account. Here the character of the deed was, that it was taken by an agent from his client of a sudden, and for the agent's advantage, the client having no advice or assistance but his own. The witnesses were a stable-boy and a servant girl, and the servant girl is certain that the alleged granter of the deed did not sign in her presence or acknowledge his signature to her. I therefore hold that the deed was irregularly executed, though the consequences of the irregularity might be removed by evidence that it was really executed by the pursuer, by whom it bears to be executed.

On that last question I am of opinion that it is not proved that the pursuer ever subscribed this deed at all. I do not go the length of saying that he did not subscribe it, but I have no difficulty in saying that it is not proved that he did. That is sufficient for this part of the case, for the letter of authority or mandate, on which the defender relies as the ground for withholding the title-deeds of the pursuer, thus fails, and therefore I am of opinion that we must pronounce the order craved in the first part of the prayer.

LORD RUTHERFURD CLARK and the LORD JUSTICE-CLERK concurred.

LORD TRAYNER was absent.

The Court pronounced this judgment:—

"Recal the interlocutor appealed against with respect to the letter of authority or mandate dated 28th February 1889, No. 5 of process: Find in fact (1) that it was not executed or subscribed by the pursuer in presence of the subscribing witnesses John Reid and Lizzie Taylor, or either of them, and that neither of them saw the pursuer subscribe the same or heard him acknowledge his subscription; (2) that it is not proved that the pursuer did subscribe the said letter or mandate: With respect to the title-deeds and documents specified in the prayer of the petition, Find in fact (1) that they were the property of the pursuer, and that they were delivered to the defender on account of and as acting for the pursuer on the occasion of his paying, at the pursuer's request and with the pursuer's money a debt of £65 which was incurred over the property of the pursuer to which they refer; (2) that the defender has no authority or mandate by the pursuer to retain the possession or custody of the said titles and documents, or to withhold them from the pursuer: Find in law that the pursuer is entitled to the order which he prays for ordaining the defender to deliver to him the said titles and documents: Therefore decern and ordain the defender to deliver to the pursuer the said titles and documents in terms of the prayer of the petition," &c.

Counsel for the Pursuer—Reid. Agents—Macpherson & Mackay, W.S.

Counsel for the Defender—Shaw—Salvesen. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Thursday, April 2.

OUTER HOUSE.

[Lord Low.

MILLAR (LIQUIDATOR OF THE PROPERTY INVESTMENT COMPANY OF SCOTLAND, LIMITED) *v.* THE NATIONAL BANK OF SCOTLAND, LIMITED, AND OTHERS.

Company — Winding-Up — Preference — Lien by Creditor over Call.

The directors of a limited company having resolved to make a call upon the shareholders to meet certain liabilities of the company, applied to a bank for an advance, and the bank agreed to grant the advance upon the guarantee of certain of the directors "with a lien over the call to be made." A call letter was issued making the call payable to the bank. No assignation or mortgage of the call was executed. Shortly thereafter a petition for the winding up of the company by the Court was presented, and after the usual procedure a winding-up order was pronounced, and an official liquidator appointed. Subsequent to the presentation of the petition certain sums were paid into the bank in respect of the call. *Held* that the bank had no lien over the sums so paid.

Company — Winding-Up — Liability of Shareholders — Compensation — Guarantee granted for Company's Debt.

The directors of a limited company resolved to apply to a bank for an advance on the security of a call upon the shareholders and the personal obligation of certain of their number, which they agreed to give "under the express condition that the calls upon their own shares when made in due course, and the first and readiest of the company's funds, shall be paid to the bank in repayment of said advances." The bank agreed to give the advance on these terms. A call was made, and a letter of guarantee in ordinary terms was granted by certain of the directors. Shortly thereafter a winding-up of the company by the Court was begun. Subsequent to the commencement of the winding-up certain sums were paid to the bank by the directors who had granted the guarantee in respect of the call. In the winding-up these directors claimed that the sums so paid must be imputed to the extinction *pro tanto* of their obligation under the guarantee, and that they were entitled to compensate their liability for the remainder of the call by their obligation under the guarantee. *Held* that their liability for the call was not compensated by their liability under the guarantee, and accordingly that the sums paid by them since the commencement of the winding-up belonged to the liquidator, and their

liability for the remainder of the call continued.

Company—Winding-Up—Right of Retention by Creditor—Sum Paid to Company's Banker after Commencement of Winding-Up.

Subsequent to the presentation of a petition for the winding-up of a limited company by the Court, but prior to the order for winding-up being pronounced, a sum of money was paid by a debtor of the company to the company's bank, and certain sums were also drawn by the company from the bank and paid to its creditors. The bank was a creditor of the company for a large sum. The bank had no formal intimation of the petition for winding-up, but the petition was duly intimated and advertised. *Held* that the date of the petition being the date of the commencement of the winding-up, the sum so paid to the bank belonged to the liquidator free from any deduction in respect of the sums drawn out.

On 14th July 1890 the Property Investment Company of Scotland, Limited, was called upon by certain depositors to make repayment of a deposit-receipt for £6000 due to them at that date, and £44 of interest thereon. There being no funds available to meet this demand and other claims which were due or to become due immediately, the directors of the company, at a meeting held on the same day, adopted the following resolution—"That a call of one pound (£1) per share should be made upon the whole shareholders of the company, payable at the National Bank of Scotland, Limited, Head Office, Edinburgh, on the fifteenth day of August 1890, and instructed the necessary intimations to be made to the shareholders, those prepaying to receive 4½ per cent. discount. In order to provide immediate funds to pay the foregoing deposit and other claims, including a present overdraft of about £500 on the company's credit with said bank, it was resolved to apply to said bank for an advance to the company of £9000, on the security of said call to that extent, and the personal obligation of Sir Thomas Clark, Bart., Mr W. O. Morrison, Mr William Hunter, and Dr Pringle, which they agree to give under the express condition that the present and future calls on their own shares, when made in due course, shall be paid to the bank in repayment of all advances by the bank to the company for which they have interposed their personal obligation as cautioners for the company. The meeting also agreed that the cheques to be issued on said advance of £9000 shall be valid if signed by any two of the directors, who will become guarantors therefor." This resolution was communicated by the directors to the manager and secretary of the bank on the morning of the 15th July 1890, and they agreed to give the advance applied for, and authorised an advance account to be opened. On the same day the directors of the bank met, and at that meeting the following resolution was adopted—"It was reported that the Property Investment Company of Scotland, Limited, required a credit to the extent of £9000 to enable them to meet deposits maturing, and that they had resolved to make a call of £1 on their shareholders. It was agreed to grant the temporary accommodation asked for, on the guarantee of Sir Thomas Clark and others, with a lien over the call to be made." The minute was not communicated to the directors of the company, but they were informed on the same day that the advance had been approved by the directors of the bank. A guarantee to the bank for the advance was signed on the same day by Sir Thomas Clark, Bart., and Messrs Morrison and Hunter, and on the 16th July 1890 by Dr Pringle, and was left with the bank. On 30th July 1890 a petition was presented by certain shareholders for the winding-up of the company, and on 13th August 1890 the Lord Ordinary on the bills appointed the company to be wound up by the Court, and appointed Robert Cockburn Millar, C.A., Edinburgh, to be official liquidator thereof.

In pursuance of the above arrangement between the directors and the bank, the bank on 15th July 1890 opened an advance account (called account No. 11), and on 24th July 1890 opened another account called a call account, to the credit of which were placed the sums paid by shareholders in respect of the call made under said minute.

On 30th July 1890 there was due to the bank on account No. 11 the sum of £8498, 1s. 4d., and on 13th August the sum of £9025, 1s. 5d. The interest on said sum amounted at 29th August to £56, 19s. 1d., making the sum due to the bank in all £9082, 0s. 6d.

On 30th July there was due by the bank on the call account the sum of £1625, 13s. 7d. Between the 30th July 1890 and the 13th August 1890 this debit was increased by the payment of further sums to the bank amounting to £5213, 15s. 10d. The total sum paid into this account by 13th August 1890 was thus £6839, 9s. 5d. Of this amount there was paid by the four directors who became guarantors to the bank sums amounting to £4584, 12s. 10d.

Between the 30th July 1890 and the 13th August 1890 there was paid to the bank into the ordinary account of the company (called account No. 1) a sum of £718, 4s. 4d. That sum was the amount contained in a cheque dated 1st August 1890 by J. A. Molleson, C.A., Edinburgh, the trustee for the creditors of Sir James Gowans, in favour of Mr Davis, the interim secretary of the company, and endorsed and paid in by him to the credit of the company.

Between the same dates the following sums were drawn by the company out of the said account No. 1, viz., on 1st August 1890 the sum of £178, and on 5th August 1890 the sum of £101. These sums were drawn in payment of deposits with the company.

Prior to 13th August 1890 the bank had no formal intimation that any application had been made to the Court for the

winding-up of the company, but the original petition therefor having prayed the Court, *inter alia*, to appoint notice thereof to be advertised once in the *Edinburgh Gazette* and once in the *Scotsman* newspaper, the Lord Ordinary on the Bills by interlocutor of July 30, 1890, being the first deliverance in the liquidation, *inter alia*, ordered the petition to be intimated, served, and advertised as craved, and accordingly there was published in the *Edinburgh Gazette* of 1st August 1890, and in the *Scotsman* of 31st July 1890, a notice intimating that such a petition had been presented. Copies of the *Edinburgh Gazette* are regularly supplied to the bank when published, but the secretary was unable to state whether he observed this notice in the *Edinburgh Gazette* of 1st August 1890.

Questions having arisen as to the effect of the arrangement under which the account No. 2 was opened and the letter of guarantee granted, and as to other matters, the liquidator on 6th November 1890 presented a note to the Court in which he prayed the Court "to decern and ordain the National Bank of Scotland, Limited, to pay to the official liquidator, or place to the credit of the official liquidator's account with said bank (first) the said sum of £718, 4s. 4d. paid to the credit of account No 1. on first August 1890, and (second) the several sums, amounting *in cumulo* to the sum of £5213, 15s. 10d., paid to the credit of the call account between 30th July and 13th August 1890, with interest thereon from the dates when they were respectively received by the bank till so paid or credited; and further, to find and declare that the National Bank of Scotland, Limited, were not entitled to set off any claims competent to them against the said The Property Investment Company of Scotland, Limited, as at the date of the commencement of the winding-up, against the said sums which had been paid, or which should thereafter be paid to the credit of the account of the official liquidator; but that the whole of said sums at the credit of the account of the official liquidator as aforesaid, and including the foresaid sums of £718, 4s. 4d. and £5213, 15s. 10d., with the interest thereof, or so much thereof as might be placed to the credit of said account, when so placed, were at the disposal of the official liquidator, subject to the orders of their Lordships, free of any claim of retention or other claim whatsoever, at the instance of the National Bank, or of the directors who had granted the letter of guarantee, or any of them: And to find and declare that the directors who had granted the letter of guarantee, were not entitled to retain the call on their shares of One pound per share, made on 14th July 1890, and were not entitled to retain any calls which might thereafter be made upon them in respect of the obligation undertaken by them to the bank under letter of guarantee of 15th and 16th July 1890, and were not entitled to pay the amount of said calls, present or future, to the bank in diminution of their liability thereunder, but were bound, as contributories, to pay the amount thereof to the official liquidator for the purposes of the winding-up, free from any claim of set-off or other claim whatsoever."

Answers were lodged by the bank, and by Sir Thomas Clark, Bart., and Messrs Morrison, Hunter, and Pringle, who had granted the letter of guarantee.

The Lord Ordinary (Low) pronounced the following interlocutor:—"Decerns and ordains the respondents the National Bank of Scotland, Limited, to place to the credit of the official liquidator's account with said bank (1) the sum of £718, 4s. 4d. paid to the credit of the account No. 1 described in the note on 1st August 1890, and (2) the several sums amounting *in cumulo* to the sum of £5213, 15s. 10d. paid to the credit of the account No. 3, also described in the note between 30th July and 13th August 1890, with interest thereon from the dates when they were respectively received by the said bank till so credited; and further finds and declares that the said National Bank of Scotland, Limited, are not entitled to set off any claims competent to them against the said Property Investment Company of Scotland, Limited, as at the date of the commencement of the winding-up thereof, against the said sums of £718, 4s. 4d. and £5213, 15s. 10d. which have been paid or of any sums which may hereafter be paid to the credit of the account of the official liquidator as aforesaid, but that the whole of said sums are at the disposal of the official liquidator, subject to the orders of Court, free of any claim of retention or other claim whatsoever at the instance of the said National Bank, or of the individual respondents, or any of them; and finds and declares that the said individual respondents are not entitled to retain the call on their shares of £1 per share made on 14th July 1890, nor to retain calls which have since been made upon them, in respect of the obligation undertaken by them to the bank under their letter of guarantee of 15th and 16th July 1890, and were and are not entitled to pay the amount of said calls to the said National Bank of Scotland, Limited, in diminution of their liability thereunder, but are bound as contributories to pay the amount thereof to the official liquidator for the purposes of the winding-up, free from any claim of set-off or other claim whatsoever, and decerns: Finds the official liquidator entitled to the expenses of the present application and relative procedure, &c.

"*Opinion.*—On 14th July 1890 a demand was made upon the Property Investment Company for repayment of deposits amounting to £6000. The manager of the company, who was absent, had not informed the directors that the deposits were payable on that date, and the credit account with the National Bank being overdrawn, the company was without funds to meet the demand.

"In these circumstances the directors held a meeting on 14th July, and resolved that a call of £1 per share should be made upon the whole shareholders, payable at

the National Bank, and that in order to provide immediate funds to pay the deposits the Bank should be asked to make an advance to the company of £9000 on the security of the call to that extent, and the personal obligation of the directors.

"The bank was then communicated with, and agreed to give the advance upon the terms proposed.

"The resolution of the directors of the Property Investment Company was embodied in a minute, which was engrossed in the minute-book and signed by Sir Thomas Clark and others, the directors present. A copy of the minute was shown to the manager and secretary of the bank, and on 15th July a meeting of the directors of the bank was held to consider the matter, and the minute of the meeting bears that 'it was agreed to grant the temporary accommodation asked for, on the guarantee of Sir Thomas Clark and others, with a lien over the call to be made.'

"On the 15th July a guarantee was also proposed by the bank and signed by Sir Thomas Clark and the other directors, and on the same day a special account (called in the note No. 2 account) was opened, and was drawn upon for the amount necessary to meet the deposits.

"On 23rd July a call letter was issued. The call was made payable at the National Bank on 15th of August, but interest at 4½ per cent was allowed on calls paid in advance.

"On 30th July a petition for the winding up of the company by the Court was presented by certain shareholders, and on 13th August a winding-up order was pronounced and an official liquidator appointed. The winding-up therefore must be held to have commenced on 30th July, the date of the presentation of the petition.

"Prior to 30th July the sum of £1625, 13s. 7d. on account of calls was paid to the bank and entered in the call account. Between that date and the 13th August a further sum of £5213, 15s. 10d. was paid into said account. On 13th August an account was opened in the name of the liquidator and all sums received for calls after that date were paid into his account.

"The bank maintain that they are entitled to apply the moneys received in payment of calls to the extent that may be necessary to extinguish the balance on account No. 2. The result of sustaining this contention would be that the bank would be entitled to all the moneys paid into the call account up to 13th August and to some £2000 of the moneys thereafter paid into the liquidator's account.

"There is no doubt that the bank agreed to give the credit on the security of this call in this sense, that the call was to be payable at the bank, and the bank was to be entitled to retain the sums so received to the extent of their advances. It was not disputed that it was within the power of the directors of the company to make such an arrangement, and if the company had not gone into liquidation I think that the bank would have been entitled to recoup themselves their advances out of calls received. The bank, however, did not get any security over the call in the proper sense of the term. No assignation or mortgage of the call was executed in their favour, and that being so the question arises, what was the effect of the winding-up upon the claim which the bank would otherwise have had?

"As regards the sum of £1625 which was paid to the bank in respect of the call prior to the date of the winding-up, I think that it was hardly disputed that the claim of the bank must be sustained. They received that sum under an express agreement that they should hold it against the advances which they had made, and they received the money lawfully and while the company was still carrying on business. The ordinary doctrine of retention therefore applies, and the bank are not bound to hand over to the liquidator the sums received prior to the winding up.

"A different question, however, arises in regard to sums received after the date of the winding-up. The doctrine of retention has no application, in my judgment, to these sums. In the ordinary case retention can only be pleaded in regard to goods or money, of which the creditor has obtained possession prior to bankruptcy. There is no bankruptcy in the present case, but I think that it is settled by the case of *Clark* v. *The West Calder Oil Company*, 9 R. 1017, that the commencement of the winding up of a company registered under the Companies Acts is, in questions of the sort under consideration, equivalent to bankruptcy in the case of an individual.

"The question therefore comes to depend upon whether the agreement between the directors of the company and the bank is enforceable after the winding-up has commenced. I have already pointed out that the bank did not actually receive a security over the call. There was only an agreement that there should be a security, which probably amounted to an obligation upon the direction to grant a security if required. If, however, that is truly the position of matters, then the bank were unsecured creditors at the commencement of the winding-up, and I apprehend that after that date no change could be made in their position. The principle to which effect was given in *Clark* v. *The West Calder Oil Company* seems to be applicable. There the company prior to the winding-up assigned to trustees, for the security of debenture-holders, certain leases and moveable property. The assignations had been duly intimated, but the trustees had not made their right complete by possession. It was held that the debenture-holders were not secured creditors. I do not think that there is any substantial difference between that case and the present. There the debenture-holders advanced their money on the faith of having the security of the leases. Here the bank allowed credit on the faith of having right to the calls. But as in the *West Calder Oil Company's* case the debenture-holders were refused a preference because the security had not been com-

pleted, so here, in my judgment, the bank must be refused a preference because they never obtained a security.

"Further, since the *West Calder Oil Company* case was decided the Act of 1886 has been passed, which enacts that a winding-up by the Court shall, as at the commencement thereof, be equivalent to an arrestment in execution and decree of furthcoming.

"The next question is in regard to the position of the four directors who granted the guarantee to the bank. The minute of meeting of 14th July 1890 bears that it was resolved to make a call of £1 per share, and 'to apply to the said bank for an advance to the company of £9000 on the security of said call to that extent, and the personal obligation of Sir Thomas Clark, Baronet, Mr W. O. Morrison, Mr William Hunter, and Dr Pringle, which they agree to give under the express condition that the present and future calls on their own shares, when made in due course, shall be paid to the bank in repayment of all advances.'

"The guarantee, which is dated 15th and 16th July 1890, bears that the said four directors 'guarantee repayment to you, the National Bank of Scotland, Limited, when required, of the said sum of £9000.'

"In respect of the call of £1 made in pursuance of the resolution of 14th July the four directors have paid sums amounting to £4584, 12s. 10d., which they maintain must be held to be a payment by them to the bank under the guarantee.

"The claim of the directors must be maintained on one of two grounds. Either, first, that they are entitled to set off or compensate their liability for calls against their liability for the advances made by the bank, or secondly, that they gave their personal obligation to the bank under an agreement that all sums due by them for calls should be imputed in extinction of that liability.

"I. It is settled that a contributory in a winding-up, who is also a creditor of the company, cannot set off calls due by him to the company against a debt due to him by the company, and that he cannot found upon the doctrine of balancing accounts in bankruptcy because he himself is a member of the bankrupt company. That was settled in the case of *Cowan* v. *Gowans*, 5 R. 581, following the rule laid down in the English cases of *Cresshill's* case, 1 Ch. 528, and *Black & Company's* case, 8 Ch. 254.

"It has also been held that in certain circumstances a shareholder may plead compensation, if prior to the winding-up it has been agreed that a debt presently due by the company to him shall be retained as payment of calls upon his shares—*Jones, Lloyd, & Company*, 41 Ch. Div. 159.

"I am of opinion that the present case falls under the first and not under the second category. The directors here did not become, by the guarantee which they gave, creditors of the company. They only became cautioners for the company, with a right of relief against the company in the event of the cautionary obligation being enforced. Of course it is now plain that they will incur liability under their obligation, but as yet that liability has not been enforced, and they are not even now directly creditors of the company. As regards the call, the directors are undoubtedly debtors of the company. The call, however, was not payable until the 15th August, and although a discount of 4½ per cent. was allowed in the event of immediate payment being made, the company could not have enforced payment of the call prior to the winding-up. In these circumstances I am of opinion that compensation cannot be pleaded. To operate compensation the one debt or obligation must, prior to the winding-up, be set off against the other and both extinguished. That certainly did not occur in this case. The call debt still exists, and a winding-up, which is equivalent to an arrestment and decree of furthcoming, has commenced. I think that it would be contrary both to principle and authority to hold that in such circumstances the directors could refuse payment of this call debt in respect of their liability under the guarantee.

"II. The question then arises, can the directors found upon the express condition under which they gave their personal obligation to the bank, viz., that the calls on their own shares should be paid into bank in repayment of all advances. I am of opinion that they cannot. In the case of *Cowan* v. *Gowans*, the condition upon which Gowans took shares in the Theatre Company was that the instalments due to him as contractor for erecting the theatre should be imputed in payment of calls. It was held that the agreement could not avail him after the commencement of the winding-up, (1) because to give effect to it would be subversive of the leading principle of the Companies Acts that the assets should be divided equally among the creditors, and (2) because to make the agreement available it was necessary that it should be filed with the Registrar of Joint-Stock Companies in terms of the 25th section of the Companies Act of 1867. It seems to me that the same reasoning applies to the present case.

"Two subsidiary questions are also raised by the note for the liquidator, which I must now consider.

"(1) On 1st August 1890 a sum of £718, 4s. 4d. was paid into the current bank account of the company with the National Bank by Mr Molleson, C.A., the trustee for the creditors of Sir James Gowans. On the 1st and 5th of August sums were drawn out of said account by the company amounting to £178 and £101 respectively. The liquidator maintains that the sum of £718, 4s. 4d. should be paid to him or placed to the credit of his account. The bank, on the other hand, contend that the sum having been paid in in good faith and in the ordinary course of business, and they having no knowledge at that time of the presentation of the petition for a winding-up order, the liquidator is not entitled to have the said sum credited to him, or at all events, that he is not entitled to have it

credited except under deduction of the sums of £178 and £101 which were drawn out. I have reluctantly come to the conclusion that the liquidator is entitled to prevail. The winding-up commenced on 30th July and was equivalent to an arrestment in execution and decree of furthcoming. The bank therefore could not lawfully (although of course I do not doubt their *bona fides*) receive payment of the money for any other purpose than to hold it for the company. The bank plead that they did not know of the petition for a winding-up, but that cannot nullify the statutory effect of the winding-up, and a notice of the petition was advertised in the *Edinburgh Gazette* and *Scotsman* newspaper, which the bank might have seen, and of which I do not think they can profess ignorance—*Emmerson's* case, 2 Eq. 231. The bank contended that it was a case for the exercise of the discretion given to the Court by the 153rd section of the Act of 1862. I doubt if the provisions of that section apply to the present case, and in any view it seems to me that to sustain the claim of the bank would be to sin against the cardinal principle of the Act, viz., the *pari passu* ranking of creditors. In regard to the sums drawn out of the account, there is no reason to suppose that the draft was allowed because of the payment of the £718 into the account. And further, if the bank, after it ought to have known of the presentation of a winding-up petition, chose to allow drafts, it must, I think, take the consequences.

"(2) The liquidator contends that a sum of £527, 0s. 1d. which was drawn out of account No. 2, should be deducted from the balance due to the bank under that account in respect that one of the directors, Mr Robertson, who signed the cheque, was not one of the directors who came under personal liability for the advances. This contention is founded upon a provision in the minute of meeting of the directors of the company of 14th July to the effect that "cheques to be issued on said advance of £9000 shall be valid if signed by any two of the directors who will become guarantors therefor." This provision seems to me to be intended to guard against the account being improperly operated upon, and it is not said that the sum in question was not drawn and applied for the purposes for which the credit was given. I therefore do not think that the liquidator is entitled to found upon a mere technicality to the effect of depriving the bank of a ranking for the sum in question. This point, although it was argued, is not referred to in the prayer of the note, and as I am in favour of the liquidator in regard to the matters mentioned in the prayer, I shall give decree in terms thereof."

Counsel for the Liquidator—H. Johnston—Ure. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for the National Bank of Scotland, Limited — Asher, Q.C. — Dundas. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Sir Thomas Clark, Bart., and Others—Asher, Q.C.—Dickson. Agents—T. J. Gordon & Falconer, W.S.

Saturday, July 11.

FIRST DIVISION.

RATTRAY AND ANOTHER, PETITIONERS.

Deed—Informality of Execution—Declaration that Deed was Subscribed by the Granter and Witnesses—Conveyancing Act 1874 (37 *and* 38 *Vict. cap.* 94), *sec.* 39.

One of the instrumentary witnesses of a disposition and conveyance subscribed "William Roberton, witness." The writer of the testing clause wrote "William Robertson, apprentice to me, the said Hugh James Rollo," and there thus occurred a descrepancy between the signature of William Roberton, to whose signature no designation was appended, and the statement in the testing clause that the instrumentary witness was William Robertson.

In a petition under section 39 of the Conveyancing Act of 1874, the Court, after a proof, declared that the disposition and conveyance was subscribed by the granter and witnesses by whom it bore to be subscribed.

This was an application for a declaration under section 39 of the Conveyancing Act of 1874, which provides—"No deed, instrument, or writing subscribed by the granter or maker thereof, and bearing to be attested by two witnesses subscribing, and whether relating to land or not, shall be deemed invalid or denied effect according to its legal import because of any informality of execution; but the burden of proving that such deed, instrument, or writing so attested was subscribed by the granter or maker thereof, and by the witnesses by whom such deed, instrument, or writing bears to be attested, shall lie upon the party using or upholding the same; and such proof may be led in any action or proceeding in which such deed, instrument, or writing is founded on or objected to, or in a special application to the Court of Session, or to the Sheriff within whose jurisdiction the defender in any such application resides, to have it declared that such deed, instrument, or writing, was subscribed by such granter or maker and witnesses."

The late Very Rev. Edward Bannerman Ramsay, Dean of Edinburgh, died on 27th December 1872. He left a trust-disposition and settlement, the trustees nominated by which were the late Sir James Burnett of Leys and the late Hugh James Rollo, W.S.

In carrying out the purposes of the trust the trustees in November 1874 executed a disposition and conveyance in favour of the parties mentioned in the deed, of certain heritable subjects situated on the east side of Ainslie Place, Edinburgh.

The testing clause of the said disposition and conveyance was in the following terms, viz.—"In witness whereof, these presents, written on this and the two preceding pages of stamped paper by John