to look carefully around to see if any other conveyance is coming up. That duty was clearly not performed upon this occasion, because it is quite evident that if the pursuer had looked about him, and observed what traffic was passing in the street, he would not have stepped down from the car at the moment the van was coming up behind, while if he had glanced backwards he must have seen the van approaching. I can see nothing in the evidence to cause any blame to be attached to the driver of the van, and I entirely agree with the Sheriff-Substitute that this unfortunate accident was caused entirely through the fault of the pursuer himself.

Lord Adam concurred.

Lord President—I so entirely concur that I should not have thought it necessary to have added anything were it not that I view the case as one of some public importance. Tramway-cars are no longer a novelty among us. They are to be seen in almost every city in the kingdom, and people who pass along the street are bound to understand and to know what are the rules that regulate these tramway-cars. There is one rule of the road which has been very much altered by the appearance of these new vehicles, and that is the rule which requires that when a carriage is coming up behind a tramway-car, and the tramway-car stops, it is the duty of the driver of the other vehicle to pass upon the left-hand side. That is against the old rule, which was that one vehicle passing another was bound to pass upon the right-hand side. The rule has been introduced from considerations of convenience and safety, and it is very obvious, because tramway-cars pass upon two lines of tramways, one in one direction and the other in the opposite direction. If vehicles were to pass a tramway-car on the right-hand side there would be very great danger of their coming into collision with another tramway-car coming the opposite way. That is the reason for the rule. Now, if a person gets off a tramway-car upon the left-hand side—which is the proper side for the purpose—it is quite obvious that in passing from the tramway-car to the pavement he is passing across a carriage-way, and a carriage-way which he ought to know may be travelled over at any moment by vehicles passing alongside of the tramway-car. He is just as much bound to look after his own safety in crossing that carriage-way as if he were crossing from one side of the street to the other. It is just as much a carriage-way as the whole street, and while vehicles are bound to go at a steady pace and not to be driven furiously, foot-passengers crossing the carriage-way are bound to look out for their own safety, and not to run unnecessary risk. Applying these observations to this case, it appears to me that while there is no blame imputable to the driver of the van—no allegation of undue haste in his driving, or of want of care and attention—there was very great carelessness on the part of the poor man who was struck. He stepped down off that tramway-car without ever looking to the left to see whether any vehicle was approaching. If he had he would have seen the van, and he would have waited till it passed. That is just the same thing as if in proceeding to cross a street where there were no tramway-cars at all he had failed to look to see whether there were any carriages close at hand which might run over him.

That being the state of the facts, there can be no doubt that the fault was entirely with the appellant, who has no one to blame for this unfortunate accident but himself.

Lord Mure was absent.

The Court refused the appeal.

Counsel for the Appellant—Glegg. Agent—A. Sutherland, W.S.

Counsel for the Respondents—James Reid. Agents—Mill & Bonnar, W.S.

Friday, June 24.

FIRST DIVISION.

SELKIRK (LIQUIDATOR OF THE NORTH BRITISH BUILDING SOCIETY) *v.* TAYLOR AND OTHERS.

Building Society—Winding-up—List of Contributories—Construction of Rules.

The liquidator of the North British Building Society presented a note to the Court, to settle a list of contributories in accordance with a scheme prepared by him giving effect to the judgments in *Carrick and Others* v. *North British Building Society in Liquidation*, July 10, 1885, *ante*, vol. xxii. p. 833, and 12 R. 1271, *revd.* as *Tosh* v. *North British Building Society*, July 30, 1886, *supra*, p. 128, and 14 R. (H. of L.) 6. Answers were lodged by several members of the Society, which raised the following points:—

"*Bank Interest.*"

Rule XIII. of the Society provided that "Any member holding any share in respect of which no advance has been made, which, by the subscriptions paid, and the profits thereon, shall have accumulated to twenty-five pounds (the amount of said share), shall be entitled to receive the amount thereof, with bank interest from the date of completion, and his connection with the Society in respect of the same shall cease."

In a question whether "bank interest" meant interest at current account or at deposit-receipt rates—*held* that, in the absence of any stipulation to the contrary, and in view of the fact that the funds of the Society were paid in and drawn out from day to day, interest was due at "current account" rates.

Advanced and Unadvanced Shares.

A subscriber for forty shares, representing a nominal capital of £1000, who had obtained an advance of £500, maintained that all the shares should be treated as advanced shares, and that he was thus, as a borrowing member, not liable for the losses of the Society, in accordance with the judgment of the House of Lords, *supra cit.* *Held* that an advance being payment of a share by anticipation, it must be either of £25, the amount of a share, or of some multiple of

that sum; that the advance of £500 was therefore payment by anticipation of a corresponding number of shares, viz., twenty; and that the liquidator was justified in treating his holding as consisting of twenty advanced and twenty unadvanced shares.

Fines.

The rules of the Society provided that interest should be charged upon instalments in arrear. Circumstances in which it was *held* that the liquidator was not justified in enforcing the rule.

Non-Timeous Withdrawal of Shares.

Rule XII. provided that "Any member holding shares on which no advance has been made, may, on giving one month's notice in writing to the manager, withdraw his or her subscriptions paid thereon, with interest, . . . and the same shall be paid as soon after the expiry of the month's notice as the funds will permit."

The date of the commencement of the liquidation of the Society was fixed at 13th May 1882. *Held* that members who gave notice of withdrawal less than a month prior to that date had not withdrawn timeously.

Interest upon Arrears of Interest.

Rule XV. provided that "Any member who has been granted an advance, shall, from the date of granting the same, become liable for such a rate of interest as, along with the interest allowed by the bank, will amount to five per cent. until said member has received said advance, when he shall pay to the Society interest thereon, at the rate of five per cent. on the full amount of said advance; and all interest shall be payable at the terms of Martinmas and Whitsunday; and members failing to pay the same within fourteen days thereafter shall be charged interest thereon at five per cent. from the term of payment."

The liquidator proposed to debit the balance due by borrowing members upon their respective bonds as at Martinmas 1882, with interest from that term till payment, the interest being charged with interest from the date when due till payment. *Held* that as the Society was no longer carrying on business Rule XV. had no application.

The North British Building Society was established in Glasgow in 1868 under the provisions of the Act 6 and 7 Will. IV. cap. 32. The rules under which it was originally constituted were rescinded at a meeting of shareholders on 27th December 1872, and at the same meeting a new code of rules was approved, which, as altered to some extent at a meeting held on 5th July 1877, was in force until the Society went into liquidation.

Early in 1882 the directors, owing to the numerous notices of withdrawal by the non-borrowing members of the Society, and to the depreciation in the Society's securities, felt it their duty to take measures to prevent the shareholders being prejudiced by the withdrawal of those members. Accordingly they issued a circular, dated 13th May 1882, to all the shareholders, inviting them to give notice of withdrawal.

Various questions having arisen as to the rights and liabilities of the members, a Special Case was presented on 26th February 1884 for the opinion of the Court upon these questions by the trustees of the Society, with consent of its directors, and by certain of its members. The Court doubted the competency of the case, but allowed it to stand over until the Society was put into liquidation.

On 19th July 1884, upon a petition under the Companies Acts 1862 to 1883, the Court pronounced a liquidation order, and appointed James Landells Selkirk, official liquidator. Thereafter the liquidator sisted himself as a party to the Special Case.

Judgment in the Special Case was given on 10th July 1885, reported *ante*, vol. xxii. p. 833, and 12 R. 1271. An appeal was taken to the House of Lords, and judgment on the appeal was given by the House of Lords on 30th July 1886, reported *supra*, p. 128, and 14 R. (H.L.) 6. By these judgments it was, *inter alia*, determined that the liquidation of the Society commenced on 13th May 1882, the date of the circular, and that the rights and liabilities of members, *inter se*, fell to be determined as at that date.

Thereafter the liquidator presented a note on March 1887, in which he, *inter alia*, craved the Court to settle a list of contributories in the liquidation of the Society in conformity with a scheme which he had prepared, giving effect to the judgments of the Court of Session and the House of Lords in the Special Case. This scheme consisted of four sections, which he described as follows:—

"Section A embraces the names of those members who had completed or withdrawn their shares prior to the commencement of the liquidation, and shows the sums due to each respectively. In accordance with the judgment of the Court of Session, members in this section are entitled to be paid out in the order of the priority of the completion or withdrawal of their shares, and preferably to all the other members of the Society, borrowing or non-borrowing. The liquidator has therefore ranked the members in this section in the order of date of their completion or withdrawal, and he proposes to pay them out from time to time as the funds in his hands permit.

"Section B of the list embraces the names of non-borrowing members who had not withdrawn or completed their shares prior to the commencement of the liquidation. The liquidator proposes to pay out these members *pari passu* after the members whose names are included in Section A have been paid out.

"Section C of the list embraces the names of those borrowing members who gave due notice prior to the commencement of the liquidation of their intention to redeem their securities and renounce their shares.

"Section D of the list embraces the names of the remaining borrowing members. The liquidator proposes to deal with these members in accordance with the judgment of the House of Lords, as having impliedly given due notice of their intention to redeem, and as being bound to redeem their securities at Martinmas 1882."

To this scheme a number of members lodged answers, and these answers raised in all five separate questions.

I. *Bank Interest.*—Messrs Taylor and others, being shareholders holding completed shares in the Society, were entered in Section A of the list

of contributories. In a note to Section A the liquidator stated that ". . . the contributories who hold completed shares will be entitled to 'bank' interest in terms of Rule XIII. The liquidator understands the term 'bank' interest to mean the rate allowed by Scotch banks on sums at the credit of current accounts kept with them, and will act accordingly."

Rule XIII. provided—"Any member holding any share in respect of which no advance has been made, which, by the subscriptions paid, and the profits thereon, shall have accumulated to twenty-five pounds (the amount of said share), shall be entitled to receive the amount thereof, with bank interest from the date of completion, and his connection with the Society in respect of the same shall cease."

Messrs Taylor maintained that they were entitled to interest at deposit-receipt rates, on the ground that while the Society had a bank account the bulk of the money was lent out to the borrowing members.

It was argued for the liquidator that in the absence of any special stipulation "bank" interest must be taken to mean current account rates. Besides, it was necessary to keep in view the mode of conducting the Society's business, according to which the funds were paid in and out in numerous small sums from day to day.

II. *Advanced and Unadvanced Shares.*—David Gordon M'Lellan was a borrowing member and at the same time an investing member. On 11th September 1876 he subscribed for forty shares, and obtained a pass-book in which these shares were entered as numbering 7525 to 7564 inclusive, each share being of the nominal value of £25. On 26th September 1877 he obtained from the Society an advance of £500, and granted in favour of the Society a bond and disposition in security therefor over heritable property belonging to him in Duke Street, Glasgow. He paid the interest regularly up to Whitsunday 1882; on 13th May 1882 he gave notice of withdrawal, and on 23d May 1883, without prejudice to said notice of withdrawal, he gave the Society notice, in the terms required by Rule XXVII. (quoted *infra*), of his intention "at Martinmas 1883 to redeem his property by renouncing said forty shares and paying any balance that might be due to the Society after deducting the instalments paid in respect of said shares and interest thereon" The liquidator placed his name in Schedule B in respect of twenty of the shares, in respect of which, as he alleged, no advance had been made, and in Schedule D in respect of the shares held by him as representing the advance made to him.

M'Lellan maintained that the advance of £500 was made in respect of the whole of the shares; that the instalments paid on these shares had extinguished *pro tanto* the advance of £500, and that the liquidator was not entitled to treat half the shares as advanced, and half as unadvanced, to the effect of converting half of the shares *ex post facto* from borrowing to non-borrowing shares, and so render him liable for a share in the losses of the Society.

It was maintained for the liquidator that shares were either advanced or not advanced. There could be no such thing as partial payment. An advance was really a payment by anticipation to the member of the amount of his shares, and accordingly that M'Lellan's name was rightly placed in Schedule B in respect of those shares which were unadvanced. This view was supported (1) by the words of the Act, 6 and 7 Will. IV. c. 32, sect. 1, in terms of which the Society was founded; (2) by Rules XVI. XXVI. and XXVII. Rule XVI. provides that "Any member who has been granted an advance may, with the consent of the directors, transfer his or her right and interest therein to any other person, along with the shares representing the same, provided all arrears of principal, interest, and penalties be paid, on payment of a transfer fee of two shillings and sixpence for every share so transferred." Rule XXVI. provides that "Any member who has received an advance from the Society upon the security of any property, may, with the consent of the directors, transfer his or her right and interest in the same to any other person, along with the shares representing the same, provided all arrears of principal, interest, and penalties due thereon are paid; and the purchaser thereof shall become a member of the Society, and subject to all the rules and entitled to all the privileges thereof; and shall pay on entry a transfer fee of two shillings and sixpence for each share represented by the property so transferred." Rule XXVII. provides that "Any member who has given any property in security to the Society may, on giving three months' notice prior to the term of Martinmas or Whitsunday in any year, redeem the same by renouncing the shares representing the advance made thereon, and paying the amount of said advance, under deduction of the instalments paid in respect of the same, and interest thereon, and his interest in said Society, so far as said shares are concerned, shall cease; or any member who has given any property in security to the Society, may redeem the same as above by payment of the whole sum borrowed and other dues thereon, and retain his shares in the same manner as if no advance had been made in respect of said shares, and he shall be entitled to have the same readvanced to him in terms of Rule XXVI., or transfer the same to any other party without the payment of any further premium, but subject to the payment of the difference of interest between the bank and the Society rate until readvanced, and thereafter the regular rate of interest thereon. Any member redeeming his property by either of the plans aforesaid, shall pay a fee of two shillings and sixpence for each share representing the advance so redeemed; or when the subscriptions, with the share of profits, of any member who has received an advance, are equal to the amount of said advance, then the payments of said member in respect of said shares on which the advance has been made shall cease, and his connection with the Society in respect of the same shall terminate." And (3) by the interpretation of those rules in the House of Lords' judgment in the Special Case, *Tosh* v. *North British Building Society*, July 30, 1886, *supra*, pp. 128, 131.

The same arguments applied to the case of William M'Geoch junior.

III. *Fines.*—By Rule III. it was provided that —"The capital of the Society shall be raised in shares of twenty-five pounds each, payable by fortnightly instalments of one shilling and threepence per share, and by interest arising

therefrom. Any member in arrears two fortnightly instalments shall pay at the rate of one penny per share per fortnight for each and every fortnightly subscription in arrears, and should said member continue in arrears until the fines incurred thereon shall equal all the subscriptions actually paid, said member shall then cease to be a shareholder, and shall forfeit all interest therein. But in case of bad health, poverty, or other casualties, the directors shall have power to suspend payment of past and future subscriptions and future fines, on application by the member or any of his or her family, but all suspended payments shall be charged interest at the rate of five per cent. per annum."

In applying this rule the liquidator stated that he had "charged completed shareholders who were in arrear of their instalments with fines up to the dates of completion, the withdrawn shareholders in the same position with fines up till Martinmas 1882, being the date when their implied notice to redeem took effect, and the date up to which they were bound to continue paying their instalments; and that in imposing fines he had in no case gone back beyond the last payment made by any member, holding that if fines previously incurred were not imposed when that payment was made he was precluded from opening up the question. He further admitted that in practice the rule had not been enforced, and that no fines were shown in the account for 1881, the liabilities and rights of parties not being ascertainable while the Special Case was undecided.

It was stated for William M'Geoch junior and others that the rule had never been enforced, and that the instalments had never been regularly exacted, but had been paid at irregular intervals, and that in these circumstances the Liquidator was not entitled to open up their accounts and levy fines.

IV. *Non-timeous Withdrawal of Shares.*—Rule XII. provided that "Any member may transfer any shares held by him or her on which they have received no advance, provided all arrears of principal, interest, and penalties be paid up, and on payment by the new members of a transfer fee of one shilling per share so transferred; and any member holding shares on which no advance has been made may, on giving one month's notice in writing to the manager, withdraw his or her subscriptions paid thereon, with interest at the rate of three per cent for first and second years, three and one-half per cent for third and fourth years, and four per cent. thereafter, and the same shall be paid as soon after the expiry of the month's notice as the funds will permit." In respect of this rule the liquidator placed the names of John Caldwell, Charles G. M'Lellan, and Jane Semple, all non-borrowing members, in section B, on the ground that they all gave notice less than a month prior to the 13th May 1882, the date of the liquidation; and in support of his view referred to the Special Case, 12 R. 1286, and to *The Blackburn and District Benefit Building Society*, July 6, 1883, L.R., 24 Ch. Div. 421—*affd.* Nov. 28, 1884, 9 App. Ca. 857.

M'Lellan gave notice of withdrawal on 27th April, Caldwell on 3d May, and Semple on 4th May, all in the year 1882. It was argued for them that the *Blackburn* case was no authority. It decided that notice was effectual to give withdrawing members priority if the period of notice had expired before the winding-up. Here there was no question as to the period of notice having expired at the date of the winding-up order. There were always two dates to be considered, that of insolvency and that of winding up. There could be no innovation after the first date, but notice did not cease to run. The fact of the conclusion of the business was a notice to all the members to withdraw.

V. *Interest.*—Rule XV. provided that "Any member who has been granted an advance shall, from the date of granting the same, become liable for such a rate of interest as along with the interest allowed by the bank will amount to five per cent. until said member has received said advance, when he shall pay to the Society interest thereon at the rate of five per cent. on the full amount of said advance; and all interest shall be payable at the terms of Martinmas and Whitsunday, and members failing to pay the same within fourteen days thereafter shall be charged interest thereon at five per cent. from the term of payment." In respect of this rule the liquidator maintained that he was entitled to charge interest on the balances due by borrowing members from and after Martinmas 1882, and on each half-yearly payment of interest in arrear he maintained that he was entitled to charge interest, limited as in terms of the bonds and dispositions in security. He conceded that the judgment of the House of Lords in the Special Case decided that on payment of the balance of the debt due under their bonds at Martinmas 1882 these borrowing members were entitled to be free of the Society. But they did not consign or tender the amount of their debts, and hence he maintained that the usual rule must be applied, and that interest under the bond was payable from the date when the debt and interest became due till payment.

D. G. M'Lellan and others maintained that in respect of the House of Lords' judgment a balance was to be struck as at Martinmas 1882, and that on payment of that balance they were to be free. This balance the bondholders tendered to the Society prior to the House of Lords' judgment, but the Society refused to give credit for more than the balance after deducting their share of loss. Any delay that arose was thus attributable to the Society itself, and accordingly interest was not exigible since that date.

At advising—

The opinion of the Court (the Lord President, Lord Mure, Lord Shand, and Lord Adam) was delivered by

Lord Adam—The questions for decision in this case, raised by the note for the liquidator and the several answers thereto, will be found most conveniently stated in the minute lodged for the liquidator, and I propose to give my opinion on them in the order in which they are there set forth.

Before doing so, however, I may state that it has been settled by the previous proceedings in this case that the 13th May 1882 is the date at which the winding-up virtually commenced—that advanced members are not bound to share the losses of the Society, and that unadvanced members with completed shares, and all members who had withdrawn prior to 13th May 1882, have

priority in ranking over members whose shares were not completed or not withdrawn.

The first question is raised by the answers for John Taylor and others, who are members holding completed shares in the Society. It arises under Rule XIII., and is whether, in terms of that rule, such members are entitled to interest on the amount of their shares from the date of completion until the date of payment, at the rate allowed by Scotch banks on sums lying on deposit-receipt—or at account-current rates only?

The rule says that the member shall be entitled to receive the amount of his share "with bank interest." What is here meant by bank interest? In the absence of anything in the rules to indicate any intention to the contrary, I should have thought that interest at current account rates was intended, and I think the matter becomes quite clear when we have regard to the nature of the business of the Society, that the funds came in from day to day in numerous small sums, and were paid out again from day to day. It appears to me that this excludes the idea that the money in the hands of the Society was intended to be lodged on deposit-receipt, or otherwise than on current account, and in point of fact it is stated by the liquidator that it was so lodged. I am clear, therefore, that the liquidator is right in proposing to allow interest at current account rates only.

The next question is raised by the answers of David Gordon M'Lellan, and for William M'Geoch junior. There seems to be no difference between the two cases, and the decision of M'Lellan's case will rule that of M'Geoch.

It appears that M'Lellan on 11th September 1876 subscribed for 40 shares in the Society, representing a nominal capital of £1000. On 26th September 1877 he applied for and obtained from the Society an advance of £500, and at the same time granted in their favour a bond and disposition in security for that sum over property belonging to him in Duke Street Glasgow.

The liquidator proposes to treat 20 of these shares as fully advanced shares, attributing the advance of £500 to such shares only, and to treat the other 20 as shares not completed and not withdrawn—and to apportion the instalments since paid between each set of shares respectively. The respondent on the other hand claims that the advance of £500 shall be attributed to the whole 40 shares, and that the whole instalments since paid shall be applied towards payment of his bond. The result is that by the liquidator's mode of stating the account a sum of £266, 6s. 2d., with interest from March 1882 remains due to the Society, while by the respondent's a sum of £2, 3s. 10d. is brought out as due to him by the Society.

It would appear that the shares in question are numbered in the respondent's pass-book from 7525 to 7564 inclusive. The account kept in the books in connection with the shares which was opened a considerable time before the advances was applied for, and remained unaltered after the advance was given, does not distinguish between them as advanced and unadvanced shares. But I understand that, although a number may have both advanced and unadvanced shares, the books do not in any case recognise the difference between them.

In the case of *Brownlie* v. *Russell*, 10 R. (H.L.) 19, Lord Watson described an advance under the rules of that Society, in these terms—"An advance," he says, "under the statute, and under these rules, does not mean a loan by the society on the security of the shares; it signifies this, that the society pay by anticipation the amount of his shares upon receiving in return certain considerations which are fixed by the rules. The considerations given by a member obtaining payment of his shares by anticipation in terms of these rules were that he should pay interest monthly along with each instalment, and, further, that he should protect the society from loss by giving adequate heritable security for the amount advanced to him."

When this case was previously in the House of Lords the Lord Chancellor referred with approval to the description there given by Lord Watson of advanced shares in *Brownlie's* case, and he says that, when the rules are looked at, the present case is undistinguishable in this respect from *Brownlie's* case, and he then comments in support of this conclusion on Rules XVI., XXVI., and XXVII. of this Society.

An advance is, therefore, under the rules of this Society, payment by anticipation to a member of the amount of his share or shares. It is not a loan on the security of his share. But the rules do not recognise a partially advanced share or a partially advanced member. A share is either an advanced share or an unadvanced share. An advance being payment of a share by anticipation, it must be either of a sum of £25, the amount of a share, or of some multiple of that sum, and in the practice of the Society this was invariably observed.

The advance of £500 to M'Lellan was therefore payment to him by anticipation of a corresponding amount of shares, that is, 20. He thus became an advanced member as regards 20 of his shares, and an unadvanced member as regards the other 20. I cannot hold, as contended for by the respondent, that the advance of £500 was made to him in respect of the whole of his 40 shares, which would be an advance of £12, 10s. of each share. It cannot be held to be an advance in security of his shares, nor can it be held to be a payment by anticipation of one-half of the amount of his shares. The rules do not recognise advances on such terms, and no practice has sanctioned it, if indeed practice could do so. I think, therefore, that the liquidator has rightly dealt with these shares.

This case, as I have said, will also rule M'Geoch's case.

The third question is, whether the liquidator is entitled, in terms of Rule III. of the Society, to charge non-borrowing members, who had completed or withdrawn their shares prior to 13th May 1882, but who were in arrear of their subscriptions at the respective dates of completion or withdrawal of their shares, with fines up to the date of completion or withdrawal, and to charge borrowing members, who were bound to redeem their securities at March 1882, and were then in arrear of their instalments, with fines to that date.

Rule III. is in these terms—"The capital of the Society shall be raised in shares of £25 each by fortnightly instalments of 1s. 3d. per share and by interest arising therefrom. Any member in arrears two fortnightly instalments shall pay at

the rate of 1d. per share per fortnight for each and every fortnightly subscription in arrear, and should said member continue in arrear until the fines incurred thereon shall equal all the subscriptions actually paid, said member shall then cease to be a shareholder and shall forfeit all interest therein. . . . ."

This rule appears to be sufficiently clear and would warrant what the liquidator proposes to do, but it is alleged by the respondents that at the date of the last balance sheet (30th November 1881) no fines had been levied upon them, that they were never charged with fines at any time during their connection with the Society, and that it was not the practice of the Society to exact fines in terms of Rule III.

The liquidator admits that no fines were shown in the account for 1881, so that for the 18 months prior to the date when the liquidation virtually commenced no charge was made which could possibly be said to be a fine, and he explains that in imposing fines he has in no case gone back beyond the last payment made by any member, holding that if fines previously incurred were not imposed when that payment was made he is precluded from now opening up the question; he further explains that the annual accounts for 1870 to 1880 inclusive show certain profits of small amount (specified by him) which he represents as having been really fines though they were never entered under that name, but under the general charge of interest and without notice to the members that any fines were ever imposed. The liquidator does not dispute the fact that Rule III. was not in use to be enforced, and indeed it is admitted that the instalments as a rule were not regularly exacted or paid fortnightly by the members, but at irregular intervals of longer duration. All that the liquidator says is, that it appeared to him that he ought to act as if the rule regarding fines was in force.

In the circumstances I am of opinion that the respondents are right in their contention that the liquidator is not now entitled to open up their accounts and to levy fines upon them in respect of their having been in arrear with their instalments at any time during their connection with the Society with the extraordinary pecuniary results which he brings out. It is clear that during the time the respondents were connected with the Society numerous members passed through the Society without this rule having been enforced against them, and I think it would be manifestly unjust to revive it now and enforce it against the respondents.

The next question is raised by the answers for John Caldwell and others, and the facts are these—Charles G. M'Lellan gave notice of his intention to withdraw his shares on 27th April 1882, John Caldwell on 3d May 1882, and Jane Semple on 4th May 1882. They are all non-borrowing members.

It will be observed that all these notices were given within one month of 13th May 1882, when the liquidation is held to have commenced.

The question is, whether these members are to be held, under Rule XII., as non-borrowing members who have withdrawn their shares prior to 13th May 1882. Rule XII. provides that "Any member holding shares on which no advance has been made may, on giving one month's notice in writing to the manager, withdraw his or her subscriptions paid thereon with interest, &c., and the same shall be paid as soon after the expiry of one month's notice as the funds will permit."

The question is not free from difficulty, but I think the respondents cannot be treated as members who had withdrawn their shares prior to 13th April 1882. The rule gave members only a right to withdraw on giving one month's notice. They had no right therefore to withdraw before the expiry of the notice, and continued therefore to be members of the Society till the expiry of the notice—that is, until after 13th May 1882. In short, the month's notice prior to the date when the winding-up of the Society virtually commenced was a condition-precedent to their right to withdrawal. I think, therefore, that the liquidator is right in this case.

The fifth and last question is this, and it is raised by the answers for David Watson and others—The liquidator proposes to debit the balance due by them on their respective bonds with interest half-yearly from and after Martinmas 1882 until the bonds be fully paid, the interest being charged with interest from the date when due till payment. The respondents object to this, and maintain that they are not liable in interest at all on the balances due by them from Martinmas 1882 till the settlement of the list, or, at any rate, that they are only liable in simple interest at legal rates thereon.

The liquidator refers to Rule XV. as justifying his charging interest on interest. Rule XV. provides that any member who has been granted an advance shall pay to the Society interest thereon at 5 per cent. on the full amount of said advance, and all interest shall be payable at the terms of Whitsunday and Martinmas, and members failing to pay the same within fourteen days thereafter shall be charged interest thereon at 5 per cent. from the term of payment.

No doubt if the Society were still carrying on business under its rules, this rule would amply justify the liquidator's proposal to charge interest upon arrears of interest. But the Society is not carrying on business and the rule is no longer applicable. The amount due by each respondent is a debt due by him to the Society, the amount of which is fixed as at Martinmas 1882. It appears to me that it is in the same position and subject to the same rules as regards interest as any other debt.

The respondents say that no interest at all is due because the delay in payment has arisen from the acts of the Society itself in refusing to settle with them on the terms now fixed by the judgment of the House of Lords.

On the other hand, the respondents neither consigned nor tendered the amount of their debts. In the circumstances it appears to me that the several respondents should be found liable only for simple interest at legal rates.

The Court pronounced the following interlocutor:—

> ". . . Repel the answers for the respondents John Taylor and others. . . . and find and declare that the bank interest to which, under Rule XIII. of the Society, the said respondents, as non-borrowing members who had completed their shares prior to 13th May 1882, are entitled on being paid out of

the Society, is the interest allowed by Scotch banks on sums standing at the credit of current accounts kept with them: Repel the answers for the respondents David Gordon M'Lellan and William M'Geoch junior, . . . in so far as the said respondents, who are both borrowing and non-borrowing members of the Society, seek to have the whole instalments respectively paid on all the shares held by them, whether advanced or unadvanced, imputed towards extinction of the advances made to them respectively by the Society; and find and declare that the liquidator is entitled to place the respondent David Gordon M'Lellan in Section B of the list of contributories annexed to the said note, ... in respect of the 20 shares held by him in the Society upon which no advance has been made, and in section D of said list in respect of the remaining 20 shares held by him therein, representing the advance of £500 made to him by the Society: . . . . Sustain the answers for the respondents William M'Geoch junior, John Caldwell and others, Elizabeth M'Lachlan and others, Thomas Morrison and another (M'Birnie's Trustees), and David Watson and others, . . . in so far as the said respondents object to the liquidator debiting them with fines; and find and declare that the liquidator is not entitled to charge fines against any of the members whose names are included in the list appended to the said note, . . . other than the fines entered in the passbooks of the members prior to the liquidation: Repel the answers for the respondents John Caldwell and others, . . . in so far as the said respondents contend that they withdrew prior to 13th May 1882 the shares held by them respectively in the Society; and find and declare that the liquidator is entitled to place them in section B of the said list of contributories in respect that they had not given timeous notice of their intention to withdraw the said shares prior to said 13th May 1882: . . . . Sustain the answers for the respondents David Gordon M'Lellan, William M'Geoch junior, Thomas Morrison and another (M'Birnie's Trustees), and David Watson and others, . . . in so far as these respondents object to the liquidator debiting the balances due by them on their respective bonds with interest half-yearly from and after Martinmas 1882 until the bonds be fully paid, the interest being charged with interest from the date when due till payment; and *quoad ultra* repel the said answers in so far as they relate to the said question: Find and declare that the said respondents are liable in simple interest at 5 per cent. on the balances respectively due by them to the Society, as at Martinmas 1882, from that date till payment, and decern."

Counsel for the Liquidator—R. Johnstone—Ure. Agent—David Turnbull, W.S.

Counsel for the Respondents—D.-F. Mackintosh, Q.C.—Strachan. Agents—Mackenzie & Black, W.S.

Saturday, June 25.

FIRST DIVISION.

[Lord Trayner, Ordinary.

M'GEORGE AND OTHERS *v.* PATON AND OTHERS.

Bankruptcy—Sequestration—Appeal—Reclaiming-Note—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *secs.* 169 *and* 171.

Held that the provisions of the Court of Session Act 1868 were not applicable to reclaiming-notes presented in the course of a process of sequestration, and that these were regulated solely by sections 169 and 171 of the Bankruptcy (Scotland) Act 1856.

Bankruptcy — Sequestration — Appeal — Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *secs.* 138, 139, *and* 169—*Competency.*

In a process of sequestration a note of appeal under section 169 of the Bankruptcy Act was lodged with the Lord Ordinary on the Bills by certain creditors who had voted against an offer of composition by the bankrupt. An objection was taken to the competency of the appeal in view of the provisions of sections 138 and 139. Appeal *held* competent.

The estates of James Clark M'George, hosiery manufacturer, Dumfries, were sequestrated by the Sheriff of Dumfries upon 17th November 1886.

At the second general meeting of creditors, held on 30th November 1886, the bankrupt made offer of a composition of 5s. per pound. The meeting entertained the offer, and at a subsequent meeting, held upon 21st January 1887, the creditors by an apparent majority resolved that the offer should be accepted.

On March 19, 1877, an appeal was presented under section 169 of the Bankruptcy (Scotland) Act 1856 to the Lord Ordinary on the Bills by certain creditors who voted for the rejection of the offer of composition, craving the Court to find that the statutory majority of legal votes had not been given in support of the resolution, to accept the composition, to recal the resolution, and to direct the trustee to proceed with the sequestration in terms of law. Section 169 is quoted in the opinion of the Lord President, *infra.*

The respondent pleaded, *inter alia*—(1) That the appeal was incompetent in respect of the provisions of section 138 and 139 of the Act of 1856.

Section 137 provides that an offer of composition, with security for payment, may be made at the meeting for the election of the trustee.

Section 138 provides—"If at the meeting held after the examination of the bankrupt, a majority in number and nine-tenths in value of the creditors there assembled shall accept such offer and security a bond of caution for payment of the composition, executed by the bankrupt or his successors, or the partners of a company (as the case may be), and the proposed cautioner shall be forthwith lodged in the hands of the trustee, and the trustee shall thereupon subscribe and transmit a report of the resolution of the meeting, with the said bond, to the Bill Chamber Clerk or Sheriff-Clerk, in order that the approval of the Lord Ordinary or Sheriff (whichever may be selected by the trustee) may be obtained