respondent to find caution upon the mere oath of the applicant for lawburrows, but the application is to be served upon the respondent in the ordinary way. And then by sub-section 3 an inquiry takes place, and it is expressly provided that the inquiry is to take place in terms of the provisions of the Summary Jurisdiction Act, and, in particular, that there are to be no written pleadings, and there is to be no record of the evidence kept.

In these circumstances, to say that the old remedy and the old form of procedure are still preserved seems to me to be entirely out of the question. We are now thrown back upon the Summary Jurisdiction Act of 1908, for, unquestionably, this is a cause within the meaning of section 2 of that Act; and if so, and if an investigation takes place into the facts before an inferior judicatory, and no note or written record of the facts disclosed in the evidence is kept, then there is one way and one way only by which an appeal may be taken against the decision of the inferior judicatory, namely, by way of stated case under section 60 of the Act.

It was urged to-day by Mr Lippe that his old remedies were all open to him in respect of the proviso in the sixth section of the Act of 1882, which runs as follows:—"That except in so far as expressly altered by this section, nothing in this Act shall affect the existing law and practice in regard to the process of lawburrows." But then, as I have pointed out, the procedure has been expressly altered by that section, for letters of lawburrows under the Signet may no longer be issued, and an investigation of the facts must take place now before a decree is pronounced, and no record of the evidence given is to be kept. Accordingly it appears to me that the old remedies are gone with the old procedure, and that an entirely new code of procedure has been brought into existence by the statute of 1882 by which the old suspension is abrogated entirely.

Accordingly I think the second plea-in-law for the respondent ought to be sustained, that the Lord Ordinary's interlocutor ought to be recalled, and that this note of suspension ought to be refused.

LORDS JOHNSTON, MACKENZIE, and SKERRINGTON concurred.

The Court recalled the interlocutor of the Lord Ordinary, sustained the second plea-in-law for the respondent, and dismissed the action.

Counsel for the Complainer—Watson, K.C. — Lippe. Agents — Inglis, Orr, & Bruce, W.S.

Counsel for the Respondent—Moncrieff, K.C. — Christie — Crawford. Agents — St Clair Swanson & Manson, W.S.

Friday, March 17.

FIRST DIVISION.

COLLINS BROTHERS & COMPANY, LIMITED, AND ANOTHER, PETITIONERS.

Company—Winding-Up—Nobile Officium — Company Dissolved by Voluntary Liquidation while under Obligation to Convey Estate to a New Company which more than Two Years after the Dissolution Requires a Formal Conveyance of the Estate.

A company was dissolved after voluntary liquidation at the beginning of the year 1906. At that date it owned heritable property which it was under obligation to convey to a new company. In 1915 the new company required a formal title to the property and presented a petition craving that the dissolution of the old company should be declared void, and its liquidator authorised to grant the necessary conveyance. The Court, in exercise of its *nobile officium*, the power conferred by the Companies Consolidation Act 1908, sec. 223 (1), not being available since the application was made more than two years after the dissolution, *granted* decree as craved.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 223 (1), enacts—"Where a company has been dissolved the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company, or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved."

Collins Brothers & Company, Limited, wholesale and export stationers, incorporated under the Companies Acts 1862 to 1900, and having its registered office at No. 4 Bridewell Place, London, and Hugh Allan, publisher, 144 Cathedral Street, Glasgow, *petitioners*, presented a petition to the First Division of the Court of Session craving the Court to declare the dissolution of a former company of Collins Brothers & Company, Limited, to have been void, and to authorise the said Hugh Allan as liquidator of the former company to grant a conveyance of the property 105 Clarence Street, Sydney, to the petitioners first mentioned.

On 31st December 1887 Collins Brothers & Company, Limited, was incorporated under the Companies Acts 1862 to 1886, with its registered office situated in Scotland. The company was formed to take over and carry on the business of publishers, bookbinders, and stationers previously carried on in Glasgow, Australia, and New Zealand and elsewhere by the firm of Collins Brothers & Company. In the year 1904 it was considered advisable, in the interests

of the limited company, that it should be incorporated in England, with its registered office there, instead of in Scotland. In this view a provisional agreement, dated 3rd March 1904, was entered into between Hugh Allan, cashier, then of 139 Stirling Road, Glasgow, on behalf of the then existing limited company (hereinafter called "the vendor company"), of the one part, and William Collins, publisher and stationer, of 139 Stirling Road, Glasgow, as trustee for a new company proposed to be formed and registered in England (hereinafter called "the new company"), of the other part, whereby the vendor company undertook to sell and the new company undertook to purchase the undertaking of the vendor company, including all lands, buildings, hereditaments, and other assets whatsoever and wheresoever of the vendor company, except its uncalled capital, if any. As part of the consideration for the sale the new company undertook to pay all the vendor company's debts and perform its contracts, engagements, and obligations, and to indemnify it against all actions, proceedings, claims, and demands in respect thereof. Moreover, if within eight weeks from the date of the agreement the vendor company should pass an effective resolution for its voluntary winding-up, the new company undertook to pay all costs, charges, and expenses of and incident to the winding-up and dissolution of the vendor company, and to indemnify it against all actions, proceedings, claims, and demands in respect thereof. Provision was also made for the allotment of shares in the new company. The agreement provided (clause 5) that the new company should, without investigation, objection, or requisition, accept such title as the vendor company had to the several premises agreed to be sold; (clause 6) that the sale and purchase should be completed within twelve months from the date of the agreement; (clause 7) that possession of the premises referred to should be given to the new company on the completion of the sale and purchase; and (clause 8) that the agreement should be conditional on its being ratified by the vendor company and adopted by the new company within six weeks from its date. In pursuance of the scheme set forth in the agreement, the vendor company on 25th April 1904 passed a resolution adopting the agreement, and a further resolution for the voluntary winding-up of the company, and it appointed Mr Hugh Allan, before mentioned, to be liquidator in the winding-up. These resolutions were duly confirmed at an extraordinary general meeting held on 24th May 1904. The new company was thereafter incorporated on 5th July 1904 under the name of Collins Brothers & Company, Limited, with its registered office in London. On 4th October 1904 the statutory meeting of the newly incorporated company was held, at which the agreement was approved and adopted. Thereafter (on 13th October 1905) a meeting of the shareholders of the vendor company, then in liquidation, was held, at which Mr Allan, as liquidator, reported upon the allotment of shares in the new company, and the transference of the property, assets, and liabilities of the vendor company. His report was approved, and was duly filed with the registrar, whose acknowledgment thereof is dated 20th October 1905. The dissolution of the vendor company took effect three months afterwards. Among the assets of the vendor company taken over by the new company was a property situated at No. 105 Clarence Street, Sydney, New South Wales, which the latter company had occupied as owners, and in which its business had been carried on ever since. The property had been mortgaged by the vendor company for a loan of £7500 and this debt was specially undertaken by the new company under its articles of association. In 1915 the loan was called up and a new loan was arranged for. It was then discovered, however, that although the property truly belonged to the new company, no formal title to it had been received from the vendor company. In these circumstances the new company desired to obtain a conveyance which would enable it to create a new mortgage in order to replace the loan which had been called up. The vendor company having been dissolved the liquidator had now no power or authority to grant a conveyance. He was, however, prepared to do so upon being authorised by the Court to that effect, and the present application was accordingly presented by the new company as principal petitioners, Mr Hugh Allan, designed as publisher, 144 Cathedral Street, Glasgow, being conjoined in the application.

The petition was served upon the Lord Advocate as representing the Crown as *ultimus hæres*. No answers were lodged, and thereafter a remit was made to Sir George M. Paul to inquire into the facts and circumstances and to report.

The reporter after narrating the facts and the procedure *reported*:—"As more than two years have elapsed since the date of the dissolution of the vendor company advantage cannot be taken of the provisions of the above section (Companies Consolidation Act 1908, sec. 223 (1)), and the application is accordingly made in virtue of your Lordships' *nobile officium*. . . . It appears to the reporter that the difficulty is a real one and the application reasonable; and in the whole circumstances he is respectfully of opinion that if your Lordships shall consider that you may exercise the *nobile officium* of the Court in the present case, you may be pleased to approve of this report and pronounce an interlocutor declaring the dissolution of Collins Brothers & Company, Limited, incorporated in Scotland under the Companies Acts 1862 to 1886 on the 31st day of December 1887, to have been void, for the purpose of allowing the petitioner Hugh Allan, as liquidator of the said company, to grant the conveyance or transfer after mentioned, and authorising him as such liquidator to grant a conveyance or transfer of the property situated at 105 Clarence Street, Sydney, in favour of the petitioners Collins Brothers & Company, Limited, and decerning."

The petitioners thereafter moved in the Single Bills for decree in terms of the prayer of the petition, and argued—The Companies (Consolidation) Act 1908 (8 Edw. VII, c. 69), section 223, did not apply, and this was a *casus improvisus*. The liquidator of a company was in an analogous position to the trustee in a sequestration—Companies Consolidation Act 1908 (*cit.*), section 151 (2) (*g*) and (6)—and in similar circumstances the Court had exercised its *nobile officium* to provide a remedy when none was to be found in the Bankruptcy Acts—*Northern Heritable Securities Investment Company, Limited* v. *Whyte*, 1888, 16 R. 100, 26 S.L.R. 91; 1891, 18 R. (H.L.) 37, 28 S.L.R. 950; *MacDuff* v. *Baird*, 1892, 20 R. 101, 30 S.L.R. 109.

The opinion of the Court was delivered by

LORD PRESIDENT—In the special circumstances of this case, and following the analogy of the decisions under the Bankruptcy Acts, we think we may, in the exercise of the *nobile officium* of the Court, approve of the report and pronounce an interlocutor in the terms suggested by the reporter.

The Court pronounced an interlocutor in the terms suggested by the reporter.

Counsel for the Petitioners—Solicitor-General (Morison, K.C.)—Maclaren. Agents—Drummond & Reid, W.S.

Friday, March 17.

SECOND DIVISION.

(SINGLE BILLS.)

DONAGHY *v.* M'GORTY.

Process—Jury Trial—Decree by Default—Failure of Pursuer to Fee Fund Precept for Citation of Jury—Expenses—C.A.S. (1913) *K, ii,* 1, *Table of Fees* 23 (5).

Where a pursuer failed to fee fund the precept for the citation of a jury the Court *assoilzied* the defender with expenses.

The Codifying Act of Sederunt (1913), K, ii, 1, enacts that the Clerks of Session shall be entitled to charge the fees specified in the table thereto annexed—

TABLE OF FEES.

"23. *Jury Causes*:—

(5) Citation of each jury, to include outlays of Sheriff-Clerk in citing and in countermanding, £2 0 0"

James Donaghy, teacher of music, Glasgow, *pursuer*, brought an action against Gerald M'Gorty, wine and spirit merchant, Glasgow, *defender*, for £200 damages in respect of personal injuries.

An issue having been approved for the trial of the cause, the Lord Ordinary (ANDERSON) on 24th February 1916, on the motion of the defender, appointed the trial to proceed at the sittings in the ensuing Spring vacation, and the case was set down for trial on 20th March 1916.

The last day for fee funding the precept for citing the jury to try the cause was 10th March 1916, but the pursuer failed to fee fund the precept, whereupon the defender lodged a note stating that the defender's agents had received on 13th March 1916 a letter from the pursuer's agents intimating that they had ceased to act for the pursuer, and moving the Court in respect of the pursuer's failure to fee fund the precept and otherwise to proceed, to assoilzie the defender with expenses.

On 17th March 1916 counsel for the defender appeared in the Single Bills, there being no appearance for the pursuer, and moved that the defender should be assoilzied with expenses. Counsel stated that the motion had been intimated to the defender, and cited *M'Millan* v. *North British Railway Company*, 1914, 2 S.L.T. 309, and *Cullen* v. *Magistrates of Edinburgh*, (1903) 10 S.L.T. 602, and referred to the Codifying Act of Sederunt, (1913) K, ii, 1, Table of Fees 23 (5).

The Court, consisting of the LORD JUSTICE-CLERK, LORDS DUNDAS, SALVESEN, and GUTHRIE, pronounced this interlocutor—

"... In respect the pursuer has failed to fee fund the precept for the citation of a jury for the trial of the cause as required by section K, ii, 1, Table of Fees 23 (5), of the Codifying Act of Sederunt 1913, discharge the order for the trial set down for 20th March curt.; assoilzie the defender from the conclusions of the action; find the pursuer liable to the defender in expenses. . . ."

Counsel for the Defender—Macdonald. Agent—David J. W. Dunn, Solicitor.

Friday, March 17.

SECOND DIVISION.

(SINGLE BILLS.)

BALMENACH-GLENLIVET DISTILLERY COMPANY, LIMITED, PETITIONERS.

Company—Preference Shares—Scheme of Arrangement—Cancellation of Arrears of Dividends on Cumulative Preference Shares—Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 120.

On the petition of a company, whose memorandum of association and articles of association gave it no power to cancel arrears of dividends on cumulative preference shares, a scheme of arrangement whereby the arrears of dividend were cancelled was sanctioned by the Court under section 120 of the Companies (Consolidation) Act 1908.

In re Schweppes, Limited, [1914] 1 Ch. 322, *followed.*

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69, sec. 120, enacts—"*Power to Compromise with Creditors and Members.*—(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the