former minute" (the minute of 8th May) "in regard to this matter be confirmed, and the clerk instructed to intimate this to the Board of Supervision,"—that is to say, they repeat, in the same offensive terms in which it was originally conceived, the resolution contained in the minute of the 8th of May, and entirely withdraw or ignore the explanation which some gentlemen thought fit to attempt to give to Mr M'Neill of what was intended by that minute. It is impossible not to see that a very wrong feeling must have been at the bottom of that proceeding of 8th May, and that, at all events, the resolution they then carried was, in the knowledge of the parties who carried it, founded upon allegations which were not true in point of fact. It was not true that Mr Campbell was unfit to discharge the duties of his office efficiently, either in the sense of personal inefficiency or in the sense of his having complained that with his previous staff he could not carry on his duties.

The first question which has been raised here is, Whether the resolution of the 8th of May is not absolutely illegal in respect that it is a resolution to reduce the salary of the inspector? Now, that is a very important question, and if it were necessary to determine it here, I confess I should have thought it necessary to take further time to consider our judgment. It is one question whether the salary which is assigned to a public officer at the time of his appointment —being an appointment *ad vitam aut culpam*—can afterwards be reduced, and it is another question whether additions to that salary made subsequent to his appointment can be taken away for sufficient cause. I can only say in regard to both of these questions that I am very glad to think that it is not necessary to determine them in this case, because I think there is quite enough to entitle us to interfere, and to call upon us to interfere, to rescind the resolution of the 8th May and the confirming resolution of the 28th August, because I cannot doubt that it is a piece of malversation on the part of this parochial board which under the 87th section of the statute we are quite entitled to set aside. Whether it is called refusal to do duty, or neglect or violation of a statutory duty, or an obstruction of the administration of the poor-law within this parish of Old Monkland, is quite immaterial. I am quite clear that there was here a failure or violation of duty on the part of this parochial board which the Board of Supervision have done well in bringing under the notice of the Court. Our power under that section of the statute is to do everything as to the Court shall seem just and necessary. It is a very large discretion vested in the Court undoubtedly, but what I would suggest to your Lordships as the proper deliverance under this petition and complaint is, that we should direct the parochial board to rescind their resolution of 8th May and 28th August 1879, and interdict them from acting thereon.

LORD DEAS and LORD MURE concurred.

LORD SHAND—I am of the same opinion. It would certainly not occur to me that in the ordinary case this Court should be induced to interfere in a question between the Board of Supervision and a parochial board in regard only to the reduction of salary of an inspector of the poor or other official paid by the parochial board by from £200 to £180. But the complainers, the Board of Supervision, have stated in this petition, in the concluding paragraph, that "a salary of £200 is below what, judging from experience, the petitioners would expect to command the services of an efficient inspector for such a parish as Old Monkland, even if he were aided by a larger staff than one assistant inspector. In the existing state of circumstances a reduction of this already inadequate salary is unjust to the inspector, and is calculated to drive him from an office of which the parochial board has not the power to deprive him by direct dismissal." I attach great importance and weight to the fact that this Board, which is charged with the supervision of the proceedings of parochial boards, have thus stated their conviction as to the effect of the reduction of the inspector's salary in this case. But my judgment does not proceed upon their mere statement, for if we look at the evidence which has been adduced in support of it, contained in the visiting officer's reports and minutes of meetings of the parochial board themselves, the statement is amply borne out, and upon that ground I am of opinion that the petitioners were entitled to come to this Court to ask the remedy they have done, and that it has been shown there was obstruction on the part of the parochial board within the meaning of the section founded on. Accordingly, I agree in thinking that the prayer of the petition should be granted.

The Court appointed and ordained the Parochial Board to rescind their resolutions of 8th May and 28th August 1879, and interdicted them from acting thereon.

Counsel for Board of Supervision (Complainers)—Lord Advocate (Watson)—J. P. B. Robertson. Agents—Murray & Falconer, W.S.

Counsel for Parochial Board (Respondents)—Balfour—Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Inspector — R. V. Campbell. Agents—

Tuesday, January 20.

SECOND DIVISION.

WHITSON (CURROR'S TRUSTEE) *v.* CALEDONIAN HERITABLE SECURITY COMPANY.

Public Company—Winding-up—Effect of Agreement amongst Directors to take Unallotted Balance of New Issue of Shares—Where Alluded to in Report of Company.

The directors of a public company agreed among themselves to take up a certain unallotted balance of a new issue of shares. That agreement was expressed in the report to the annual general meeting of the company, which was approved of, issued, and thereafter engrossed in the minute-book of the company. C. was a director, and had been present at all the meetings at which the arrangements had been concluded, and at the general meet-

ing. His representative, upon being applied to for payment of a certain sum in respect of C.'s proportion of the shares in question, refused it on the ground that there had been no concluded contract to take a fixed number of shares, and no allotment, and he therefore brought a petition for rectification of the register of shareholders upon which C.'s name stood in respect of these shares. Petition *refused.*

This petition was at the instance of Mr Thomas Whitson, C.A., trustee on the sequestrated estates of the late Mr Curror of the Lee, and had for its object the rectification of the register of the Caledonian Heritable Security Company, to the effect of having the name of Mr Curror, or of the petitioner in his right, deleted as the holder of certain shares.

The petition was brought under the 35th and 62d sections of the Companies Act 1862 (25 and 26 Vict. c. 89).

The late Mr Curror had been one of the promoters, a shareholder, and an original director of the Company in question, and had continued a director down to the date of his death in February 1879. Shortly before his death Mr Curror had applied for sequestration, and the petitioner had been appointed trustee on his estate. Part of the estate consisted of 800 shares of £5 each in the Company in question, and about the month of March 1879 the petitioner, in the course of his administration of the estate, sold these shares through a broker to various purchasers.

On the transfers being sent in to the manager of the Company for registration in the Company's books, the petitioner on 17th March 1879 was applied to for payment of the sum of £91, 12s. (including interest) alleged to be due by Mr Curror upon 30 shares of the Company, being a portion of 267 shares (the remainder of a new issue of 5000 shares made in May 1877 at £2 premium) which it was alleged the directors had agreed to take up among themselves. It was further intimated that no transfers of any shares held by Mr Curror would be passed by the directors until the payment was satisfied.

The petitioner had known nothing of the additional shares, and refused to recognise his liability for them, and he accordingly presented this petition.

Answers were lodged by the Company. It was stated for them that "shortly before the report of the annual general meeting of the shareholders for 1877 was prepared, the directors (other than Mr Kenneth Mathieson, who was abroad at the time), finding that between 200 and 300 shares of 5000 new shares remained to be taken up, agreed to take these remaining shares amongst themselves. This arrangement is expressed in the report under the head of 'I. Shareholders' Capital,' as follows—'In terms of a resolution agreed to at last annual general meeting, 5000 new shares were issued to the shareholders in proportion to their respective holdings, at £3 per share (being a premium of 40s. per share), the whole of which were accepted by the shareholders, with the exception of between 200 and 300 shares, which the directors arranged to take up among themselves. They are therefore in a position to report that the whole of this issue has been placed. From the premiums thereon the reserve fund has been increased from £6600 to £15,000, and a balance of £1600 has been carried to the credit of the profit and loss account, all as shown in the balance-sheet. The number of shares now issued is therefore 20,000, representing a subscribed capital of £100,000, whereof £1 per share, or £20,000, has been paid up.' The full amount of premiums on these 5000 shares—£10,000—is also credited in the accounts annexed to the report—£8400 to the reserve fund, and £1600 to profit and loss. The report was approved of at the meeting held on the 6th March 1878, and was thereafter issued and engrossed in the minute-book of the Company. Mr Curror was present at the various meetings of the board when the report was prepared and adjusted, and also at the meeting of shareholders when the report was adopted."

It was admitted that Mr Curror never accepted in writing the shares referred to, and that no notice of allotment was ever sent to him. The entry in the stock-ledger as to the transference of the shares to Mr Curror was as follows:—

"1878.

"Dec. 31. By shares transferred from Richard Wilson 'in trust,'
30, Nos. 17926-17942 / 16322-16334
By shares transferred from Kenneth Mathieson, 3, Nos. 16419-16421."

It was admitted that these entries were made after Mr Curror's death. Mr Mathieson, who as stated above was abroad, refused to take up his shares, and they had been allotted among the other directors.

Argued for the petitioner—The contract or agreement to take shares was defective (1) because there was no evidence to show what number of shares Mr Curror had agreed to take; (2) Because one director was abroad, and knew nothing of what was going on, and part of the shares he should have got were afterwards assigned to Mr Curror; (3) Directors were not bound by a report signed by the manager unless the shares had been actually allotted and the allotment intimated to the allottee.

Authorities—Lindley on Partnership, 100 and succeeding pages, and 1382; Buckley (2d ed.) (notes of sec. 23 of Companies Act), p. 46, &c.; *Gunn's* case, L.R., 3 Ch. App. 40; *Wheatcroft's* case, July 24, 1873, 29 L.T. 324; *Hallmark's* case, 38 L.T. 413; *Ritso's* case, L.R., 4 Chan. Div. 774; *Ramsgate Hotel Company* v. *Montefiore*, L.R., 1 Exch. 109; *Ward's* case, L.R., 10 Eq. 659.

Argued for the respondents—The report was written evidence of a contract by Mr Curror to take these shares; it was not the contract, but was the narrative of it. The cases quoted did not apply, for all of them were cases of outsiders who had applied for shares and to whom no intimation had been sent. Here Mr Curror was a director and cognisant of the whole transaction, and present at the meetings at which it was carried through. The transaction was one calculated to increase the credit of the Company with the public, and the latter were entitled to rely on the good faith of it.

Authorities — *Harward's* case, L.R., 13 Eq. Cases, 30; *Leek*, L.R., 6 Chan. App. 469; *Leveta*, L.R., 3 Chan. 36

At advising—

Lord Justice-Clerk—At an earlier part of this argument I was much impressed with the view that nothing had been done sufficient to entitle the Company to place the directors on the register in respect of these shares, but that all that passed amounted only to a contract, imperfect for want of specification.

But I did not sufficiently consider the fact that this being an agreement by the directors to take up the remaining unallotted shares, no formal allocation was necessary. A report was issued by the directors which, *inter alia*, contained a statement that they (the directors) had agreed to take up the unaccepted balance of new shares, which statement was made to enable them to declare that all the new issue had been taken up, and to make up the accounts of the Company on this footing. I think the true view of the case is, that the directors having made this representation are bound to act up to it. Such a representation was calculated to increase the credit of the Company in the market, as indicating the confidence which the directors had in its stability. And when they go on to report that the premiums on the shares had been applied to increase the reserve fund, it is impossible to say that this was not a very important representation to the public. Everyone who transacted with the Company was entitled to believe that these 267 shares had been taken up in *bona fide*. I am therefore for refusing the petition.

Lord Ormidale and Lord Gifford concurred.

The Court therefore refused the prayer of the petition.

Counsel for Petitioner — Kinnear — Graham Murray. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Respondents — Balfour — Keir. Agent—J. W. C. Murray, W.S.

Wednesday, January 21.

FIRST DIVISION.

[Lord Curriehill, Ordinary.
Exchequer Cause.

LORD ADVOCATE *v.* REID AND ANOTHER (REID'S EXECUTORS).

Revenue—8 and 9 Vict. cap. 76, sec. 4—Definition of Testamentary Writing—Liability to Legacy-Duty where Annuity Payable out of General Estate—Implied Revocation where Annuitant, if he acted as Factor, was to do so Gratuitously, but in a Subsequent Deed was to get a Suitable Gratification.

The proprietrix of N. executed a bond of annuity in favour of her factor binding her heirs and successors in her lands and estate, "in testimony of my satisfaction with his conduct and management of my affairs while he acted as my factor . . . to make payment to the said W. R. yearly, and each year after my decease, and during all the days of his life, of an annuity of £150 . . . . but declaring it is my desire that the said W. R. shall after my death continue to discharge the duties of factor on the said lands and estate of N., and that without any factor fee: But it is my intention . . . . that the said annuity shall be paid to the said W. R. even in the event of his not acting as factor at my death, or ceasing to act as factor at any time thereafter, and that whether such non-acting or ceasing to act as factor shall arise from inability on his part, or from his services not being desired and required, or from any other cause whatever." And then she reserved power to revoke, and dispensed with delivery. In no prior or subsequent deed of the granter was this annuity mentioned; in particular, it was not mentioned in a general trust-disposition and settlement of her affairs other than the estate of N., executed previously, but with codicils executed subsequently; nor in a subsequent trust-disposition and deed of entail of N. The deed of entail of N. referred to a deed of instructions of even date, the fourth direction of which authorised and empowered "my said trustees of N. to appoint W. R., whom failing any one of their own number, or any other person, as factor under themselves for conducting the trust, and to allow such factor a suitable gratification for his trouble." W. R. (who was himself a trustee) acted as factor to the trustees under the deed of 1844, to whom for a certain period the rents of N. belonged, and received the annuity, but no other factor fee. When the estate came to be entailed in terms of the deed of instructions, the institute in the entail did not desire the services of W. R. as factor, but continued to pay him the annuity down to the date of W. R.'s death.

Held (*aff.* Lord Curriehill) (1) that the bond of annuity in question was a testamentary instrument; and (2) that the annuity was a legacy within the meaning of the 4th section of the Act 8 and 9 Vict. cap. 76 (Legacy-Duties Act), and was therefore subject to duty.

Observed that, in the circumstances, even assuming the competency of a contention that the bond of annuity had been revoked by the subsequent deeds of the granter, it failed upon its merits.

Opinion per Lord President (Inglis)—Lord Curriehill, Ordinary, *contra*—that W. R. would not have been entitled to payment of the annuity and also to take benefit from the provision in the fourth head of the deed of instructions empowering the trustees to allow him a suitable gratification for his trouble.

This was a subpœna with a relative Special Case against the executors of the late William Reid, writer, Dundee.

Mrs Bethune Morison of Naughton died on 16th December 1850. On 9th September 1848 she executed a bond of annuity for £150 in favour of William Reid, writer, Dundee, in the following terms: — "I, Mrs Isobel Bethune Morison of Naughton, for the esteem which I have and bear to William Reid, writer in Dundee, my factor, and in testimony of my satisfaction with his conduct and management of my affairs while he has acted as my factor, do hereby bind and oblige myself, and my heirs and successors in my lands and estate of Naughton, to make