should say it was entirely in the option of the directors to exercise or not exercise that power according to their discretion.

For these two reasons I reject the argument founded upon the 36th article—(1) because the case in hand is not one to which it applies; and (2) if it did apply, there is no duty imposed upon the directors, but merely a power given, which they may exercise or not according to their discretion, acting in the interest of the corporation which they represent.

No doubt it is hard that after the lapse of six years from Mr Low's death his executors should be called upon for the first time to undertake so large a responsibility as is here sought to be imposed upon them, and I dare say what they say is very true—that they knew nothing about his holding those shares; but I am afraid that lapse of time has nothing to do with it, and that if Mr Low had died in the month of September last instead of having died five or six years ago, the question would have been exactly the same; and if that had been so—if Mr Low had continued a partner *qua* trustee in respect of those shares down to within a week or two of the stoppage of the bank—I doubt whether the petitioners would ever have supposed they had any case for escaping from liability to the extent of his executry estate. Now, that really makes the case, I think, a very simple one. It is quite impossible for us to order Mr Low's name to be taken off the register. It was properly put there, and it has never been taken off by any competent proceeding.

It is said on the part of the petitioners that if a man dies he must cease to be a trustee, and therefore he ought no longer as trustee to continue a partner of the bank, and that it is not necessary, in order to enable the directors to take a name off the register, that there should be somebody else whose name is to be put on in his stead. That may be true in certain cases, but I doubt very much whether it is true in any case where the directors have no application made to them at all on the subject. It is a very delicate matter indeed for directors of a joint-stock company to meddle with their register to the effect of either taking a name off or putting a name on where nobody asks that that shall be done. I doubt the propriety of their doing it. They cannot know, and do not know, why a name is allowed to remain there. There may be very good reasons for it, of which they are not aware, and therefore it would be a very rash thing, and very far from being their duty, for the directors of such a company to take a name off the register of shareholders without knowing the reason why, and being asked to do it by somebody who can assign a good reason for asking it.

I am therefore for refusing the petition.

Lord Deas, Lord Mure, and Lord Shand concurred.

The Court pronounced this interlocutor:—

"The Court . . . direct the liquidators to remove the name of the deceased John Low from the first part of the list of contributories of the City of Glasgow Bank, and to place the names of the petitioners as his representatives on the second part of the said list: *Quoad ultra* refuse the petition, and decern: Find the petitioners liable in expenses," &c.

Counsel for Petitioners—Trayner—Pearson. Agents—Cowan & Dalmahoy, W.S.

Counsel for Respondents—Kinnear—Asher—Lorimer. Agents—Davidson & Syme, W.S.

Thursday, October 16.

SECOND DIVISION.

MACKENZIE *v.* BLAKENEY.

Expenses—Fees to Counsel in Sheriff Court Action—Act of Sederunt 4th December 1878.

The Act of Sederunt of 4th December 1878 recognises the employment of counsel in Sheriff Court cases only when "authorised or subsequently sanctioned" by the Sheriff. In a Sheriff Court action, which was subsequently appealed to the Court of Session, a commission was granted by the Sheriff to examine witnesses in London. The pursuer at this examination employed both counsel and agent, but the defender was only represented by his agent. No notice of the employment of counsel was given to the Sheriff by the pursuer, and his sanction was not obtained. The pursuer was successful in the action, and at the taxation of accounts he claimed that counsel's fees for the commission should be paid by the unsuccessful party. The Auditor disallowed the claim, and the Court adhered.

Counsel for Pursuer—R. Johnstone. Agent—J. Smith Clark, S.S.C.

Counsel for Defender (Appellant)—Balfour—Darling. Agents—Lindsay, Paterson, & Co., W.S.

Friday, October 17.

SECOND DIVISION.

[Lord Rutherfurd Clark, Ordinary.

CRAIGIE AND OTHERS *v.* THE COMMISSIONERS OF SUPPLY FOR THE COUNTY OF ABERDEEN.

Commissioners of Supply—Whether Entitled to more than One Vote when Representing Several Interests—Proxy—Stat. 17 *and* 18 *Vict. c.* 91 (*Valuation of Lands* (*Scotland*) *Act* 1854), *sec.* 19.

A factor acting for a commissioner of supply does not vote by proxy, but under a separate qualification as commissioner established by the Valuation of Lands Act 1854, and however many qualifications he may have, he is only entitled to one vote.

By the Act 17 and 18 Vict. cap. 91, entituled an Act for the Valuation of Lands and Heritages in Scotland, sec. 19, it was, *inter alia*, provided—"From and after the passing of this Act the qualification requisite for a commissioner of supply in any county shall be the being named as an *ex officio* commissioner of supply in any act of supply, or the being proprietor, or the husband