The following interlocutor was pronounced:—

Recal the interlocutor: "Reduce, decern, and declare in terms of the reductive conclusions of the summons: Farther, find and declare that the defender Robert Hamilton had ceased to be a member of the town council of Rutherglen prior to the 5th November 1875, and was therefore on the said 5th November 1875 ineligible to the office of a bailie of the said burgh, and was not lawfully and duly elected a bailie of the said burgh, and decern: Farther, decern and ordain the said Robert Hamilton to desist and cease from exercising any of the functions of a bailie or of a councillor of the said burgh. *Quoad ultra* of consent assoilzie the defenders, and decern," &c.

Counsel for Pursuers (Reclaimers)—Dean of Faculty (Watson)—Pearson. Agents—Dewar & Deas, W.S.

Counsel for Defenders (Respondens)—Balfour—Darling. Agents—J. & R. D. Ross, W.S.

Friday, February 18.

SECOND DIVISION.

[Lord Craighill.

CHALMERS *v.* DIXON & CO.

Property—Damage—Reparation.

Ironmasters accumulated a "bing" or heap of waste material drawn from their pits, to the amount of 200,000 tons. The bing became ignited, but whether through spontaneous combustion or otherwise could not be ascertained. After the fire had been going on for three months, the ironmasters, for the first time, took steps to have it extinguished, but failed to do so.—*Held* that they were liable for the damage caused to a neighbouring farm by the vapours and fumes from the burning bing.

Property—Use—Damage.

Opinions that an owner of land who puts it to the natural and ordinary uses, and thereby injures his neighbour, is only liable in damages on proof of wilfulness or neglect, but an owner who puts his land to non-natural and extraordinary uses is liable, though there is no personal wilfulness or neglect.

This was an action at the instance of John Chalmers, farmer, against William Dixon & Co. ironmasters in Glasgow, incorporated under the Companies Acts 1862 and 1867. The summons concluded—(1) for £500 damages; (2) for interdict against the defenders "burning and calcining ironstone, or burning blaes or other mineral substances" at their pit, in the immediate neighbourhood of the pursuer's farm, "so as to cause noxious, unwholesome, and offensive vapours, smokes, and fumes," injuring and incommoding Mr Chalmers in the management and cultivation of his farm at Heads. Subsequently the pursuer departed from his conclusion for interdict, and reduced his claim for damages to £200.

The pursuer leased the farm of Heads from Sir William Baillie, at a rent of £66, for nineteen years from 1857. He averred that he had largely improved his farm, and that it yielded him good profits, but that the defenders, in the course of their operations as ironmasters, had accumulated an immense "bing of blaes" or waste material from the pits covering an area of half an acre, and that "through the carelessness and fault of the defenders, or those for whom they are responsible, it was set on fire in the course of the year 1872, and has since been burning, and will continue to burn for a long time to come." The distance between the bing and Mr Chalmers' farm was about a mile, and when the wind blew from the south-west the vapours and gases from the burning "bing" spread across the farm and injured the pastures and ryegrass.

In the statement of facts for the defenders they admitted that the bing contained "about 200,000 tons of refuse," but said that it "had been formed in the usual course of working the ironstone, and in precisely the same way as all the other bings (their being many of them) of the like material in the district." Further, the defenders averred that the ignition, which was discovered early in September 1872, had occurred spontaneously from the unusually wet season, and also that they had taken every means to put it out.

The defender pleaded, *inter alia*—"(2) The igniting of the bing of blaes and refuse foresaid, and the smoke and gase emitted therefrom, and the alleged nuisance and injury to the pursuer caused thereby, not having been caused through the fault of the defenders, they are entitled to absolvitor. (3) The defenders and others in the neighbourhood having, for many years prior to the pursuer coming to his farm, calcined the ironstone obtained from the lands near to their respective pits, and the defenders having for many years continued to calcine ironstone close to their present pits without complaint, the pursuer is not entitled to the interdict craved. (4) It being impossible to extinguish or stop the burning of the bing of blaes foresaid, any interdict granted against it would be inept."

On 2d June 1875 a proof was led before Lord Craighill, Ordinary, and thereafter his Lordship pronounced the following interlocutor:—

"*Edinburgh*, 27*th July* 1876.—The Lord Ordinary," &c.—"In the first place, Finds as matter of fact, (1) That the bing referred to in the record and proof was ignited in the beginning of September 1872, and that since then the fire has continued to burn, although, from the progressive exhaustion of inflammable materials, it has not recently been so strong as it was in 1872, 1873, and 1874; (2) That the smoke and sulphurous vapours discharged from the said bing since it became ignited, when the wind was from the south-west, which is the prevailing current in the district, reached the pursuer's farm of Heads, and were the cause of discomfort to all living in the farm-house, as well as the cause of serious injury to the crops of all kinds in these years upon the farm; and (3) That £200 is not more than reasonable *solatium* for the discomfort and reparation for the loss which in consequence was suffered by the pursuer: In the second place, Finds as matter of fact, (4) That the said bing covered two acres of ground, and was for a considerable portion of its area 42 feet in height, and the materials of which it was composed, being in part rubbish from the workings of the defenders' ironstone pit, No. 8, and in part, though not

nearly to so great an extent, ashes from the ventilating furnace at the bottom of the shaft, contained matter of an inflammable character, and might be ignited by spontaneous combustion; (5) That the liability of the bing to be ignited through spontaneous combustion was increased by the size of the bing, which was greater both in area and in height than in ordinary bings, and also by the moisture imbibed from the mossy ground upon which it was raised, and into which, for several feet, it subsided; and (6) That the unusual rainfall of the summer and early part of the autumn of 1872 so impregnated the said bing with moisture, and generated such heat in the bing, that the inflammable materials composing the bing were ignited; and the fire thus kindled in September 1872 has since continued to burn: In the third place, Finds, *separatim*, as matters of fact, (7) That though the said fire, when first discovered by the defenders in September 1872, was burning at only one part of the bing, and might have been extinguished if proper means for the purpose had been immediately employed, nothing was done by the defenders for its extinction till the end of 1872 or beginning of 1873; and (8) That the means which were then put in operation were, in consequence of the progress of the fire, ineffectual for its extinction: Lastly, Finds, as matters of fact, that (9) The defenders were in fault in putting down the bing in question upon mossy ground, and in making it of a size unusually great. at an increased risk of fire from spontaneous combustion; and, *separatim*, in not employing means immediately after the ignition was discovered by which the fire might have been extinguished: Finds, as matter of law, that the facts being as above set forth, the defenders are liable in the damage suffered as aforesaid by the pursuer: Therefore, repels the defences, and decerns the defenders to make payment to the pursuer of the sum of £200 sterling, in terms of the first conclusion of the summons: *Quoad ultra*, in respect that the conclusion for interdict is not now insisted in by the pursuer, assoilzies the defenders from that conclusion of the summons, and decerns, &c.

"*Note.*—There are two conclusions in this summons. The first is for damages, and the second for interdict. The latter, however, is not now insisted in; partly because the pursuer's lease of his farm is nearly run out, and partly because the inflammable material in the burning bing is already all but consumed. But the first conclusion remains matter of controversy; and the decision of the questions which it involves has been to the Lord Ordinary the cause of some anxiety.

"1. The summons sets forth a double ground of complaint. The first relates to the smoke and fumes resulting from calcining operations, and the second to those discharged by a bing of blaes, which has been on fire since the beginning of September 1872. The former may, the Lord Ordinary thinks, be dismissed from consideration, because the pursuer in the course of his evidence admitted that the vapours from the bing are the only vapours by which he is inconvenienced or injured.

"2. As to the vapours from the bing, the first inquiry which the Lord Ordinary has disposed of is, whether these produced discomfort or injury to the pursuer. This has been taken first, because if there has been no injury the consideration of any other question is superseded. The Lord Ordinary has come to the conclusion that injury, and substantial injury too, has been sustained. The damages in precise amount are not easily assessed; but as the witnesses examined for the pursuer suggest a much higher amount, and as there is little in the evidence for the defender, especially as to the earlier portion of the period during which the mischief has been in operation, that conflicts with the testimony of the pursuer, the sum at which the damage has been assessed by the foregoing interlocutor cannot be considered more than may reasonably be claimed.

"3. The great question in the case is, whether the fire in the bing is due to fault on the part of the defenders. Here, of course, the burden is upon the pursuer; and had there been no evidence adduced for the defenders, the Lord Ordinary thinks that fault could not have been established. The chief ground, if it may not be said to be the only ground, of liability disclosed on the record is, that 'through the carelessness and fault of the defenders, or of those for whom they are responsible,' the bing 'was set on fire in the course of the year 1872.' This statement is vague enough; but the views entertained by the pursuer, before evidence by the defenders had been adduced, were rendered more precise in the course of the proof led by the pursuer. Then it was made to appear that there were three ways, as the pursuer suggested, in one or other, if not in all, of which the bing was ignited. The first was the tipping of ashes, still hot, from the ventilating fire at the bottom of the shaft upon the bing; the second, the heat communicated by a fire kept burning in a cage during night on the surface of the bing, for the purpose of affording light; and the third, ashes from a fire in a hut or shelter erected upon the bing for the conveniency of the workmen. The Lord Ordinary thinks that each and all of these, singly or in combination, are insufficient to account for the fire. One difficulty is with him insuperable. If the bing had been ignited by the operation of such causes the ignition must have begun at the surface; and if it had there begun, the effects of the fire must have been patent. But after the fire was discovered, nothing on the surface was marked by fire, and consequently another cause than any included within the original suggestions of the pursuer must be assigned.

"4. The defenders, in contending against the cause or causes to which the fire was ascribed by the pursuer, have not relied on the insufficiency of the evidence adduced by the pursuer. They have led proof to show that the origin of the fire is to be explained, and can only be adequately explained, by the action of spontaneous combustion; and they have convinced the Lord Ordinary that this is the true explanation. The thing, no doubt, seems improbable for many reasons, and especially because there are other bings in the district which were drenched by the rains of the summer and autumn of 1872, and which, though also containing as inflammable materials, remained unignited; but the defenders' witnesses afford materials by which the discrepancy can be reconciled, and the improbability of spontaneous combustion within the bing in question is removed. The efficient

causes are, first, the concentration of the heat generated by chemical action among the materials of which the bing was composed, by preventing its radiation; and secondly, the communication of moisture. Both these are required for spontaneous ignition, and if both are in operation, a natural result is spontaneous combustion. In the bing in question the concentration of the necessary heat was produced by the size of the bing, and by its partial subsidence in the mossy ground upon which it was raised. The moisture, again, was supplied partly by this mossy ground, and partly by the rain-fall of the season in which the fire began. These are things which are told us by all the witnesses for the defenders; and believing what has been said, the Lord Ordinary has come to the conclusion that the defenders' explanation of the origin of the fire has been established.

"5. But, unfortunately for the defenders, the adoption of this opinion involves results which, as the Lord Ordinary thinks, are fatal to the defence. In the first place, the size of the bing was a special source of danger, the outer air being more thoroughly excluded from the interior of the mass than it would be in smaller bings. Radiation was in consequence prevented, and the heat generated there, in place of being dispersed, was there left as a predisposing cause of combustion. In the second place, the ground on which the bing was raised was unsuitable. It was soft; and the mass sinking down for several feet, the lower portion of the bing was covered up, and so far lateral radiation was prevented. Moreover, the ground was wet, and moisture might consequently be imbibed from below. The defenders say that though these sources of danger are now apparent, they were neither detected nor suspected when the formation of the bing was begun. Chemists, they argue, might have surmised that the fire which broke out would some time occur; but such an anticipation was far beyond the range of knowledge possessed by an ordinary mining engineer. The Lord Ordinary doubts whether there is warrant for the disparagement implied in this last suggestion; but the point is really unimportant. The defenders were dealing with materials more or less dangerous. They were bound to know the extent of the danger, and the counteractive precautions which ought to be adopted, as the interest of others were concerned; and having acted in such a way as to aggravate the danger, and by so doing produced the results in which the present action has originated, they, in the opinion of the Lord Ordinary, are answerable for the consequences of the faults which have been committed.

"6. Numerous decisions, it may here be mentioned, were cited by counsel at the debate upon this question of fault, among which were *Keith* v. *Keir*, 10th June 1812, F. C.; *Rankine* v. *Dixon & Company*, 19th March 1847, 9 D. 1048; *Kerr* v. *Orkney*, 17th December 1857, 20 D. 298; *Tennent* v. *Glasgow* (H. of L.), 2 Macph. p. 22; and *Mackintosh* v. *Mackintosh*, 15th July 1864, 2 Macph. 1357. All of these, as well as the comments upon them, have been considered by the Lord Ordinary; and the only other explanation which appears to him to be necessary is, that if the faults imputed to the defenders in this action are as have been found, none of the cases referred to is at variance with the conclusion which has been adopted.

"7. These views of the case, if sound, are sufficient; but there is another ground of liability which the Lord Ordinary has introduced as a separate ground of judgment. The fire was discovered by the issue of smoke from the surface of the bing at a single point in September 1872. Nothing, however, was done for the purpose of extinguishing the fire for several months; but an attempt was then made to put it out by water. The fire, however, ere this had spread so far that no effect could be produced. In these circumstances the question is, whether delay in the use of means is a ground on which the defenders may be held liable for the consequences of the fire? They were certainly indifferent, assuming that they were not misled by the idea that the fire, as it appeared only on one spot, would soon burn itself out, without taking hold upon the mass of the bing. But indifference is not enough, if the fact be that the fire when detected could not be extinguished. And a great deal of evidence to this effect has been led for the defenders. But the opinions of the scientific witnesses on whom the defenders rely are for the most part hypothetical. They were not on the spot at the time; and those of them who afterwards visited the place, did so only after the fire had spread through the bing. This consideration renders their evidence, though perfectly honest, somewhat untrustworthy; and the Lord Ordinary, in consequence, has formed his views upon this part of the case on the evidence given by those who were upon the spot when the fire in the bing was discovered. One, and the principal of these, is Frederick Duncan, a mining engineer, and the mineral manager to the defenders. In the course of his cross-examination, being asked—'When you saw the smoke you came to the conclusion there was fire there?' He answers, 'I thought it was very slight. (Q.) What at the time occurred to you as the cause of it?—(A) I did not make it out at the time.' Again he depones, 'In the present case I could not say how far down the fire had seized the bing. It did not occur to me that there was any danger whatever. (Q) 'Supposing the fire was, as you understood it at the time, limited to a very small portion of the bing, do you think anything could have been done for its extinction?—(A) Yes, it might have been dug out. That is my opinion now.' Proceeding upon this, which is the most reliable evidence on the subject, the Lord Ordinary has come to the conclusion that the defenders must be held to be in fault in not having used means calculated to extinguish the fire, and that the fault is such as renders them answerable for the consequences, so far as these have injured the pursuer."

The defender reclaimed.

Authorities — *Keith* v. *Keir*, 10 June 1812, F.C.; *Rankine* v. *Dixon & Company*, 19 March 1847, 9 D. 1048; *Kerr* v. *Earl of Orkney*, 17 Dec. 1857, 20 D. 298; *Tennent* v. *Earl of Glasgow*, 2 Macph. (H. of L.) 22; *Mackintosh* v. *Mackintosh*, 15 July 1864, 2 Macph. 1357; *Rylands* v. *Fletcher*, 1868, 3 L. J. (English and Irish Appeals) 330.

At advising—

Lord Justice-Clerk—We have had a very able argument in this case, which is one of considerable peculiarity, but I have come to a very clear opinion on the question at issue. I think

that the Lord Ordinary's interlocutor should be in general adhered to, although not entirely on the same grounds as those upon which his Lordship has proceeded. [*His Lordship then narrated the facts of the case as above set forth.*]

Here there was distinctly an *opus manufactum*, and this consisted of a large quantity of a material which the result showed to be combustible. This material was put there by the defenders; and undoub tedly it did take fire, and either could not be, or at any rate was not, extinguished. It really does not matter how the fire was caused, whether by what may be termed spontaneous combustion or by applied ignition or by some other mode, but once on fire, this mass, placed there by the defenders, emitted noxious gases and vapours which did injury to the pursuer's farm, injury which has gone on for some two or three years, and which we are told is likely to go on for some time to come.

On the question of *culpa*, I may here observe that the mass of material was certain, if ignited, to give out gas and vapour, and that any attempt to establish a case of *damnum fatale* has entirely failed.

There occur to me three points worthy of attention in connection with the evidence led before the Lord Ordinary—*First*, that there does not appear to be any satisfactory proof of a spontaneous ignition of this mass. *Second*, that when the defenders began to use water in order to extinguish the fire in the months of January, February, and March, the outer crust of the burning bing was cool, and it was not until two or three feet below the surface that the heat became perceptible. *Third*, that the defenders ought to have made efforts to put out the fire sooner than they did.

It would indeed be a remarkable result were the persons who caused the injury to Mr Chalmers' farm to escape entirely, and the loss be left to fall on the farmer, who was in no way profited by or responsible for the cause of it. I think the pursuer is entitled to damages here, and that the argument used on behalf of the defenders, that they were acting legally, is met by the well-known maxim—"*sic utere tuo ut alienum non lodas.*"

Lord Neaves—I am quite of the same opinion. Suppose a person to be possessed of an animal known to be dangerous, he is bound to look after him, and he will be held responsible for any accident or injury which may occur; or even suppose a new zoological creature, the disposition of which is unknown, to be imported, the person who imports it must be held liable should any accident supervene. No doubt circumstances of a peculiar nature may modify this rule, but one thing is plain, namely, that a non-natural operation, more or less involving danger, must be conducted with every precaution and under the best scientific advice. Had such advice been taken here, the defenders would have been warned by the chemists of the combustible nature of the bing. There was a source of danger here from the quality of the material, and also from the quantity accumulated, from the sulphur which so largely entered into its composition, and from the unusual height to which the bing was raised. It was the duty of the defenders here to consider the rights of their neighbours as well as their own profits and rights, and to see that in the exercise of their own legal rights they did not injuriously affect those around them.

I agree that we should adhere to the Lord Ordinary's interlocutor, and the only further matter which occurs to me for observation is, that it appears questionable whether there was not negligence in extinguishing the fire. I do not sympathise with any man who says that he has no scientific knowledge, and who pleads ignorance. If this fire could have been put out it should have been so without delay; if it could not, that would have been a characteristic of the materials of the bing aggravating the danger of accumulation in such quantities.

Lord Ormidale—The questions here raised are not only very important, but some of them are also of the greatest possible nicety. It is by no means easy to reconcile all the opposite decisions and *dicta* which have been quoted to the Court, but, nevertheless, I think the result arrived at is very satisfactory.

I am not prepared to say that it has been proved whether the ignition in this case arose spontaneously or by the external application of fire. It is impossible to arrive at a definite conclusion as to the origin of the fire, but I feel certain that this is not a case which can possible be referred to *damnum fatale*. This seems to me to be absolutely precluded by the definition given by Lord Westbury of *damnum fatale* in *Lord Glasgow's* case. To bring a question under this head requires something to have occurred which no human skill and no human knowledge could have prevented. That is entirely inapplicable to the present case.

There is another defence which would have been a perfectly good one, viz., that the fire had been caused by the negligence or the direct act of the pursuer himself, but this has never been suggested, nor has it been even hinted that the fire was the work of some passer-by; the fire was certainly caused by the operations of Dixon & Co. or their employees. It is, however, enough for me, looking at once to the authorities and to good sense and reason, that the defenders here were doing a non-natural act, and although their operations on their own property were quite lawful, yet, as to their neighbours they must be prepared to face the consequences. It is not necessary to show any direct or immediate *culpa* in order to fix the responsibility on the defenders. I may illustrate this view by the case of mining and quarrying operations, where the mining tenant is bound to leave supports to sustain the surface, and not only that, but he must by lateral supports protect his neighbour's ground from falling in. The only defence offered of any real importance was that the danger was not known to or foreseen by the defenders. Even were that so, I do not think it enough to exculpate them. In the case of *Rylands* v. *Fletcher*, a miller, in the exercise of rights undoubtedly legal, made a reservoir for his mill; it turned out that this reservoir had been unconsciously made on ground under which mineral workings existed, and for the consequent damage by escape of the water through these workings the miller was held liable, though he did not know of these workings, and it did not appear that there were any openings on the surface to indicate their existence.

But, were it technically necessary to find that there was *culpa* on the defenders' part here, I think there is quite enough in the case. There was a want of due diligence in the effort to extinguish the fire. For three months no steps whatever were taken, and not until March 1873, or six months after the ignition, were any vigorous measures taken, and by that time things had gone too far. Though the defenders had the right to bring up and spread this material, it should have been placed in separate bings of smaller size and sufficiently under control—not in one bing of so great a height, and containing such an enormous quantity as 200,000 tons.

Lord Gifford—I am of the same opinion. The questions of principle here involved are delicate and difficult, but they come to be relieved of everything save the one point for inquiry, and that is whether the acts of the defenders on their own property was such as to render them liable to the pursuer for the damage which he has suffered. The defenders say it is not *culpa*, and therefore we are not liable. But the pursuer referred the Court to the cases of *Rylands* and of the *Earl of Orkney*, showing that in those cases the defender was found liable in damages even without *culpa*. We have two principles here which require to be reconciled. The first is the pursuer's right to use his own property, and the second is based on the maxim alluded to by your Lordships, "*sic utere tuo ut alienum non lodas.*"

The ordinary use of an agricultural subject is cultivation, and if in the exercise of that ordinary use accidental loss to a neighbour is caused no liability is incurred. Such a use of the subject has been termed primary, but there are other uses, termed non-primary. Thus, where water has been collected for a mill, and damage has thereby resulted, in that case a liability is created even though it may be impossible to bring home negligence to the maker of the dam. I agree with your Lordship in the chair that *culpa* is at the root of all this, but fault is a very flexible term, and a much greater duty is laid on a person who is not making a primary use. In the case of an *opus manufactum* (and here there was an *opus manufactum*), the act may be perfectly legal and still non-natural, and the highest possible precaution must be taken. This, it is certain, the defenders did not do, and in that sense there was fault. No doubt there was danger—it may have been remote—but there it was. Chemists know that such things *might* catch fire, and therefore extraordinary precautions should have been taken. Accordingly it is no use to say that the defenders did not know the inflammable nature of the substance; they should have employed men of skill who could have informed them.

In conclusion, I may say that whether I put the matters on the broad ground of non-natural use as Lord Cairns did in the case of *Rylands* or not, I can only arrive at the same conclusion, that the defenders are liable.

The Court adhered.

Counsel for Pursuer — Asher — Strachan. Agents—Morton, Neilson & Smart, W.S.

Counsel for Defenders—Trayner—Robertson. Agents—Melville & Lindesay, W.S.

Saturday, February 19.

FIRST DIVISION.

WILSON (LIQUIDATOR OF THE GLASGOW AND DISTRICT CO-OPERATIVE SOCIETY, LIMITED) — PETITIONER *v.* M'GENN & COMPANY—RESPONDENTS.

Company—Voluntary Winding-up—Extraordinary Resolution—Notices, Form of—Companies Act, 1862, *sec.* 129, *subsec.* 3.

Notice was given of an extraordinary meeting of shareholders in a company "to consider and, if approved of, to sanction the voluntary winding-up of the company. The directors enclose a balance-sheet. . . . . . From the results of that balance . . . . it will be apparent that it is hopeless to carry on the company with any prospect of success," &c. At the meeting an extraordinary resolution to wind up voluntarily was passed under the 3d sub-section of the 129th section of the Companies Act, 1862, and a liquidator was appointed. —*Held* that this resolution was invalid as an extraordinary resolution under the 129th section, and that the liquidator had no title, the notice not disclosing that it was proposed to pass such a resolution for winding-up as would not require confirmation by a subsequent meeting.

The Glasgow and District Co-Operative Society, Limited, incorporated under the Companies Acts 1862 and 1867, carried on business in Glasgow in groceries and such goods during 1873 and 1874.

At a meeting of the Company on the 2d April 1875 the following resolution was carried:—"That the directors be authorised to issue bonds to an amount not exceeding £2000, in bonds of £2, 10s. each, to be redeemed in five yearly drawings, or earlier in the option of the directors, at a premium of 5s. per bond. Until each bond is drawn interest will be paid half-yearly at the offices of the Company at the rate of five per cent. per annum. No dividend to accrue on the ordinary capital until all the bonds are redeemed."

At a subsequent meeting, on the 3d May 1875, the Company passed this resolution:—"It having been proved to the satisfaction of this meeting that the Company cannot by reason of its liabilities continue its business, resolve that it is advisable that the Company be wound up, and this meeting requires the Company to be wound up voluntarily accordingly."

A liquidator, John Wilson, was at the same time appointed, who forthwith proceeded to wind up the Company's affairs.

On 17th June 1875 M'Genn & Company, creditors of the Company, raised action against them in the Sheriff Court at Glasgow for payment of a debt due them, and thereafter, on 21st June, upon the dependence of the action, arrested goods and monies belonging to the liquidated Company in the hands of different parties. They further proceeded by an action of forthcoming to obtain the goods they had arrested.

This was a petition at the liquidator's instance under the 138th and 163d sections of the Companies Act 1862, praying the Court to order