be plain enough from the evidence before us, both written and oral. Indeed, the oral evidence need scarcely be appealed to, for the pursuer's letter of 10th November 1891, No. 26 of process, sufficiently instructs the terms of the contract. By it the pursuer agreed to take the premises then occupied by the defender off his hands, to relieve him of the rent thereof till the expiry of his lease, and to pay him for the fittings in the premises, including an engine and boiler, for the sum of £15. It is said that this letter cannot be looked at in respect it is neither holograph nor tested. When rightly regarded, that letter did not require to be either, in order to make it binding or to make it evidence. As regards the purchase of the fittings, it was properly a writing *in re mercatoria*. As regards the premises, it was not a bargain to the effect that the defender should grant or the pursuer take a lease of the premises. It was merely a bargain that the pursuer should relieve the defender of a liability he was then under for the payment of rent to his own landlord. It was no doubt part of the agreement between the parties that the premises for which that rent was payable should be transferred to the pursuer, and both knew that this could only be done with the landlord's consent. The bargain about the premises came therefore to this, that the defender, so far as he was able, would aid the pursuer in obtaining the premises, and he was impliedly bound to do nothing which would hinder the pursuer in getting the necessary consent of the landlord. I think the defender so understood the bargain, and so agreed. In pursuance of that agreement, and in exchange for the letter I have referred to, the defender wrote the letter dated 10th November, No. 17 of process, to the landlord, in which he said he had secured another tenant for the premises, and asked, "as a great favour," that they would arrange "with him" for a lease. This letter the defender handed to the pursuer to be by him delivered to the landlord, and it is plain enough to my mind that in doing so he represented the pursuer as the tenant he had secured with whom the landlord was asked to make the new arrangement. It is said, however, that the bargain was not completed because the defender did not accept the pursuer's offer contained in the letter No. 26 of process. I think that letter was not an offer requiring acceptance. It was the written expression of a contract already made. The defender's signature to it would have bound him. But I think he testified his assent to the terms of that letter by his writing to the landlord in the terms in which he did, and by delivering that letter to the pursuer to be used by him in furtherance of the contract as clearly as if he had subscribed the agreement itself. What followed the making of the bargain was (without going into the details), that before the landlord had the opportunity of considering whether he would agree to the transfer of the lease, the defender announced to him that the transaction with the pursuer was off, and that the letter he (the defender) had addressed to the landlord was cancelled.

I think this was a distinct breach of contract between the parties—a breach committed by the defender for the purpose of enabling him, as it did, to make a better bargain for himself with other parties. For this breach of contract I think the defender is liable in damages to the pursuer. The amount of damages awarded by the Sheriff-Substitute seems to me to be very ample, and although I might have been disposed to have awarded a smaller sum, I do not feel called upon to interfere with what the Sheriff-Substitute has done. I think therefore that the Sheriff's interlocutor should be recalled and that of the Sheriff-Substitute affirmed.

LORD RUTHERFURD CLARK, LORD YOUNG, and the LORD JUSTICE-CLERK concurred.

The Court adhered to the Sheriff-Substitute's interlocutor.

Counsel for the Appellant—Kennedy—W. Thomson. Agents—Gray & Kinnison, S.S.C.

Counsel for the Respondent—Guthrie—Craigie. Agents — M'Call & Andrews, S.S.C.

Saturday, December 10.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

MORE (LIQUIDATOR OF THE BURNT-ISLAND OIL COMPANY, LIMITED) *v.* DAWSON AND OTHERS.

Company—Liquidation—Power to Carry on Works—Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *sec.* 95.

The liquidator of an oil company applied to the Court under section 95 of the Companies Act 1862 to authorise him to carry on the company's business for six months, and to declare that the expenses thereby incurred should be a first charge on the company's assets. In support of the application the liquidator stated that the oil trade was then subject to a severe depression, which rendered the property of the company unsaleable except at a ruinous sacrifice; that he considered it of great importance that the works should be kept going for a time, until it was seen whether a sale could be effected on reasonable terms, or a favourable scheme of reconstruction carried through; and that the probable result of an immediate stoppage would be the sale of the works as a broken-up concern, whereas if they were carried on, there might be a chance of selling them as a going concern.

The great majority of the debenture-holders and unsecured creditors con-

sented to the course proposed by the liquidator.

The Court *refused* the application, *holding* that the liquidator had failed to show, as required by section 95, that carrying on the business was necessary for the beneficial winding-up of the company, but subsequently *authorised* the liquidator to carry on the business for six weeks while the works were being advertised for sale, and to pay the expenses out of the monies from time to time in his hands.

Observed (following opinions expressed in *Wreck Recovery Company*, 15 Ch. Div. 353) that the Court has jurisdiction to authorise the liquidator of a company to carry on its business under the 95th section, if satisfied that there is a mercantile necessity, for the beneficial winding-up of the company, that the liquidator should receive such power.

On 26th September 1892 the Court directed that the winding-up of the Burntisland Oil Company, Limited, previously resolved upon by the shareholders, should be continued subject to the supervision of the Court.

The capital of the company amounted to £170,000 in 17,000 shares of £10 each, the whole of which had been called up. The sum of £100,000 had also been borrowed upon debentures secured by the transfer to trustees for behoof of the debenture-holders of certain lands and others belonging to the company, and certain mineral leases held by them.

Article 47 of the declaration of trust provided—"The debenture-holders in general meeting may, at any time, with the consent of the company and the trustees, alter all or any of the provisions of these presents, or make new provisions to the exclusion of or in addition to all or any of the provisions of these presents." . . .

In addition to the amount borrowed on debenture, and a sum of £17,999 borrowed on the security of products manufactured by the company, there were unsecured debts to the amount of £12,841, 11s. 11d.

On 7th October 1892 Francis More, C.A., the liquidator of the company, presented a note, in which, *inter alia*, he craved the Court "to sanction the liquidator carrying on the business of the company for such time as he may think proper, but not beyond 30th April 1893, and for that purpose to make such capital expenditure on the company's mines and other works as he may consider necessary; to draw, accept, make, and endorse any bill of exchange or promissory-note in the name and on behalf of the company; and generally, to execute and do all such other acts and deeds as may be necessary for or incidental to the carrying on of said business, and the exercise of said powers; and to declare that the debts and obligations incurred in connection with the carrying on of said business (including any advances the liquidator may make) shall be a first charge on the assets of the company."

The note contained the following statements—"At the present time the mineral oil trade in Scotland is subject to severe depression. In short, a state of crisis exists which renders such property as that belonging to the company unsaleable at the present time except at a ruinous sacrifice. In these circumstances, the liquidator considers it of great importance that the mines and works of the company should be kept going for a time until it is seen whether a sale can be effected on favourable terms, or a suitable scheme of reconstruction can be carried through. To do so, however, will probably necessitate a capital expenditure of £2650 or thereby in completing improvements at the works and in the mines commenced before the liquidation. Were the business of the company to be stopped, the mines would become filled with water, and the works and machinery and plant therein would become depreciated to such an extent that they could only be sold as old material. On October 4th 1892 a meeting of the committees of shareholders and creditors, called by the liquidator, was held in order to consider a report by the liquidator in regard to the advisability of carrying on the business of the company. The committees by a large majority concurred in the liquidator's opinion that the business and works of the company should be carried on for a time. It was accordingly resolved that he should be authorised to carry on the business and works until the end of April 1893, and that all debts incurred in connection with the carrying on of said business and works (including any advances the liquidator might make for the purpose) should be a first charge on the assets of the company—the liquidator to submit to the committees at the end of said period a statement of the results of the working, and take their opinion as to whether the business and works should be further carried on. The liquidator does not propose to borrow any of the money which he may require to enable him to carry on the business and works. He proposes to advance the same himself. He anticipates that the contemplated capital expenditure already referred to will considerably enhance the value of the company's property. Indeed, without it, it would not be advisable to attempt to carry on the company's business. In the event of the present application being granted, the liquidator proposes to request the trustees to call a meeting of the debenture-holders to pass resolutions consenting to the debts and obligations incurred in carrying on the business and works being a first charge on the property held by the trustees, along with the remainder of the company's property which has passed into the charge of the liquidator."

After considering the note, the Lord Ordinary on the Bills (STORMONTH DARLING) indicated that unless the liquidator were prepared to allow a limit to be fixed to his advances, the further consideration of the note should be delayed till meetings of the debenture-holders and unsecured creditors had been held.

Meetings of the debenture-holders and

the unsecured creditors were accordingly called for the 27th.

The minute of the meeting of the debenture-holders bore, *inter alia*—"Mr More thereupon explained the position at length, and replied to the various questions put to him by the debenture-holders present. He pointed out that the probable result upon the property of the company of an immediate stoppage of the works and mines would be the sale thereof as a broken-up concern, while were he allowed to carry on for a time, and to spend the comparatively small sum of money suggested by him, there would, he thought, be a chance of selling the works as a going concern."

The following resolutions were passed—"1. That the liquidator of the Burntisland Oil Company, Limited, with a view to the beneficial realisation of the property of the company, including the assets held as security for payment of the debentures by the company, be and is hereby authorised to carry on the business of the company in such manner as he shall deem most advisable, and that for such time he may think proper, but not beyond 30th April 1893; and for the said purpose to make such capital expenditure on the company's mines and other works as he may consider necessary, not exceeding the sum of £3000. 2. That the said capital expenditure, and any other debts and obligations incurred in the carrying on of the said business, including any advances the liquidator may make, shall and are hereby declared to be a first charge on the assets of the company, including the property held by the trustees for the debenture-holders as a security for the debentures, and the trustees are hereby authorised to give effect to this resolution in carrying out the realisation of the property and the distribution of the price."

There were present at the meeting holders of debentures to the amount of £82,740, of whom holders to the amount of £81,740 voted in favour of the resolutions. Michael Dawson, who held debentures to the amount of £1000, was the sole dissentient present. Two other debenture-holders, who each held £300 debentures, intimated dissents.

At the meeting of unsecured creditors there were present creditors to the amount of £7425, 13s. 3d. Of these creditors for £7398, 17s. 2d. voted in favour of the following resolutions, which were accordingly passed—"1. That the liquidator of the Bruntisland Oil Company, Limited, with a view to the beneficial realisation of the property of the company, be and is hereby authorised to carry on the business of the company in such manner as he shall deem most advisable, and that for such time as he may think proper, but not beyond 30th April 1893; and for the said purpose to make such capital expenditure on the company's mines and other works as he may consider necessary, not exceeding the sum of £3000. 2. That the said capital expenditure, and any other debts and obligations incurred in connection with the carrying on of the said business, including any advances the liquidator may make, shall and are hereby declared to be a first charge on the assets of the company."

Answers to the note of the liquidator were lodged by Messrs Middleton & Kirkpatrick, creditors to the amount of £753, for which they held a security of the nominal value of £234. They averred that the company's business could only be carried on at great loss, and that "the proposal to carry on the business would not in any way facilitate the realisation of the estate, and is not for the preservation thereof, but is simply a speculation, and at best an attempt to render the estate more valuable by waiting for a possible improvement in the trade." They craved the Court to refuse the prayer of the note (so far as quoted above).

Answers were also lodged by Michael Dawson, who held debentures to the amount of £1000. He objected to the prayer of the note being granted, in so far as it craved the sanction of the Court to the debts and obligations to be incurred by the liquidator in connection with the carrying on of said business being made a first charge on the property held by the debenture trustees.

It appeared from the liquidator's report to the joint committees of creditors and debenture-holders that £15,700 had been expended on improvements at the works during the preceding eighteen months, and that in the opinion of the liquidator if the works were at once closed the debenture-holders would not be likely to get more than 8s., or the unsecured creditors more than 4s., in the pound.

Argued for the liquidator—It was certain that if the works were closed at once they would be disposed of at a great loss. There were two great advantages in delay. In the first place, time would be given for reaping the fruit of the large sums recently expended on the works, and in the second, there was a considerable chance that the depression in the oil trade might mitigate. At all events, it was of the utmost importance that the works should be kept up, so as to be sold if possible as a going concern. No doubt the liquidator did not express any very confident hope of being able to effect such a sale, but his opinion in favour of the proposal he made was none the less valuable for being expressed with caution. It was to be borne in mind that the value of a business of this kind depended just as much upon the by-products, such as ammonia, as upon the oil, which was the main product. Taking all the circumstances into consideration, a case of "mercantile necessity" had been made out which would justify the Court in granting the authority craved—Companies Act 1862, sec. 95; *Wreck Recovery Company*, 1880, 15 Ch. Div. 353, *per* L. J. Thesiger, 362. No doubt the Court could not under section 95 authorise the carrying on of a company's business where the object was to effect a scheme of reconstruction in the sense of restoring a moribund company as a going concern; but reconstruction might merely mean a sale to a new company, and that was an object which the section recognised as legitimate. This was a creditors' liquidation, and if the powers craved were such as the provisions

of the statute contemplated, the Court would allow the creditors to be the best judges of their own interests. The overwhelming majority were in favour of the course proposed by the liquidator. Further, it was within the powers of the Court to declare that the expenses of carrying on the business should be a first charge on the assets of the company. In so doing the Court would not deprive the debenture-holders of any preferential right pertaining to them, but would merely find this expenditure to be a legitimate charge in the winding-up. The fact that a large majority of the debenture-holders consented to the liquidator's proposal distinguished this case entirely from the *Regent Canal Ironworks'* case, where the debenture-holders were not consulted. In the present case, also, the debenture-bonds referred to the declaration of trust, and under section 47 thereof the debenture-holders might, with the consent of the trustees and the company, alter the provisions of the declaration of trust so as to authorise such a charge being made on the assets in the trustees' hands—*Follit* v. *Eddystone Granite Quarries*, 3 Ch. Div., 1892, 75. A minority could not override the desire of the majority unless it were shown that the majority were using their powers fraudulently to further some interest of their own outside the company, or that they were oppressing the minority by depriving them of their just rights. The course proposed in *Follit's* case was a much more extreme one than that proposed here, namely, to innovate on the rights of the debenture-holders in order to carry on the company as a going concern—an object with which the interests of the debenture-holders were not immediately concerned. Here the powers craved were to be used for the realisation of the company's assets, and largely for the benefit of the debenture-holders, as it was calculated that the ranking of the secured creditors on the unsecured assets would carry off 5-6ths of those assets from the unsecured creditors. At all events, the liquidator was entitled to have authority to carry on the works, and to make the expenses a first charge on the unsecured assets.

Argued for the respondents—The liquidator had failed to show that it was necessary or highly expedient for the winding-up of the company that its business should be kept up for a time as a going concern, and so had failed to satisfy the conditions of sec. 95 of the Companies Act 1862. A continuance of the business with a view to reconstruction was not within that section—*Wreck Recovery Company*, 1880, 15 Ch. Div. 353. The liquidator did not express the view that the depression in the oil trade was merely temporary, or that there was a good prospect of a more favourable realisation if the works were carried on for six months, but only that there would be a chance of selling them as a going concern. No reasons had been given to found a belief that delay would result in a more favourable realisation of the assets. The advantage to be gained by delay was therefore purely speculative, and the fact that the majority of the debenture-holders and unsecured creditors were willing to enter on such a speculation was not to the point. The support given to the liquidator's scheme might in many cases be accounted for by the fact that the consenters were interested in keeping the company up as a going concern apart altogether from their interests as debenture-holders or creditors. The argument in favour of carrying on the works, so far as based on the recent expenditure on the works, had no special reference to realisation. At all events, a debenture-holder had a right to object to his position being prejudiced without his consent—*Regent's Canal Ironworks Company e. p. Grissel*, 1875, L.R., 3 Ch. Div. 411. What the liquidator asked for was a free hand to carry on the works for six months, or perhaps longer, with the result that an indefinite amount might be put as first charge upon the assets in the hands of the trustees for the debenture-holders.

At advising—

LORD PRESIDENT—We can only grant the prayer of the official liquidator in this note if we are satisfied that what he proposes is necessary for the beneficial winding-up of the company. Now, I quite accede to the view that the word "necessary" in the context is to be read in the sense explained by Lord Chief-Justice Thesiger in the well-known case which was cited in the course of the argument. That is to say, we are not put to the question whether any alternative is open, but rather to the question whether, to use his Lordship's language, there is "mercantile necessity" for the carrying on of the business which is proposed.

Now, when I turn to the statements made by the liquidator I find the essential propositions which he advances to be these—"At the present time the mineral oil trade in Scotland is subject to severe depression. In short, a state of crisis exists which renders such property as that belonging to the company unsaleable at the present time except at a ruinous sacrifice. In these circumstances the liquidator considers it of great importance that the mines and works of the company should be kept going for a time until it is seen whether a sale can be effected on favourable terms, or a suitable scheme of reconstruction can be carried through." Now these are the grounds stated in the note to the Court; but counsel for the liquidator has given us a fuller exposition of his views. He stated that the liquidator called a meeting of the debenture-holders, and that he there pointed out that the probable result upon the property of the company of an immediate stoppage of the works and mines would be the sale thereof as a broken-up concern, while, were he allowed to carry on for a time, and spend the comparatively small sum of money suggested by him, there would he thought be a chance of selling the works as a going concern.

Now, I was struck by the observation made by Mr Murray that the Court is not to dwell too much upon the very properly

guarded language that is employed by the official liquidator in discussing matters which are in the secret future. But at the same time—and all the more because we are dealing with a liquidator of such experience in these matters—I cannot avoid seeing that the liquidator has stated all that is to be said as to the prospects and probabilities of the condition of things, at the expiry of the time he desires, being different from what it is at present. And accordingly I am afraid we must take it that after the best advice he could get, after, as he says, he has obtained the opinions of a large number of persons conversant with such affairs and interested in them, he cannot say more about the probable state of matters at the end of six months than that by the efflux of that measure of time fuller opportunity will be given for seeing whether a sale can be effected on favourable terms, or a suitable scheme of reconstruction can be carried through.

I think, as regards the second of these alternatives, one is entitled to leave it out of account, because as the argument of the liquidator was developed it would rather appear that unless a scheme of reconstruction ends in an offer of purchase—that is to say, an offer for and sale by the liquidator—it is not different from any other sale which can be suggested.

Now, I observe there again that there is no suggestion or adumbration of any scheme which is in train or progress for the purchase of the concern. All that is said is—what is a somewhat obvious remark—that if you wait six months you will have six months' experience of seeing whether such a proposal will emerge.

But then it is necessary again to examine the statements of the liquidator to see what is meant by saying that a crisis exists rendering the property unsaleable except at a ruinous sacrifice. I am not tying the liquidator at all to what is necessarily matter of estimate or conjecture. In the view which he presents in the application it appears that he thinks that if there were a sale under those disastrous circumstances 8s. in the pound might be paid to the debenture-holders, and 4s. in the pound to the general body of creditors. He says—Better not encounter those evils which we know of, but rather wait six months to see whether things may not be better. "I give no opinion," he adds—I interpolate this into his statement, and I think it is the fair construction of it—"as to whether the chance is of things being worse or of being better." But there is more than that when we consider the proposal which is made. If it were merely a question of waiting and then resuming consideration of the liquidation with the same financial state as at the time when you began your postponement the proposal might be open to the same objection that the creditor is entitled to have the estate wound up at once, unless the carrying on of the business is necessary in the sense of the statute. But we find that while the liquidator points out that the expenditure in carrying on the business will necessarily be of a more or less indefinite amount, and will certainly be very considerable, he prefaces that by saying that in order to commence working he wants to spend a capital sum of between £2000 and £3000. That therefore is the proposal.

Now, I turn to the attitude of the creditors who object to this power being granted, and I do not leave out of account the fact that they are few in number and in value. They are certainly outnumbered and outborne in point of number and amount of debt by those who concur in the liquidator's proposal. But in the view which I take we have to satisfy ourselves of the nature of the proposal. Is it within the statute? Because if it is not within the statute, then the mere fact that the great majority of the debenture-holders and creditors wish it to be done cannot avail with us. We cannot extend the statute in order to gratify their wishes.

Now, I find the objectors, as represented by Mr Ure, say this. In the ordinary case, they say, of a liquidation, a creditor is entitled to have the estate forthwith liquidated and realised and the debts paid. Mr Ure says—I object, although I may be one against ten, to any such postponement as is proposed, that it is very much of the nature of a speculation; that there is, first of all, a capital sum of between £2000 and £3000 to be added to the debts of the company and put in front of me; and that after that is done additional expenditure will be necessary to keep the works going for six months, which will further add to the debts of the company, with the result merely that there is an indefinitely small chance of doing better with that expenditure than without it.

I cannot help thinking that the balance of the argument upon the statute is on the side of the objectors. It appears to me that the fact that a great number of gentlemen who have put money into this concern are willing to adventure more, does not avail in a question whether it is a legitimate step in the winding-up of this company that the business should be carried on upon the terms which I have stated. Therefore I am for refusing the note.

LORD ADAM concurred.

LORD M'LAREN—I also concur. I only wish to add that I am inclined to think that a power to carry on a going business with a view of ultimate realisation is not within the scope of the statutory powers for which the petitioner applies.

I concur with your Lordship that in this case the statement of the liquidator amounts to no more than the expression of a hope or a chance that things may be better six months hence than they are at present; and that that is not a sufficient reason for enforcing what is essentially more or less a matter of speculation upon dissentient debenture-holders. Upon that ground I agree that the petition should be refused.

LORD KINNEAR concurred.

The Court refused the note (so far as quoted above).

On 26th November the liquidator presented a note to the Lord Ordinary (STORMONTH DARLING), to whom the liquidation proceedings had been remitted, wherein he craved the Court to authorise him "to expose and offer for sale its" [the company's] "works and plant as a going concern on January 18th 1893, and for that purpose to sanction the liquidator carrying on the business of the company to that date, and for such further time as is necessary to convert into marketable commodities the oils, candles, and other products then in course of being manufactured; and also to pay out of the money from time to time in his hands the salaries, wages, and remuneration of the persons employed in the said business; and also all such outgoings, including rents, lordships, and taxes as may from time to time become due and payable in respect of the lands and others now in the occupation of the company."

In this note the liquidator, after referring to the previous application, and the interlocutor pronounced by the First Division therein, made the following statements—"Immediately after said interlocutor was pronounced the liquidator took steps with the view of realising the assets of the company in the way which is most likely to produce the best results consistent with following out the judgment of the Court. With this object in view the liquidator has arranged to expose the whole works belonging to the company, exclusive of Whinneyhall estate, but including a lease of the shale in Whinneyhall estate, and the leases which the company at present hold, to public roup and sale on January 18th 1893, and has had the same duly advertised. He considers it would be unwise to attempt to expose on an earlier date, as the time to elapse betwixt and the exposure is not longer than is necessary for the due advertisement thereof, and to allow intending purchasers time to make their arrangements. Of this date (November 21, 1892) a meeting of the committees of shareholders and creditors, called by the liquidator, was held in order to consider a report by the liquidator in regard to the immediate realisation of the assets of the company. At said meeting the report of the liquidator was fully considered, and it was explained by him in modification of it that unless the works and mines are kept going until they are exposed for sale, it will practically mean that they cannot be offered as going works, because although the works and pits might be kept in order at a weekly expenditure of £100 or £120, the dispersion of the miners and other workmen would take the subjects out of the category of going works. The liquidator further pointed out that it was not only very advisable that the works should be sold as going works, because, if so sold, a considerably larger price would be got than if they were sold off at break-up value, but that it is also very desirable that they should be sold as a going concern in order that the leases held by the company should be taken up by the purchaser, as if the leases have to be abandoned very considerable claims may arise at the instance of landlords in respect of fixed rents, and also in respect of keeping pits in order and clear of water, and restoration of ground. The liquidator further explained that there was a large quantity of oils, candles, and other products in different stages of manufacture, the sale of which in their present state would lead to great loss. The liquidator further explained that after consultation with the works manager of the company, he was of opinion that it would be cheaper to carry on the works and mines until they are exposed for sale than it would be to stop them and keep them in proper order until the exposure, and this without taking into account the advantage of being able to offer the works for sale as going works. After discussion the joint committees of shareholders and debenture-holders resolved (Mr Dawson alone dissenting) that they 'approve of the suggestion of the liquidator to expose the works not later than the middle of January, and to keep the same as a going work at the lowest possible cost, subject to the sanction of the Court, if the liquidator is advised that that is necessary.' The liquidator, in carrying out the proposed arrangements, intends so to arrange that in the event of the works not selling as a going concern at their exposure on January 18th 1893, he will be in a position to close the mines and pay off the miners on the following day, and to close the oil and candle works so soon as the materials in course of being manufactured are converted into marketable commodities, and he hereby undertakes to do so."

The application was opposed by Messrs Middleton & Kirkpatrick and Michael Dawson, who stated that the course proposed by the liquidator was a breach of the judgment of the First Division, that the scheme, though modified, was still a mere speculation, and that in addition to the working expenditure, large expenditure was necessary to put the works into working order, for which no return might be got.

The Lord Ordinary granted the prayer of the note, stating that he did so after consultation with the Judges of the First Division, who were of opinion that the authority craved should be granted.

Counsel for the Liquidator — Graham Murray, Q.C.—W. L. Mackenzie. Agents —Davidson & Syme, W.S.

Counsel for the Respondent Dawson — Ure. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for the Respondents Middleton & Kirkpatrick—Watt. Agents—Clark & Macdonald, S.S.C.