given to the only parties who now represent the Episcopalians of Brechin.

LORD ADAM concurred.

The Court pronounced the following interlocutor:—

"... Find the petitioner entitled to the expenses of the present proceedings and incident thereto out of the trust funds, as the same shall be taxed by the auditor, to whom remit for that purpose, and authorise the petitioner to take credit therefor; further, after taxation and adjustment of the law agents' accounts, ... and deduction of the last-mentioned expenses, authorise the petitioner to make payment of the free balance of the trust funds that shall then remain in his hands to the respondents the Reverend James Crabb and others, the vestry of St Andrew's Episcopal Church, Brechin: *Quoad ultra* continue the petition."

Counsel for the Petitioner—Kennedy. Agents—Gordon, Pringle, Dallas, & Company, W.S.

Counsel for the Respondents the Rev. R. W. Orr and Others—Strachan. Agent—W. Officer, S.S.C.

Counsel for the Respondents the Rev. J. Crabb and Others—Fleming. Agents—Gordon, Pringle, Dallas, & Company, W.S.

Wednesday, June 13.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

LOCKHARTS *v.* BROWN.

Partnership—Joint Adventure—Sale.

A, an ironmonger, entered into a joint adventure with his brother B, a general merchant, for carrying on the business of owners of fishing boats. The understanding between them was that each should bear part of the expense of the boats, and that each should supply goods from his own stores to the joint adventure, at the usual retail prices. B purchased nets from L at wholesale prices, which he fitted and made ready for fishing, and then supplied to the joint adventure at retail prices. In an action brought against A, after B had become bankrupt, for the price of the nets, *held*, on the evidence, that B had no authority to enter into such a contract for behoof of the joint adventure; that B had purchased the nets from L on his own individual credit, and then put them into the joint adventure; and that the nets supplied were not *in rem versum* of the joint adventure. *Held* that A was not liable to L for the price of the nets.

This action was raised by N. & N. Lockhart, net manufacturers, Kirkcaldy, against John Brown, ironmonger, Lerwick, for payment of £162, 10s. 3d. alleged to be the balance due to them for nets and other goods supplied to a joint adventure of which the defender was a partner.

In 1879 John Brown, the defender, entered into a joint adventure with his brother William Brown, grocer and general merchant in Lerwick, to carry on for their joint behoof the business of owners of fishing boats, which they were to hire out to fishcurers, fishermen, and others. On the 16th of February 1883 William Brown sent the pursuers an order in the following terms:—"Some time ago you sent me your price list of nets, and requesting an order, which I can now send you, and which I hope you will send on as soon as possible. This order is only for one of our six boats, but I wish to get this lot and let our men see them, and then I can order for the rest. As I have had nets which has not pleased our men from other places, and which came to be a serious loss to both our men and ourselves, but as I come to learn you have sent some to our town already which have given satisfaction, so I trust it may be a mutual benefit, so will you please send as undernoted as soon as possible, and oblige.—Yours, &c., WILLIAM BROWN.

"6 nets 60 yards 18 score 31½ rows to the yard 45/9 cotton.

"12 nets 60 yards 18 score 32 rows to the yard 45/9 cotton.

"*P.S.*—Also cotton lines to rig the same right and left hand, and rigging twine.—W. B."

Other orders in similar terms were subsequently sent. In answer to these orders the pursuers supplied the goods requested at wholesale prices.

William Brown having become bankrupt, N. & N. Lockhart sued John Brown for the price of the goods so supplied.

The pursuers pleaded—"(1) The said goods having been ordered and sold and delivered on account of the said partnership or joint adventure, the defender is liable in payment of their price. (2) Assuming that the boats for which the goods supplied by the pursuers were furnished or used, were separate joint adventures, the defender, as a partner in each and all of said joint adventures, is liable in payment of the price of said goods."

The defender denied liability.

Proof was led, the import of which was to the following effect:—The joint adventurers started with one boat in 1879. The largest number possessed by them at any time was six, and at the date at which the order for the goods in question was sent the number possessed was five, William Brown being separately interested in a sixth, in which his brother had no share. There was no written contract between the brothers, but William Brown thus explained their agreement—"The understanding my brother and I had as to supplies for the boats was that I should provide whatever I had in my shops. I was to charge the current prices I was charging to other people. In addition to that I was to have the supplying of the men with provisions, charging in that case also the current rates." John's evidence on this point was as follows—"The understanding was that he (William) should provide whatever he had in his stores or shops as a general merchant that the boats required, and that I should provide whatever blacksmith work and other things I might have requisite for the boats out of my business; and we were each to charge the regular trade prices of the place—the retail prices. I thought my brother would be able to do some-

thing in the way of paying for the hulls of the boats, but after the first one I had to pay for all the rest." The boats were worked on the half-catch system—that is, the fishermen received half the gross produce as their earnings, and the brothers after paying the expenses of the adventure divided the residue of the other half equally. There was also an agreement with the fishermen employed that when the expenses of building, and fitting out, and working a boat, with interest thereon, had been cleared off, they should become part owners. The brothers supplied the joint adventure with the goods they dealt in at the current rates; William supplying nets, ropes, and such goods; and John the ironmongery goods required. With reference to the question whether William had authority from John to order nets for the joint adventure, John deponed in his examination-in-chief as follows—"The skippers had instructions from me to go to my brother when they required nets. My brother and I were joint adventurers in the boats; we had equal shares. (Q) And it was with your authority and approval that he got the nets for these boats, and handed them over to the skippers, was it not?—(A) Yes, he had my authority to supply the boats with nets. (Q) And you knew that the nets were being got for the boats in that way?—(A) Yes, I knew my brother supplied them. I took nothing to do with getting nets myself unless the skippers came to me having failed to get them from my brother. In these cases I would buy them wherever I could. I charged them to the boat's account." In cross-examination he explained himself thus—"(Q) In this matter, had your brother authority from you to order from the net manufacturer any special lot of nets for any particular boat?—(A) No, never at any time, and he never asked it. (Q) Was the agreement between you and him simply that he should get the nets as he would get them for his ordinary business, and was he to supply them as he would to any ordinary customer?—(A) Yes. (Q) And did he do so?—(A) Yes." William, it was proved, did a considerable trade in nets. The yearly amount was not stated, but in his ledger for 1883 there was an account against one customer amounting to £122, 18s. for nets, and he deponed to selling many to fishermen for cash, of which no account appeared in his books. The nets which he ordered and received from the pursuers were unmounted nets averaging about 38s. 6d. in price. The nets supplied to the joint adventure by him were rigged nets, and their average price about 63s. or 64s. On the question whether all the nets, the price of which was sued for, passed to the boats of the joint adventure, William Brown deponed that the "Nellie," a boat in which he had an interest, but his brother no interest, got some of them, and his assistant Jamieson deponed to having sold some of them to two customers over the counter. The accounts of the joint adventure were kept by John Brown, but each brother kept a passbook of the goods he supplied to the joint adventure, and settlements were periodically come to.

The Lord Ordinary (M'Laren) on 10th January 1888 pronounced the following interlocutor:—"Finds that the sum sued for is the price of goods supplied to account of a joint trade in which the defender was a partner, and that the price is resting-owing and unpaid: Therefore decerns against the defender in terms of the conclusions of the action, &c.

"*Opinion.*—This is an action at the instance of a firm of manufacturers carrying on business in Kirkcaldy, against one of the joint owners of certain fishing boats trading at Lerwick, for the price of nets supplied to the joint adventure.

"The defender John Brown and his brother William Brown were the chief owners of the fishing boats, the only other owners being the fishermen who worked the boats, and who according to custom received each a small share in the boat which he assisted in working, in order that he might have an interest in the safety of the boat and an inducement to maintain it in good repair.

"It is in evidence that the defender kept the accounts of the joint trade, but that his brother William Brown took the chief part in the ordering of nets and fishing gear for the boats and provisions for the men. William Brown kept a shop at Lerwick from which he supplied the boats with provisions, and the defence is that the nets were supplied by William Brown in his capacity of tradesmen; that he ordered nets from makers on his credit as a tradesman, passed them into his stock, and from that stock supplied such quantities of nets and other gear as might be necessary for the purposes of the joint trade. Hence it is argued there is no contract relation between John Brown and the manufacturers who supplied the material which eventually went into the fishing concern.

"I am of opinion that this defence is more ingenious than sound.

"It does not appear to me that the case raises any substantial question depending on the differences between joint trade and partnership. The chief difference of course is that in a proper partnership the acting partner has a universal power to bind his co-traders for goods ordered on account of the firm, and therefore it is not necessary that a manufacturer or wholesale merchant suing for the price of his goods should prove that the goods were in fact applied to the purposes of the partnership trade. In an action against a defender who is not sued as a partner but as a joint trader it is, if not in every case strictly necessary, yet in all cases very material to the cause of action to inquire whether the goods supplied were of the description covered by the agreement for joint trade, and whether the goods were in fact applied to the purposes of the joint trade. In the present case the evidence satisfies me that both questions must be answered in the affirmative, and it does not satisfy me that there is any substance or reality in the defence that the nets were purchased by William Brown in his capacity of private trader and supplied to the joint adventure upon a separate and independent contract of sale.

"The chief witnesses to facts were the defender and his brother. Their evidence, which is perhaps more copious than necessary for the purposes of the case, deals largely with the history of the joint trade and the manner in which it was carried on. A considerable part of this evidence relates to matters which are not in dispute, and which do not call for observation from me.

"But when these witnesses come to speak of the particular transaction their evidence is evi-

dently coloured by the argumentative view of it, which they have perhaps persuaded themselves is well founded; and it is my distinct impression that their statements on this subject cannot be accepted without large reserves.

"1. It is evident that William Brown had authority to order nets and fishing gear for the joint trade.

"2. In his first letter to the pursuers William Brown stated that he was in want of nets for 'our six boats,' and gave what he professed to be a trial order. I understand that there were then only five boats belonging to the joint adventure, but there had been another which was disposed of. No other meaning has been suggested as applicable to the expression 'our six boats,' and I read this as an order for nets on account of the joint trade.

"3. Other orders were given at short intervals extending over a period of six months, and in the absence of any distinguishing direction I consider that the pursuers were entitled to treat these as orders for the account of the owners of the six boats.

"4. The defender has failed to prove that the nets supplied by the pursuers were in fact applied to other purposes than that of the joint fishing trade.

"5. The defender has shown that his brother did to some extent supply nets in the course of his business as a general dealer, but it is not likely that William Brown would order nets of the value sued for on the chance of disposing of them, and without reference to a specific order.

"6. The defender kept the accounts of the joint trade, and I think that there was a certain duty cast on him to see that the obligations of the fishing adventure were duly met. In a question with creditors of the adventure he was not justified in shutting his eyes to their claims and treating the obligations of himself and the other owners as matters which only affected the accounting between himself and his brother.

"7. The nets of the fishing adventure were stored in a store belonging to the defender, and were insured in the joint names of himself and his brother. When the store and its contents were destroyed by fire the defender recovered £1200 from the insurance company for the value of goods stored (chiefly nets), and divided this money among the joint adventurers, apparently without making any inquiry as to whether the makers of the stored property had been paid.

"This action on the part of the defender may no doubt be represented as being consistent with his view that the nets were supplied by his brother, and that he had no individual responsibility to the makers. But it is also consistent with the supposition that the two joint traders, one of whom was a man of means, and the other impecunious, had arranged to divide the money which ought to have been applied in meeting their trade obligations, and to relegate the payment of the debts of the undertaking to the chapter of accidents.

"There are other points in the evidence on which comment might be made, but I think I have said enough to indicate the grounds of my opinion, which is, that the defender is responsible in law and in equity for the debt sued on."

The defender reclaimed, and argued—The interlocutor of the Lord Ordinary should be recalled, because (1) William Brown had no authority to order the goods in question on the credit of the joint adventure or of the defender; (2) The joint adventure never got the benefit of the transaction between the pursuers and William Brown, the goods received by it being different goods and charged at a different price from those supplied by the pursuers to William Brown; (3) some of the pursuers' goods were sold to other customers; (4) the price of the goods supplied by each of the brothers was credited to them in account with the joint adventure, and the account annually balanced and settled. The contract of the pursuers consequently was with William Brown alone, and the defender was not liable under that contract—*White* v. *M'Intyre*, January 12, 1841, 3 D. 334; *Lockharts* v. *Moodie*, June 8, 1877, 4 R. 859.

The pursuers and respondents argued—The defender was justly indebted in the sum sued for. The correct view of the evidence was that William Brown ordered these goods for the purposes of the joint adventure, which he had authority to do. The principle of the judgment in *Lockharts* v. *Moodie* would thus apply. The goods were supplied on the faith of the joint adventure, and were *in rem versum* of the joint adventure. There was here a disclosed joint adventure, and consequently the *onus* lay on the defender of proving that the goods were not used by the joint adventure—Bell's Comm. (7th ed.) ii. 539.

At advising—

Lord President—In this case there was a joint adventure on the part of two brothers John and William Brown for fitting out fishing boats for the purpose of fishing in the fishing grounds near Lerwick. William Brown, one of the joint adventurers, now bankrupt, was a general merchant in Lerwick, and dealt, among other things, to a considerable extent in nets. John Brown was an ironmonger in Lerwick. It was accordingly a very natural arrangement that they should supply the joint adventure with the goods they dealt in. The evidence of the two brothers as to the arrangement between them is quite clear, and there is no reason to doubt its accuracy. There are no general imputations against their honesty, and there is nothing improbable in their story.

In pursuance of his undertaking to furnish nets and other gearing, William Brown put himself in communication with Messrs N. & N. Lockhart, the pursuers, having before that received their price list, and he wrote to them a letter ordering a certain quantity of nets, which letter was in the following terms:—"Gentlemen,—Some time ago you sent me your price list of nets, and requesting an order, which I can now send you, and which I hope you will send on as soon as possible. This order is only for one of our six boats, but I wish to get this lot and let our men see them, and then I can order for the rest. As I have had nets which have not pleased our men from other places, and which came to be a serious loss to both our men and ourselves, but as I come to learn you have sent some to our town already which have given satisfaction, so I trust it may be a mutual benefit," &c. There were other letters in the same style, in which he speaks of nets required "for our boats." It is not disclosed what the joint

adventure was, nor even that there was a joint adventure between him and his brother. Some one else was disclosed as interested along with the writer in some boats. That is all that can be got from the terms of the letter.

The goods were furnished between the 28th March and the 9th August 1883, and we have the account rendered by the pursuers for these goods to William Brown, amounting to £187, 5s. 3d., which is substantially the account now sued upon.

The ground of action is that William Brown having ordered nets they were supplied to him for the use of the joint adventure, and that the joint adventure got the benefit. It is upon this question that the whole case depends, whether the joint adventure got the benefit of this transaction between the pursuers and William Brown? That the joint adventure did get the benefit I think the pursuers have failed to prove; indeed, I think the contrary has been established. From the evidence, oral and documentary, it has clearly been made out that William Brown purchased from the pursuers the goods mentioned at wholesale prices, namely, 37s. for nets of a certain size. Of these he received delivery, and before he sold them he performed certain operations upon them, and in fact converted them into different goods. They were received as simple nets, and were fitted up, and therefore, supposing all the nets bought by William Brown from the pursuers were put into the joint adventure, they were put in not in the specific form in which they had been received, but were converted into other goods, and the price which was charged was totally different and much higher than that the pursuers charged William Brown.

In these circumstances it is utterly impossible to say that the joint adventure got the benefit of the transaction entered into between William Brown and the pursuers. The joint adventure neither got the same goods, nor were the goods they got the same price.

The question whether any, and if any, how many of the nets purchased from the pursuers really went to the joint adventurers is perhaps not of much importance. It is not established and not plain that the whole of the nets so purchased reached the joint adventurers. William Brown dealt in nets and goods of such a kind, and was selling to various parties besides the joint adventurers.

The ground of judgment, which I think unassailable, is that the contract between the pursuers and William Brown was never taken up by the joint adventurers. They never got the benefit of that contract, and never got delivery of the same goods, nor of goods at the same price. The legal view of the matter, then, is that the contract of the pursuers was with William Brown as an individual. They were not aware of the joint adventure, and they must have trusted to William Brown's credit alone. If, however, the goods were *in rem versum* of the joint adventure, the mere circumstance that they had trusted to William Brown alone would not disentitle them from proceeding against the joint adventurers for payment. But they have failed to prove that the goods were *in rem versum* of the joint adventure.

The case which comes nearest the present, and indeed is quite parallel to it, is the case of *White* v. *M'Intyre*, January 12, 1841, 3 D. 334. In that case two persons acquired a piece of ground for building purposes as a joint adventure. One party, who was a builder, agreed to erect buildings thereon, and the other to pay him a certain sum as the price of erecting and finishing the buildings. In execution of his undertaking to the joint adventure the builder employed other tradesmen, and among others a bricklayer to execute the necessary brickwork. The builder became bankrupt, and the bricklayer sued the solvent joint adventurer, as the Lockharts here sue John Brown, and the answer made was that the bricklayer contracted with the builder individually, and not with him in his capacity of joint adventurer. No doubt in one sense of the word the joint adventure got the benefit of the bricklayer's work. Yet the Court held that the labour and material supplied by the bricklayer were not *in rem versum* of the joint adventure but of the builder. The matter is very clearly put in a passage of Lord Mackenzie's opinion—"The furnishings by the pursuer were not *in rem versum* of the copartnery, but *in rem versum* of Reid, enabling him to fulfil his contract with White, or with the joint adventure, and giving him right to the stipulated price for it." Then Lord Fullerton says—"The pursuer's claim, if it has any foundation at all, must rest on the other ground, that where a joint adventure exists, although not known to the public, a third party dealing with an individual partner, and on the credit of that individual alone, may have the benefit of a joint liability against the *socii*, if the dealing, though nominally with the individual partner, is truly and substantially one with the joint adventure itself, out of which the joint adventure is to take the benefit through the medium of the act of the partners." Here the contract was between the pursuers and William Brown. That was quite distinct from the contract William Brown had to meet in order to perform his undertaking to the joint adventure. He proposed to supply nets to the adventure. He ordered them from the pursuers. The cases stand on the same footing. Where the original contract is made on the credit of the partner giving the order, and the tradesman supplies goods in consequence of the order, he cannot recover from the joint adventure unless he can show that the goods were *in rem versum* of the joint adventure. I am therefore of opinion that the Lord Ordinary's interlocutor should be recalled.

Lord Mure—It appears to me on the evidence that the two brothers are very distinct as regards the nature of the joint adventure. The import of the evidence is that each was to furnish part of what was necessary. The defender John Brown was to contribute boats and the ironwork necessary for the boats; William Brown the nets and other gearing necessary for the fishing. There is no reason to doubt the truth of this statement. I am unable to draw the inference from the letter containing the order and the other documents that that statement is not to be relied on. No doubt William Brown talks in that letter of "our boats," but the letter is the letter of an individual. He says—"Some time ago you sent me your price list of nets, and requesting an order, which I can now send you, and which I hope you will send on as soon as

possible." Nets were furnished on that request, and sent to William Brown. He fits them up, and upon that being done he furnishes them for the use of the boats—fits up and sells retail to the joint adventure the nets which he had purchased in an unfitted state. That is all perfectly consistent with the statement of the brothers.

That being so, the case falls under *White* v. *M'Intyre*, and especially under the views in Lord Fullerton's opinion, where he says—"There is another class of cases . . in which a party to a joint adventure has agreed to put into the common stock a certain quantity of goods or a certain sum of money; and in order to fulfil this agreement to his partners has a separate dealing with a third party in his own name and on his own credit, from whom he gets the goods or money. In such cases the individual partner is neither ostensibly nor really acting for the joint concern, as may at once be seen by considering that the joint adventure has no interest whatever in the terms of that dealing. In such cases I think there is no principle for holding the *socii* jointly liable as the dealing of the individual is not joint in point of law." Upon these grounds I concur with your Lordship that the interlocutor of the Lord Ordinary should be recalled.

Lord Shand—I think the first matter to be ascertained in this class of cases is what were the terms of the contract between the joint adventurers. It is generally found that when we have reached these facts the question of liability can be answered—that is, where the parties have acted in terms of the joint adventure. Now, what was the contract between William Brown and John Brown in regard to the joint adventure in the six boats? The evidence is all one way, and as there is no written agreement the pursuers were obliged to prove the terms of the contract out of the mouths of the brothers William and John Brown. William Brown in his evidence in a single passage states the contract in this way—"The understanding my brother and I had as to supplies for the boats was that I should provide whatever I had in my shops. I was to charge the current prices I was charging to other people. In addition to that I was to have the supplying of the men with provisions, charging in that case also the current rates." Again his brother says—"The understanding was that he (William) should provide whatever he had in his stores or shops as a general merchant that the boats required, and that I should provide whatever blacksmith work and other things I might have requisite for the boats out of my business, and we were each to charge the regular trade prices of the place—the retail prices."

The result of the undertaking was that each party was to put material into the joint adventure. John Brown hoped that William Brown would help him as to the hulls, but he failed to do so. John Brown had to put in the hulls, and also put in ironmongery and other goods which he could supply at retail prices. William Brown supplied paint, ropes, and also nets at retail prices. The result of the agreement was that each was to give from his own shop part of the subject of the joint adventure —that was the contribution of each of the joint adventurers—and each became to that extent a creditor of the joint adventure. That very arrangement excluded the idea that one could pledge the credit of the other in making any purchase; therefore, if he thought fit to make any purchase or to furnish goods from his store for the joint adventure, he was the person to supply the goods, and not the person from whom he bought them. Unless there is something in the actings counter to this conclusion there can be no liability on the part of the defender. I can see nothing in the evidence counter to it; on the contrary, everything squares with it. The accounts between the brothers were settled on that footing. They kept passbooks. William was a creditor of John, and John of William, and it may be each was also a creditor of the fishermen who afterwards had a share in the venture for these things, and the goods for which each was a creditor were carefully brought to a general accounting, and the balance settled year after year. Further, the nets which were supplied were not necessarily or exclusively the nets sued for here, but were taken out of the general store. I am not satisfied that all the Lockharts' nets went into these boats; probably many did, they were rigged out and completed by William Brown, and part of them were supplied to the joint adventure, part to other people. Even if the whole of the nets had gone into the boats at the wholesale prices, that would not have altered the liability, for William Brown was not entitled to pledge the credit of the joint adventure for goods so supplied, the agreement being, I think, that he should put them in as his contribution.

I think, on the whole matter, the case is clear. Mr Burnet made a great point naturally of the terms of the order. No doubt any merchant getting the order of February 1883 would very naturally think that he was getting other people to answer for the debt, though it is not certain that William Brown meant to convey that; "our six boats" might just be a loose way of talking. The answer to that is, that although the letter might and probably would be so read, that is just the risk which the pursuers as sellers of goods take. It was their duty to make inquiry on whose credit the goods were ordered, and if not satisfied on ascertaining the true nature of the contract, with William Brown's credit alone, it was for them to say that they would not supply the goods. No doubt the terms of the order may be looked upon as a strong piece of evidence that William was authorised to order these goods on behalf of the joint adventure, but it is not conclusive on that point.

That being so, I cannot agree with the Lord Ordinary in what I think is the fundamental finding on which he has proceeded, as to the first proposition of which he is satisfied on the proof, that William Brown had authority to order nets for the joint trade. If that means that William Brown could pledge the credit of John Brown, the proof, I think, does not show that. He had authority to supply nets, but the proof does not go beyond that. In the case of *Lockharts* v. *Moodie*, 4 R. 859, I put the matter thus in the opinion I gave—"The question is whether Mackenzie was acting for himself alone, with the view of afterwards selling the yarn as his own property to the joint adventure, or was really acting for the joint concern in making the purchase." I think there is the same question here, whether

William Brown was acting for himself or for the joint adventure in making the purchase? And the answer I give is that clearly William Brown was here acting for himself and not for the joint adventure. Having bought the nets they were put into his stock, and he sold them and made profit on them.

Lord Adam—I do not think that it is doubtful on the evidence that the terms of the joint adventure were that one of the brothers should supply boats and ironmongery, the other the nets and other necessaries to fit out the boats. It is not doubtful, I think, that the one being a dealer in ironmongery, the other in nets and ropes and such goods, the agreement was that the one should supply his goods, and the other his goods, at retail prices just as to other customers. The evidence of the brothers is clear, and is the only parole evidence we have. The accounts and books produced are in conformity with it, and they prove that these were truly the terms of the joint adventure. It appears to me, then, that the books prove that such of the nets as were supplied by N. & N. Lockhart, and passed to the joint adventure, passed in terms of the contract of sale between William Brown and the joint adventure, and not on any other terms. The price charged was the retail price and not the wholesale, which would have been charged had they been supplied direct to the joint adventure. They were in fact just sold to the joint adventure by William Brown. It appears to me on the facts of the case that the pursuers can have no claim for nets which they sold to William Brown, who again sold them to the joint adventure. As to the terms of the letter in which William Brown ordered the nets, and the meaning put on these terms by the counsel for the pursuers, I have to say that by the terms of the contract between them William Brown had no power to bind John Brown. It would have made no difference if he had said plainly that he was acting on behalf of his brother, as he had no authority to order nets in his brother's name and to bind his brother therefor.

The Court recalled the interlocutor of the Lord Ordinary and assoilzied the defender.

Counsel for the Pursuers and Respondents—G. W. Burnet. Agents—Watt & Anderson, S.S.C.

Counsel for the Defender and Reclaimer—Gillespie—H. Johnston. Agents—Mackenzie & Kermack, W.S.

Saturday, June 16.

FIRST DIVISION.

[Sheriff-Substitute of Caithness, &c., at Wick.

FARQUHARSON *v.* SUTHERLAND.

Bankruptcy—Sequestration—Election of Trustee—Bankruptcy (Scotland) Act, 1856 (19 *and* 20 *Vict. c.* 79), *secs.* 69 *and* 71—*Sheriff—Jurisdiction—Appeal.*

In a competition for the office of trustee in a sequestration an objection was stated to the oath of one of the creditors on the ground that it did not bear to have been taken before a magistrate or justice of the peace. The Sheriff-Substitute sustained this objection, and in the note appended to his deliverance stated that he considered this sufficient without dealing with any of the other objections, as one of the candidates was proposed by the creditor whose vote was thus objected to, and if the creditor was not entitled to vote he was not entitled to propose. The Sheriff-Substitute therefore declared the other candidate duly elected.

An appeal was taken against this deliverance, to the competency of which it was objected that the judgment of the Sheriff was final under sec. 71 of the Bankruptcy Act. *Held* that the Court could consider the reasons for the judgment given in the Sheriff-Substitute's note, and that as these disclosed that the Sheriff had exceeded the jurisdiction conferred on him by the statute, the appeal was *competent*, the *Lord President* being of opinion that the duty of the Sheriff was to determine which candidate had the majority of votes, which he had declined to do, *Lord Shand* and *Lord Adam* being of opinion that the Sheriff was only entitled under sec. 69 of the statute to entertain objections which were stated, and no others. The Court therefore *recalled* the judgment of the Sheriff-Substitute, and remitted to him to proceed with the election of the trustee.

The estates of Eric Sinclair Mackay, fishcurer, Pulteneytown, Wick, were sequestrated on 24th March 1888. There was a competition for the office of trustee in the sequestration, in which John Campbell proposed William Farquharson, bank agent, whom failing George Sinclair, accountant, and on the other hand Hector Sutherland proposed Alexander Sutherland, S.S.C., whom failing Symon Flett Sutherland, accountant. On the vote being taken creditors to the value of £15,856, 18s. 9½d. voted for Farquharson, whom failing Sinclair, and creditors to the value of £1641, 0s. 5d. for the Sutherlands.

Objections were stated to the validity of the votes tendered for Farquharson and Sinclair. In regard to the vote of John Campbell, the proposer of Farquharson and Sinclair, who produced an oath by himself to a debt of £16, 8s. 2½d., it was objected that the oath did not bear to have been taken in presence of a magistrate or justice of the peace, and that the name of the justice of the peace was omitted, and his oath therefore was null.

The Sheriff-Substitute (E. Erskine Harper) on 16th April 1888 pronounced the following interlocutor:—"The Sheriff-Substitute having heard parties upon the note of objections for Alexander Sutherland, S.S.C., Wick, and Symon Flett Sutherland, accountant, Wick, in the competition between them on the one hand, and William Farquharson, agent, North of Scotland Bank (Limited), Wick, and George Sinclair, accountant, Telford Street, Pulteneytown, on the other, for the office of trustee on the sequestrated estates of Eric Sinclair Mackay, fishcurer, Pulteneytown, in the parish of Wick and county of Caithness, for the reasons stated in the subjoined note hereby declares the said Alexander Sutherland and the said Symon Flett Sutherland to have