ment was half-yearly, to Martinmas 1867, and I think he is corroborated by the facts and circumstances of the case. I don't think it is probable that he took the pursuer for a year, knowing that he was then out of place, and being warned that he had better ask his former master about him. There is no probability that the pursuer was engaged for a year.

Then the defender got a letter from the pursuer on 25th August, saying, "I am quite disappointed in you not sending me the money, as we stand in need of it." The defender says he had agreed to pay the pursuer his wages quarterly, but I think this letter by the pursuer was quite uncalled for, seeing at this time no money was due. Then on 28th August, the defender says that on meeting the pursuer, "I remarked to him that I considered his letter of the 24th August was uncalled for. He answered, 'Have you come down here to make a fuss about a bit of money? I have served with gentlemen before, and could get money whenever I thought proper, and as much as I thought proper.' I said such should not be the case with me. He answered it was hard for a family to 'be kept out of their money.' I said my brother's coachman had a wife and child, and only got his wages in the half-year. Pursuer said, 'You are a liar, they get it every month.' I told him to desist from such language instantly. He said in reply, 'Who the hell are you; do you take me for a sailor?' He then said, 'I am ready to give up my place this moment; say the word and I will go away at once.'" I think the master was quite justified in dismissing the pursuer on the spot, or he might have told him to go at the next Martinmas, and there is nothing in that at all inconsistent with the defender understanding that the pursuer's engagement was only half-yearly, and liable to terminate at that term. It is said the master had no right to use the services of the servant up to the term; that he should have dismissed him at once. But it was a mutual advantage to let his service continue till the term. It might be awkward for a master to have his horses left suddenly without a coachman, and, on the other hand, a servant is more likely to get a new place if he leaves his old one at the term than between terms. Then the defender is corroborated by the evidence of Gracie, the gardener, as to the unjustifiable language used by the pursuer on 28th August.

The only other question is, whether the defender was entitled to turn the pursuer out of the house or cottage he then occupied. That is always a question of circumstances. This cottage was on his property; it belonged to him, and was apparently appropriated as a residence for the coachman and his family. According to the pursuer's own statement, he was told distinctly that he must leave, but he does not choose to attend to the notice. He says that on 27th November, he not being there, and his wife also not being in the cottage, the master got the door broken open, and put his furniture out upon the road. There was no turning out of the pursuer and his wife personally, and no allegation of personal violence. The other coachman and his wife had arrived, and it was necessary that they should be accommodated. It is simply a question whether, in the circumstances, the master was entitled to take possession of the house, so as to hand it over to the new coachman. I don't see anything wrong in his doing so, or at least anything so wrong as to entitle the servant to damages. He was not a tenant. If the place he occupied had been part of the mansion house, the matter would have been clear; and if he had insisted on staying, I don't know of any law that would have prevented him from being put out by a little gentle pressure. It was suggested that the pursuer might have got help so as to enable him to retain possession of the house; but if he had done so, he of course must have taken the consequences of being right or wrong. The case of *Scougal* doesn't at all resemble this.

LORD ARDMILLAN concurred. He held it to be settled that in the case of a coachman or other domestic servant, if there was no bargain, there was no presumption that the hiring was for a year. The case of farm servants and gardeners was different; in their case, and probably in the case of governesses, the presumption probably being for a yearly hiring. But in the present case that presumption did not exist, and the pursuer had failed to prove the existence of any prevailing custom which would support his contention.

LORD KINLOCH concurred.

The LORD PRESIDENT concurred.

Agent for Appellant—W. S. Stuart, S.S.C.

Agents for Respondents—Scott, Bruce, & Glover W.S.

Thursday, February 4.

ARTHUR *v.* METHVEN.

Lunatic—Poor—20 & 21 Vict., c. 71—Title to Sue—Consent—Recovery of Disbursements—Certificate—Sheriff. A parish believing itself to be the parish of settlement of a lunatic, made disbursements on his behalf, in the way of sending him to and maintaining him in a lunatic asylum. Finding that belief to be erroneous, it gave notice to the true parish of settlement, and sued for repayment of its disbursement for a year preceding the notice. *Held*, that the action was well founded, under section 76 of the Lunacy Act, qualified by the proviso at the end of section 78.

The certificate by the Sheriff, provided for in the 76th and other sections, is not an indispensable pre-requisite to an action for repayment of disbursements, but is a privilege to the party or parish disbursing.

Methven, inspector of poor of Monifieth, with consent and concurrence of Craig, inspector of poor of St Cuthbert's, brought this action against Arthur, inspector of poor of Forfar, for repayment to the first party of advances made by him on account of a pauper lunatic for one year preceding 28th March 1867, being the date of notice to the defender that the pauper had become chargeable on Monifieth.

It appeared that, in the end of February 1866, the lunatic was put into Morningside Asylum by the inspector of St Cuthbert's, in which parish she then was. It was believed that the lunatic had a settlement in Monifieth, which parish accordingly, on receiving notice from St Cuthbert's, admitted liability, paid for the lunatic, and removed her to Dundee Asylum. It became known that the lunatic's true parish of settlement was Forfar, and Forfar received notice from Monifieth in March 1867. This action was brought in September 1867. The 78th section of the Lunacy Act, 20 and 21 Vict. c. 71, was narrated, which enacts that—"If the

parish of the settlement of any such pauper lunatic cannot be ascertained, and if the lunatic has no means of defraying the expense of his maintenance, nor any relations who can be made liable for the same, the expenses attending the taking and sending such lunatic, and of his maintenance in the district asylum, shall be defrayed by the parish in and from which he was taken and sent, but with recourse, nevertheless, to such parish, at any time when it shall appear that such expenses are legally chargeable to any other party or parish, against such party or parish, and who or which shall be liable also in interest and expenses; and the Sheriff of the county in which the parish defraying such expenses in the first instance is situated shall certify under his hand the amount of such expenses; and such certificate shall be final and conclusive as to such amount, and shall not be subject to review, by any process whatsoever, under any proceeding instituted for recovery of the same; and the party entitled to recover such expenses shall proceed as accords of law against the party or the parish liable for the same, by summary process before the Sheriff of the county within which such party resides, or in which such parish is situated, and the judgment of such Sheriff shall be final: Provided always that the parish of settlement shall not in any case be liable in repayment of the expenses incurred in relation to any lunatic as aforesaid unless written notice shall have been given by the parish or party disbursing the same to the parochial board of the parish of settlement, and shall then only be liable for the expenses incurred subsequent to such notice and for the year preceding."

The Sheriff-substitute (ROBERTSON) pronounced this interlocutor:—"Finds, in point of fact, that the lunatic, Margaret Law or Barrie, became insane in February 1866, and was placed in the Royal Lunatic Asylum at Morningside: Finds that, shortly after this, the pursuer, as inspector of the poor for the parish of Monifieth, admitted his liability for the maintenance of the said pauper lunatic: Finds that the pursuer disbursed the sums sued for in *bona fides*, and under the belief that the lunatic belonged to his parish: Finds that, after about twelve months, the pursuer discovered that he was in error, and that the parish of Forfar was the parish to which the lunatic belonged: Finds that, accordingly, in March 1867, due notice was given to the defender, as representing that parish: Finds that the defender admitted liability for any disbursements made after the date of notice: Finds that, six months after said notice, and in consequence of the defender's refusal to pay the sums sued for, the present action was raised: Finds that, under these circumstances, the pleas of *mora* and taciturnity must be repelled: Finds that, at common law, and under the 77th section of the Act 20 and 21 Vict., c. 71, the defender is bound to repay the disbursements sued for; therefore decerns against him for the sum of £30, 11s. 6d. sterling, with relative interest, as concluded for in the summons; and in consequence of the defender's admission of liability subsequent to the date of the notice sent him, finds that it is unnecessary to give effect to the conclusions in the summons for future relief: Finds the defender liable in expenses," &c.

The Sheriff adhered, but holding that the sum sued for was due under the 75th, 76th, and 78th sections, as well as under the 77th.

The defender appealed.

MILLAR and SCOTT for appellant.

CLARK and NEVAY for respondent.

At advising—

LORD PRESIDENT—The question now before us is one of considerable practical importance. The circumstances of the case are peculiar. When St Cuthbert's parish originally took charge of this pauper lunatic and had her lodged in Morningside Asylum, they were under the impression that Monifieth was the parish of her settlement, and Monifieth itself, being under the same impression, admitted liability, the consequence of which was that, for the expenses which had been disbursed by St Cuthbert's up to that date, that parish got reimbursement from Monifieth. From that time down to the date of the statutory notice in Forfar in 1867, Monifieth continued to pay directly to Morningside Asylum, and afterwards to Dundee Asylum, the sums necessary for the maintenance of the pauper.

It appears to me that it is very difficult to bring that case under the 78th section of the statute. The demand of the pursuers is that they shall be reimbursed, not only for their expenditure since, but for their expenditure for a year previous to the notice. The 78th section relates to the case where the parish of settlement cannot be ascertained, and where accordingly, the lunatic having no means, the parish in and from which the lunatic is taken and sent to an asylum disburses the expenses, seeking afterwards to recover them from the parish of settlement. But that is not the question here. This is a case where a parish against which the pauper has no claim, either temporary or permanent, has made disbursements, being under no obligation to do so. The parish where the lunatic is apprehended is under a statutory obligation in the meantime, with right of relief against the parish of settlement, which is under the obligation permanently; but in this case the parish of Monifieth was in neither position, and we are therefore driven to another section of the statute, if it is a statutory action at all. I think the authority for the action is to be found in the 76th section, which provides—"All the expenses attending the taking and sending a pauper lunatic to any district asylum in or from any parish which is not the parish of the settlement of such lunatic, including the sum paid for the order for admission of such lunatic, and the maintenance of such lunatic therein, shall be recoverable by the party or parish defraying such expense from the parish of the settlement of such lunatic; and it shall be competent for the Sheriff of the county in and from which such lunatic was taken and sent to ascertain and fix the amount of the same, and the expense so fixed shall be recoverable by summary process from the parish of the settlement of the lunatic before the Sheriff of the county in which such parish is situated." I have no difficulty in saying that the parish of Monifieth is in the position of a party defraying these expenses. It is not the parish contemplated by the Act of Parliament, but the word "party" is wide enough to include a parish under no obligation. Every other party except the parish laid under liability by the statute may fairly be comprehended. But if any party defraying the expenses, no matter whether a private party or a parish, may recover them under the 76th section, without any limitation at all or necessity of giving notice, that would be an extraordinary privilege, and inconsistent with the after provisions of the 78th section. But that apparent inconsistency is overcome by attending to the proviso at the end of the 78th section. That proviso is (*reads ut supra*).

There is no case in the leading provisions of the 78th section of any parish other than that in and from which the party is sent to the asylum, and therefore it is impossible to limit the meaning of this proviso so as to restrict its application to the 78th section. It must apply to the preceding sections as well, and in particular to the 76th. Thus the Act is made harmonious, and any difficulty in the 76th section is obviated. I think, therefore, that this is a good action at the instance of Monifieth, authorised by the 76th section, but properly limited to recovery of expenses incurred for one year preceding the statutory notice, all the subsequent expenses having been paid.

The only other point is, that there is a want of any certificate by the Sheriff of the amount of expenses sought to be recovered. No doubt it is provided by the 76th section that it shall be competent for the Sheriff of the county in and from which such lunatic was taken and sent, to ascertain and fix the amount of the same, and the expense so fixed shall be recoverable by summary process from the parish of the settlement of the lunatic before the Sheriff of the county in which such parish is situated; and similarly in the 76th section. But I do not read that as importing that the ascertainment of the amount of expenses by the Sheriff is an indispensable pre-requisite to any action for reimbursement of the amount of expenses. I think it is a privilege of a party disbursing to go to the Sheriff of his own county to get from him a certificate which will relieve him from having to prove the amount when he goes to another county for recovery of them, and therefore the absence of the certificate is not material. In this case there can be no difficulty, for there is no dispute as to the amount.

I am therefore for refusing this appeal.

Lord Deas said that the pleas of the defender were these—(1) That the claim was not made by the proper party; and (2) that there was no statutory certificate. As to the first point, the action was at the instance of John Methven, residing in Brook Street, Broughty Ferry, inspector of the poor of the parish of Monifieth, for and on behalf of the parochial board of the said parish of Monifieth, with the consent and concurrence of James Craig, inspector of the poor of the parish of St Cuthbert's, for and on behalf of the parochial board of that parish, for all right, title, or interest competent to said board in the premises. There was no doubt that that concurrence was the same as the instance of the inspector of St Cuthbert's. Even in the case of a disposition of heritage, a consenter had been held to be a disponer, and unquestionably a party consenting in an action was held to be a pursuer. There were, therefore, two pursuers, to one or other of whom the money was due. It was quite settled that where there were several pursuers it was competent to conclude that payment should be made to any one of them. Even payment to some one else might be concluded for. Any difficulty of construction could have no effect on the result of the case. On the other matters he concurred.

Lord Ardmillan and Lord Kinloch concurred.

Agents for Appellant—Adam & Sang, S.S.C.

Agents for Respondent—Leburn, Henderson, & Wilson, S.S.C.

Thursday, February 4.

BURNS *v.* CRAIG.

Bankrupt—Bankruptcy Act 1856, *sect.* 142—*Count and Reckoning—Petition.* An action of count and reckoning by a discharged bankrupt against his trustee, also discharged, *held* incompetent, the bankrupt's remedy in such case being by petition under section 142.

Burns, a bankrupt discharged on composition, brought an action of count and reckoning against Craig, trustee in his sequestration, now also discharged. The defender pleaded that the action was incompetent, in respect that the Bankrupt Act 1856, section 142, provides that the proper method in such cases is by petition to the Lord Ordinary or the Sheriff.

The Sheriff-substitute (A. E. Murray) sustained the plea, and dismissed the action.

The Sheriff (Bell) adhered.

The pursuer appealed.

Scott for appellant.

Watson and Brand for respondent.

At advising—

Lord President—I think the Sheriffs are right. The sequestration of the pursuer's estates had come to an end, the trustee had been discharged, and, as I understand, the bankrupt himself had been discharged on a composition. In these circumstances, before the trustee can obtain his discharge, there must have been the proceedings provided in the bankruptcy Act. But all this is to be subject to the review of the Lord Ordinary or the Sheriff, if complained of by the trustee, the bankrupt, or any of the creditors. Now, the question as to the sufficiency of the trustee's accounts, as to any balance due to or by him, and as to the remuneration for his services, are all made matter of adjudication by the commissioners in the first instance, and by the Lord Ordinary or the Sheriff in the second place, and the bankrupt is a necessary party to these proceedings. After all that the trustee obtains his discharge. That discharge is a deliverance by the Lord Ordinary or the Sheriff which exoners and discharges him of his whole intromissions as trustee in the sequestration—trustee, not only for the creditor, but also for the bankrupt. If it were not for the somewhat singular provision at the end of the 142d section, there is no doubt that there could be no action by the bankrupt against the trustee to call him to account for his intromissions, of which he is formally discharged. It must be observed that, in the case of a balance being in the hands of the trustee after satisfying the creditors, or after providing for all he was bound to provide for, the trustee will not get his discharge until he has paid over any such balance to the parties to whom it belongs. That was found so long ago as in 1810, in the case of *Ballantine.* Therefore it is clear that, if it were not for this provision in the 142d section, the bankrupt would have had no opportunity of calling the bankrupt to account for his actings as trustee. But this section certainly does nevertheless give the bankrupt a right to present a petition to the Lord Ordinary or the Sheriff against the trustee and his cautioners, to account for his intromissions as trustee. It is a remarkable remedy, and one that must be strictly followed, and as the statute says it is to be by the form of a petition, I do not think we can allow it in any other form.