trouble, we have been authorised by him to offer you £3550 for your property, in terms and conditions set forth in the articles of roup under which it was to have been sold yesterday had you not withdrawn it, with entry in terms of said articles, and not later than 20th December next." The offer was accepted, whereupon Messrs Yeats and Flockhart intimated that the purchase had been made on behalf of the defender, Mr Duthie. Mr Brebner, upon the sale of the house having been effected, resolved to sell the conservatory and plants and specimens in the grounds attached to the said house, and advertised the sale thereof. But Mr Duthie maintained that under the missives and articles of roup he had acquired right to these subjects, and presented an application to the Sheriff of Aberdeenshire craving interdict against Mr Brebner from "selling or otherwise disposing of or removing or interfering with the conservatory and green-house or greenhouses, and stove attached for heating thereof, the plants and specimens therein contained, the fixed and other frame-pits, and the frames thereof, the growing trees and shrubs that are rooted in the soil, and all subjects that are of the character of fixtures, and heritable, upon or within the said lot or piece of ground and premises belonging thereto." Mr Duthie obtained interim interdict in terms of the prayer of this application.

A dispute then arose whether it was for the referee to decide on the point in dispute; and after much discussion and correspondence, the disposition to the property duly executed, and dated 18th and 21st December 1868, was delivered on the 21st December 1868 to the defender; and the agreed on price of the property, £3550, was paid on that day by the defender to the pursuer.

The Lord Ordinary (BARCAPLE) sustained the defences, chiefly on the ground that the contract of sale did not embody a reference to Mr Adam.

The trustee reclaimed.

SOLICITOR-GENERAL and SHAND for him.

GIFFORD and DEAS in reply.

At advising—

LORD PRESIDENT—I am of opinion that the Lord Ordinary's interlocutor is right. The first question is, What is the meaning and extent of these articles of roup? I think, if any question was raised between the seller and purchaser under these articles of roup, in short before the disposition was delivered or the price paid, the clause of reference would apply. But what the purchaser contends is, that a disposition conceived in the terms prescribed in the articles of roup includes the greenhouse. There is no need to decide such a question after delivery of the disposition or payment. No arbiter in the world could add to, or detract from, the description in the articles of roup. They say in the 7th article that in the disposition to be executed to the purchaser the subjects "shall be described as contained in the title-deeds thereof," and "with and under the provisions and declarations contained in the said instrument of sasine in favour of the said James Brebner." In short the arbiter had nothing to do with the form of the disposition. Any decision therein would be beyond his jurisdiction.

LORD DEAS—Article 7 of the articles of roup stipulates precisely what is to be sold. It provides that the exposer binds and obliges himself to execute a disposition to the purchaser in terms of the title-deeds. The thing that is to be sold and conveyed in the disposition is the subject described in the title-deeds, and as burdened in the sasine of James Brebner. It would be quite impossible to say that under that arbitration any arbiter could change the limits of the subjects sold. There is no offer to reduce the terms of the disposition. It is not a question about the terms of the disposition, or the implementing of the articles of roup. The only question is, What is the legal effect of the disposition? What is moveable and what is heritable? The arbiter could not decide that a reservation of the greenhouse must be inserted in the disposition. It does not fall within the clause of reference.

LORD ARDMILLAN—I view this case as if the disposition had not been made nor the price paid; but I come to the same conclusion as your Lordships. The sellers were bound to give the disposition in terms of the 7th and 9th of the articles of roup. That is what the purchaser is entitled to get. The true version, I think, of the articles is, that article 7 is a description of the subjects, and article 3 a specification of the date of entry; and by article 7 the purchaser is to get the subject as specified in the title-deeds.

LORD KINLOCH—I am of the same opinion with all your Lordships,—that we should adhere to the interlocutor of the Lord Ordinary; though I also agree in placing the decision on somewhat different grounds. I think the contract of sale did embody a reference to Mr Adam; but a reference within certain limits. I do not think its object was to make Mr Adam a perpetual referee, but only to give him power to determine such disputes as might arise before the time of delivering the disposition and paying the price. The subjects were described in the articles of roup, and the disposition conveys the subjects in exactly the same terms. On this point there was no dispute to refer. No doubt a dispute might afterwards arise as to what this disposition gave; but I do not think this is a dispute which falls within the clause of reference.

Agents for Pursuer—Tods, Murray & Jameson, W.S.

Agent for Defender—John Robertson, S.S.C.

Tuesday, November 23.

SECOND DIVISION.

ANDERSONS *v.* ANDERSON.

Joint-Owners—Farm—Management — Remuneration. Circumstances in which *held* that a joint-owner was entitled to a small sum of remuneration for his services in the management of a farm for his own behoof, and that of other joint-owners.

This was an accounting which related to the accounts of the defender's management of a farm which had been tenanted by the deceased father of the parties, and which, it had been previously held, was to be dealt with as a joint concern. The defender had maintained that he had been in the management and possession of the farm for his own behoof, in respect of a transaction with the pursuers, but it was ultimately held that he did not possess on that footing, and that he had to account for his intromissions to the pursuers. The case came up again before the Lord Ordinary (BARCAPLE) with an additional report by the accountant, and a plea by the defender that he was entitled to charge a certain sum annually, as re-

muneration for his services in the management of the farm.

The Lord Ordinary pronounced the following interlocutor:

"*Edinburgh*, 12*th June* 1869.—The Lord Ordinary having resumed consideration of the process, with the additional report of the accountant, and heard counsel for the parties thereon—Repels the respondents' eleventh objection to the first report of the accountant in so far as regards the question as to the expense of the advocator's riding-horse, said objection having been formerly repelled *quoad ultra*: Finds that the farm of West Newton having been carried on as a partnership concern by and for behoof of the advocator and respondents and their brother James Anderson, the advocator, being one of said partners, is not entitled to any allowance or remuneration for superintending and managing said farm, and repels the seventh objection stated for him to the first report of the accountant: Finds, in terms of the reports of the accountant and the foregoing findings, that there was a balance on his intromissions, including interest due by the advocator to the said partnership or joint concern, at 15th May 1861, amounting to £1451, 18s. 3d., one-fourth part of which sum is due to each of the respondents; Appoints the respondents to give in a state shewing the portion of said sum for which they ask decree under the conclusions of the action: Finds the advocator liable in the whole expenses of process in the Inferior Court and in this Court to the 12th March 1867; and *quoad ultra*, Finds no expenses due to or by either party; Allows accounts thereof to be given in, and, when lodged, remits the same to the auditor to tax and report.

"*Note.*—The Lord Ordinary feels that, in the peculiar circumstances of this case there is some hardship in the application of the rule of law by which the advocator is precluded from claiming remuneration for his services in carrying on the joint concern belonging to a partnership of which he is a member. But the principle is well established, and has been strictly enforced in cases not materially different from the present—*Campbell, Rivers & Co.* v. *Beath*, 2 W. & S., 25. As the advocator is not allowed any remuneration, the objection taken by the respondents to half of the sum allowed by the accountant for expense of a riding-horse is repelled.

"The result of the findings on these points is that the sum reported in the additional report by the accountant is the balance against the advocator at 15th May 1861, to which period he produced his accounts, and they have been dealt with on the reports of the accountant and the interlocutor of the Lord Ordinary and the Court. But the conclusions of the summons only relate to the balance due at the date of the action, and the respondents will now lodge a state shewing for what sum they ask decree as at that date. It was stated at the bar that the advocator will settle with them for the subsequent period, in conformity with the findings now pronounced.

"The advocator is clearly liable in full expenses to the date of the first remit to the accountant. He was till that time disputing all liability to account. In the proceedings before the accountant under the first remit both parties were maintaining points which have been ultimately held untenable. The respondents were doing so with much keenness and to a large extent. But upon the whole matter, the balance of success was much in favour of the respondents. In the discussion of the accountant's first report (when the respondents persisted in reclaiming, and unsuccessfully opposed the motion of the advocator for leave to withdraw his reclaiming note) and in the procedure following on the second remit, the respondents have succeeded in increasing the amount at the advocator's debit by the sum of £130, 19s., half of which is due to them, and in resisting the advocator's claim for an allowance for management. But during this period, besides maintaining many minor objections which have been repelled, they contended at the debate on the first report, as they had previously done before the accountant, that no item of credit was to be allowed to the advocator for which there was not a voucher; and they also maintained, and got a special remit to the accountant and Mr Dickson on the point, that he ought to be debited with profits on buying, selling, and feeding cattle in addition to the value put upon the produce of the farm. On both of these important points the respondents have been unsuccessful. The parties have latterly been engaged in a partnership accounting in which the advocator has not been dealt with as a factor or manager bound to render an account of his intromissions, but entitled to remuneration for his trouble. In the circumstances, and without any fault of the advocator, some expense might well have been incurred by the joint concern on getting the partnership account properly stated. The actual expense has been greatly increased by the advocator having failed to keep, after 1850, such a record of his transactions as he had previously done, and by the untenable contentions of both parties. The Lord Ordinary has no doubt that a considerable portion of the expense of the accounting must be thrown upon the advocator. But he thinks that, upon the whole matter, substantial justice is done to all parties by giving the respondents their full expenses to the date of the Lord Ordinary's interlocutor disposing of the objection of both parties to the first report of the accountant, and finding no other expenses due to either party."

The defender reclaimed.

SOLICITOR-GENERAL and BALFOUR for him.

WATSON and H. SMITH in answer.

The Court altered this finding, and held that the relation here was not properly partnership, but joint-ownership, and that, in the peculiar circumstances of the case, remuneration to some extent must be allowed. The amount allowed, however, must be limited to £5 a-year for the period over which the management extended.

Agents for Pursuer—Henry & Shiress, S.S.C.

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

Friday, November 26.

SECOND DIVISION.

RUSSELL (GALLOWAY'S TRUSTEE) *v.* NICOLSON & TAYLOR.

Expenses—Bankrupt—Commissioners—Deliverance—Trustee. A trustee having appealed against a deliverance of commissioners in a sequestration fixing his commission, and the Lord Ordinary having ordered service of the appeal upon them, and they having appeared to defend their judgment, *held* (*diss.* Lord Benholme) that they were entitled to their expenses out of the estate, up to the date of a report by the accountant in bankruptcy, (to whom the Lord