any room for serious doubt (1) that the pauper, Thomson, is not only now, but has always been, since at least 1835, a proper object of parochial relief; and (2) that he has never acquired a settlement for himself, but that his settlement must be held to be that of his mother. Hay *v.* Thomson, 6th February 1856, 18 D., 510; and Greig *v.* Adamson & Craig, 2d March 1865, 3 Macp., 575.

"The Lord Ordinary cannot give any effect to the defender's criticism on the terms of the formal part of the summons, which he thinks must be read in connection with the condescendence, and so reading it the defender's suggestion to the effect that John Thomson must be held to have been, previous to 1845, not a pauper but able to support and acquire a settlement for himself, is inadmissible. Nor does the Lord Ordinary see any sufficient reason for holding that there has been an unwarrantable change in the revised condescendence, as compared with the condescendence before revisal.

"Neither can the Lord Ordinary hold that the defender's plea of *mora* is supported by the facts applicable to the period for which his liability has been sustained.

"On the other hand, the Lord Ordinary is of opinion that the pursuer is precluded by the payment to Huntly parish of the £31, 19s. 11d. in September 1854 from now going back to the period prior to that date, and claiming repetition of that sum. Supposing it was paid in error, as it appears to have been, the error was one avowedly of law and not of fact, but an error in law is not a good or sufficient foundation for an action of *condictio indebiti*. Wilson *v.* Sinclair, 7th Dec. 1830, 4 W. & S., 398; and Dixon *v.* the Monkland Canal Company, 17th Dec. 1831, 5 W. & S., 445.

"On examining the documents in process, and more especially the letters which passed at the time, the Lord Ordinary has satisfied himself that the pursuer is in error in alleging that the payment to Huntly in 1854 of the £31, 19s. 11d. can be held to have been made under protest. If the Lord Ordinary be right thus far, it follows, if not necessarily, on fair reasoning, that any statutory notice which may have been given by the parish of Rathven to the parish of Huntly prior to the payment by the former to the latter of the £31, 19s. 11d. must be disregarded, and if so, the first available statutory notice is that which was given on 26th February 1856.

"Notwithstanding the number of pleas in law for the parties, being no less than nine for the pursuer and twelve for the defender, the Lord Ordinary believes he has noticed all the points of any importance in the case.

"The parties will, of course, have an opportunity of being heard on the subject of the modification of the pursuer's account of expenses when the auditor has made his report; and all the Lord Ordinary has to say regarding that matter at present is, that according to the impression he now entertains, it ought not to be slight, but considerable. (Initd) "R. M."

Neither party reclaimed.

On the reserved question of modification of expenses,

W. A. Brown, for the pursuer, argued—The pursuer has been substantially successful in the action, and therefore the modification should be slight. As to past advances, he has got a judgment for a sum greatly in excess of that of which the defender has been relieved, and he has been relieved of liability in all time to come. The plea of *condictio indebiti*, in which the defender was found successful, was merely incidental to the case. The real issue between the parties was the parish of the pauper's settlement.

Balfour, for the defender, answered—The pursuer has only obtained judgment as to past advances for about one-half of what he concluded for. The argument did not turn on the consideration of the evidence to any material extent, and the greater part of that was admitted in a minute adjusted between the parties. The discussion was mainly upon the pleas in law, and in an important one of these the pursuer was defeated. There should be a modification to the extent of at least a third, and there are circumstances in the case determining that the modification should be even greater.

The taxed amount of the pursuer's expenses amounted to £125. The Lord Ordinary modified the account to £100, and decerned for that amount.

Agent for Pursuer—J. C. Baxter, S.S.C., and James Gordon, Solicitor, Keith.

Agents for Defender—Gibson-Craig, Dalziel, & Brodies, W.S.

OUTER HOUSE.

(Before Lord Barcaple.)

HARVEY, BRAND, AND CO. *v.* ANDERSON.

Bankruptcy—Trustee—Bill of Exchange—Pleas of Compensation by Creditors of Bankrupt. A firm accepted bills to bankrupts the day before they stopped payment. Sequestration was afterwards awarded. The acceptors of the bills claimed right to plead compensation in respect of other debts due to them by the bankrupts, and applied for interdict against the trustee indorsing or negotiating the bills. Held by Lord Barcaple (and acquiesced in) that the trustee was not entitled, by indorsing the bills to a third party, to defeat the acceptors' plea of compensation, and interdict accordingly granted.

This is a suspension and interdict at the instance of Harvey, Brand, & Co., of London, against William Anderson, accountant in Glasgow, trustee on the sequestrated estate of Buchanan, Hamilton, & Co., merchants in Glasgow.

For several years prior to their bankruptcy, Buchanan, Hamilton, & Company had very extensive business transactions with the complainers, Harvey, Brand, & Company. In the course of these transactions a very large amount of foreign produce imported into this country was intrusted by Buchanan, Hamilton, & Company to Harvey, Brand, & Company, for realisation in London. The complainers were bound to account to Buchanan, Hamilton, & Company for the proceeds realised by the sale of the said produce, and they charged and were allowed a commission on the proceeds so realised.

When the shipping documents for each successive shipment of produce were placed in the hands of Harvey, Brand, & Company, it was generally arranged between Buchanan, Hamilton, & Company and them, that, in anticipation of the realisation of the produce, they should grant their acceptances to Buchanan, Hamilton & Company for a stipulated proportion of the invoice value of that particular shipment. These bills were generally drawn payable at six months' date, and during the interval between the dates of the bills and their maturity the shipment was realised, and the complainers from that source were placed in funds to meet their acceptance against it.

In accordance with the established course of dealings and transactions between the parties, Buchanan, Hamilton, & Company, on 4th April 1865, transmitted to the complainers certain shipping documents for produce of the invoice value of £13,337, 13s. 5d. These documents were sent by Buchanan, Hamilton, & Company to the complainers, enclosed in a letter in the following terms :—"We beg herewith to hand you the following documents for produce—viz. :—

1. Invoice and B/L, 40 bales silk, p. 'Overland,' costing 20,071 dols., at 4s. 9½d.	£4787	15	5
2. Invoice and B/L, 865 pkgs. tea, p. 'Beatrice,' policy in North China Co. Ts., 8580, at 6s. 6d., £2788, 10s.	2656	10	0
3. Invoice and B/L, 1181 bags coffee, p. 'Norval'	4329	0	8
4. Invoice and B/L, 1331 buffaloe Hides, p. 'Norval'	531	15	4
5. Invoice and B/L, 500 boxes pearl sago, p. 'Norval'	422	16	0
6. Invoice and B/L, 869 bags sago flour, p. 'Norval'	610	8	0
	£13,337	13	5"

The receipt of these shipping documents was acknowledged by the complainers by letter to Buchanan, Hamilton & Company, dated 5th April 1865.

On 13th April 1865 Buchanan, Hamilton, & Company drew upon the complainers four drafts or bills for £3350, £1850, £3000, and £1100, amounting in all to £9300, and all payable six months after date. The said drafts or bills were by Buchanan, Hamilton, & Company transmitted to the complainers for acceptance, in a letter dated 13th April 1865, in the following terms :—"Please accept and return the enclosed drafts against produce—viz.,

"£3350 against 40 bales silk, p. 'Overland.'
1850 ,, 865 pks. tea p. 'Beatrice.'
3000 ,, produce p. 'Norval.'
1100 ,, ,, p. ,,
£9300."

The said four drafts or bills were accepted by the complainers, and returned to Buchanan, Hamilton, & Company, enclosed in a letter dated 15th April.

On 14th April 1865 Buchanan, Hamilton, & Co. having become insolvent, stopped payment, and on 26th July 1865, their estates were sequestrated. The four bills were not discounted, but the trustee refused to deliver them up to the complainers to be cancelled, and threatened to negotiate them.

The complainers thereupon presented this suspension, in which they asked the Court to "interdict, prohibit, and discharge the said respondent from discounting, or endorsing or negotiating, or protesting, or demanding, or enforcing payment, or dealing with all or any of the four drafts, all drawn by the bankrupts, Buchanan, Hamilton, and Company, merchants in Glasgow, in their own favour, upon, and accepted by the complainers, all dated 13th April 1865, payable six months after date, for the respective sums of £3350, £1850, £3000, and £1100, and also from discounting or endorsing, or negotiating, or demanding, or enforcing payment of, or dealing with a draft, dated Penang, 8th March 1865, drawn for £2500, by William Hall & Company, upon the complainers, in favour of the bankrupts, Messrs Buchanan, Hamilton, & Company, payable six months after sight, and accepted by the complainers on 15th April 1865."

The note of suspension was passed, and a record thereafter made up and closed. The complainers averred—

(Reas. 4.)—After crediting the proceeds of all produce realised prior to 30th November 1865, there remained a balance of £121,104, 7s. 6d. due by the bankrupts to the complainers. The estimated value of produce and securities belonging to the bankrupts remaining in the complainers' hands at that date was £71,069, leaving an unsecured balance of £50,035, 7s. 6d. The sums and securities thus credited or deducted included the particular consignments referred to in the respondent's statement. All of these particular consignments were held by the complainers for some time prior to the drafts in question being accepted ; and when the complainers received the shipping documents therefor, a very large unsecured debt was due to them by the bankrupts, for which debt the complainers had a right of lien over the said consignments. The sums above mentioned do not include the amount of the said four drafts for £9300, these falling to be stated as cross-entries in account.

(Reas. 5.) The transactions between the complainers and Buchanan, Hamilton, & Company were of this nature. Buchanan, Hamilton, & Company sent to the complainers consignments of foreign produce, which the complainers sold on their account. The complainers were in use to accept drafts in favour of Buchanan, Hamilton, & Company, for which they held as security the whole goods consigned to them ; and as the proceeds of the consignments were realised, these proceeds were placed to the credit of Buchanan, Hamilton, & Company in account. The parties had a general account, on which the debtor or creditor balance arising on their whole transactions was from time to time struck and ascertained. By the course of dealing between the parties, the whole transactions between them formed part of one general account. The complainers, on the one hand, credited the proceeds of goods received, and on the other hand debited the drafts accepted by them when paid, and advances and commission. The established course of dealings and transactions between the parties was, that on receipt of each mail, Buchanan, Hamilton, & Company sent to the complainers all the free shipping documents for produce they received without any stipulation, and it was afterwards matter of arrangement for what amount the complainers would accept, taking into consideration not only the invoice value of such goods, but the position of the whole account at the time. In this way the proportion of an invoice to be accepted against was determined, or whole invoices might be left undrawn against in respect of the sum which had been received by Buchanan, Hamilton, & Company in previous advances or acceptances.

(Reas. 6.) There never was a separate settlement of particular invoices of produce in relation to advances made against them, or any settlement except in general account, to which all balances were brought, and the appropriation of particular produce to particular bills was adopted for facility of accounts only, and from it being found in practice the clearest way of soonest ascertaining the real position of the general account. The advantage of this mode of keeping the accounts was that when a particular invoice was sold out, account sales could be made up, the interest adjusted, and exact balances carried to general account, instead of leaving such adjustment and ascertainment of exact balance until many other transactions were equally advanced by sales of produce.

(Reas. 7.) In March 1865, letters in the following terms were sent by Buchanan, Hamilton, & Co. to the complainers—viz., (1.) A letter dated 18th March 1865, addressed to the complainers as follows—viz., "In consideration of your making advances to us from time to time on goods consigned by us to you, in this country or abroad, for sale, either on bill of lading or otherwise, we agree that all surplus monies produced by the sale of any particular consignment or consignments, or bills of lading, shall be applicable by you towards and against all deficiencies that may arise from any other consignment or bill of lading upon which you may have made advances or come under acceptance on our account; and we accordingly give you a general lien upon all surplus or other monies which may come to you, both for deficiencies and on general account of monies due from us to you." This was enclosed in (2) a letter from Buchanan, Hamilton, & Co., of which the following is an extract: — "Referring to your firm's notice to the writer of 15th and 17th inst., in regard to you having a letter embodying the manner in which surplus balances or consignments are to be held by you against deficiencies on other consignments, we now return the letter you wish signed. We cannot remember whether you ever had a letter to this effect before; but we have always understood, and we have all through mutually acted on the understanding, that you were to be entitled to make any surplus on one transaction available against a deficiency on another. In fact, that you held Cr. balances against Dr. balances."

Besides the said four drafts by the bankrupts on the complainers, the respondent, as trustee foresaid, also held a draft by William Hall & Company upon and accepted by the complainers, on said 15th April 1865, dated Penang, 8th March 1865, for £2500, payable to the order of the bankrupts, Buchanan, Hamilton & Company, at six months' sight, and thus falling due on 18th October 1865. This draft for £2500 was forwarded by Buchanan, Hamilton, & Company to the complainers for acceptance at the same time as the other drafts before mentioned, and was returned accepted on the same day as these drafts.

The trustee denied that the bills were accepted for the accommodation of the bankrupts. He admitted that when the bills were accepted the complainers were not possessed of property or securities belonging to Buchanan, Hamilton, & Company sufficient to pay the debt due to them; but he averred that the value of the produce against which the four bills were accepted was considerably in excess of the amounts of these bills. He further averred that the produce or the proceeds thereof had been claimed from him by the parties abroad who had consigned the goods; and in Stat. 10 it was averred—"The produce against which the four drafts or bills first above mentioned were drawn was delivered to the complainers by Buchanan, Hamilton, & Company, within ten days of their insolvency. If the said drafts or bills were delivered up to the complainers and cancelled, or if an account were stated thereanent in the manner contended for by the complainers, the result would be to give to the complainers, to the extent of the value of the said produce, being at least the sum of £13,053, 12s. 3d., a security for certain other and prior debts due by Buchanan, Hamilton, & Company to them. This would be in violation and contrary to the faith of the agreement upon which the said produce was delivered to the complainers, and the said acceptances granted by them. An unfair and illegal preference would thus be obtained by the complainers over the other onerous creditors of Buchanan, Hamilton, & Company. In like manner, if an account was stated with reference to the said draft for £2500, or compensation allowed in respect thereof, as contended for by the complainers, the complainers would obtain, to the further extent of £25,00, an unfair and illegal preference over the other onerous creditors of Buchanan, Hamilton, & Company, making the amount of the illegal preference which would thus be obtained, £15,553, 12s. 3d. The respondent is and has always been ready, and now offers to deliver to the complainers, the said drafts for £9300, accepted by them, on their accounting to him for the produce p. Overland, Beatrice, and Norval, against which the drafts were respectively drawn, and the respondent reserves all action, competent to him against the complainer, to compel such delivery."

The complainers pleaded:—1. The said four drafts for the total sum of £9300 having been accepted for the bankrupts' accommodation, the respondent, as their trustee, is not entitled to enforce payment thereof or to negotiate or dispose of these drafts. 2. The complainers are entitled to set off and compensate their claims on the bankrupts, arising out of the complainers' said acceptances of the said four drafts for £9300, against their obligation to the bankrupts as acceptors of the drafts, and to have the said drafts cancelled. 3. The complainers are entitled to have the said four drafts dealt with in account between them and the bankrupts' estate in the manner stated in the account produced with said affidavit. 4. The complainers, in a question with the bankrupts and also with their trustee in bankruptcy, are entitled to compensate and set off against their liability, arising out of their acceptances of the whole drafts in question for the total sum of £11,800, the unsecured debt due to them by the bankrupts. 5. The respondent has no higher right or privilege in regard to any of the drafts in question than the bankrupts, and is subject to all exceptions and objections pleadable against them. 6. The pleas stated by the respondent are unfounded in fact and in law, and ought to be repelled. The respondent has stated no grounds in fact or in law which can entitle him to have the interdict recalled or refused.

The respondent pleaded:—1. The complainers are not entitled to have the first four drafts above mentioned delivered up and cancelled, or to have an account thereanent stated in the manner contended for by the complainers, in respect that the acceptances of the said drafts formed a special advance against the produce placed in their hands for realisation as aforesaid, and that in the said produce the complainers received full value for the said acceptances. 2. The complainers are not in the circumstances entitled to have the debts constituted by the said bills set off against or compensated by any unsecured balance of debts due to them by Buchanan, Hamilton, & Company. 3. The complainers are not entitled to have the said drafts delivered up, or to have the set-off claimed, in respect that they would thereby obtain an unfair and illegal preference over the other onerous creditors of Buchanan, Hamilton, & Company. 4. The alleged right of compensation or offset is unfounded, in respect that the drafts in question were accepted after the insolvency and stoppage of Buchanan, Hamilton, & Company. 5. The letters founded on by the complainers in Reason 7

are of no force or effect against the respondent as trustee foresaid, in respect that the said letters were granted on the eve of bankruptcy. 6. The claim of compensation or offset made by the complainers in regard to the draft for £2500 is unfounded. 7. The complainers' statements are irrelevant, and their pleas are untenable, and the prayer of the note should be refused with expenses.

The Lord Ordinary pronounced the following interlocutor, which has been acquiesced in :—

"*Edinburgh, 20th July* 1866.—The Lord Ordinary having heard counsel for the parties and considered the closed record, productions, and whole process, Finds that the complainers are entitled to have the subsisting interdict kept up until the parties shall have had an opportunity of obtaining, in proceedings competent for that purpose, final judgment as to the rights of parties with reference to the bills in question : Continues in *hoc statu* the interdict formerly granted : Meantime supersedes farther consideration of the cause, and reserves the question of expenses.

"E. F. MAITLAND.

"*Note.*—It does not appear that this suspension and interdict is the proper process in which to obtain a decision as to the ultimate rights of parties in reference to the bills in question. The present judgment is merely tentative; the views on which it is rested being formed only for the purpose of deciding whether the interdict should be declared perpetual, or at least continued *in hoc statu*, or should now be absolutely refused. But as the case was fully argued, and the parties concurred in wishing him to do so, the Lord Ordinary will state the views as to the legal position and rights of parties in reference to the bills, which lead him to the conclusion that the complainers are entitled to have their interests protected by interdict, at all events until such time as a decision can be obtained upon the questions of right between the parties. If he had been satisfied of the soundness of the legal views maintained by the respondent, he must have at once refused the interdict.

"The bankrupts Buchanan, Hamilton, & Co., in Glasgow, were in the practice of consigning goods to the complainers in London to be disposed of on their account and of drawing bills in their own favour on account of the consignments. Immediately before the bankruptcy they drew four such bills amounting to £9300 for consignments, of which they had recently sent the complainers invoices and bills of lading. These bills were returned accepted by the complainers. The respondent, the trustee in the sequestration, maintains that the transaction constituted an illegal preference but the interdict does not interfere with any remedy which he may be entitled to on that ground, and it is unnecessary to consider the point. At the date of the bankruptcy these bills were still in the hands of the bankrupts, and they have been indorsed to the trustee, and are now held by him. The complainers seek to have him interdicted from negotiating or taking action on them, on the ground either that they are to be treated as accommodation bills, or that the complainers are entitled to set off against them a debt of larger amount due to them by the bankrupts, and that the trustee is not entitled by indorsing them away to change the position of parties after the bankruptcy.

"In support of the view that they were merely accommodation bills, the complainers founded upon a correspondence between the parties by which the bankrupts gave them a general lien on the proceeds of goods realised by them. The complainers referred to this correspondence as establishing a mode of dealing under which their acceptances to the bankrupts were no longer to have relation to specific consignments, but each consignment, as received, was to become the subject of a general lien for the balance of the whole account current between the parties. The Lord Ordinary does not take this view of the correspondence, and if the case of the complainers had depended upon it, he would not have been prepared to continue the interdict. He thinks it was plainly intended, that as formerly, and consistently with general usage, each consignment was to be the subject of separate drafts ; and that it was only the surplus of proceeds, beyond the amount to which they had been anticipated by the acceptance of bills specially drawn against them, that was to be subject to a general lien. He does not think that the bills drawn after, any more than before the agreement constituted before the correspondence, can be treated as in a proper sense accommodation bills. They were drawn against the proceeds of particular consignments then in the hands of the complainers, as for instance, the first of the bills now in question is 'for value received in produce per "Overland" 40 bales silk.' And in regard to the bills in question, the consignments against which they were respectively drawn have realised more than the amount of the bills. In these circumstances the complainers were bound to the bankrupts to retire the bills, being entitled to reimburse themselves out of the proceeds in their hands.

"But the question remains how the mutual claims of the parties are to be dealt with in the event, which has occurred, of the bankruptcy of Buchanan, Hamilton, & Co. while the bills were still in their hands. It appears to the Lord Ordinary that so long as they continued in the hands of Buchanan Hamilton & Co. before their bankruptcy, the bills must be held merely to have constituted or represented a portion of the liability of the complainers to account to them for the proceeds. They could not add to the amount of that liability. In this view of the matter the complainers must have been entitled to set off the debt due by Buchanan, Hamilton, & Co. to them against their liability for the proceeds of the consignments—partly represented by the bills, or, what is the same thing, against their liability for the amount of the bills, and for the unconstituted balance of the proceeds. The mere fact of the bankruptcy could not make any change as to this, and the complainers would still be entitled to plead compensation in the same way if the trustee should sue them as indebted to the bankrupts ; and the Lord Ordinary thinks, in claiming as creditors on the bankrupt estate, they would be entitled to require the trustee to adjust the account between the parties, so as to give them the benefit of their right of compensation, and to rank them for the balance.

"The real question between the parties is whether the trustee can be restrained from indorsing the bills to a third party for value, so as to deprive the complainers of the compensation which they could plead against the trustee himself. The parties were unable to adduce authority upon this point, and the Lord Ordinary has not found any. If the bankrupts had discounted the bills even at the last moment before their bankruptcy, the complainers must have retired them, and would have lost the benefit of compensation against the bankrupt estate. The circumstance that they were indebted to the complainers in much more than the amount of the bills could not put even the bankrupts in bad faith in discounting

them, for they had given full value for them in the produce against which they were drawn, and they got them for the express purpose of being discounted. But the Lord Ordinary is of opinion that the bankruptcy having taken place, and the complainers having intimated that they hold the debts compensated, the trustee is not now entitled to discount the bills for the purpose of defeating the plea of compensation at present available to the complainers. He thinks it is involved in the principles of bankrupt law, as they have gradually come to be established, both here and in England, that the state of indebtedness by or to the bankrupts, as that is to be ascertained by the rules for balancing accounts in bankruptcy, shall be fixed as at the date of the bankruptcy, and shall not be altered by either party to the prejudice of the other. No third party is at present interested in this question between the complainers and the trustee in the sequestration, and it is thought that the complainers are entitled in respect of the bankruptcy to have effect given to their rights as they now stand, without being liable to have them defeated by a third party being brought in as discounter of the bills. It results from bankruptcy that parties having accounts with the bankrupt are entitled to bring them to an immediate close, and to plead compensation or retention in respect even of future or illiquid claims, as equivalent to payment. The Lord Ordinary thinks it is not in the power of the trustee in the sequestration to postpone or set aside this equitable balancing of the account by assigning his claim to a third party, so as to defeat the plea of compensation.

"There is a fifth bill included in the application for interdict, which is in a different situation from the other four, in so far as it is drawn by Hall & Co., of Penang, upon and accepted by the complainers in favour of the bankrupts. In the view which the Lord Ordinary takes of the question this bill must be dealt with in the same way as the others. It would have been different if he had proceeded on the ground contended for by the complainers, that the other four were accommodation bills. "E. F. M."

Counsel for Complainers—Mr Shand. Agents—Webster & Sprott, S.S.C.

Counsel for Respondent—Mr Balfour. Agents—Gibson-Craig, Dalziel, and Brodies, W.S.

WHEATCROFT & TURNER *v.* HAWTHORNS AND COMPANY.

MP.—HAWTHORNS AND CO. *v.* M'FARLANE AND SON AND OTHERS.

Arrestment—Double Distress—English Firm. Held by Lord Barcaple (and judgment acquiesced in) that an arrestment against one of the partners of an English firm, used in the hands of Scotch debtors to the firm, did not entitle the debtors to refuse payment of their debt or to bring an action of multiplepoinding.

In the first of these actions Wheatcroft & Turner who are wire and india rubber merchants in Derby, sued Hawthorns and Company, engineers in Leith, for the sum of £53, 8s., as the price of a quantity of india rubber goods which were sold and delivered to them by the pursuers on 23d September 1865. The defenders admitted the debt, but refused payment on the ground that they had been interpelled by an arrestment used in their hands against Thomas Turner, one of the individual partners of the pursuers' firm. This arrestment had proceeded on the dependence of an action of damages at the instance of M'Farlane & Son, wire merchants in Leith, against Turner, who had formerly been in their employment. The defenders averred that they were advised that it might be held that the said arrestment attached the share or interest of Turner in the sums sued for, and that they would not be in safety to make payment to the pursuers until the arrestment was withdrawn. By the law of England, an unincorporated partnership is not a distinct person, and cannot sue in the partnership name. Neither can it possess any property or funds, but what is called the property of the firm is the property of the partners composing it in the proportion of their respective shares in the copartnery concern. They therefore contended, in point of law, that the action was unnecessary, in respect (1) that they were and had been all along willing to make payment to the pursuers of the sum sued for, on the arrestment in their hands being withdrawn; (2) that they had and now again tendered payment of the proportion of the sum sued for effeiring to the partners of the pursuers' company other than Turner; and (3) that the action should be sisted till an action of multiplepoinding was brought to have the matter determined as among the whole parties interested. After lodging these defences in the action of constitution, Hawthorns & Company raised an action of multiplepoinding in which they called M'Farlane & Son and Wheatcroft & Turner as defenders. They maintained that in the circumstances which have been stated above there was double distress, and it was necessary and they were entitled to raise the multiplepoinding in which the rights and interests of all parties might be judicially determined. Defences and objections to the action were lodged by Wheatcroft and Turner, in which they maintained that the fund *in medio* being due to them, and no arrestment having been laid against them in the hands of the raisers, there was no double distress nor any conflicting claim in reference to the fund or any part thereof, and that the action was unnecessary and incompetent. Hawthorns & Company moved to have the action of constitution sisted till the determination of the action of multiplepoinding, but this motion was refused by the Lord Ordinary. A record was thereupon made up in each action and both cases were debated together.

FRASER and STRACHAN argued for Wheatcroft and Turner, that their claims under these actions must be determined by the law of Scotland, and that there was no question of English law involved in the matter. It was a well-known and recognised rule of international law, that whatever the domicile of the parties or the origin of the right, the remedies and modes of proceeding must be determined by the law of the country where the action had to be enforced. They had nothing to do here with the constitution of English companies, or the respective rights and interests of the company and individual partners. These suits related to the enforcement or discharge of obligations to the company and fell to be determined by the *lex fori*. If it were held otherwise, no debt due to a foreign company could be recovered or discharged in this country without an inquiry as to the partnership laws of the country where the company was domiciled, and the individual rights of the various partners. The rights of Wheatcroft and Turner must therefore be dealt with in these actions on the same footing as if they were a Scotch company. It was settled by the law of