and now stands as if the first section of that Act of Sederunt were printed *in gremio* of it instead of its own section 27. Under the proviso of that section the direction to lodge issues is not made peremptory with a rigid sanction. It therefore remains a matter in the discretion of the judge whether he will allow the excuse for the issues not being lodged in due time. Had the Lord Ordinary considered himself free, I do not doubt that in this case he would have allowed the issues to be held as timeously lodged.

The interlocutor reclaimed against must therefore be recalled and the case remitted to the Lord Ordinary to allow issues to be adjusted—the expenses of the reclaiming note to be expenses of the cause.

LORD KINNEAR—I agree.

LORD JOHNSTON—I also agree.

LORD SALVESEN—I agree. It follows from what your Lordships have held that where the Act of Sederunt of 10th March 1870 has been infringed by issues not having been timeously lodged, the Lord Ordinary has a discretion as to further procedure, and is not bound as under the previous practice to dismiss the action. No doubt he will exercise that discretion according to circumstances; but I should like to say that where an honest mistake has been made by the one side and no prejudice is being suffered by the other, that the discretion ought generally to be exercised so as to permit of the action being proceeded with.

The Court remitted the cause to the Lord Ordinary in order that he should allow issues to be adjusted.

Counsel for the Pursuer and Reclaimer—D. P. Fleming. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defender and Respondent—A. A. Fraser. Agent—James G. Bryson, Solicitor.

Saturday, October 15.

FIRST DIVISION.

(SINGLE BILLS.)

EADIE, PETITIONER.

SEAFIELD PRESERVE COMPANY, LIMITED, PETITIONERS.

Company—Liquidation—Expenses—Petition for Judicial Winding-up Followed by Petition for Supervision Order instead of a Note.

When a petition is already in Court for the judicial winding-up of a company, and thereafter the company resolves to wind itself up and obtain the supervision of the Court, it should for this purpose present a note in the petition already before the Court and not a new petition.

When a new petition was presented the company was found entitled only to such expenses as would have been incurred by it had a note been presented.

On 19th July 1910 Andrew Morrison Eadie presented a petition for the judicial winding-up of the Seafield Preserve Company, Limited, in which he was a shareholder, and suggested Robert Archibald Craig, C.A., as liquidator.

On 20th July 1910 an extraordinary general meeting of the shareholders of the company was held, when the following extraordinary resolutions were unanimously adopted—"That it has been proved to the satisfaction of the company that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same, and that the same be wound up accordingly." "That Charles John Munro, chartered accountant, Edinburgh, be and is hereby appointed liquidator for the purpose of winding-up, and that the liquidator be instructed to take the necessary steps for having the liquidation placed under the supervision of the Court."

On 21st July the company and the liquidator thereof presented a petition for a supervision order.

LORD PRESIDENT—Two petitions have been presented with regard to the winding-up of this company, one by a shareholder and the other by the company. The shareholder presented his petition on 19th July, and the crave of that petition is that the company should be wound up by the Court. On 21st July the company presented a petition on its own behalf craving that the voluntary winding-up resolved on at a meeting of the Company should be continued under the supervision of the Court; and it subsequently lodged answers in the other petition.

We shall dispose of the matter in this way. We shall order the company to be wound up under the supervision of the Court, as craved in the company's petition, but we shall make the order, not in that petition, but in the shareholder's petition, as it was first presented, and we shall find the petitioner entitled to expenses. That will make it unnecessary for us to deal with the company's petition except as to the crave for expenses, and in that matter we shall allow the company its expenses, but limited to those only which would have been incurred had the company lodged a note in the shareholder's petition, for that was the course which the company should have taken, and there was no necessity for its presenting a separate petition.

LORD KINNEAR, LORD JOHNSTON, and LORD SALVESEN concurred.

The Court pronounced these interlocutors in the respective petitions:—

". . . Order that the voluntary winding up of the Seafield Preserve Company, Limited, resolved on at an extraordinary general meeting held

on 2nd July 1910, be continued, but subject to the supervision of the Court: Confirm the appointment of Charles John Munro, C.A., as liquidator of such company, in terms of and with all the powers conferred by the Companies (Consolidation) Act 1908: Find the petitioner entitled to expenses as these may be taxed by the Auditor, to whom remit the account for taxation; direct these expenses to be chargeable against the liquidation, and decern."

". . . In respect of the supervision order granted of this date in the petition at the instance of Andrew Morrison Eadie for winding up of the Seafield Preserve Company, Limited, find it unnecessary to dispose of the petition except in so far as it craves expenses: Find the petitioners entitled to expenses, but only such as would have been incurred by them had a note been presented in the said application for winding up instead of a petition being presented to the Court; remit to the Auditor for taxation, and declare these expenses to be chargeable against the liquidation."

Counsel for the Petitioner Eadie—J. G. Jameson. Agent—Malcolm Graham Yool, S.S.C.

Counsel for the Petitioners the Seafield Preserve Company, Limited, and the Liquidator thereof—Mair. Agents—Garden & Robertson, S.S.C.

Thursday, October 20.

FIRST DIVISION.

(SINGLE BILLS).

SCRYMGEOUR WEDDERBURN, PETITIONER.

(See *ante*, in the House of Lords April 7, 1910, 47 S.L.R. 532; in the Court of Session July 18, 1908, 45 S.L.R. 949, and 1908 S.C. 1237.)

Expenses—Taxation—General Finding for Expenses—"Particular Part or Branch of the Litigation" — Disallowance by Auditor of Expenses Connected with Preliminary Pleas—Act of Sederunt 15th July 1876*—General Regulations, Art. V.*

Article V of the General Regulations as to the taxation of judicial accounts appended to the Act of Sederunt of 15th July 1876 enacts—"Notwithstanding that a party shall be found entitled to expenses generally, yet if, on the taxation of the account it shall appear that there is any particular part or branch of the litigation in which such party has proved unsuccessful, or that any part of the expense has been occasioned through his own fault, he shall not be allowed the expense of such parts or branches of the proceedings."

In an action of declarator the Lord Ordinary repelled the defender's preliminary pleas of incompetency, *res judicata*, and no jurisdiction, and appointed the cause to be put to the roll for further hearing. The action was ultimately decided in favour of the defender, who was found entitled to expenses generally. The defender objected to the Auditor's report on the ground that he had disallowed the expenses connected with his, the defender's, preliminary pleas.

The Court *sustained* the objection, *holding* that the preliminary pleas were not a separate part or branch of the case in the sense of Article V of the General Regulations appended to the Act of Sederunt of 15th July 1876.

On 28th April 1902 the Right Honourable Frederick Henry Earl of Lauderdale brought an action against Henry Scrymgeour Wedderburn Esquire of Wedderburn, and another, for declarator that he was entitled to the office of Hereditary Standard Bearer of Scotland. Mr Wedderburn lodged defences, in which he pleaded, *inter alia*, (1) the action is incompetent, (2) *res judicata*, and (3) no jurisdiction.

On 13th December 1902 Lord Kyllachy (Ordinary), after a hearing in the Procedure Roll, repelled the first, second, and third pleas-in-law for the defender, and appointed the cause to be put to the roll for further procedure. Thereafter, on 4th December 1903, his Lordship granted decree in terms of the conclusions of the action. The defender reclaimed to the First Division, who on 18th July 1908 granted decree in the pursuer's favour, and found him entitled to expenses. Mr Wedderburn appealed to the House of Lords, who on 7th April 1910 reversed the interlocutors of 13th December 1902 and 18th July 1908 so far as complained of, and found the appellant entitled to costs both in the House of Lords and in the Court below. A petition to apply the judgment was presented by Mr Wedderburn on 4th June 1910, and on 7th June 1910 their Lordships applied the judgment, found "the pursuer liable to the defender in the expenses incurred by him in this Court," and remitted the account thereof to the Auditor to tax and to report.

In taxing the petitioner's account the Auditor disallowed, *inter alia*, the expenses connected with the defender's pleas of incompetency, *res judicata*, and no jurisdiction, which formed the subject of discussion at the first Procedure Roll debate, and in which the defender had been unsuccessful, amounting in all to £34 odd. To this disallowance the petitioner objected.

Argued for petitioner—The finding of the House of Lords as to costs was equivalent to a general finding of expenses in his (the petitioner's) favour, and that being so the petitioner was entitled to his whole expenses in fighting the case, even though in the course of doing so he had unsuccessfully stated certain pleas.

Argued for respondent—The Auditor was right. The petitioner had been unsuccess-