustee's discharge is quite different. For the interests of the creditors and the bankrupt are then not the same. The interest of the creditors is only to be secured in the payment of the composition; they have bargained to accept so much, and security has been given that they will receive it. So in that case it is unnecessary to delay the proceedings for approval of the composition until all the trustee's accounts have been investigated. And indeed it would hardly be practical to do so, for the first thing the trustee does is to write to all the debtors of the bankrupt to make payment of their accounts, and that is a process which takes time, while the bankrupt may be in a position to offer security for a composition long before that process has been carried out.

Now under section 141 certain preliminary proceedings are provided for. The commissioners have to audit the trustee's accounts in so far as complete at that date, ascertain the balance due by him, and fix his remuneration, which has to be provided by the bankrupt, and this is subject to review if complained of by the trustee, the bankrupt, or any of the creditors. But it is obvious that questions of accounting may still remain between the bankrupt and the trustee even though the composition has been approved of. And therefore I think that the procedure for

approval of the composition does not give the bankrupt all the accounting to which he is entitled, viz., an accounting for the period of the trustee's administration subsequent to the approval of the composition. I note that by the provision in section 142 the trustee is not to be called on to account for everything—the expenses, for instance, have been already provided for in the previous section. What he is to account for is his "intromissions," and it is clear that although a composition has been agreed to, that does not affect his intromissions with the estate. And so I think that section 142 is a very necessary section, for it has this object, that it makes it necessary for the trustee to account to the bankrupt for all the money that he has ingathered for his estate. In short, section 142 provides for his discharge *quoad* the bankrupt, his discharge *quoad* the creditors having been provided for in the preceding section.

That was substantially the argument of Mr Blackburn, and I agree with all that Lord Kinnear has said with regard to the audit by the commissioners and the impossibility of reading the statute as meaning that the trustee is to be called on to account a second time for the figures in his accounts that have been already investigated. There is no suggestion here that the trustee has failed to account for his intromissions. The only questions that are raised are as to postages, copying expenses, and fees to the valuator and law agent. All these matters have already been the subject of investigation. I therefore agree that no relevant case has been stated for the appellant.

LORD MACKENZIE—I am of opinion that the pursuer has failed to state a relevant case. I do not think that the effect of the 142nd section of the Bankruptcy Act is to allow the bankrupt to ask for an accounting from the trustee in regard to matters that have already been adjudicated upon under section 141. To make a relevant case it would be necessary for the pursuer to aver that there were items which had not been dealt with under section 141, and I am unable to find such averments here. Therefore I think the opinion of the Sheriff is right.

The LORD PRESIDENT gave no opinion, not having heard the case.

LORD PEARSON was absent.

The Court refused the appeal, affirmed the interlocutor of the Sheriff, and of new dismissed the action.

Counsel for Pursuer (Appellant)—Morison, K.C.—A. M. Anderson. Agent—J. M. Glass, Solicitor.

Counsel for Defender (Respondent)—Blackburn, K.C.—Kemp. Agent—William Geddes, Solicitor.

Saturday, June 6.

FIRST DIVISION.

[Lord Johnston, Ordinary.

J. M. & J. H. ROBERTSON *v.* BEATSON, M'LEOD, & COMPANY, LIMITED.

Principal and Agent—Agent's Powers—Company Promoter—Amalgamation of Companies—Right to Involve Principal's Credit with a Law Agent.

A limited liability company, which proposed to acquire the business of another similar company, employed a chartered accountant to carry out the amalgamation. He employed a firm of law agents to execute certain deeds, informing them that they were to do the work for one of the amalgamating companies. The company had not given him any authority to do so.

Held that the law-agents could not sue an action for their account against the company.

On 31st December 1906 Messrs Robertson, writers, Glasgow, and the individual partners thereof, raised an action against Beatson, M'Leod, & Company, Limited, wine merchants, Kirkcaldy, in which they sued for payment of a business account amounting to £19, 12s. 2d. with £11, 1s. 1d. of outlays.

The defenders pleaded no employment.

The circumstances out of which the action arose are stated in the *opinion* of the Lord Ordinary (JOHNSTON), who, on 6th June 1907, after a proof, granted decree as craved.

Opinion.—"I do not think it necessary that I should take time to consider this case, because it appears to me to be a fairly simple one. I agree with counsel on both sides in regretting the necessity that has caused it, because it is clear that one or other of the parties to it must suffer for what I cannot characterise as other than the fraud of the agent Fulton, (*v. infra*), who came between them. Mr Fulton's position it is hardly possible to understand. But that he has defrauded one or both of the parties is perfectly clear. That leaves it, therefore, necessary to determine the legal rights of the parties irrespective of any question of hardship, because hardship must fall on one or other of them.

"The circumstances out of which the case arose are these—Messrs Beatson, M'Leod, & Company, of Kirkcaldy, are wine merchants, carrying on a limited liability business in Kirkcaldy. Mr Fulton was their auditor. Messrs John Taylor & Company, also a limited company, and carrying on a business something of the same character in Glasgow, were apparently not very prosperous; and, inasmuch as Mr Fulton was also their auditor, and therefore knew the circumstances of both businesses, he, very likely in concert with the managing director of Taylor & Company, brought before Beatson, M'Leod, &