exercising that power he must, as a matter of form, use the firm name? I know no authority for that proposition. If the point had been settled, even by inveterate usage, I should not have gone against such usage. The whole title and interest are vested in the pursuer in the character in which he sues.

LORDS DEAS and MURE concurred.

LORD SHAND—I have come to be of the same opinion. The defence which has been substantially sustained is the preliminary plea. I gather from the note by the Sheriff-Substitute, in which the Sheriff concurs, that if the name of the firm had been used he would have held the instance good. The objection therefore comes to be that the company firm is not made the pursuer.

The first ground on which it is said that the action cannot be maintained in its present form is in respect of the terms of the minute of agreement. I do not think the minute raises any difficulty; it is merely an agreement which stipulated that the dissolution should take place at a certain date, and went little further. The third article embodies merely a convenient arrangement for the collection of the firm's debts. One of the parties died, and the arrangement was at an end. The consequence was that Mr Nicoll became the sole surviving partner, just as he would have been had the company been a going concern when Mr Reid died. In these circumstances is it necessary to have the company firm in the instance? I am not surprised at the Sheriff's decision, as even in ordinary cases of dissolved partnerships I think the action has usually been in the firm's name. Had the pursuer been able to point out any case in which an individual partner was found entitled to sue in his own name for a company debt, it would have been cited, and the preliminary plea would at once have been repelled. The question really is, "Have we not substantially the company here as pursuers?" The pursuer sues, moreover, not only as an individual, but as "now sole surviving partner of the dissolved firm of Nicoll & Reid," and I think that this is in substance an action raised at the instance of the company, and therefore I am for sustaining the instance as sufficient.

The following interlocutor was pronounced:—

"Recall the Sheriff-Substitute's interlocutor of 20th January 1877, and all the subsequent interlocutors; Repel the preliminary plea stated for William Reid, defender (respondent): Sustain the pursuer's (appellants) title to sue; and remit to the Sheriff to proceed further as shall be just; Reserve to the Sheriff all questions of expenses in the Sheriff Court: Find the appellants entitled to expenses in this Court; allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Pursuer (Appellant)—M'Laren—J. A. Reid. Agents—Ronald & Ritchie, S.S.C.

Counsel for Defender (Respondent)—Balfour—J. P. B. Robertson. Agents—Macbean & Malloch, W.S.

Thursday, November 15.

FIRST DIVISION.

KEY *v.* M'INTOSH.

Poor's Roll—Act of Sederunt 21st December 1842.

Where a party belonging to a parish in the country applied to be admitted to the poor's roll, and for that purpose produced a certificate from the kirk-session of an Edinburgh parish, which bore the qualification that they were ignorant of the truth of the applicant's statements, the Court *remitted* to the parish of domicile for further information, but dispensed with the personal attendance of the applicant there, which is required by the 3d section of the Act of Sederunt of 21st December 1842.

In an application by a party named Key for admission to the poor's roll, the necessary certificate, under the Act of Sederunt of 21st December 1842, was produced from the kirk-session of the parish of St Andrew's, Edinburgh, in which the applicant had resided for about five weeks previously. It bore that the kirk-session were not personally aware of the truth of the facts stated, as they rested entirely on the applicant's own credit.

The petitioner's story was that he had been a veterinary surgeon in Nairn, but falling into a state of destitution he had come into Edinburgh, partly to try to obtain work, but also with a view of making arrangements for carrying on an action which he had depending in the Court of Session against a party named M'Intosh.

The application was opposed by M'Intosh, on two grounds—1st, That the certificate should have been from the kirk-session of Nairn, where the applicant's real domicile was; and 2d, that as the certificate depended entirely on the applicant's own statement, it was not sufficient.

Objector's authorities — Duncan's Parochial Law, 720; *Paton*, Nov. 30, 1832, 11 S. 146; *Paterson* v. *Mackenzie*, June 15, 1830, 8 S. 920.

Counsel for the applicant stated that he was willing to apply to the kirk-session at Nairn, but that by the 3d section of the Act of Sederunt of 21st December 1842 he would be obliged to attend personally before the kirk-session, and asked the Court to allow communication to be carried on by letter, as the expense of going to Nairn was more than the applicant could afford.

Petitioner's authorities — *Cumming*, Jan. 27, 1831, 9 S. 342; *A. B.*, June 21, 1832, 10 S. 673; *Dickson*, Jan. 15, 1852, 24 Jur. 154.

The Court made a remit to the kirk-session of Nairn for information as to the applicant, and dispensed with personal attendance by the applicant.

Counsel for Applicant—Goudie. Agent—F. J. Martin, W.S.

Counsel for Objector—Mair. Agent—Wm. Officer, S.S.C.