different case. That is not alleged, nor is it alleged that there were any general instructions given by the Duke of Hamilton to his keepers to kill dogs. What is alleged is that "the defenders James Wood and John Tait, being in the service of the other defender his Grace the Duke of Hamilton, and acting with his authority or at least for his behoof, fired at or in the direction of the pursuer and his greyhound bitch known by the name of 'Dolly Varden,' all wrongously, illegally, wantonly, and maliciously, and shot and killed the said animal, which was of the value of £70 sterling or thereby, and shot and wounded the pursuer, to the great effusion of his blood and injury of his person," and these allegations are not sufficient to infer any liability against the Duke of Hamilton.

LORD MURE concurred.

Counsel for Pursuer—Rhind. Agent—George Begg, S.S.C.

Counsel for the Defender the Duke of Hamilton—Dean of Faculty (Watson)—Gloag. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Defenders Wood and Tait—J. P. B. Robertson. Agents—Bruce & Kerr, W.S.

Tuesday, June 27.

FIRST DIVISION.

PETITION—HUME.

Expenses—Petition—25 and 26 Vict. cap. 89, secs. 82 and 92.

On the application of a creditor of a company for a judicial winding-up under 25 and 26 Vict. cap. 89, with suggestion of an official liquidator, the directors of the company lodged answers merely for the purpose of suggesting another person as liquidator.—*Held* that the respondents were only entitled to the expenses of appearance by counsel to make a statement at the bar.

This was a petition presented to the Court under the Companies Act 1862 (25 and 26 Vict. cap. 89) for the winding-up of the Highland Peat Fuel Company, Limited. The petitioner was a creditor for the amount of £545, 7s. 5d. constituted by a promissory note which fell due on 19th January 1875. The company were charged to make payment thereof to the petitioner, and on the expiry of the *inducice* of the charge he presented this petition in terms of the 80th and 82d sections of the Act of 1862, and suggested Mr T. A. Molleson, C. A., as liquidator to be appointed under the 92d section of the said Act. Answers to this petition were lodged by the directors of the Company, in which they stated that a majority of the shareholders were in favour of the appointment of Mr J. H. Balgarnie, C.A. as liquidator. They had no other objections to the petition.

Mr F. B. Anderson, C. A. was appointed liquidator by the Court.

When the Auditor's report came up—

The LORD PRESIDENT said—These claims for expenses are very important in the administration of the law under the Companies Acts, and I am extremely anxious that everything should be regularly done, so as to establish a fixed rule. There can be no doubt that the petitioner is entitled to the taxed amount of his expenses out of the estate, because the proceedings initiated by him have enured to the benefit of the estate; but as regards the claim of the respondents, I think that they are not entitled to the taxed amount of their expenses as it is now before us. The only objection they had to the petitioner's application was to the name of the person suggested as liquidator. Now, it would have been quite sufficient that counsel should have appeared and stated their objection at the bar. If they had taken this course it is clear that the expenses would have been very much less. We must therefore send this account back to the Auditor to be taxed on this footing, that the respondents were only entitled to appear by counsel at the bar and make a verbal suggestion.

The Court pronounced the following interlocutor:—

"The Lords having considered the report on the account of expenses incurred by the petitioner William Hume, No. 108 of process, and heard counsel for him, Approve of the said report, taxing the said expenses at the sum of Fifty-five pounds nineteen shillings and elevenpence sterling, and appoint the said taxed amount of the said expenses to be paid out of the estate of the Highland Peat Fuel Company (Limited): And as regards the account of expenses incurred by the respondents, the Directors of the said Company, and John Baxter and Others, No. 109 of process, remit of new to the Auditor to tax the said account on the footing that the said respondents were not entitled to lodge answers for the purpose of stating their objection to the person proposed as liquidator in the petition, but were only entitled to appear by counsel on the calling of the petition, and object verbally to the appointment of the person so proposed, and to report."

Counsel for Petitioner—Pearson. Agents—Dove & Lockhart, S.S.C.

Counsel for Respondents—Strachan. Agent—G. C. Banks, S.S.C.

Tuesday, June 27.

SECOND DIVISION.

M'CLELLAND *v.* ROBERTSON.

Feu-Contract—Obligation of Feuar—Clauses of Repayment and Indemnity.

A feued certain steadings of ground under an obligation to pay to the superior one-half of the expense of forming and constructing such common sewers or drains as the superior might have already formed, or which he might thereafter form, in a street *ex adverso* of his feu; and to repay to the superior one-half of the price of the formation of said streets so far as already formed. The sewer

had been constructed and the street formed many years before by an adjoining proprietor at his own expense, in consideration of a right of access thereby secured to him. A was sued by the superior under the obligation in the feu-contract for one-half of the expense of forming the sewer and street. —*Held* that the clauses in the feu-contract were clauses of repayment and indemnity, and did not entitle the superior to recover a sum which he had not expended.

This was an appeal from the Sheriff Court of Lanarkshire against an interlocutor of the Sheriff assoilzieing the defender. The action was at the instance of James M'Clelland, chartered accountant in Glasgow, against Alexander Robertson, wright and builder there, and concluded for payment to the pursuer of the sum of £30, 0s. 1d., being one-half of the expense of forming the sewer in Wilton Street, Glasgow, and causeywaying and paving that street so far as it extends along certain subjects feued by the pursuer to the defender. The feu-contract was entered into in November 1873, and by it the pursuer feued to the defender, with entry as at March 1872, *inter alia*, two steadings on the north side of Wilton Street, adjacent to the New City Road. The contract contained an obligation that the defender should "pay one-half of the expense of forming and constructing such common sewers or drains as the first party may have already formed or which he or his foresaids may hereafter form in Wilton Street," "as the amount of said expense shall be fixed by the first party's surveyor for the time;" "and in so far as the said streets (which expression includes Wilton Street) are already formed, the second party shall be bound to repay to the first party one-half of the expense of formation, as the same shall be fixed by the first party's surveyor for the time."

The defender denied liability under the above clauses, on the ground that the work was not done by, nor at the expense of, the pursuer or his predecessors. In the year 1850 the pursuer and James Lumsden, merchant in Glasgow, were proprietors of portions of the lands of Northwoodside, of which the subjects feued to the defender formed part; and John Bain of Morriston was proprietor of grounds situated to the west of and adjoining them. The said John Bain was desirous of acquiring a right of access between his grounds and the New City Road by the street or streets to be formed on the ground of the pursuer and the said James Lumsden, and offered, if they would grant such a right, at his own expense to construct and form or continue the common sewer, and level, form, and complete the street." This proposal was acceded to, and an agreement was entered into by which the said James Bain bound himself, his heirs and successors whomsoever, at his or their sole expense, immediately to form, construct, or continue from his own grounds, through the grounds of the pursuer and the said James Lumsden, a common sewer, to be carried forward to the centre of the New City Road, and to form and complete the street, all as delineated on a feuing plan referred to in the said agreement. Under this agreement the said John Bain formed the sewer and the street now called Wilton Street, and in consideration thereof obtained the stipulated right of access to the New City Road, which has ever since that time been used and exercised.

The pursuer had in 1852 become sole proprietor of the ground originally belonging to him and the said James Lumsden, and by the feu-contract of 1873 he feued to the defender the parts therein described, which were thereby declared to be feued and conveyed always with the whole privileges and the whole burdens, conditions, provisions, and servitudes *inter alia* created by the said agreement between him and James Lumsden and the said John Bain.

The Sheriff-Substitute (ERSKINE MURRAY) decided in the pursuer's favour, on the ground that as Bain did the work under an obligation incurred by him to the pursuer for a consideration granted by the pursuer, Bain's execution of the work must be held as pursuer's execution thereof, and that therefore the pursuer was entitled to charge therefor as done by himself.

The Sheriff, on appeal, recalled the judgment of his Substitute, and assoilzied the defender for the reasons stated in the following note appended to his interlocutor:—

"*Note.*—The question here is one purely of law, the parties being agreed upon the facts, and the defender's procurator having admitted at the bar that if he is liable in any sum to the pursuer the amount sued for is correct.

"The question is, whether under the defender's feu-contract he is bound to pay to pursuer a proportion of the expenses incurred by Bain in forming the street and sewer referred to. The pursuer makes his claim on the ground that the street and sewer were formed by himself, 'or by others on his behalf,' and the Sheriff-Substitute has adopted that view, holding that as Bain did the work under an obligation incurred by him to the pursuer for a consideration, his execution must be held as pursuer's execution.

"The Sheriff is unable to take this view. Bain formed the street and sewer at his own expense, and no part of the expense thereof was incurred by the pursuer. No doubt Bain did the work under an agreement with the pursuer, and for a valuable consideration; but there are no data upon which the Court can estimate the comparative value of that consideration and of the work performed. In their nature they do not admit of comparison with regard to the present question. The benefit which Bain obtained as a consideration for doing the work may have been great, and the cost or value of that consideration to the pursuer was probably very trifling, if anything at all. If so, it could not be held that the work was done at the pursuer's expense. The truth rather seems to be that the making of the street and sewer were of material advantage instead of expense to the pursuer, as they contributed towards opening up his property for feuing.

"The words of the feu-contract as to the sewers are distinct, being that the defender should pay the expense of such sewers 'as the first party (the pursuer) may have already formed;' while as to the street the defender is bound to 'repay to the first party one-half of the expense of formation'—an expression somewhat different, but with the same meaning, as one can only be repaid an expense which he has incurred. The Sheriff does not see how either of these