part of the defender, because he undertakes in the first place to pay the whole public burdens, and all he has by way of relief is contained in the following words:—"he always having allowance thereof in the first end of the foresaid feu-duty yearly at clearing." Now these words occur in that part of the charter which provides for the *reddendo*. There are several items of *reddendo* in this charter, consisting of money payments, victual, kain, carriages, &c.; and all these are said to be due in name of feu-duty. Then occurs the obligation on the vassals to pay the public burdens, and the clause winds up, "they always having allowance thereof in the first end of the foresaid feu-duty yearly at clearing." Reading that clause strictly, the only right competent to the vassal is to deduct from each year's feu-duty the amount of public burdens paid for that year. But it is to be borne in mind that the burdens here undertaken by the defender were truly burdens on himself, as proprietor of the *dominium utile* of the lands, and not upon the superiors. The undertaking was only to pay what was properly his own debt; and the right he had secured to him, on the other hand, was a right of relief against the superior, who undertook to relieve him in the end of these payments. That is a very different sort of right. It is very difficult to understand how the vassal could have this right unless there was a corresponding debt incumbent on the superior. It is said that the vassal is only entitled to deduct from the first end of each feu-duty—that that is the measure of his right. I think, on the contrary, that these words are only added as a farther privilege, to enable him to operate his own relief, in terms of the obligation which the superior has undertaken. I think therefore that this clause is to be construed by implication, as an ordinary general obligation on the superior to relieve his vassal of all public burdens.

This practically puts an end to the whole case. It resolves into a question of debt between the superior and vassal. There is no prescription to cut off this debt, and the debt accordingly subsists. There being no technical objection raised to the form which the action has taken, and to the absence of certain parties, there is no reason why we should not give effect to it, when pleaded in compensation. I therefore think that the Lord Ordinary has done quite right in finding that this claim of retention is not cut off; but I also think he has done quite right in refusing interest upon these sums claimed to be retained, because it was the fault of the vassal that his right was not made effectual sooner.

There might have been something in the last argument submitted to us by the pursuers, viz., that the accepting of a charter of confirmation by the defender in 1855, cut off all claims previous to that year. If this charter of confirmation were in the ordinary form, it might have been inferred that all claims on the part of the superior had been settled, and in consequence it might have been contended that all counter claims on the part of the vassal for bygone poor-rates had been departed from. But unfortunately the terms of the charter itself negatives this, for it contains an express reservation of all claims of the superior to arrears of feu-duties. This therefore does not alter the question.

LORDS DEAS, ARDMILLAN, and KINLOCH concurred.

The Court adhered.

Agents for the Pursuers—Hope & Mackay, W.S.
Agents for the Defender — Tods, Murray, & Jamieson, W.S.

Friday, June 23.

BEVERIDGE'S TRUSTEES *v.* BEVERIDGE.

Partnership—Process—Relevancy. Averments *held* not relevant or sufficient to support an action invoking the interference of the Court in the affairs of a copartnery.

This was an action by the trustees of the late Erskine Beveridge against James Adamson Beveridge, manufacturer, Dunfermline. On the 24th October 1864 the truster, shortly before his death, entered into a contract of copartnery with his son, the present defender, to endure from 1st July 1865 to 19th March 1874. It was provided that in the event of Mr Erskine Beveridge's death during the subsistence of the contract the copartnery should continue, notwithstanding, as between his representatives or trustees on the one hand, and James A. Beveridge on the other. The contract contained the following clause:—"The books of the company, which shall contain all and every part of the affairs and transactions of the joint trade, shall be brought to a just and true balance at least once in every twelve months, and that at the 23d day of December in each year, and the profits or loss arising in the previous year's trade shall be shared by the parties in the proportions after mentioned."

The averments of the pursuers, and the conclusions of their summons, will sufficiently appear from the Lord President's opinion.

The Lord Ordinary (ORMIDALE) found that no relevant or sufficient grounds had been laid by the pursuers entitling them to insist in the present action, and accordingly dismissed the action.

The pursuers reclaimed.

The SOLICITOR-GENERAL and WATSON for them.

SCOTT for the defender.

At advising—

LORD PRESIDENT—The Lord Ordinary has dismissed the action in respect that no relevant or sufficient grounds have been laid by the pursuers entitling them to insist in the present action. The ground alleged by the pursuers is that they have been in partnership with the defender under a contract of copartnery dated 24th October 1864. In obedience to a clause in the deed, balance-sheets were made up for 1865 and the following years. The rest of the condescendence, in so far as it alleges any grounds of fact, is to be found in Article 9—"The said balance-sheets exhibit just and true balances of the affairs of the said copartnery of Erskine Beveridge & Company. The concern has been exceedingly prosperous, and large annual profits have been realised since 1st July 1865. The defender has from time to time drawn out of the business large sums to account of his fourth share of profits. But although he has been regularly furnished with the balance-sheets, the defender has hitherto declined to aid the trustees, or concur with them, in adjusting the same, according to the terms of the contract of copartnery, in order to fix and ascertain the amount of profits due respectively to him and to his father's trust, in consequence whereof it has become necessary to raise the present action." It is not alleged that the defender has drawn any sums to account not justified by the balance-sheets. It is not alleged

that he has stated objections to the balance-sheets, or that he has done anything except to decline to aid the trustees in adjusting the balance-sheets. What do the trustees ask the Court to do? They ask for declarator that the defender is bound to concur with the trustees in bringing to a just and true balance the books of the firm once in every twelve months, and for decerniture against him to concur with the trustees in adjusting the balance-sheets, and to subscribe or otherwise authenticate the same in token of his acquiescence therein. Then there is an alternative conclusion that in the event of the defender appearing and objecting to the said balance-sheets, correct balance-sheets should be adjusted at the sight of the Court. The alternative is, that either the defender is to be ordained to concur in adjusting the existing balance-sheets, or otherwise, throwing these aside, correct balance-sheets are to be made up at the sight of the Court. Apart from the impossibility of finding any sufficient grounds for the interference of the Court at all, I am struck by the novel form of remedy proposed. I am not prepared to pronounce an opinion that circumstances might not occur where a partner is entitled to throw the affairs of the copartnery into Court; but this is not a course which a partner can take in the ordinary course of the partnership with no stronger allegation against his copartner than that he will not help him in adjusting the balance-sheets. By the contract of copartnery there is no obligation on the defender to express his acquiescence in the balance-sheets, and it would be rather a strong thing for the Court to create this obligation against him. I quite agree with the Lord Ordinary. I may say, at the same time, that I am the more easily reconciled to throw the action out of Court from the information we now have that there are other disputes between the parties which have not yet been finally determined. I quite understand the unwillingness of the defender to subscribe balance-sheets while he is objecting to some of the principles on which they are struck. This action would have no practical value if we could have sustained it. But I put my judgment on the same grounds as the Lord Ordinary.

The other Judges concurred.

The Court adhered.

Agent for Pursuers—T. J. Gordon, W.S.

Agents for Defender—Wotherspoon & Mack, S.S.C.

Friday, June 23.

CUNNINGHAM AND OTHERS *v.* EDMISTON AND OTHERS.

Process—Title to Sue—Sepulchre—Property—Contract—Implied Obligation. Where eleven out of thirteen thousand lair holders in a cemetery brought an action of declarator and interdict, &c., against the proprietors of the cemetery, seeking to have certain points determined which affected the rights of the whole body of lair holders, as well as those themselves individually—*held* that they had a right to pursue such action, but that the right to insist was a different thing from the title to sue, and must be judged of on the merits of the case. And, on the merits, it being found that they as individuals had no right to insist in conclusions of such a general nature, as would have put the rights of the whole body upon a perfectly new footing,—*held* that the proper course was to give decree of absolvitor, and not to dismiss the action.

Circumstances in which it was found that lair holders had no absolute right of property in their lairs (the cemetery not being a public parochial one), but only a permanent right of use, which right was a right *ex contractu* though implied merely between them and the proprietors, and its extent to be determined by a consideration of that contract; and farther, that they were not, in terms of that implied contract, entitled to demand, upon all the lairs being disposed of, that the proprietors should denude and transfer the property to trustees for behoof of the lair holders, or give up the management to a committee appointed by them:—

In which, on the other hand, it was held that the proprietors, by the implied contract between them and the lair holders, were bound to dedicate the whole ground to the purposes of cemetery; and though not debarred from profit from interment fees, as well as from the sale of lairs, they were only entitled to fair and reasonable fees, which the Court might interfere to fix, if properly applied to for that purpose.

This was an action of declarator, &c., brought by James Methven Cunningham and others, being thirteen lair holders in the Western Division of the Southern Necropolis, Glasgow, against William Edmiston, the trustees of James Watson, and the trustees of James Galloway.

The conclusions of the action will be more fully disclosed in the note to the Lord Ordinary's interlocutor given below. The general object of it may be shortly stated to have been—to compel the defenders to denude and divest themselves of the property of this Western Division of the Southern Cemetery in favour of trustees, who should thereafter hold for the sole behoof of the lair holders; and to hand over the management to a committee of lair holders, as in the other divisions of the cemetery. Failing this, there were several conclusions intended to regulate the management of the cemetery, the fees for interment, &c., and to prevent the practice of "pit-burial."

In order to understand the rights of parties in this Western-Southern Cemetery, it is necessary shortly to refer to the history of the original Southern Cemetery, and its first or eastern division.

The original Southern Cemetery, extending to seven acres, was projected in 1839 by the late Colin Sharp M'Laws. Two public meetings were held in Gorbals, and thereafter a prospectus was issued embodying the views of the projector, and the resolutions come to at these two meetings. The ground was purchased from William Gilmour, merchant in Glasgow, M'Laws' father-in-law, and a disposition was executed by him in favour of a committee of management appointed by a general meeting of subscribers to the projected cemetery, the said committee to remain in office and not be removable by the subscribers until the price was paid to Mr Gilmour. The prospectus above referred to especially set forth that it was one of the objects of the promoters to prevent and put a stop to the practice of pit-burial. It was farther specially held out and provided in the prospectus that the management of the said Southern Necropolis should be in the hands of the purchasers of the lairs; that the property should be vested in the Magistrates of