nothing was said against that proposal in the Outer House, I think it not unlikely that, apart from consent, expenses would not have been given in the Outer House to either party, and I am not aware of any rule or practice in our Courts that would oblige us to give expenses in this case. For these reasons therefore—though, of course, without very great confidence in my own opinion, since it differs from that of your Lordships—I must respectfully dissent from the order proposed.

LORD KINNEAR—I agree with your Lordship in the chair and with Lord Adam, and I confess I must agree with Lord Adam in thinking that in a question of this kind we ought to follow our own practice, not because I have any doubt that the practice of the English Courts may be extremely valuable and extremely well founded, but because it would be very dangerous to follow a practice with which we are so imperfectly acquainted, and as to which I say for myself that I know absolutely nothing whatever. I agree with the view that we must look at this case as an action by the pursuers for the purpose of attacking the will of Sir William Cunliffe Brooks. I do not think it is at all a litigation of the kind which arises from ambiguous testamentary disposition, or from any act which may well be ascribed to the testator. The attack is not suggested by any ambiguity in the document itself, nor does it arise from any ambiguity in his own conduct. His whole course of life was perfectly open and well known, and the difficulty arises merely in the application of general rules in the law of domicile to particular facts. If there be any difficulty in the exposition or application of the rules of domicile it is not one for which Sir William Brooks or his estate should be made responsible, and I therefore see no reason for departing from the general rule that expenses should follow the result.

Counsel for the *curator ad litem* moved for expenses out of the shares of the trust-estate falling to the minor children.

The Court pronounced this interlocutor:—

"The Lords having considered the reclaiming-note for the pursuer Dame Jane Davidson or Brooks against the interlocutor of Lord Low, dated 4th July 1901, and heard counsel for the parties, Adhere to the said interlocutor: Refuse the reclaiming-note, and decern: Find the *curator ad litem* to Ean Francis Cecil, Richard William Cecil, Edith Celendine Cecil, and Esterel Edith Philippa Louisa Tillard entitled to expenses, as between agent and client, out of the shares of the estate falling to be paid to them respectively: also Find the pursuer liable in additional expenses since the date of the interlocutor reclaimed against, and remit," &c.

A similar interlocutor was pronounced in Lady Huntly's action.

Counsel for the Pursuer, Lady Brooks—Dean of Faculty (Asher, K.C.)—Macphail. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Pursuer, Lady Huntly—Balfour. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Defenders—The Lord Advocate, K.C.—Shaw, K.C.—Cullen—Adam. Agents—J. & A. F. Adam, W.S.

Counsel for the Compearing Defender, Mrs Hawkshaw—Ewan Macpherson. Agents—J. & F. Anderson, W.S.

Counsel for the *Curator ad litem*—Pitman. Agents—J. & F. Anderson, W.S.

Tuesday, July 8.

SECOND DIVISION.

[Dean of Guild, Edinburgh.

SOMERVILLE *v.* DICK.

Burgh—Dean of Guild—Buildings—Internal Alterations—Alteration of Structure—Hatchway—Cutting of Joists—Necessity for Warrant—Edinburgh Municipal and Police Amendment Act 1891 (54 *and* 55 *Vict. cap.* cxxxvi.) *sec.* 59.

Held (*diss.* Lord Young) that the operation of cutting away part of the joists of a floor in a house for the purpose of making a hatchway was an "alteration of structure," for which a warrant from the Dean of Guild Court was required under the Edinburgh Municipal and Police Amendment Act 1891, section 59.

Burgh—Dean of Guild—Penalty—Technical Offence—Amount of Penalty.

A technical offence against the Edinburgh Municipal and Police Amendment Act 1891, section 59, having been committed by the carrying out of certain operations upon the floor and joists of a house without a warrant, in the erroneous but *bona fide* belief that such a warrant was not required, the Court on appeal, in view of the character of the offence, and of the fact that certain other items in his complaint had been ultimately abandoned by the Dean of Guild Court Procurator-Fiscal, *reduced* a penalty of £10 imposed by the Dean of Guild to the sum of one shilling.

Expenses—Dean of Guild Court—Petition Partially Abandoned by Procurator-Fiscal—Technical Offence—Sole Ground of Complaint Insisted in Taken only at Late Stage of Case.

A proprietor of subjects in Edinburgh who was making certain alterations on his premises made no application to the Dean of Guild Court for a warrant, being advised that no such warrant was required in the circumstances. After his operations had been practically completed he was served with a petition presented in the Dean of Guild Court by the Procurator-Fiscal

of Court, in which the petitioner craved interdict and the imposition of a fine, in respect of the proprietor having executed his operations without obtaining a warrant from the Dean of Guild. After a preliminary appeal, in consequence of which a proof was allowed and led, the Dean of Guild ordained the proprietor to apply for a warrant, and fined him £10. The proprietor appealed. The procurator-fiscal ultimately abandoned his contentions with regard to a great number of different operations of which he had complained as having been executed without a warrant, contrary to the Edinburgh Municipal and Police Amendment Act 1891, section 59, and in the end founded upon one operation only, as regards which the Court held that the proprietor had been guilty of a technical contravention of the Act, committed in the erroneous but *bona fide* belief that a warrant for this particular operation was not required. This operation had been founded on only at a late stage of the case. The Court, in addition to finding the proprietor entitled to expenses up to the date of the interlocutor in the preliminary appeal, *found* him entitled to expenses modified to two-thirds since that date.

This was an appeal against an interlocutor pronounced by the Dean of Guild of Edinburgh in a petition at the instance of George Somerville, Procurator-Fiscal of Court, petitioner and respondent in the appeal, against Adam Dick, solicitor, Dundas Street, Edinburgh, respondent and appellant, in which the petitioner craved the Court, *inter alia*, to fine and amerciate Dick in a sum not exceeding £25 for having proceeded to execute certain operations upon a house belonging to him, No. 12 Gayfield Square, Edinburgh, without applying for and obtaining a warrant from the Dean of Guild, contrary to section 59 of the Edinburgh Municipal and Police Amendment Act 1891.

Dick admitted that he had executed certain operations in the house referred to, and that he had not applied for a Dean of Guild warrant, but maintained that no warrant was required to entitle him to carry out these operations

Ultimately the only question on the merits came to be whether the operation of making a hatchway in the floor of the street floor of the house was "an alteration of structure" within the meaning of the Edinburgh Municipal and Police Amendment Act 1891, section 59, and therefore an operation for which a Dean of Guild Court warrant was required.

In carrying out the operation in question it was necessary to cut two of the joists of the floor of the street floor, to remove part of each of these joists permanently, and to bridle the joists at the points where they were cut away.

The petitioner had founded upon a number of other operations as having been illegally executed without a warrant, but he ultimately, either at the proof before the Dean of Guild or at the hearing in the present appeal, abandoned his contentions with regard to them and insisted in his contentions with regard to the hatchway only. This point had only been taken at a late stage of the procedure before the Dean of Guild. The petition was not presented until the operations complained of were practically completed.

The Edinburgh Municipal and Police Amendment Act 1891, section 59, enacts as follows:—"Every person who shall erect or begin to erect any house or building, or alter the structure of any existing house or building, or use for human habitation any building not previously so used, or alter the mode of occupancy of any existing house in such a manner as will increase the number of separate houses or occupiers without a warrant, or otherwise than in conformity with a warrant of the Dean of Guild Court, and every person who shall, in the erection or alteration of any house or building, the erection or alteration of which has been sanctioned by the Dean of Guild Court, deviate from the plan or plans, and section or sections, elevation or elevations, and detailed drawings so sanctioned, or shall in the erection or alteration of any house or building in any way contravene the building rules of this Act, shall be liable to a penalty not exceeding twenty-five pounds, besides being bound, if and in so far as required by the Dean of Guild Court, to take down or remove the said house or building, or to restore it to the state it was in previous to the alterations thereon, or to alter it in such a way as the Dean of Guild Court shall direct, so as to make it in conformity with the warrant of the Dean of Guild Court; and the Dean of Guild Court may grant an interdict for the prevention of any such erection or alteration or deviation being proceeded with until the extracted warrant of the Court shall be obtained for the same."

By interlocutor dated 1st August 1901 the Dean of Guild, after visiting the premises, found that the appellant had contravened section 59 of the said Act, and interdicted him from proceeding further with his operations until he had obtained a warrant to do so.

Dick having declined to apply for a warrant, and having continued his operations, the Dean of Guild, by interlocutor dated 29th August 1901, fined him £10 for having proceeded with the operations without any warrant, and ordained him within twenty-one days to restore the house to the state in which it originally was.

Dick appealed, and on 23rd January 1902 the Second Division recalled the Dean of Guild's interlocutor of 1st August 1901, and the subsequent interlocutors, and remitted to him to proceed, reserving the question of expenses.

The Dean of Guild allowed the parties a proof of their averments, and thereafter on 1st May 1902 pronounced the following interlocutor:—"Repels the whole pleas-in-law for the respondent: Finds that the respondent has, without any warrant of Court and in contravention of the Edin-

burgh Municipal and Police Amendment Act 1891, section 59, altered the structure of the house at 12 Gayfield Square, Edinburgh, by cutting the joists of the floor on the street floor of the said house at the point marked Q on the plan No. 60 of process, and by forming a hatchway at the said point—[*Then followed a finding with regard to matters, the contention of the Procurator-Fiscal in regard to which was ultimately abandoned*]: Therefore sustains the pleas-in-law for the petitioner: Ordains the respondent to apply for a warrant of Court for the said operations: Fines and amerciates the said respondent in the sum of Ten pounds (£10) sterling, payable to the Procurator-Fiscal of Court for the public interest: Finds the respondent liable in expenses," &c

Note.— . . . "The other operations in respect of which the Procurator-Fiscal ultimately asked a conviction are in a different position. It is proved that without warrant of Court the respondent formed a hatchway at the point marked Q on the street floor plan No. 60 of process. To form this hatchway the respondent cut out considerable pieces of several of the joists, and had to bridle the joists at the points where they were cut away. The Court is of opinion that such an operation is essentially a structural alteration, and if not carried out with care may affect the stability of the building. While a mere alteration on the flooring of a house might fall within the rule laid down in *Macgregor* v. *Somerville*, an operation such as was carried out in this case on the joists of a floor cannot fall within that rule. The joists are an essential part of the structure of the building, and an interference with them by cutting part of them away is an operation of a delicate nature. . . .

"With regard to the penalty to be imposed upon the respondent, the Court has been guided by two considerations. The first is that the operations for carrying out which without warrant it has convicted the respondent were operations for the like of which warrants are always applied for in Edinburgh. It is most necessary in the public interest that such operations should not be carried out without warrants, and if the respondent did not himself know that a warrant was necessary, the Court would expect that any competent tradesman employed to carry out the work would have informed the respondent that it was necessary to have a warrant. The second reason is that the respondent appears to have known that it was necessary to get a warrant at anyrate for the operations at the cellar and the gangway*, as he himself applied for a warrant for the re-erection of the side wall separating his back area from the side street. The operation on this wall was necessarily one open to public view, whereas it is in evidence that the operations for which the respondent is now being convicted were not open to public view, and might never have been discovered if an officer from the Master of Works had not required to visit the premises in connection with an application by the respondent for warrant to erect buildings of large size on the back area."

Mr Dick appealed, and argued that the operations were not of such a kind as to require a warrant.

Counsel for the Procurator-Fiscal thereupon intimated that he did not insist in his contention *quoad* any of the operations except the alterations involved in the construction of the hatchway.

Argued for the appellant—The alterations on the floor of the house necessitated by the insertion of the hatchway did not require a warrant, and consequently he had not contravened section 59 of the Edinburgh Municipal and Police Amendment Act of 1891. The Act only applied to operations which would affect the stability of the structure. The operations in question had not been proved to affect the stability of the structure, and that was the criterion as to whether a warrant was necessary or not—*Somerville* v. *M'Gregor*, November 7, 1889, 17 R. 46, 27 S.L.R. 52.

Argued for the respondent—The evidence showed that the alterations would affect the stability of the structure, and therefore the conviction should stand.

At advising—

LORD JUSTICE-CLERK—In this case when formerly before us we thought it right to remit it back to the Dean of Guild Court, not being satisfied with the judgment which the Dean of Guild had pronounced, and I see nothing that has occurred since, and we have heard nothing in the debate, to lead to any other conclusion than that the Procurator-Fiscal of the Dean of Guild Court was wrong in his proceedings up to that stage. I do not go into details, but simply say he was wrong up to that time.

The case has come before us again, and it is now limited down to this—whether or not the making of this hatchway, which involved the cutting through of two or more beams in the ceiling of the ground floor, was an operation or alteration which required that the Dean of Guild should have the matter laid before him, being an alteration of structure. Now, in such a matter of fact as the question whether it is an alteration of the structure or not, the decision on fact must be based very much on the view one takes of what is a structural part of a building, and I hold that the joisting which supports a floor and which forms part of the ceiling of rooms is a part of the structure, and that one cannot interfere with that in the way of removing any parts of the joisting permanently—which was done in this case—and substituting something else in the way of supports, than a continuous joist from side to side, without making any alteration of the structure. I think it is extremely probable that this particular operation was one in which any great risk was not to be anticipated, and probably one which might very well have

*Counsel for the Procurator-Fiscal ultimately abandoned the contention that a warrant was required for these operations.

been left in ordinary circumstances to a respectable tradesman to carry out, but technically I think it was an alteration of the structure, and therefore technically it required that the Dean of Guild should be satisfied before it was carried out. That being so, the appellant here has been wrong to that extent. But then there is this remarkable circumstance, that this being an application by the Procurator-Fiscal of the Dean of Guild Court against the appellant, this question about the hatchway does not turn up until very late in the proceedings, and is not a matter which the Procurator-Fiscal founded on in the first instance at all as constituting a breach of the obligation of the appellant under the statute. It turns up very late in this case, and one cannot help supposing that if it had been pointed out that this particular matter was a matter affecting the structure the procedure of the appellant might have been quite different. We do not know, but at all events it was not until very late that any such question was raised, and it is not a matter which is really stated in the grounds of the petition at all. Holding, as I do, that the appellant was technically wrong in not making that application, I think that he must be held to have been wrong in this particular. On the other hand, I think that in all the circumstances the fine imposed by the Dean of Guild was unreasonable, and I think the fine in such a case should be purely nominal, settling the point in regard to the particular matter of fact under investigation—settling that such an alteration as that ought not to be made without application to the Court, and that anyone doing so without making application is in fault. I think a nominal fine sufficient to meet that.

But then comes what is really the important question in this case, namely, expenses. Now, I think the Procurator-Fiscal of the Dean of Guild Court was entirely wrong up till the time when we decided the case then before us, and therefore I think that the appellant in this case is entitled to his expenses up till the date of our pronouncing the interlocutor which we did, sending the case back. In regard to the subsequent expenses which have been incurred, and the matter of which formed the subject of the subsequent appeal, I think, looking to the fact I have just stated—that this was never made one of the points by the Dean of Guild till the very end of the case—that the appellant is entitled to some expenses, but as he was technically wrong I think the expenses he is entitled to should be subject to modification. I therefore propose a nominal fine, fining him a shilling, and finding him entitled to expenses up to and including the date of the last interlocutor, and also entitled to expenses subject to modification since that date.

LORD YOUNG—The interest of this case has been reduced to an expression of our opinion, which I am sorry to think is not unanimous, upon the question of whether the construction of such a hatchway as this is an alteration of the structure of the house requiring an application to and warrant from the Dean of Guild before it is proceeded with. Upon every matter to which your Lordship has referred, with the exception of that question, I agree with what your Lordship has said. With regard to the complaint as it was presented by the Procurator-Fiscal, and as it was before us formerly on the Dean of Guild's judgment thereon, I entirely agree with your Lordship. I think that the Procurator-Fiscal before the Dean of Guild and the Dean of Guild in dealing with the prosecution were entirely wrong, and while I sympathise a good deal with observations that have been made that the Dean of Guild and his officials were irritated by certain very irritating letters which were written by the agent for the appellant here, I think that their proceedings were not at all warrantable, were contrary to the law which governs their duty, and I therefore agree with your Lordship that expenses incurred up to the date of our interlocutor remitting the case back should be given to the appellant.

This question of the hatchway is undoubtedly a very narrow question, and admits of very subtle argument on both sides. The question is, whether the hatchway which requires the cutting apart of a beam and the substitution of another form of support, is an alteration of the structure of the house? I think I quite fairly represent this as a question upon which there may legitimately be a difference of opinion. I think that the bulk of the evidence of experts in building operations is in favour of the view—which is certainly mine—that this alteration is not an alteration of the structure of the house. It was, I think, conceded, but whether conceded or not, it is I think clear, that to take out a beam which is worn out, or for any other reason, and supply its place with another beam is not an alteration of the structure. I think that it would be contrary to the common meaning of language to say that the structure of a house had been altered by the substitution of one beam for another in exactly the same place. Yet if you interpret these words literally, proceeding upon this as a foundation, that a beam is part of the structure, it is altered by taking it out and substituting another. Literally the language is satisfied, but I think there will be a unanimity of opinion—indeed, as I have observed, it was conceded—that the meaning of the words as used in the Act would not be at all satisfied by the mere substitution of one beam for another placed in the same position. The Dean of Guild has to do with the structure of the buildings only because he is entrusted with the safety of the public and the neighbours. There is no other reason for the Dean of Guild's interference. There is no difference between a burgh, a town, and the country—as remote from the town as you please—in regard to buildings, except that in a town it has been thought necessary — those responsible for the law have thought it necessary and proper in the interests of

the public—to see that buildings are not erected which would endanger the public or encroach upon public streets or upon the ground of adjoining neighbours. The Dean of Guild has to see to that, and by very recent legislation he is also entrusted with seeing that the building is erected with due regard to sanitation. Now, an alteration of the structure must, I think, mean an alteration affecting the safety of the public or exposing the public to danger in a manner that the unaltered structure did not. Suppose you extend a drawing-room window by doing, what is very common in Edinburgh, bringing the window down to the floor, does that require a plan and an application to the Dean of Guild? I think not. I do not give much weight to practice, because the Dean of Guild sometimes insists on an application being made, and there is apt to be yielding in such cases as the least troublesome thing to do. But I cannot regard the lowering of a window as an alteration of the structure within the meaning of the Act. Or take the case of the alteration of a chimneypiece. The chimney and the chimneypiece are parts of the structure of a room, and a room is part of the building. May you not alter your chimneypiece to make it fit a new grate which you wish to put into your room—may you not alter the chimneypiece for this purpose without going to the Dean of Guild with plans and asking for a warrant? I think you may. I do not think you require to go to the Dean of Guild in such a case. But I do not want to press the matter further than this, namely, to indicate my own opinion, which is pretty distinct, that this cutting of the beam is not an alteration of the structure within the meaning of the clause in the Act, for the performance of which a proprietor however honest will incur a penalty if he has not presented a plan and got a warrant from the Dean of Guild. He may even be ordered—for the statute says so if there is an alteration of the structure—to undo the whole thing and apply for a warrant to do it all over again. I cannot think that this is a reasonable view. But we are now going to determine by a majority, in a Court consisting of three Judges, that the right view is, that if a party has honestly acted on the view which I have just stated is my view, he might yet have been subjected to a penalty under the penal clause of an Act of Parliament. That is a result in which I cannot concur. I think that there was an honest proceeding here—it may be upon a doubtful matter—and that a penalty was not thereby incurred. Even though it should be unanimously decided that technically a penalty has been incurred, I think that a penalty of one shilling should be imposed in order to mark an illegal proceeding.

With that explanation of my views as to altering the structure of the building I concur in the judgment which your Lordship proposes as to the expenses of the case.

LORD TRAYNER—I have not felt this case as being attended with very much difficulty, notwithstanding that there must be some difficulty in it since there has been a difference of opinion expressed on the Bench regarding it. The statute says that where there is to be any alteration of the structure of a building it shall be preceded by an application to the Dean of Guild Court to authorise it. In this case certain operations were performed upon a building for which no authority from the Dean of Guild was got or asked; and the question therefore is, whether the appellant was right or wrong in doing what he did without first making the application to the Dean of Guild which the statute prescribes. The question narrows itself down to this, whether what he did was an "alteration of the structure." Now I am not prepared to press counsel on either side for a definition of these words. I think it is for us to construe them, and to construe them according to the fair and ordinary meaning of the language which the statute uses. Many a hatchway may be made—I can conceive it possible—without at all altering the structure; but the question is whether this operation was one which resulted in an alteration of the structure. Now it was not made and apparently could not have been made without cutting away two joists, and I cannot have any doubt that the joists of buildings are part of the structure as much as the wall which they support or bind and the floor which they support. I would not listen to anybody who said that the joists in a house were not part of the structure. Well then, if they were part of the structure, were they altered? Now, I think it might be a very nice question whether, if a man cut out a joist which was decayed and put in another which was not decayed, that would be an alteration of the structure. Some people would think it was. Some people would think it was not. But I entertain no doubt on the question that if a man cuts away joists in a house and does not replace them he is altering the structure. Now, that is what was done here. The Dean of Guild takes the position that such an alteration as that cannot be performed without his authority, and I should be sorry to say anything to derogate from the authority or impinge upon the jurisdiction of the Dean of Guild. His office is a most important one, and I should certainly not do anything to interfere with the due exercise of his powers. If the appellant had been entitled to cut away two joists of the house without authority, why not cut away half-a-dozen or the whole? I could quite understand that an operation of that kind might be made vastly dangerous to adjoining properties or to tenants on the floor above that on which the operation was performed. I agree with your Lordship in the chair that this was an alteration of structure for which the appellant ought to have applied and obtained the authority of the Dean of Guild, and having failed in that respect, I think our judgment of his having done wrong must be marked by the imposition of a fine, but that fine I agree with your Lordship ought to be merely

nominal. I believe the appellant here was acting with perfect good faith, and that he did not abstain from going to the Dean of Guild for any other reason than that he believed it was a case in which there was no necessity under the statute for doing so. On the question of expenses I entirely agree with what your Lordships have said, and have nothing to add.

LORD MONCREIFF was absent.

On 4th June 1902 the Court pronounced the following interlocutor:—

"Dismiss the appeal: Find the appellant has without any warrant of the Dean of Guild Court, and in contravention of the Edinburgh Municipal and Police (Amendment) Act 1891, section 59, altered the structure of the house at 12 Gayfield Square, Edinburgh, by cutting the joists of the floor on the street floor of the said house at the point marked Q on the plan No. 60 of process —[*Then followed a finding in favour of the appellant with reference to the points which had been given up by the Procurator-Fiscal of the Dean of Guild Court*] —Modify the amount in which the appellant was fined and amerciated by the Dean of Guild, viz., £10, to the sum of one shilling, for which sum decern against the appellant for payment to the petitioner: Find the appellant entitled to expenses up to and including the 23rd January 1902, and to the subsequent expenses subject to modification: Remit to the Auditor to tax the said expenses and to report: Recal the said interlocutor of 1st May 1902 so far as it finds the respondent Adam Dick liable in expenses, and decern."

On 8th July 1902 the Court pronounced an interlocutor approving of the Auditor's report on the appellant's account of expenses, and with regard to the expenses to which the appellant had been found entitled subject to modification, fixing the modication at two-thirds of these expenses as taxed.

Counsel for the Respondent and Appellant—Clyde, K.C.—A. M. Anderson. Agent —W. R. Mackersy, W.S.

Counsel for the Petitioner and Respondent—Mackenzie, K.C.—Deas. Agents — Graham, Johnston, & Fleming, W.S.

Thursday, October 24, 1901.

OUTER HOUSE.

[Lord Kyllachy.

CRESSWELL RANCHE AND CATTLE COMPANY, LIMITED *v.* BALFOUR MELVILLE.

Bankruptcy — Discharge — Effect of Discharge—Liability of Shareholder in Company for Calls Made Subsequent to His Discharge in Bankruptcy — Deed of Arrangement — Company — Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *secs.* 35, 36, 37, 38, 52, 53, 126, 129, 137, 146, *and* 147.

The holder of four hundred £5 shares in a company was sequestrated on 14th December 1894. He was discharged and reinstated in his estate on 17th December 1895 under a deed of arrangement—the discharge being of all debts and obligations contracted by him or for which he was liable at the date of the sequestration. In the beginning of May 1894 the shares were paid up to the extent of £3 per share, there being a liability of £2 per share. Calls each of 5s. per share were made by the company on 31st May 1894 and 9th January 1895, respectively, and the company received dividends in respect of these calls from the trustee under the deed of arrangement. A call of 5s. per share was made by the company on 30th December 1895, and — the company having meantime gone into liquidation —a further call of 25s. per share was made by the liquidator of the company on 22nd May 1896. Nothing was received by the company or its liquidator in respect of the shares in question under the last-mentioned calls. In an action brought by the company—its liquidation having been stayed in February 1901—against the shareholder for payment of the two calls last mentioned, the shareholder pleaded that the claim was excluded by his discharge. *Held*, that as there was no obstacle to the company claiming and obaining a ranking on the shareholder's estate for the amount uncalled on the shares held by him at the date of the sequestration, either in the sequestration or under the deed of arrangement by which the sequestration was superseded, the company's claim was excluded by the discharge obtained by the shareholder, and the shareholder was entitled to decree of *absolvitor*.

The Cresswell Ranche and Cattle Company Limited brought an action against James Heriot Balfour Melville, Writer to the Signet, Edinburgh, concluding for payment of (first) £100 sterling, with interest at the rate of 10 per cent. on the said sum from February 28, 1896, and (second) £500 sterling, with interest at the rate of 5 per cent. on the said sum from June 15, 1896.