The defender reclaimed, and argued—There had been no change in the circumstances, and the pursuer had accordingly no right to sue the defender. The pursuer had not paid or been called upon to pay any sum to the bank, and the defender was quite solvent. There were only three sets of circumstances under which a cautioner might take proceedings against the principal debtor to protect himself without having paid or been sued for payment. These were (1) when the debtor was expressly bound to deliver to the cautioner his obligation cancelled; (2) when the debtor was *vergens ad inopiam;* and (3) when the date of payment was shifted by the debtor from day to day—Ersk. Inst. iii. 3, 65. None of these circumstances occurred here; the pursuer had not paid and had not been threatened with distress. He ought first to have himself demanded a discharge or relief from the bank—*Spence* v. *Brownlee*, December 13, 1834, 13 S. 199; *Murray* v. *Hogarth*, February 12, 1835, 13 S. 453. There was certainly no ground for the pursuer obtaining such an order as he asked for.

Counsel for the respondent were not called upon.

LORD PRESIDENT—It does not appear to me that there can be any doubt that the judgment of the Lord Ordinary is right.

The pursuer became, under a letter of guarantee dated 15th November 1898, a guarantor to the Bank of Scotland for payment of all sums for which the defenders might become liable to the bank up to the amount of £6500. The letter contains no stipulation that the guarantee is to remain in force for any specified period. On the contrary, the letter bears that "this guarantee is to remain in force until recalled by us or our heirs or executors in writing." I think that implies a right to terminate the guarantee at any time, or at anyrate at any time upon reasonable notice. The sum of money covered by the guarantee was practically drawn out by the 7th August 1901. Even before that date the pursuer appears to have desired that his liability should be terminated, and his solicitor on 4th March 1901 wrote to the defender that he desired that his name should be removed from the cash-credit bond by 15th May then next. It is not, however, necessary to decide whether this was too short a notice, but however this may be, it appears to me that by the end of August 1901 it could not be said that the revocation was unreasonably soon. Fifteen or sixteen months have since elapsed without the defender having done anything to release the pursuer from his liability. It appears to me that, looking to the terms of the letter of guarantee and to the time that has elapsed especially since the demand for relief from liability under it was made, the pursuer is entitled to the decree which the Lord Ordinary has pronounced.

LORD KINNEAR—Mr Dewar, as I understood, conceded that the pursuer is now entitled to terminate his obligation as cautioner, and that being entitled to bring it to an end he is also entitled to be relieved of the liability already attaching to it, but he maintained that the pursuer is not entitled to be relieved in the way proposed. I think that there might have been very considerable force in that argument at an earlier stage of the proceedings, and that the Lord Ordinary was right in giving the defender time. But that put on the defender the duty of procuring a discharge of the pursuer from the bank under any arrangement he could make with which the bank might be satisfied. He has failed, however, to make any such arrangement, and accordingly the pursuer now says, "If you don't relieve me in any other way, you must procure a discharge from the bank by paying the debt; but at all events you must procure a discharge." I agree that in these circumstances the judgment of the Lord Ordinary should be affirmed.

LORD ADAM concurred.

LORD M'LAREN was absent.

The Court adhered.

Counsel for the Pursuer — Campbell, K.C. — Sandeman. Agents — Galloway & Davidson, S.S.C.

Counsel for the Defender — Salvesen, K.C.—Dewar. Agents — Menzies, Bruce-Low, & Thomson, W.S.

Thursday, January 8.

FIRST DIVISION.

[Lord Low, Ordinary.

AITCHISON & SONS, LIMITED *v.* M'EWAN.

Process — Diligence for Recovery of Documents — Action by Company against Shareholders — Jury Trial — Slander — Books of Company.

A company raised an action of damages against certain of its shareholders for alleged slanders contained in a petition for judicial liquidation of the company, in which the defenders had averred that the company "was hopelessly insolvent." The pursuers obtained an issue. There was no counter issue of *veritas.* The defenders moved for a diligence for recovery of, *inter alia*, the books of the pursuers. The Court *granted* the diligence, on the ground that the books might be material in respect to the question of the amount of damages, but intimated that they were not to be used for any other purpose.

An action was raised by Aitchison & Sons, Limited, Queen Street, Edinburgh, against John M'Ewan and others, shareholders of the company, concluding for payment of £5000 as damages.

The pursuers averred that the defenders had wrongfully and without any ground presented a petition in March 1902 for the judicial liquidation of the pursuers, in which they had slandered the pursuers by stating that they were "hopelessly insolvent," and that "their business in Queen Street is also unsuccessful and has earned no profit."

They further averred that their business had been greatly injured by these slanderous statements.

The pursuers were granted two issues, of which the second was "Whether the statements," quoted above, "falsely, calumniously, and maliciously state that the pursuers were insolvent," to their damage.

The defenders did not ask for a counter issue of *veritas*.

The defenders moved for a diligence to recover, *inter alia*, "The whole business books of the pursuers, including cash books, cash ledgers, sales books, bank pass books, letter books,and other books for the period from 12th May 1894 to 7th July 1902, that excerpts may be taken therefrom at the sight of the Commissioner of all entries therein relating to the matters referred to in the record."

The pursuers opposed the motion, on the the ground that the books would not be relevant to the matter covered by their issue, and that the defenders had taken no counter issue of *veritas*.

The defenders maintained that, as shareholders of the company, they were entitled to recover the books for any purpose, and that in any event they might use them with reference to the amount of damages.

LORD PRESIDENT—We think that this diligence should be granted for recovery of the books specified in article 1 on one ground only, viz., that these books might be material with reference to the question of the amount of damages. If at the trial it is proposed to use them for any other purpose, it will be for the presiding judge to see that they are not so used.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"The Lords grant diligence against havers at the instance of the defenders for the recovery of the documents in their specification No. 31 of process (as amended at the Bar); grant commission to Mr W. Æ. Mackintosh, advocate, to take the oaths and examinations of the havers and receive their exhibits and productions, to be reported *quam primum*."

Counsel for Pursuers — W. Hunter — Wilton. Agent—W. Marshall Henderson, S.S.C.

Counsel for Defenders—Wilson, K.C.—T. B. Morison. Agents—Adamson, Gulland, & Stuart, S.S.C.

Friday, January 9.

SECOND DIVISION.

[Dean of Guild Court, Glasgow.

RENWICK *v.* NEILSON.

Burgh—Dean of Guild—Street—Powers of Corporation—Alteration of Line of Footpath — Glasgow Building Regulations Act 1900 (63 *and* 64 *Vict. c. cl.*), *sec.* 25 *—Improvement of Footpath or Street—Compensation.*

By section 25 of the Glasgow Building Regulations Act 1900 it is provided that "in order to secure as far as possible a regular line and satisfactory width and level for the footpaths in any street," the Corporation may, after notice to the person responsible for the maintenance of the footpath, "alter the line and level of the footpath, increase or lessen the width thereof, and carry out such other operations as may be necessary or desirable for the improvement of the footpath or street."

In 1899 a builder purchased a block of buildings extending for 300 feet along one side of a street in Glasgow, made certain alterations on the buildings, and added to the existing footpath of 8 feet in width a plot of ground 10 feet in width in front of the buildings, thus increasing the width of the footpath to 18 feet.

In 1900 the Corporation of Glasgow resolved that the street would be improved by taking a strip of 6 feet in width off this footpath and adding it to the carriageway, thus reducing the width of the pavement to 12 feet and increasing the width of the carriageway from the centre of the road to the edge of the pavement to 18 feet.

Held that in virtue of the provisions of section 25 the Corporation were entitled to lessen the width of the footpath in the manner proposed without paying any compensation to the builder.

By section 25 of the Glasgow Building Regulations Act 1900 it is enacted:—"In order to secure, as far as possible, a regular line and satisfactory width and level for the footpaths in any street, the Corporation may, after notice by the Master of Works to the person responsible for the maintenance of such footpath, or the part thereof affected, alter the line and level of the footpath, increase or lessen the width thereof, and carry out such other operations thereon as may be necessary or desirable for the improvement of the footpath or street; and thereafter such footpath, when so altered or widened, shall be subject to the provisions of the Police Acts. The compensation, if any, to be paid to such person in respect of damage, if any, done to his property by any alteration of level of footpath shall, whatever be the amount claimed, be settled by the Sheriff in manner provided by sections 21 and 22