to a court of law at all. I think that to qualify his right to the large demand which the pursuer makes in this action, he must be in a position to say something more than merely that an examination of the books and accounts will 'enable him, as a commissioner, to judge whether gas cannot be supplied to the community of Peterhead at a less price than that at which it is at present supplied.' It may be an altogether unfounded apprehension which the pursuer entertains. He alleges nothing by means of which the probability of his suspicion—for it amounts to little more—can be tested, and I apprehend a court of law will not be moved to grant a remedy of so extraordinary a character without some evidence or reasonable assurance that there is a wrong to be redressed. No doubt the pursuer urges that it is the withholding of the books from him that explains the dearth of his information; but it seems to me that in order to warrant a court of law in granting such an application there must be some specific dispute or question, not in a depending process (for the summary application would not then be necessary), but *de facto* in existence, which without access to the books and documents founded on could not be brought to a practical issue. In short, I am of opinion that it is not relevant to justify the interference of a court of law in the affairs of a statutory body such as the defenders, to allege merely that a probable result of inquiry will be to show that they are not administered with the highest advantage to the public. But the second of the general grounds above referred to appears to me to be a much simpler and safer basis on which to rest the judgment in the case." [*His Lordship then referred to the correspondence between the parties, and expressed the opinion that prior to the raising of the action the defenders had not distinctly refused to give the access claimed, and that the pursuer's proceedings were therefore premature.*]

The pursuer appealed, and argued that at common law he had a right, as one of the commissioners whose the books were, and as responsible to the inhabitants of Peterhead in the capacity of a commissioner for regulating the gas supply, to have access to the books, accounts, and vouchers in the defenders' possession relative to the manufacture and sale of the gas.

The Court, after hearing counsel, intimated that it was their opinion that the pursuer was entitled to access to the books of the defenders as concluded for, and continued the case.

On the 12th January the case was re-enrolled, and counsel for the pursuer, after stating that the access craved had been given to the pursuer in terms of the opinion of the Court, moved for expenses.

The Court thereupon pronounced the following interlocutor:—

"The Lords having heard counsel for the parties in the appeal, Sustain the same: Recal the interlocutor of the Sheriff-Substitute appealed against: Repel the first and second pleas-in-law for the defenders, but in respect access to the books and documents libelled has now been given, find it unnecessary to pronounce any order thereanent: Find the pursuer entitled to expenses in the Inferior Court and in this Court."

Counsel for Pursuer (Appellant) — Comrie Thomson. Agent—Alex. Morison, S.S.C.

Counsel for Defenders (Respondents) — Jameson. Agents—Boyd, Jameson, & Kelly, W.S.

Saturday, January 12.

FIRST DIVISION.

[Sheriff of Stirlingshire.

CLARKE *v.* MULLER.

Process — Expenses — Caution for Expenses — Bankrupt.

An action of damages for slander, raised by a bankrupt pursuer whose trustee declines to sist himself, is, though said to be raised for vindication of character, within the ordinary rule that a pursuer in such circumstances must find caution for expenses, but it is within the discretion of the Court to dispense with such caution being found. Circumstances in which *held* that an undischarged bankrupt, whose trustee refused to sist himself, was not entitled to sue an action for defamation of character without finding caution for expenses.

This was an action in the Sheriff Court of Stirlingshire at Falkirk, at the instance of Patrick Clarke, Glenyards, Greenhill, against C. W. M. Muller, Glenyards, Greenhill, concluding for £3 of damages in respect the defender had illegally deprived the pursuer of the use of certain premises let to him, and for £500 in name of damages for defamation of character.

The pursuer averred that on a date mentioned, the defender, who was his landlord, assembled his tenants at Glenyards farm, and read to them a letter purporting to have been written by the pursuer complaining of trespassers; that the defender then said in presence of certain persons—"Isn't that a nice complaint from a d——d scamp like that, that ran away from his former place at 12 o'clock at night without paying his rent, and that steals anything he can get about the place;" and stated that pursuer was a dishonest and dangerous person, and that "they," meaning pursuer and his family, were "bad" people. Further, that the defender, on a date mentioned, and in presence of certain persons named, said that the pursuer was a member of and belonged to a secret society, meaning thereby that the pursuer was a disreputable person and belonged to an illegal society.

The pursuer was an undischarged bankrupt, and the trustee on his sequestrated estate refused to sist himself as a party to the case.

The Sheriff-Substitute (BELL) ordained the pursuer to find caution for the expenses of process within a certain time.

"*Note.*—The general rule that a sequestrated bankrupt is not allowed to proceed as pursuer in an action without finding caution for expenses has been fully recognised—Bell's Com., 7th ed., vol. ii. p. 324-5, and cases therein quoted; also *Stephen* v. *Skinner*, May 31, 1860—and although it lies within the discretion of the Court to allow an exception from the general rule, the Sheriff-Substitute

is able to see no cause in the circumstances of the present case for a departure from the general rule. The grounds of action are not exclusively for vindication of character, and the pursuers' case otherwise as disclosed in the record does not warrant the Sheriff-Substitute in allowing the defender to be involved in an expensive litigation without having security for the expenses of process."

On appeal the Sheriff (GLOAG) adhered.

When the period for finding caution had expired, the Sheriff-Substitute, in respect the pursuer had failed to find caution, dismissed the action, to which interlocutor the Sheriff adhered.

The pursuer appealed to the Court of Session, and argued that although divested of his estate, he was entitled to vindicate his character without finding caution although he was an undischarged bankrupt—*Bell* v. *Anderson*, February 25, 1862, 24 D. 603.

The respondent admitted that a defender in similar circumstances would not be bound to find caution—*Buchanan* v. *Stevenson*, Dec. 7, 1880, 8 R. 220, but argued that pursuer was bound to find caution for expenses—*Home* v. *Sanderson & Muirhead*, January 9, 1872, 10 Macph. 295. Even if the appellant got damages they would fall into his bankrupt estate — *Jackson* v. *M'Kechine*, Nov. 13, 1875, 3 R. 130.

At advising—

LORD PRESIDENT—Since this case was in the roll I have looked over the authorities bearing on the question, and I am satisfied that the general rule is well established, that where the pursuer of an action is an undischarged bankrupt he cannot sue an action, when the trustee has refused to take it up, without finding caution.

I was under the impression that there was one exception to this rule, namely, that if the action was one for vindication of character the pursuer was entitled to bring it without fulfilling the condition of finding caution for expenses. But I am satisfied that the exception has not been established. It is within the discretion of the Court to say whether in the circumstances of a particular case the pursuer may be allowed to go on without finding caution for expenses. That, however, is a discretion which is to be used very carefully, and it is only in very exceptional cases that the Court will dispense with the finding of caution.

Having considered the whole circumstances of the case, I am of opinion that it is not one in which the Court should use that discretion in favour of the pursuer.

The Court refused the appeal.

For the Appellant—Party.

Counsel for Respondent — R. V. Campbell. Agent—A. Wylie, W.S.

Tuesday, January 15.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

FIRST EDINBURGH AND LEITH 415TH STARR-BOWKETT BUILDING SOCIETY *v.* MUNRO AND OTHERS.

(See *ante*, p. 6.)

Master and Servant—Servant's Remedy for Illegal Dismissal — Building Societies Act 1874 (37 *and* 38 *Vict. c.* 42) — *Dismissal of Officer —Jurisdiction.*

The secretary of a building society, registered under the Building Societies Act 1874, was dismissed from his office by a resolution of the society, which was notified to him. On the grounds that all disputes between him and the society should have been submitted to arbitration, and that he had been illegally dismissed, he refused to accept his dismissal, and continued to act as secretary. In an action of suspension and interdict at the instance of the society to have him interdicted from interfering with the management of, or collecting contributions on behalf of, the society—*held* that, assuming that the Court had no jurisdiction to decide the disputes between the respondent and the society, and that he had been illegally dismissed, the complainers were entitled to the interdict craved, since having been *de facto* dismissed, his remedy, if any, was by action of damages.

The facts out of which the present proceedings arose are fully detailed in *Munro* v. *First Edinburgh and Leith* 415*th Starr-Bowkett Building Society, ante*, p. 6. The First Edinburgh and Leith 415th Starr-Bowkett Building Society presented the present note of suspension and interdict against Munro and others, craving the Court (1) to interdict and prohibit the said Alexander Munro from interfering in any way with the management of or the affairs of the First Edinburgh and Leith 415th Starr-Bowkett Building Society, and from collecting or receiving payment of the weekly contributions or subscriptions of the members of the Society, or otherwise intromitting with the funds thereof, or in any way acting as secretary of the Society. The complainers further (2) craved interdict against Munro proceeding to submit to arbitration any dispute or difference alleged to exist between him and the Society with reference to his dismissal; and (3) interdict against certain persons said to have been nominated as arbiters to decide a dispute between Munro and the Society, proceeding to act as such.

The complainers averred that at the first annual general meeting of the Society held upon 8th September 1882 a vote of no confidence in the respondent had been passed, and that at a meeting duly convened in terms of the laws of the Society upon 16th February 1883, subsequently adjourned till 27th April following, the respondent was removed from office, that intimation to that effect was duly given to him, and that he was requested forthwith to hand over all the books, papers, securities, and documents belonging to the Society then in his possession; that an action was