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

of any proprietor, infeft in liferent, or in fee not burdened with a liferent, in lands and heritages within such county of the yearly rent or value, in terms of this Act, of at least one hundred pounds, or the being eldest son and heir-apparent of a proprietor infeft in fee, not burdened with a liferent, in lands and heritages within such county of the yearly rent or value, in terms of this Act, of four hundred pounds; and the factor of any proprietor or proprietors infeft, either in liferent or in fee unburdened as aforesaid, in lands and heritages within such county of the yearly rent or value, in terms of this Act, of eight hundred pounds, shall be qualified to act as a commissioner of supply in the absence of such proprietor or proprietors."

The pursuers in this action—Mr J. Burnett Craigie of Linton, Mr J. F. G. Shireffs Gordon of Craig, and Mr Francis Edmond of Kingswells—were all proprietors of lands in the county of Aberdeen of the yearly value of £800 and upwards, and Mr Edmond was also factor for the other two gentlemen. The question raised in the action was whether at meetings of commissioners of supply for the county Mr Edmnod, in addition to his own vote as a proprietor to the requisite amount, was also entitled to a separate vote for each of the estates of Linton and Craig, as representing them in the absenne of the proprietors.

By The Commissioners of Supply (Scotland) Act 1856 (19 and 20 Vict. cap. 93), sec. 1, it was provided that "All persons, being males and of full age, qualified in terms of the nineteenth section of the Act of the seventeenth and eighteenth years of Queen Victoria, chapter ninety-one, for the valuation of lands and heritages in Scotland," otherwise than by nomination *ex officio*, for acting as commissioners of supply in any county in Scotland, shall, without being named in an act of supply, be commissioners of supply of such county while so qualified, and shall as such be entitled and have power to vote and act as freely and to the like effect as if they had been so named." By the same Act, provision was made for the appointment of a committee of commissioners to dispose of claims to be enrolled as commissioners and objections thereto. By the 5th section the clerk of supply was directed, on or before the 31st December in each year, to make up the list of commissioners of supply, which, subject to corrections in accordance with judgments on appeal, "shall, till the next list shall have been completed and authenticated, be conclusive as to the right of acting and voting as commissioners of supply."

In the list of commissioners for the year 1878 Mr Edmond's name appeared three times, viz., for himself as a proprietor, and also as factor for the other two pursuers. At the meeting of commissioners on April 30, 1879, Mr Edmond moved, *inter alia*, " . . . . it is therefore resolved that every commissioner of supply entered in the said list as proprietor, and also as factor for one proprietor, or as factor for more proprietors than one, shall, till next list be completed and authenticated, be entitled without objection to give one vote on behalf of each of his absent constituents, and also, if a proprietor in the list, one vote in respect of his qualification as a proprietor." This motion was put to the meeting and lost, the convener, Mr Forbes Irvine of Drum, refusing to receive Mr Edmond's votes as factor for the other pursuers.

The present action was thereafter raised at the instance of the three above-named gentlemen against the commissioners and Mr Forbes Irvine as their convener, concluding for declarator that Mr Edmond was entitled to exercise three votes.

The Lord Ordinary (Rutherfurd Clark) assoilzied the defenders from the conclusions of the action, adding the following note:—

"*Note.*—The question in this case is whether at the meetings of the commissioners of supply a person, himself qualified as the owner of land, can give a plural vote because he is at the same time the factor of other commissioners.

"The commissioners exercise functions partly judicial and partly administrative. See *Advocate-General*, 4 Macq. 387. It was conceded that before the Valuation Act of 1854 these functions must be exercised personally and not by proxy. But the pursuers maintained that that Act permitted commissioners of supply to act by their factors, and that such factor could vote for each of his constituents, and that if the factor possessed a personal qualification he could give his own as well as his factorial vote.

"To the Lord Ordinary it appears that the Act of 1854 does not authorise a commissioner of supply to act by proxy or through a mandatory. It deals only with the qualification of commissioners. It lowers the former qualification of value and introduces a new one. For it provides, in the first place, that the ownership of land to the yearly value of £100 shall give a qualification, and, in the second place, it declares that the factor of any proprietor or proprietors infeft in lands of the yearly value of £800 'shall be qualified to act as a commissioner of supply in the absence of such proprietor or proprietors.'

"By this Act the factor does not act as the mandatory of anyone in the proper sense of the word, but is himself a commissioner of supply. He is entitled to act as such in respect of the qualification which the Act gives. He holds a qualification as good as any other commissioner. The question then seems to be, whether a commissioner who holds more than one qualification can give more than one vote? and the Lord Ordinary answers it in the negative. No person can be more than one commissioner of supply, however numerous his qualifications may be."

The pursuers reclaimed.

Authority—*Robertson* v. *Murdoch*, Feb. 23, 1830, 8 Shaw 587.

At advising—

Lord Justice-Clerk—This question truly turns upon the object and intention of the Valuation Act in authorising factors for proprietors of £800 a-year of rental and upwards to act as commissioners of supply. If the intention was to enable these proprietors to act by proxy and vote by proxy, then there would be a great deal in the pursuers' view. But I do not think that is the nature of the statutory provision. What is created is a new qualification. A factor who appears at a meeting with a factory and commission from an absent proprietor with a sufficient rental is to be entitled to act as a commissioner of supply. His qualificaiion may be

representative, but when he has once got the qualification he is not in any different position from the other commissioners. Once having obtained a qualification, a factor is entitled to vote as a commissioner, but he is not entitled to vote in any other manner than the other commissioners, neither more nor less. I think the Lord Ordinary has come to a right conclusion.

Lord Ormidale—I am also of opinion that the Lord Ordinary has decided rightly.

One of the qualifications of commissioners of supply—that created by the recent Act—is being factor of a proprietor infeft in lands of the yearly value of £800 or upwards. That is the qualification, and so long as the factory exists the party holding it is, in the absence of the proprietor, entitled to act as a commissioner of supply as fully and independently as any other commissioner however qualified. He does not attend meetings of commissioners or act as a mandatory or proxy. The Act contains nothing to that effect. He is a commissioner of supply, and entitled to act as such so long as he holds the requisite qualification. The proprietor for whom he is factor cannot control him or interfere with him at all, except, it may be, by recalling his factory.

In regard to the question whether the factor so long as he holds his qualification is entitled to a plurality of votes, that is to say, one in virtue of every factory he may happen to hold, and one also in respect of property belonging to himself, I am very clearly of opinion that he is not. He must in this respect conform himself to what I have always understood to be the general, if not the invariable, practice. And independently of the practice I am satisfied that on principle, and having regard to the nature of his office, and the duties he has to discharge—these being partly judicial as well as administrative—a plurality of votes is quite inadmissible. Were it otherwise, the same individual might argue and vote in one way or direction for himself, and in another way for the proprietor whose qualifying factory he might happen to hold, and that too in questions of a judicial nature. It is impossible, I think, consistently with reason and propriety, to hold that a commissioner of supply has any power warranting such a course of proceeding.

Lord Gifford—I am of the same opinion. At first sight the case presented some nicety, but ultimately the difficulty has entirely disappeared.

The point is, whether a commissioner of supply having several qualifications may vote in right of each? Mr Edmond, who is qualified to vote in his own right, claims to vote also as factor for Mr Shireffs Gordon and Mr Craigie. Now, I take it as quite clear from the statutory construction of the office of commissioner of supply that when a person, whether with one or with ten qualifications, is placed on the commission, he is simply entitled to one vote. Other cases might be put by way of illustration. Suppose, for instance, that Mr Edmond was the heir-apparent to another property worth £400 per annum, this would not give him a second vote. The simple question is, whether or not a person is entitled to vote as a commissioner of supply? and if this question be answered in the affirmative, it is of no consequence whether his qualification be represented three or four or a hundred times over; he can be placed only once on the roll as a commissioner, and can exercise only one vote. Now, there is here no question whether Mr Edmond is or is not a commissioner of supply. He no doubt is so; but the fact of his being entered three times can give him no right to vote three times. It would be a possible case that a man possessed of three property qualifications should sell the subject of one of them, yet his right to vote as a commissioner would be neither more nor less than it was before. The analogies from voting by shareholders of a company or by creditors of a bankrupt seem to fail entirely, for in the case before us the vote is not according to the value of the subject, but is simply a question of qualification. The case of voting for a member of Parliament is much more in point.

On the whole matter, therefore, I concur with your Lordships in affirming the judgment of the Lord Ordinary.

The Court adhered.

Counsel for Pursuers (Reclaimers)—Balfour—Keir. Agents—Morton, Neilson, & Smart, W.S.
Counsel for Defenders (Respondents)—Kinnear—Begg. Agents—Baxter & Burnett, W.S.

Tuesday, October 21.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*GORDON'S CASE*)—JAMES GORDON AND OTHERS (GORDON'S TRUSTEES) *v.* THE LIQUIDATORS.

Public Company — Winding-up — Trustees and Executors — Where Confirmation sent to Company, and Executor has not Resolved to Sell the Stock within a Definite Time, and has Drawn Dividends for Several Years.

A truster died in 1874 leaving, *inter alia*, £3200 stock in a banking company of unlimited liability. In his trust-deed he directed his trustees and executors to sell and dispose of his whole estate, heritable and moveable, as soon after his death as convenient, and to re-invest it in certain specified classes of security; and the trustees resolved to sell, and in part did sell, the stock in the bank in question accordingly. In 1878, however, when the bank failed, £1900 worth of stock still formed part of the trust-estate. The names of the trustees and executors, which were previously on the register of members, were placed on the list of contributors as liable in their own right in respect of this £1900 stock; and they presented a petition for rectification of both lists. On a proof it appeared that the agents of the trust had requested the secretary of the bank to "transfer the stock to the names of the executors and send us new certificates therefor;" that certificates were sent accordingly, which it was shown were subsequently brought under the notice of the petitioners; that portions of the stock had been sold by the petitioners, the transfer being signed by