

Thursday, July 14.

SECOND DIVISION.

[Lord Rutherford Clark,  
Ordinary.

MOUAT v SMITH.

*Ship—Managing Owner—Carpenter's Repairs.*

Laurence Mouat, a carpenter in Lerwick, raised this action against Andrew Smith, merchant, Lerwick, to recover payment of the sum of £76, 9s. 9d. as the price of certain furnishings and repairs made on the schooner "Krydseren" by the order of the latter, who was the managing owner. The defender, while admitting that the debt was justly due, pleaded in defence—(1) That the pursuer was a joint owner with him in the vessel, which had been chartered by the parties as a speculation for the fishing season; (2) That the season having proved a failure, an accounting had to be entered into between the parties, in the result of which it appeared that the pursuer's shares of the losses incurred counterbalanced his charges for the repairs and furnishings rendered to the ship.

The Lord Ordinary (RUTHERFURD CLARK) decreed against the defender. The defender having reclaimed, the Court adhered, being of opinion that the pursuer was entitled to recover payment for the repairs admittedly made on the ship from the defender as managing owner, and that it was incompetent under the conclusions of the present action to enter upon the questions of accounting between the parties.

Counsel for Reclaimer—M'Kechnie—Galloway.  
Agent—Thomas Carmichael, S.S.C.

Counsel for Respondent—Johnstone—Young.  
Agent—George M. Wood, S.S.C.

Thursday, July 14.

FIRST DIVISION.

[Sheriff of Renfrewshire.

MATHER v. M'KITTRICK (MATHER'S  
TRUSTEE).

*Bankruptcy—Right of Trustee to Refuse to give  
his Report under Bankruptcy Act 1856 (19  
and 20 Vict. cap. 79), sec. 146.*

Held (*diss.* Lord Deas) that the trustee in a sequestration has no discretion to refuse to deliver his report on the bankrupt's conduct under sec. 146 of the Bankruptcy Act, when demanded by the bankrupt five months after the date of the deliverance awarding sequestration, with a view to obtaining a discharge, the proper course for the trustee being, if he thinks fit, to oppose the bankrupt's petition for discharge.

The defender in this case was the trustee on the sequestrated estate of the pursuer. The object of the action was to have the defender ordained to prepare and deliver to the pursuer a report on the pursuer's conduct, in terms of the 146th section of the Bankruptcy (Scotland) Act

1856 (19 and 20 Vict. cap. 79). That section, after setting forth various conditions necessary to the bankrupt's discharge without a composition, continues as follows:—"And provided also that it shall not be competent for the bankrupt to present a petition for his discharge, or to obtain any consent of any creditor to such discharge, until the trustee shall have prepared a report with regard to the conduct of the bankrupt, and as to how far he has complied with the provisions of this Act, and, in particular, whether the bankrupt has made a fair discovery and surrender of his estate, and whether he has attended the diets of examination, and whether he has been guilty of any collusion, and whether his bankruptcy has arisen from innocent misfortunes or losses in business, or from culpable or undue conduct; and such report may be prepared by the trustee upon the requisition of the bankrupt at any time after the bankrupt's examination, but shall not be demandable from the trustee till the expiration of five months from the date of the deliverance actually awarding sequestration; and such report shall be produced in the proceedings for the bankrupt's discharge, and shall be referred to by its date or by other direct reference in any consent to his discharge."

In reply the defender averred—"The application for pursuer's sequestration was made by the pursuer himself with concurrence of a creditor to the statutory amount, and was made for pursuer's own benefit. Nothing has been realised from the estate by the creditors, and the bankrupt alone has derived any advantage from the sequestration. The defender's remuneration as trustee has been paid, with the exception of a small balance of 10s. 9d., but there remains unpaid a balance of £32, 5s. 1d. of a law account incurred by the defender, as trustee foresaid, to Messrs W. E. & A. J. Annan, writers in Glasgow, for the necessary expenses of pursuer's sequestration. The said law account amounts altogether, as taxed, to £52, 5s. 1d., a considerable portion of which is outlay. The pursuer in his business of builder has recently had some good contracts, for the profits of which he has not accounted. The defender believes and avers that from the profits of these contracts the pursuer is able, or ought to have been able, to pay the balance of the expenses of his sequestration."

The pursuer pleaded—"The defender having, in breach of his duty as trustee foresaid, failed and refused, or at least delayed, to furnish a report in terms of the 146th section of the Bankruptcy (Scotland) Act 1856, decree as craved should be pronounced."

The defender pleaded—" (1) The creditors of pursuer having realised nothing from pursuer's sequestration, and the pursuer alone having derived any advantage from it, it is but reasonable that he should pay the expense of the sequestration. (2) The pursuer being able to pay the balance of the expenses of his sequestration, is not entitled to his discharge nor to the report asked for, except on condition of his paying the said balance. (3) *Separatim*—The pursuer having failed to make a fair discovery and surrender of his estate, the defender is not bound to furnish the report craved."

The Sheriff-Substitute (COWAN) sustained the