let the farm of Mosshouse to the said John Pearson on a nineteen years' lease from Martinmas 1881, at an annual rental of £53.

Pearson failed to pay the full rent due at Whitsunday 1885, and the half-year's rent due at Martinmas following, and an action of removing was raised against him in the Sheriff Court of Ayr, in which decree in absence was pronounced on 4th February 1886, ordaining him to quit the farm, lands, and pertinents of Mosshouse at Whitsunday 1886, under pain of ejection. A charge followed on this decree on 25th February 1886, and on 10th April thereafter, Mr Howden, as factor foresaid, let the farm to James Harper, with entry at Whitsunday 1886. Pearson refused to remove from the farm at Whitsunday 1886, and on the 26th May lodged a reponing note and defences in the action of removing. The note, which operated as a sist of diligence, was refused by the Sheriff-Substitute, and on appeal by the Sheriff.

Pearson still refused to leave the farm, and on 19th July he was formally ejected by a sheriff-officer, but after the departure of the officer he immediately resumed occupation of the premises. When the new tenant, Harper, endeavoured to obtain entry, Pearson threatened him and his servants with bodily violence, and prevented him from obtaining possession of the farm, and thereafter continued grazing, cropping, and making hay thereon. On 17th August following a note of suspension and interdict was presented to the Lord Ordinary on the Bills by the present petitioners, praying the Court to interdict respondent from continuing the possession of the said farm of Mosshouse, and from preventing the said James Harper from peaceably enjoying the same. The respondent lodged answers. On 3d September following the Lord Ordinary on the Bills (Lord Lee) having heard counsel for the petitioner and an agent for the respondent, passed the note on caution, and, under certain reservations and undertakings by the complainers, granted interim interdict.

Notwithstanding the interdict, Pearson continued to retain possession of the farm. The present application was accordingly made by the petitioners, the concurrence of the Lord Advocate having been obtained thereto. Harper was also a consenting party to the proceedings.

On 16th October the respondent was ordained to lodge answers in eight days.

The *inducie* having expired, and no answers having been lodged, the case was re-enrolled, and on Saturday 30th October an order was pronounced by the Court ordaining the respondent to attend personally at the bar on Thursday the 4th November. On the motion of petitioners' counsel the Court appointed this order to be intimated to the respondent by registered letter. The respondent appeared at the bar on 4th November, and stated that he was guilty of the breach of interdict, but being unable to state any explanation of his conduct, the Court continued the case until the following day in order to enable him to obtain the assistance of counsel.

On Friday November 5th the respondent having again attended at the bar, counsel for him confessed the breach of interdict and made an explanation in answer, to which the Court heard a statement by counsel for the petitioners.

LORD PRESIDENT—John Pearson, you have admitted the breach of interdict charged against you, and we are bound to consider in dealing with your case of what the breach of interdict consisted. It is very much to be regretted that a person in your condition of life, tenant of a farm in Ayrshire, should have resisted the action of the law in the way you have done; and not only so, but you have committed very serious injury and loss both upon your landlord and upon the incoming tenant by the course of conduct you have pursued. Instead of removing from the farm, in obedience to the decree of the Sheriff, you continued in possession of it, and prevented the incoming tenant from taking possession, and went on grazing, cropping, and making hay on the farm notwithstanding that you were no longer entitled to possession, and notwithstanding the rights, of which you were well aware, of the incoming tenant. This led to the interdict which was granted on the 3d September, and even after that interdict was served upon you, you still continued to retain forcible possession of this farm. Now, that is an offence against the law which cannot be passed lightly over. It is impossible to allow the orders of the Court to be set at naught, and treated with contempt as you have done by that course of conduct, and therefore the Court feel, while they are unwilling to inflict a severe sentence upon you in the circumstances of the case, that they cannot do less than order you to be incarcerated for one month.

The Court pronounced the following interlocutor:—

> "Find, on the respondent's confession at the bar, that he has broken the interdict granted by Lord Lee on 3d September 1886: Therefore decern and adjudge the respondent to be imprisoned for the space of one month from this date, and thereafter to be set at liberty, and for that purpose grant warrant to officers of the Court to convey the respondent, the said John Pearson, from the bar to the prison of Edinburgh, and thereafter to be dealt with in due course of law."

Counsel for Petitioners—Macfarlane. Agents—Scott Moncrieff & Trail, W.S.

Counsel for Respondent—Galloway.

Tuesday, November 2.

FIRST DIVISION.

ALLIANCE HERITABLE SECURITY COMPANY AND ANOTHER *v.* THE HERITABLE PROPERTY TRUST (LIMITED).

Public Company—Winding-up—Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *secs.* 79 *and* 80 —*Companies Act* 1880 (43 *Vict. cap.* 19), *sec.* 7. Procedure where a creditor of a limited company petitioned for a winding-up order, and before the *inducie* expired the Registrar of Companies had struck it off the register.

The creditor of a company presented a petition to

the Court for the winding-up of the company. Three days after the petition was presented the Registrar of Joint-Stock Companies struck it off the register as a company "not carrying on business or in operation," in terms of section 7 of the Companies Act 1880.

That section provides that where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation he shall, after certain demands for information, and after certain notices in the *Gazette* and to the company itself, unless cause be shown to the contrary, strike it off the register, and publish notice thereof in the *Gazette*, "and on the publication in the *Gazette* of such last-mentioned notice the company whose name is so struck off shall be dissolved; provided that the liability (if any) of the directors, managing officers, and members of the company shall continue, and may be enforced, as if the company had not been dissolved." By sub-section (5) of the same section, "if the company or any member feel aggrieved at the name being so struck off, 'the company or member' may apply to the Court in which the company is liable to be wound up, and such Court may order the name to be restored to the register, and thereupon the company 'shall be deemed to have continued in existence as if the name thereof had never been struck off.'"

On the petition again appearing in the Single Bills, counsel for petitioner stated that no answers were lodged, but that the Registrar had struck the company off, as above stated; that it could not be restored except by the application of the "company" or a "member" (sub-sec. (5), *supra*); that as a public company cannot be sequestrated (*Standard, &c., Company* v. *Dunblane, &c.*, Dec. 12, 1884, 12 R. 328), the petitioner, as a creditor, had no remedy except a winding-up order, to which he submitted he was now entitled as the company had been ostensibly an existing company when he presented the petition, and no application might ever be made to restore it to the register.

The Court granted the petition and appointed a liquidator.

Counsel for Petitioner—Alison. Agent—T. F. Weir, S.S.C.

Saturday, November 6.

FIRST DIVISION.

[Sheriff of the Lothians.

SCOTT *v.* COOK.

Lease—Removing—Citation—Peace-warning to Leave Urban Tenement.

Held that a peace-warning served upon the tenant of a shop and a dwelling-house, which were separate subjects, at the shop, was a good citation as regarded both subjects, on the ground that the tenant was at the time living at the shop.

Sheriff—Process—Exception—Sheriff Courts Act 1877 (40 *and* 41 *Vict. c.* 50), *sec.* 11.

The 11th section of the Sheriff Courts Act 1877 provides that "when in any action competent in the Sheriff Court a deed or writing is founded on by either party, all objections thereto may be stated and maintained by way of exception without the necessity of bringing a reduction thereof."

Opinion (*per* the Lord President) that a sheriff-officer's execution is a "deed or writing" in the sense of those words as used in this section.

Misses Harriet Scott, Jane Scott, and Magdalen Scott were the proprietors of a shop situated in St Andrew Street, and a dwelling-house in Smeaton's Close, Leith. This house and shop were separate, but near each other. Isabella Cook was tenant of both house and shop, under missives of lease from Whitsunday 1885 to Whitsunday 1886. The proprietors called upon Cook to remove at Whitsunday 1886 under a peace-warning, of which the executions were dated 3d April 1886, but Cook refused to remove, and a petition for her ejection was accordingly presented in the Sheriff Court of the Lothians and Peebles at Edinburgh.

This was a process of summary ejection from both premises.

The pursuers stated that on 3d April they had given the defender peace-warnings to remove at Whitsunday, but she had failed to do so, and they produced (1) an execution of warning applicable to the shop, and (2) an execution of warning applicable to the house, as evidence that warning was duly given.

The defender denied that she had been "peace-warned," and alleged that the "executions referred to are false and fabricated. It is not true that on 3d April last, or on any other date, James Lindsay, sheriff-officer, Leith, served upon the defender or her husband, or any servant for them, any intimation to the effect as therein stated." She further averred that she was married to a man called Henry Ayre, and that he not being called the action should be dismissed.

The pursuers, *inter alia*, pleaded—"(3) The executions in question cannot be pleaded by way of exception in the Sheriff Court." . . .

The Sheriff-Substitute (HAMILTON) repelled the pursuers' third plea, and allowed a proof.

"*Note.*—. . . . The question is, whether the defender is entitled to maintain this defence by way of exception under the 11th section of the Sheriff Court Act 1877, which provides—'When in any action competent in the Sheriff Court a deed or writing is founded on by either party, all objections thereto may be stated and maintained by way of exception, without the necessity of bringing a reduction thereof.' The Sheriff-Substitute is of opinion that the words 'deed or writing' used in this section are wide enough to embrace the executions here founded on, and that it would be against the policy of the Act of 1877 to compel the defender to bring an action of reduction in the Court of Session."

At the proof James Lindsay, the sheriff-officer, deponed—"The peace-warnings in question were given in writing, and therefore what I served was in writing. They were served in only one place—the shop. There was a house at the back. There was no one in the house when we went there." . . . "I think it was defender's mother that we found in the shop." . . . "The two citations were served in the shop because we could not get into the house, the door being locked. The house and shop were separate, but they were