opinion that it was perfectly competent for a single justice to sign such a warrant. Such an act was simply ministerial, and differed essentially from giving judgment in a disputed case. The misrecital of the Act of Geo. III. was unimportant. The provisions of the Poor Law Amendment Act were sufficient, and were not impaired by this unnecessary misquotation. The warrant was therefore legal, and there was no ground for reduction or for damages, so far as the claim arose out of the alleged illegality of the warrant. The claim for damages was, however, also founded upon the manner in which the warrant had been carried out. But such a claim was excluded by the limiting clause, § 86, of the Poor Law Amendment Act.

Lord Cowan concurred with the Lord Justice-Clerk in holding the grounds of reduction bad, and that the action was excluded by the 86th section of the Poor Law Act. His Lordship indicated an opinion that he would hold the same view as to the excluding effect of the Poor Law Act, even if the warrant had been bad.

Lord Benholme thought it was unnecessary to pronounce an opinion upon a point that was not necessary for the decision of the case. He agreed in holding the warrant a good one.

Lord Neaves concurred with Lord Benholme. The objections taken to the warrant were not latent, they were *ex facie*. He would not say that he would not reduce the warrant if he thought it bad, but he agreed in holding it quite a good one. The objection that it was not signed by two commissioners really came to this, that a warrant could not be issued without the intervention of a Justice of the Peace Court.

Agent for Pursuer—W. Officer, S.S.C.

Agents for Defender—Adam, Kirk & Robertson, W.S.

Wednesday, November 6.

MORONEY & CO. AND OTHERS *v.* MUIR & SONS.

Sheriff—Action of Reduction—Petitory Conclusions—Advocation. An action was raised in the Sheriff Court which contained both reductive and petitory conclusions. The Sheriff-substitute disposed of the case on the merits; shortly thereafter the Court of Session decided the case of *Murray* v. *Dickson*. An appeal was then taken to the Sheriff, who dismissed the action as incompetent. Advocation of this judgment sustained, and case remitted to the Sheriff, on the ground that it was possible to separate the petitory conclusions from the reductive conclusions, and thereby entertain the former.

This is an advocation from the Sheriff-Court of Lanarkshire of an action raised by the creditors of Andrew Jackson & Son, concluding for reduction, under the Act 1696, of certain transfers of delivery-orders by which Jackson & Son, on the eve of bankruptcy, had conveyed 2000 bags of thirds to the defender. There were also petitory conclusions for the restoration of the goods or their value. There was a question of joint adventure between the parties, but that was not raised in the advocation. After a variety of procedure, the Sheriff-substitute (Glassford Bell), on 11th June 1866, pronounced decree on the merits in favour of the pursuers. On 7th June 1866 the case of *Murray* v. *Dickson*, below more fully referred to, had been decided by the Supreme Court, and was brought under notice of the Sheriff-Substitute, but was not given effect to in his judgment. But his Lordship made the following observations on that point:—"It may be right to state, before closing, that the Sheriff-Substitute has seen to-day a newspaper report of a case decided in the Second Division of the Court of Session on 7th inst.—*Murray v. Dickson*—from the judgment in which, in as far as the report can be understood, it would appear that the Division did not consider an action of reduction competent in the Sheriff-Court. No such defence has been pleaded in the present action, and ever since the provisions of section 10 of the Bankruptcy Act of 1856, and of section 9 of the Act of 1857, it has been held competent in this, and, it is believed, in most other Sheriff-Courts, to entertain actions of reduction. If this be erroneous, the consequence may be important; but it would be premature to hold that it has as yet been so authoritatively settled that actions of reduction are incompetent before the Sheriff, as to make it *pars judicis* to decline to adjudicate therein."

The defenders appealed, and specially pleaded that the action, being one of reduction, was incompetent in the Sheriff-Court. The Sheriff (Alison) pronounced the following interlocutor:—

"*Glasgow, 20th November* 1866.—Having heard counsel for both parties under the appeal for the defenders upon the interlocutor appealed against, and upon an objection or defence, pleaded at the bar for the first time, that the action being one of reduction is incompetent in this Court,—Finds that the present action is in substance and form one of reduction, under the Act 1696, of certain transfers or delivery-orders of 2000 bags of thirds belonging to the bankrupts Andrew Jackson and Son, with petitory conclusions for delivery or payment of the said 2000 bags of thirds following on the reductive conclusions contained in the summons: Finds, under the authority of the decision pronounced by the Second Division of the Court in the recent case of *Murray* v. *Dickson*, 7th June 1866 (M'Pherson's Cases, iv., 757), that such an action is incompetent in the Sheriff-Court: Therefore sustains the objection now pleaded against the competency of the action, recals the interlocutor appealed against, and dismisses the action as incompetent, reserving all competent action at the pursuers' instance against the defenders, and to them their defences thereagainst, as accords: And on the question of expenses, in respect the objection to the competency of the action was not stated by the defenders on record, and the parties joined issue on the merits, and led proof thereanent, and in respect the case of *Murray* v. *Dickson* was only decided in the Court of Session in June last, a few days before the date of the judgment of the Sheriff-substitute, and it was not till after the report of that case appeared, and the decision of the Sheriff-substitute was pronounced, that the objection to the competency of the action was stated for the defenders, Finds no expenses due to or by either party, and decerns.

"A. Alison.

"*Note.*—This is a most important case, and was most ably and concisely debated under the appeal upon the question of competency, both by Mr Lancaster and Mr Scott. It need hardly be said that by the law and practice of Scotland actions of reduction are among the class of actions which are only

privative to the Supreme Court; and as it frequently happened in bankruptcy proceedings that deeds and writings were produced and founded on in actions before the Sheriff-Court which required to be reduced and set aside by one or other of the parties, the practice of necessity arose, when such a stumbling-block occurred, of sisting process till the deed challenged was set aside under a formal action of reduction before the Supreme Court. This necessarily led to great delay, as well as expense, in actions in the Sheriff-Court in cases arising out of bankruptcy proceedings, which led to the enactment in section 10 of the Bankruptcy (Scotland) Act of 1856, which enacts that 'deeds made void by this Act, and all alienations of property by a party insolvent or notour bankrupt, which are voidable by statute or at common law, may be set aside either by way of action or exception.' The subsequent Bankruptcy Act of 1857, sect. 9, enacts that the 10th section of the Act 1856 'shall be taken to apply to actions and exceptions in the ordinary court of the Sheriff as in the Court of Session.'

"By these Acts, beyond all doubt, the Sheriff-Court is now competent to decide all questions in regard to deeds or alienations of property voidable by statute or at common law, and may set aside such deeds either by way of action or exception, which formerly could only be done under an act of reduction before the Court of Session. The statutes, however, do not say *how this jurisdiction conferred upon the Sheriff is to be exercised;* and hence it was the general understanding of the Sheriffs and practitioners before the Sheriff-Courts that it was the object of the Bankrupt Statutes to throw open the Sheriff-Courts for formal actions of reductions of deeds in relation to bankruptcy proceedings in the same way as was formerly competent only in the Court of Session. And the practice became general of raising actions in the Sheriff-Court to have deeds set aside and reduced which were voidable at common law or under the statute as granted within sixty days of bankruptcy. As explained in the opinions of the Judges, when deciding the recent case of *Murray* v. *Dickson*, the object of the Legislature in the Bankruptcy Acts of 1856 and 1857 was to do away with the necessity, in actions in the Sheriff-Court where a deed was founded on as excluding the action, of sisting process till the deed was reduced and the party driven to the Court of Session to have the deed reduced under an action of reduction. It was never intended by these enactments, however, to render the Sheriff-Courts *competent for any action of reduction* even in relation to bankrupt estates. The object, and the only object, was to let any ground of reduction, or any defence pleadable, competent to be tried and decided in any competent action in that Court without any *conclusions for reduction* at all either in that or the Supreme Court. Under an ordinary action in the Sheriff-Court, containing merely *petitory* conclusions for delivery or payment of goods, as having been illegally acquired from a bankrupt, which is met by a defence founded on certain deeds or writings which, prior to the Bankruptcy Act of 1856, would have required to be set aside by a reduction in the Court of Session, the Sheriff apprehends it would be quite competent for the pursuer to challenge the deeds founded on by way of reply to the exception, and that it would be equally competent for the Sheriff under the Bankruptcy Statutes, to set aside the deed by way of exception, without any reductive conclusions in the summons at all. An action of reduction was never heard of in the Sheriff-Court, and as the evil complained of prior to the Bankruptcy Acts was the necessity of having recourse to a reduction in the Supreme Court, and the remedy required was as far as possible to *get quit of reduction altogether*, it could not be the intention of the Legislature to introduce actions of reduction into Courts where they had never been before competent, and the clauses in the Acts of 1856 and 1857 need not be so construed This is rendered abundantly plain by the opinions of the Judges in deciding the case of *Murray* v. *Dickson* above referred to. Thus, the Lord Justice-Clerk stated that the question is, 'What is the purpose of the enactment of 1856, and what is its effect? It is a remedial enactment, and the first things to ascertain in constructing that enactment are, first, what was the mischief intended to be remedied? and, secondly, what was the remedy provided? The mischief was the expense and delay occasioned in bankruptcy proceedings by the necessity of instituting actions of reduction for the purpose of setting aside deeds which were objected to as fraudulent alienations by a bankrupt. This, I think, was the only mischief that was contemplated to remedy. What, then, is the remedy one would naturally expect to be provided for this mischief? The simple remedy, if it were attainable, would be to declare that reductions were not necessary. And it appears to me that that is the remedy applied by the clause of the Act. I read it as if it had said, *that it should not be necessary thereafter to reduce deeds, but that all objections to them on the Statutes and at common law might be pleaded without reduction.*' Again he says, 'I read this 10th section as meaning that this challenge may now be given effect to either by action or exception, including in the phrase 'by way of exception' reply, so that the pursuer of a petitory action, in answer to whose demand there is produced a deed that excludes it, '*may challenge that deed by way* of reply to the exception. That provides an adequate remedy for what I hold to be the mischief contemplated. If this be so, and a full remedy is thus supplied, it is not necessary to construe this clause as meaning anything more, or as introducing a new form of action. It therefore appears to me that this clause only means, that whereas formerly if a question of this kind turned up in a Sheriff-Court process, it was required that the action should be sisted until a reduction was brought; in future no sisting is to be required, but the question is to be tried in that action and in that Court where it first arises.' To the same effect Lord Cowan says the provision in the statute 'cannot by implication be held to enlarge the jurisdiction of the Sheriff to the effect of enabling him to judge in actions not previously competent in this Court. Whenever, in bankruptcy procedure, a proper action of reduction becomes necessary, it must still be brought before the Court of Session. But the effect of the Act is, that a trustee may disregard a deed which is voidable under the bankrupt law, *and bring his action with merely petitory conclusions;* and the validity of a defence founded on the voidable deed may be judged of *cum processu*, without the necessity of reduction.' Lord Neaves also says, 'In construing a remedial statute the first thing is to discover the evil to be remedied. I think the evil here consisted in the impediments and delays arising out of the peculiar and cumbrous forms attending actions of reduction, and the remedy aimed at was

the abolition of such actions by dispensing with their necessity in certain questions arising in bankruptcy. It would not meet the exigencies of the case to make it competent merely to bring in the Sheriff-Court the same cumbrous and complicated action which it was intended thus to supersede.'

'Under these opinions, and the decision following upon them, the Sheriff considers that he has no alternative but to dismiss the present action, which is one of reduction with proper reductive conclusions, with petitory conclusions tacked on to it, and leave it to the pursuers to proceed of new in competent form. It is no doubt true that the case of *Dickson* was one of an action of reduction, and reduction only, and that of an heritable right, whereas here, the reductive conclusions are only the groundwork of petitory conclusions which follow in the same summons. But although this circumstance makes a difference, it does not, in the Sheriff's opinion, create a distinction. The argument which prevailed with the Court in the case of *Dickson*, viz., that the statutes only authorised the Sheriff to consider reductive matter in disposing in bankruptcy cases of petitory conclusions, and not to render him competent to actions merely reductive, applies with equal force to the entertaining reductive conclusions when annexed to petitory ones following, instead of adjudicating on the ground of such reductive conclusions in determining the petitory ones. It was suggested at the bar by the counsel for the pursuers that the summons might still be amended by striking out the whole reductive conclusions, and leaving only the petitory ones. But it seems to me a sufficient answer to this to say, that it is incompetent at the eleventh hour to amend a summons after a record has been made up and closed, proof led, and judgment pronounced on the merits by the Sheriff-substitute. And even if the Sheriff were inclined to allow the summons to be amended, he has great doubts whether the Court of Session would sanction such a proceeding. In dismissing the action, however, he is of opinion that the defenders have no claim for expenses, seeing they did not in the record object to the competency of the action, but joined issue with the pursuers on the merits, and led proof; and it was not till the eleventh hour, and after the case of *Murray* v. *Dickson* was decided in the Court of Session, and the Sheriff-substitute had pronounced the interlocutor now appealed against, that the objection was stated by the counsel at the bar. The Sheriff-substitute's interlocutor under appeal, framed before the report of the case of *Murray* v. *Dickson* came out, was strictly in conformity, so far as the competency of the action is concerned, with the prior practice of this Court, and has only been altered by the Sheriff in consequence of the new light thrown on this important point by the decision in that case by the Second Division of the Court."

The pursuer advocated.

D.-F. Moncreiff and Clark for them.

A. Moncrieff & Lancaster in answer.

The Court held, that although the reductive conclusions were competent under the authority of *Murray* v. *Dickson*, the ground of actions involved in them might be entertained so as to give effect to the petitory conclusions of the summons.

The case was remitted, to be disposed of on the merits by the Sheriff.

Agent for Advocator—James Webster, S.S.C.

Agents for Respondents—Wilson, Bruce & Gloag, W.S.

Saturday, November 9.

FIRST DIVISION.

SCOTTISH EQUITABLE LIFE ASSURANCE ASSOCIATION *v.* DUNCAN AND OTHERS.

Husband and Wife—Conquest—Policy of Insurance—Assignation—Marriage-Contract—Universitas. By antenuptial marriage-contract a husband and wife mutually conveyed to each other the liferent of all estate "pertaining or belonging, or that shall pertain or belong, to either of them at the dissolution of the marriage." The fee of the whole property was, with a certain exception, to be divided at the death of the survivor into two equal parts, one share to go to the heirs of either spouse. The husband insured his wife's life, and subsequently assigned the policy gratuitously, continuing to pay the premiums out of income. In a claim by the executors of the wife, who survived, for one-half of the sum in the policy—*Held* that the assignees of the policy had right to the whole sum.

Per Lord Curriehill—1. Taking the words literally, the policy belonged to the spouses neither at the date of the marriage nor at the date of the dissolution. 2. The husband was entitled to administer the joint estate during the marriage, and to make even gratuitous donations, if not *in fraudem* of the contract.

The question in this action of multiplepoinding related to the right of property in a sum contained in a policy of insurance effected by the late Rev. Mr Duncan on the life of his wife. Mr Duncan and his wife, by antenuptial marriage-contract in 1831, mutually conveyed to each other, "in case of his or her surviving, the liferent of all and sundry lands, heritages, houses, tenements and other heritable subjects, and of all goods, gear, debts, sums of money, or other moveable estate whatever, pertaining or belonging, or due and addebted, or that shall pertain and belong or be due and addebted, to them or either of them at the dissolution of the marriage by the death of any one of them, with the whole writs and evidents of the said heritable subjects, and all bonds, bills, and other documents and instructions of the said moveable subjects, excepting always from this conveyance the liferent of the heritable subjects presently belonging to the said David Duncan, which it has been agreed shall on his death descend and belong to his own heirs in the manner after mentioned; but declaring always, as is hereby expressly declared and provided, that the survivor of the said parties who shall enjoy the benefit of the conveyance above narrated shall be bound and obliged to support, maintain, and educate any child or children which may be procreated of said marriage in a manner suitable to their station, until they shall respectively attain the age of twenty-one years complete, or be married, which ever of these events shall first happen: Moreover, with regard to the fee of said lands and heritages, and goods, gear, and other moveable estate, the said parties have covenanted and contracted and agreed as follows, viz., in the event of there being procreated of said marriage one or more child or children, then, on the death of the longest liver of the said parties, the whole of the said lands and heritages, goods, gear, and other moveable estate, shall be divided among the said children in such proportions as the said parties