deed is not the deed of the said Mrs Robina Jarvie or White? (3) Whether at the date of the said deed the said Mrs Robina Jarvie or White was weak and facile in mind and easily imposed upon; and whether the defender Alexander White, taking advantage of the said weakness and facility, did by fraud or circumvention impetrate and obtain the said deed from the said Robina Jarvie or White, to her lesion? (4) Whether the said deed was executed by the said Mrs Robina Jarvie or White under essential error as to its nature and effect?"

The defenders reclaimed, objecting *in toto* to the last issue; and the Court altered the issues to the effect of deleting No. 1 on the ground that any case that could be tried under the first issue could be tried under the second, although it might be necessary that the jury should return a special verdict. The Court also caused to be added to the last issue "induced by the fraudulent misrepresentations of the said Alexander White."

Counsel for Pursuer—Rhind. Agent—W. Officer, S.S.C.

Counsel for Defenders—Kinnear. Agents—Dove & Lockhart, S.S.C.

Thursday, July 19.

FIRST DIVISION.

[Lord Curriehill, Ordinary.

WILSONS *v.* BRYDONE.

Nuisance—Property—Mutual Gable.

The proprietor of a tenement built as a dwelling-house in a street in Edinburgh put up a steam-boiler and engine in his premises for the purposes of a printing business, and introduced the flue of the furnace of the boiler into one of the ordinary chimneys of a mutual gable wall. The owners of the adjoining tenement raised an action to have the flue removed and the defender interdicted from again inserting it. Evidence was led that the heat was excessive, and rendered the pursuers' house almost uninhabitable.—*Held* that the gable was used in a way inconsistent with the ordinary use of a mutual wall, and that a nuisance existed which must be removed, but defender allowed to put in a minute stating how he proposed to obviate it.

Counsel for Pursuers—Fraser—Rhind. Agent—William Paul, S.S.C.

Counsel for Defender—Guthrie Smith—R. V. Campbell. Agents—H. & H. Tod, W.S.

Thursday, July 19.

FIRST DIVISION.

PETITION—JAMIESON (OFFICIAL LIQUIDATOR OF THE GARBEL HÆMATITE COMPANY, LIMITED).

Public Company—Application of an Official Liquidator for Leave to Resign.

An official liquidator, who had been appointed by the Court to wind up a company incorporated under the Companies Acts 1862 and 1867, applied under section 91 of the Act of 1862 for leave to resign. It was stated that there was nothing to recover from the bankrupt estate, and the application was concurred in by, and appearance made for, all the original petitioning creditors, who were substantially the whole creditors of the company. The application was not opposed. *Held* that in the circumstances it might be granted.

Counsel for the Liquidator—Guthrie Smith. Agent—H. Buchan, S.S.C.

Thursday, July 19.

FIRST DIVISION.

BURRELL *v.* SIMPSON & COMPANY AND OTHERS.

(*Ante*, p. 120.)

Expenses—Shipping Law—Petition for Limitation of Liability in a Collision Case—Principles of Taxing Claimants' Accounts.

In a petition for limitation of liability by the owner of the offending ship in a collision *held*—"(1) That where several claimants have the same interest and ground of claim they ought all to concur in lodging one claim and appear by the same counsel and agents, and cannot be allowed any expenses for separate claims or appearances; (2) that claimants whose claims are unopposed are to be allowed only the expense of preparing and lodging their claims, and of one appearance by counsel to take decree,"; and (3) that where the master of a vessel and the crew present claims they should do so together.

This case, in which an appeal had been taken by some of the parties to the House of Lords, now came before the Court with reference to the accounts of the different claimants upon the fund, and the reports of the Auditor thereon after taxation.

It was stated that £2, 2s. only were allowed as expenses in unopposed claims in the Admiralty Courts in England.

At advising—

LORD PRESIDENT—The object of the reports of the Auditor in this case is to obtain a general direction as to the principles on which accounts by claimants in a petition of the kind are to be

taxed. I sympathise with the observation which was made by Mr Balfour upon the terms of the 514th section of the Merchant Shipping Act 1854. It was obviously intended that where a variety of claimants appear against the owner of a delinquent ship, they are to claim together as far as possible, as is done in an action of multiplepoinding in this Court. For that purpose the owner brings a petition to have the fund for which he is liable ascertained and consigned for division. Certainly, one matter which ought to be an object in such a case, is to save expense. If we were to sanction the contention of some of the parties here, to the effect that they were warranted in appearing separately, and were entitled to their expenses accordingly, it would lead to a defeat of the statute. It is necessary to lay down rules for the guidance of the Auditor so as to diminish the expense so far as expedient.

There is one suggestion of the Auditor in which I entirely concur. Where there are a variety of claimants of one class, *e.g.*, owners of cargo, their claims ought to be stated in one paper, and appearance should be made by only one counsel and agent. So, too, in regard to other classes, where they are owners or underwriters, or occupy any other capacity. Where they all have the same interest they are required to claim together, and no expenses will be allowed to individual members.

Then, there is another ground on which the Auditor has not reported, and has not made any suggestion. What expenses are to be allowed to claimants whose claims are unopposed? That question will perhaps fall to be regulated hereafter more precisely than I propose to deal with it at present. But I think, so far as I see now, they should not be entitled to more than the cost of lodging their claim, and of one appearance by agent and counsel. All the expenses should be limited to these two items.

There is still another matter in regard to one particular class of claimants. There seems no reason why the master of the ship should not have joined with the mariners and have lodged one claim with them. It can hardly be said to be inconsistent with his dignity, and I see no other reason why he should decline to do so.

LORD DEAS, LORD MURE, and LORD SHAND concurred.

The Court pronounced the following interlocutor:—

"Of new remit the accounts of expenses to the Auditor, with the following instructions:—(1) That where several claimants have the same interest and ground of claim, they ought all to concur in lodging one claim and appear by the same counsel and agents, and cannot be allowed any expenses for separate claims or appearances; (2) that claimants whose claims are unopposed are to be allowed only the expense of preparing and lodging their claims and of one appearance by counsel to take decree."

Counsel for Petitioner—Balfour—R. V. Campbell. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Owners of Cargo, &c.—Lang—Guthrie—Alison, &c. Agents—Frasers, Stodart, & Mackenzie, W.S., and others.

Thursday, July 19.

FIRST DIVISION.

[Lord Craighill, Ordinary.

M'ARTHUR *v.* LAWSON.

Reparation—Obligation — Copartnery — Contract—Competency.

Held that an action of damages for breach of contract is relevant only where the contract of which breach is averred is capable of specific implement.

Terms of a document which were held (*revg.* Lord Craighill, Ordinary—*diss.* Lord Shand) not to contain *termini habiles*, out of which a contract of copartnery could be formed.

Observations (*per curiam*) on the appropriate remedy in different classes of actions for breach of contract.

This was an action of damages for breach of contract, in which the following averments were made:—"In April 1875 certain negotiations which were initiated by the defender took place between him and the pursuer, and resulted in an agreement being entered into between them, whereby the defender engaged the pursuer to take the sole management under him of his business as a metal merchant—the engagement to be for two years from 12th April 1875. The terms proposed by the defender were that the salary should be not less than £160 for the first year, and not less than £180 for the second, with a partnership at the end of the term. The pursuer entered the defender's employment, and in about a month after, the defender said that instead of drawing his salary at £160 it should be a £180 for the first year, and afterwards he stated that instead of £180 for the second he would give him £210. A written engagement was prepared, but not executed till the 13th January 1876, when the pursuer had been nine months in the defender's employment. In fulfilment of the understanding between the pursuer and the defender, the following agreement was then made between them:—'60 *Robertson Street, Glasgow*, 12*th Apr.* 1875.—Mr John M'Arthur.—Dear Sir,—I hereby engage you to take the sole management under me of my business as a metal merchant. The engagement to be for two years from this date. The salary for the first year to be £180, and for the second year £210. At the expiry of the second year I engage to give you a substantial interest by way of partnership in my business, so that your annual income may be considerably increased.—I am, yours truly,' (Signed) 'JOHN LAWSON.' '*Glasgow*, 13*th January* 1876.—The above arrangement is now and hereby confirmed.'—(Signed) 'JOHN LAWSON.' '*Glasgow*, 12*th April* 1875.—John Lawson, Esq.—I accept of the above engagement on the terms stated.'—(Signed) 'JOHN M'ARTHUR, JOHN LAWSON.' But for the said engagement or obligation by the defender in favour of the pursuer, which entitled the pursuer to a substantial interest in the defender's business at the end of the term, the pursuer would not have concluded any engagement having such an endurance at the salary mentioned. The pursuer duly entered upon and completed his said two years' engagement, and