so many years *was proceeding on the accustomed footing.* It is for these reasons that I agree in the result which the Lord Ordinary has reached.

LORD MACKENZIE—The whole question in this case depends upon whether the war clause, printed in red ink at the top of the defenders' letter-paper, is part of the contract or not. If the clause had been so hidden away that a business man of ordinary intelligence could not be expected, with the exercise of reasonable care, to find it where it was placed, then it could not be held part of the contract. Nor would it be part of the contract if undecipherable, within the fair meaning of that word. In the present case there is this difficulty in the pursuers' way that this is not the case made by them either on record or in the evidence. It was, however, the question that was argued.

The first matter to be cleared up is in regard to the letters which have to be considered. The record is not in a satisfactory state as regards this. My view is that the important letter is that of the defenders dated 29th July 1914. No doubt the whole documents beginning with the form of tender sent by the pursuers on 4th June must be considered in order to find out the terms of the bargain. It is not necessary to express an opinion upon the question whether the defenders would have succeeded in this case if the contract had been concluded upon the offer of 15th June (with no war clause) enclosed in the letter of the same date (with the war clause). There was no agreement on the terms therein set out. The defenders' offer of 29th July is complete in itself, and there is in my opinion nothing in the preceding or subsequent correspondence to take off its effect. It contains the war clause in red ink at the top of the first page. The pursuers' contention was that the substance of the offer, which is the body of the letter, could not be withdrawn by a note at the top of the letter. I am unable to assent to this view. No doubt if the note had been placed on the back of the notepaper, and there had been no direction to turn over, then the note could not have been said to form part of the contract. The note, however, is on the front and not on the back, and I am unable to hold that nothing is part of the letter except what is between "Dear Sirs" and the signature. On a fair reading of the letter I am of opinion that the war clause was a part of it. To a certain extent the question here is of the same nature as that involved in the ticket cases to which reference was made. It is necessary to determine whether fair notice was given that there was a war clause attached to the offer. The circumstances, however, of the two classes of cases is quite different. In the case of the ticket there is no written and signed offer and acceptance. The ticket is the voucher for the money paid, and there is no opportunity for deliberate consideration. In the case of a contract embodied in correspondence there is. Accordingly I am of opinion that the pursuers must be held to have assented to the clause in red ink. If they are, then the stipulations in that clause do operate to qualify the conditions in the tender, particularly articles 5 and 9. The contention to the contrary, which is of the nature of a special defence, is contained in the concluding sentence of condescendence 3. In my opinion it is not well founded.

I am therefore of opinion that the defenders are entitled to be assoilzied.

LORD SKERRINGTON—The only question which the pleadings seem to me to raise is one of construction in the ordinary sense of that expression, viz., whether, notwithstanding a certain condition contained in the tender prepared by the pursuers and signed by the defenders, a red ink note, which the latter had caused to be printed at the top of their letter-paper, ought to be regarded as incorporated in the final agreement between the parties. That question I have no difficulty in answering in the affirmative. It was argued, however, though there is neither averment nor evidence to that effect, that the red ink headnote was placed in such a position and was printed in such a manner that a business man who read the letter with ordinary care might excusably fail to notice the headnote. I do not think that a mere inspection of the letters warrants such a conclusion. In the result the defenders are entitled to absolvitor.

The Court recalled the interlocutor of the Lord Ordinary and assoilzied the defenders.

Counsel for the Pursuers (Respondents)—Moncrieff, K.C.—C. H. Brown. Agents—Drummond & Reid, W.S.

Counsel for the Defenders (Reclaimers)—Lord Advocate (Clyde, K.C.)—A. M. Mackay. Agents—Dove, Lockhart, & Smart, S.S.C.

Friday, July 6.

SECOND DIVISION.

ANDERSON & SONS, PETITIONERS.

Process — Petition — Company — Winding-up—Objection to Proposed Liquidator—Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69).

In a petition by creditors of a company for a judicial winding-up under the Companies (Consolidation) Act 1908 an official liquidator was suggested. The directors of the company lodged answers for the purpose of suggesting another person as liquidator. *Held* that the proper method for respondents to object to a suggested liquidator was by a statement by counsel at the bar and not by means of answers.

Peter Anderson & Sons, plumbers, Dundee, *petitioners,* presented to the Court under the Companies (Consolidation) Act 1908 (8 Edw.

VII, cap. 69) a petition for the winding-up of the Broughty Picture House, Limited. The petitioners were creditors of the company to the extent of £113, 15s. 10d., being the balance of an account due to them by the company for plumber work in connection with the erection of a picture house at Broughty Ferry in 1916. Various other creditors of the company whose claims remained unsatisfied approved and concurred in the petition, and Mr J. E. Miller, C.A., Dundee, was suggested as liquidator. Answers to this petition were lodged by the directors of the company and by various creditors and shareholders, who, although not opposing the petition, desired the appointment by the Court either of their own nominee, Mr R. J. Logie, C.A., Dundee, or of an entirely neutral liquidator.

LORD JUSTICE-CLERK—I do not think this was a case in which answers should have been lodged. The parties should simply have appeared at the bar and stated the facts. I do not think that in this case there is any reason to suppose Mr Miller, who is the nominee of a large majority of the creditors of this company, will do otherwise than discharge his duties properly, and I am therefore for granting the prayer of the note.

LORD DUNDAS—I concur.

LORD SALVESEN—I think what we have chiefly to regard is the desire of those who are most interested in the realisation of the assets of this company, and Mr Garson's clients are in that position. They include nearly three-fourths of the unsecured creditors, and they accordingly have an interest in securing the best possible price for the assets. So far as Mr Fraser represents unsecured creditors, his interests are identical. I agree with your Lordship that answers ought not to have been lodged, and that any objections to the appointment of the liquidator proposed should simply have been stated at the bar. It is very desirable in liquidations that all unnecessary expense should be avoided when parties are attempting to induce the Court to appoint a neutral liquidator because an objection of some kind is taken to the nominee of the majority of the creditors. Objection to receive effect should be of a tangible or definite nature, and nothing that is not of that nature should be put forward.

LORD GUTHRIE—I agree. I think the objections to Mr Miller's appointment are too vague and unspecific to receive effect.

The Court granted the prayer of the petition.

Counsel for Petitioner—Garson. Agents—Oliphant & Murray, S.S.C.

Counsel for Respondents—M. P. Fraser. Agents—Clark & Macdonald, S.S.C.

Friday, July 6.

FIRST DIVISION.

[Lord Hunter, Ordinary.

MURRAY *v.* BRUCE.

Superior and Vassal—Ground Annual—Casualties—Grassum—"A Duplication of the Ground Rent or Ground Annual."

A contract of ground annual granted in 1877 stipulated for a ground rent or ground annual payable at two terms in the year, Whitsunday and Martinmas, beginning the first term's payment at a certain date. There followed a clause stipulating for liquidate penalty and interest, and then the following words—"And also under the real lien and burden of the payment of a duplication of the said ground rent or ground annual in respect of the said subjects in name of grassum therefor at the expiry of every nineteenth year from and after the term of Martinmas 1877 over and above the ground rent or ground annual . . ., with interest and penalty as provided with regard to the said ground rent or ground annual." *Held* (*sus.* Lord Hunter, Ordinary) that the sum payable to the granter of the contract in every nineteenth year was a sum equal to the amount of the ground rent or ground annual in addition to the ground rent or ground annual for the year.

Finlay v. *Adam*, 1917, 54 S.L.R. 388; *Commercial Union Assurance Company, Limited* v. *Waddell*, 1917, *ante*, p. 497, *distinguished*.

Governors of George Heriot's Trust v. *Lawrie's Trustees*, 1912 S.C. 875, 49 S.L.R. 561, *doubted per* Lord Johnston.

Bertram Murray, *pursuer*, brought an action of maills and duties against Mrs Ada Davis or Bruce, *defender*, and others, her tenants, to obtain payment of £133, 6s. 8d., the alleged amount of a grassum stipulated for in a contract of ground annual.

The *contract of ground annual*, which was dated 21st February and recorded 7th March 1877, after disponing a plot or area of land to the defender's authors, provided as follows—"And which plot or area of ground thereby disponed was so disponed always with and under the burdens, conditions, restrictions, declarations, and others therein specified or referred to; and particularly with and under the real lien and burden of the payment of a yearly ground rent or ground annual of £66, 13s. 4d. payable out of the subjects disponed under the said first-mentioned contract of ground annual, which ground rent or ground annual was declared to be a *debitum fundi* to be paid to and uplifted and taken by the [pursuer's authors] furth of and from the said plot or area of ground thereby disponed and houses and buildings erected or to be erected thereon on any part or portion thereof, and from the readiest rents, maills, and duties of the same, at two terms of the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said