fees allowed in the Inner House were on the whole larger than the fees in the present case. The tendency has been to exaggerate the difference between fees in the Outer House and in the Inner House. In certain cases which involve such preparation as the present case, counsel's labours in preparing for the debate in the Inner House are to my mind not less arduous than in preparing for a proof. At the same time the practice is sanctioned by long usage, and in the ordinary case is founded upon just reasons, but when dealing with exceptional cases, like the present, the Auditor might well come to the conclusion that he should allow the same fee for the first day's hearing in the Inner House as was allowed for the first day's proof, and I do not consider that we should interfere with what he has done.

LORD ARDWALL was absent.

The Court adhered.

Counsel for Pursuers (Respondents)—MacRobert. Agents—Pringle & Clay, W.S.

Counsel for Defenders (Reclaimers)—D.-F. Dickson, K.C.—Macmillan. Agents—John C. Brodie & Sons, W.S.

Tuesday, June 27.

SECOND DIVISION.

TAIT (SOMERVELL'S TRUSTEE) *v.* SOMERVELL AND OTHERS.

(See *ante* June 10, 1909, 46 S.L.R. 761, 1909 S.C. 1125; February 6, 1907, 44 S.L.R. 386, 1907 S.C. 528; and July 2, 1904, 41 S.L.R. 716, 6 F. 926.)

Agent and Client—Interest—Professional Charges.

In the winding-up of a sequestrated estate the Court *allowed* interest at 5 per cent. on the professional charges of agents who had made a judicial demand for payment, of those whose accounts charging interest at that date had been accepted and passed by the commissioners, and of those who had intimated in writing to the trustee on claiming payment that interest also was claimed—interest to run from the date of such demand, passing, or intimation respectively—but *refused* interest on professional charges where no judicial demand for payment had been made, nor any intimation given in writing that interest would be claimed from the date of the demand.

Blair's Trustees v. *Payne, &c.*, November 8, 1884, 12 R. 104, 22 S.L.R. 54, *followed.*

On 16th March 1909 John Scott Tait, C.A., Edinburgh, trustee on the sequestrated estates of James Somervell of Sorn, presented a petition for approval of a scheme of ranking and division of the purchase price of the estate of Sorn, which had previously been disentailed and sold by the trustee. On 10th June 1909 the Second Division pronounced an interlocutor, *inter alia*, approving of the scheme of ranking and division, and ordaining the petitioner to lodge the sum of £6808, 1s. 3d. on deposit-receipt in his name as trustee to meet the whole outstanding outlays and expenses of the sequestration. The Edinburgh Life Assurance Company, one of the heritable creditors, was ranked, *inter alia*, on any balance of the said sum of £6808, 1s. 3d. which might remain after meeting the said outlays and expenses.

On 31st May 1911 the Accountant of Court reported that the expenses chargeable against the said sum of £6808, 1s. 3d. amounted to £5154, 4s. 1d., leaving a balance of £1653, 17s. 2d.

The Accountant reported—"The question whether interest is payable on the agents' accounts, *i.e.*, not only on their outlays but also on their professional charges, has been raised. The Accountant found that interest on their accounts had been claimed by Mr More's—a former trustee—agents down to 16th November 1906, and had been included in the claim by Mr More's representatives, which was admitted by the commissioners by minute dated 11th March 1907, their claim for further interest being reserved; also that Mr Duke's (a prior trustee) agents had raised an action for payment of their accounts against Mr More as trustee. That action was interrupted by Mr More's death. A judicial demand for payment had thus been made. Other agents to whom accounts are due also claim interest. For three only of the accounts now being dealt with has decree been obtained, viz., that for Mr More's discharge, the curator *ad litem's* expenses, and the tutor *ad litem's* expenses in the disentail of Sorn. The law on the question is not definite. The ruling case is *Blair's Trustees* v. *Payne and Others*, 1884, 12 R. 104. Interest was not allowed on the agents' professional charges in that case, the accounts not having been rendered; but it was observed by Lord Craighill that 'whether from the date of rendering an account' interest would run is an open question,' and he further observed that it was 'a question of circumstances.' In this case the accounts, some of which date back to 1900, were all rendered, but none of the trustees had sufficient funds to pay them. All the agents might have taken action and obtained decree, but this would have meant further expense. They therefore awaited the sale of the entailed estates. The rents of Sorn were applied in meeting the charges thereon, the balance as regards the rents falling under the Edinburgh Life Office's Security being paid over to that office. The rents of the remainder of Sorn were exhausted by the charges. The question is an important one, as the interest comes to a large sum. On the whole accounts in the sequestration it exceeds £1000. As regards Sorn, it comes to £370, 0s. 4d. On the outlays alone it amounts to £118, 5s. 4d. In view of the fact that this is an insolvent estate, the Accountant is doubtful whether interest should be allowed

on the professional charges, and he reports the matter for the decision of the Court. The interest on the accounts for which decree has been obtained is included in the above sum of £5154, 4s. 1d. To this will have to be added the interest on the outlays, or on the whole accounts, as the Court may decide, to the date of settlement. The latter interest has been calculated as from the dates of taxation of the respective accounts, being the dates when the amounts of the accounts were definitely ascertained. The dates of rendering are not all known."

When the report came before the Court, counsel appeared for the trustee, for Messrs Dundas & Wilson, C.S., and Messrs Tods, Murray, & Jamieson, W.S., two of the agents to whom accounts had at one time been incurred in the sequestration, and for the Edinburgh Life Assurance Company.

The Edinburgh Life Assurance Company conceded that interest was payable (1) on outlays from the date on which they were made, (2) on the professional charges on those accounts in which a judicial demand had been made for payment, (3) on the professional charges in the account which had been admitted with interest by the commissioners.

With reference to the remaining accounts it was argued for the compearing agents—These were not running accounts. The employment had been terminated—the time when the agent was superseded was the period from which interest was to be calculated. The account was accordingly rendered and taxed. In *Blair's Trustees* v. *Payne, &c.*, November 12, 1884, 12 R. 104, 22 S.L.R. 54, Lord Craighill stated (at 12 R. 108) that it was a question of circumstances in each case whether interest was payable on professional charges or not. Here the agents had been employed by the trustee in a sequestration. Their employment had come to an end before the close of the sequestration. Accordingly in the circumstances here they would have incurred useless expense if they had taken judicial proceedings and added to the cost of the liquidation. It was unreasonable to suggest that a person should be put to a disadvantage because he did not insist on his extreme rights. Interest on professional charges should therefore be allowed to them.

Argued for Edinburgh Life Assurance Company and for the trustee—The agents had merely rendered their accounts. Rendering was not enough, even with a request for payment. The general rule was that an agent must either make a judicial demand for payment or give intimation in writing that interest was claimed from the date of the demand—*Blair's Trustees* v. *Payne, &c.* (*sup. cit.*), *per* Lord Fraser at 12 R. 104, 22 S.L.R. at 58. This rule was followed by Lord Kyllachy in *Bunten* v. *Hart*, March 19, 1902, 9 S.L.T. 476, and approved by the House of Lords in *Greenock Harbour Trustees* v. *Glasgow & South-Western Railway Company*, June 28, 1909, S.C. (H.L.) 49, 46 S.L.R. 1014. The fact that the accounts were incurred by a trustee in a sequestration made no difference.

LORD SALVESEN—The questions here are said to be of general importance, and one of them I think is, but so far as the larger accounts involved are concerned it seems to me that they may be disposed of on quite fixed principles of law.

In the case of Messrs Tods, Murray, & Jamieson they made a judicial demand for their leading account, and it has been always recognised that interest at the ordinary rate of 5 per cent. must be allowed against the debtor on an account of which payment has been demanded by judicial process. Accordingly this account presents no difficulty at all. By this account I mean the leading account and all other subsidiary accounts which were included in the judicial demand.

As regards Messrs Dundas & Wilson's account, I have no difficulty in holding that they also must be allowed 5 per cent. interest. They rendered their account, including interest up to date, and it was considered and admitted *in toto* by the commissioners on the bankrupt estate. Accordingly it was unnecessary for Messrs Dundas & Wilson to make any judicial demand for payment. A question was raised as to whether interest should continue to run after the date at which it had been admitted by the commissioners. I think it necessarily follows that it must. The principle had been admitted by the commissioners, and Messrs Dundas & Wilson were entitled to assume that interest would continue to run upon the account until it was actually paid. That disposes of the two most important accounts with which we are here concerned.

But a general question has been raised with regard to some small accounts of Messrs Tods, Murray, & Jamieson which they did not include in their judicial demand. As regards these it seems to me that we must apply the rule laid down by the case of *Blair's Trustees* v. *Payne*, [1884] 12 R. 104, and followed by Lord Kyllachy in the case of *Bunten* v. *Hart*, [1902] 9 S.L.T. 476. I think it is a wholesome general rule that interest shall not be allowed on open accounts until there has been either a judicial demand made for payment or an intimation that after a certain date interest will be charged on the account if not paid by that date. That is in accordance with general custom and practice both as regards traders' accounts and as regards lawyers' accounts.

I do not say that there may not be special circumstances in a particular case which may take it outside of that general rule which has been so recently approved in the House of Lords in the case of *Greenock Harbour Trustees* v. *Glasgow and South-Western Railway Company*, [1909] S.C. (H.L.) 49. But then in this particular case none of the parties who have an interest have been able to allege any particular circumstances except that the account was incurred by the trustee in a sequestration. It does not seem to me

that that makes any difference. A trustee in a sequestration is just in the same position as any ordinary client—he is personally liable for the accounts which agents incur on his employment, and I think it would be very much against the interests of ordinary creditors in sequestrations if a difference were to be made between such a client and the ordinary run of clients.

All that we know with regard to the accounts with which I am now dealing is that they were rendered. It is not even said that a demand was made for payment, far less that there was any intimation that if payment were not made by a given date interest would be charged. There are thus no special circumstances to take these accounts out of the ordinary rule, and I propose that we should direct the Accountant accordingly.

LORD MACKENZIE—The question which is raised by the Accountant of Court is whether interest is payable in the case of agents' accounts, not only on outlays, but also on professional charges.

As regards the first question, it has been conceded at the Bar that interest must run upon outlays, and I understood that the further concession was given that interest should run from the dates at which the different outlays were made. We are not called upon to go into that matter. I only add that it seems to me that these concessions were quite properly given.

As regards interest on professional charges, that is, of course, in a different position, and the Accountant has stated that the law on the question is not definite. It appears to me that in the case of *Blair's Trustees* v. *Payne*, 12 R. 104—particularly in the opinion of Lord Fraser—which was followed in the case of *Bunten* v. *Hart*, 9 S.L.T. 476, by Lord Kyllachy, a rule was formulated which is equitable in its operation and should be followed. By that I do not mean that there may not be special circumstances which may take a particular case out of the operation of the rule; but it is on the party who maintains that the rule should not apply to show cause why it should not.

The rule that I refer to is stated by Lord Fraser in *Blair's Trustees* v. *Payne*, at 12 R., p. 112, when he deals with the effect of rendering an account. His Lordship states it thus—"In my opinion no interest ought to be allowed on such claims on open account, except when there is a judicial demand, or some such intimation given in writing as is required by the English statute, viz., that interest will be claimed from the date of the demand. In such a case the Court would in its discretion allow interest prior to the period of citation." Lord Kyllachy followed this rule in the case of *Bunten* v. *Hart*, 9 S.L.T. 476, where a claim for interest was rejected in respect of no judicial demand for payment having been made or any intimation given in writing that interest would be claimed from the date of the demand.

So far as regards the professional charges, the account of a law agent is just in the position of any other open account, and the general rule applies to them. In the present case it only applies to a limited number of the accounts before us. For the reasons which have been already explained by Lord Salvesen with regard to the accounts of Messrs Tods, Murray, & Jamieson, and of Messrs Dundas & Wilson, I concur in the judgment proposed.

LORD DUNDAS concurred.

The LORD JUSTICE-CLERK and LORD ARDWALL were absent.

The Court pronounced this interlocutor—

". . . Find that interest at 5 per cent. per annum is payable on all cash outlays included in the . . . sum of £5154, 4s. 1d. from the date of disbursement until payment: Find further that interest at 5 per cent. is payable on accounts of professional charges included in the said sum of £5154, 4s. 1d. in the cases where either a judicial demand has been made for payment of such accounts or intimation has been made to the trustee that interest is claimed, said interest to run from the date of such demand or intimation respectively, and direct the Accountant accordingly," &c.

Counsel for Somervell's Trustee—Chree—Moncrieff. Agents—R. R. Simpson & Lawson, W.S.

Counsel for Messrs Dundas & Wilson, C.S., and Messrs Tods, Murray, & Jamieson, W.S. — Blackburn, K.C. — Maconochie. Agents—Parties.

Counsel for Edinburgh Life Assurance Company — Macphail, K.C. — Hamilton Grierson. Agents—Mackenzie & Kermack, W.S.

Tuesday, June 27.

SECOND DIVISION.

[Lord Skerrington, Ordinary.

BROWNRIGG COAL COMPANY, LIMITED *v.* SNEDDON.

Company — Process — Expenses — Caution for Expenses by Limited Company — Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 278.

The Companies (Consolidation) Act 1908, sec. 278, enacts—"Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given."

Circumstances in which the Court