money of the trust to particular individuals, which they have no power to do by the Scheme or in any other way.

We have had a suggestive and useful report by Mr Gillespie, and there is one passage of the report which I desire to notice — "I hardly think," the reporter says, "that the present application is an application of the character which the Legislature expected to be made under that section. What seems to have been contemplated by that section was a permanent alteration in the scheme of management of the institution or of the constitution of the governing body, which experience had been found to recommend. There is no such alteration sought here; all that is asked is that the Court shall grant special powers of a temporary nature for certain particular cases. Now, that being so, it is not to be expected that the proposal should be contrary to anything contained in the Act, in the sense of being forbidden by any of its provisions. Had there been a provision proposed for giving the Governors a general power of awarding pensions in the future, that would have raised a general question of principle, on which some instruction could be got from the Act, but there is no such proposal here."

I entirely adopt the suggestion of Mr Gillespie. I think that is not a case which can be entertained under the 20th section of the Act. If any application for the purpose of introducing into the Scheme a general power to make a pension fund be hereafter presented to us, that will be a fitting subject for consideration on its merits. Here the proposal is not of that kind, but is only an attempt under cover of the 20th section to enable the Governors to pay certain sums to particular individuals which otherwise they have no power to do.

LORD ADAM—So far as I can judge, the three persons mentioned in the petition are worthy of the pensions proposed, and if I thought we could do it I would be desirous of complying with the prayer of the petition, but I entirely agree with your Lordship that we cannot.

LORD M'LAREN—I have doubts about our powers in this matter, and prefer not to express an opinion, as I understand your Lordships are all of opinion that the petition cannot be granted.

LORD KINNEAR concurred.

The Court refused the petition.

Counsel for the Petitioners—Jameson—Cosens. Agents—Tait & Crichton, W.S.

Saturday, November 29.

FIRST DIVISION.

MILLAR, PETITIONER.

Public Company—Companies Act 1862, *sec.* 95—*Sanction of Court—Prosecution by Liquidator of Action Instituted in Company's Interest by Third Party before Winding-up.*

A holder of shares in a company who had alienated certain properties with the supposed object of defeating the diligence of the company against them for unpaid calls, was thereafter sequestrated. His trustee having obtained indemnity for expenses from the company, sued a reduction of the deeds of alienation. The defenders were assoilzied in the Outer House, and thereafter an order for the winding-up of the company was pronounced. The official liquidator was advised to reclaim against the judgments, and presented an application, under section 95 of the Companies Act 1862, for the sanction of the Court in prosecuting the reclaiming-notes. Application *granted.*

The petitioner was the official liquidator of the Property Investment Company of Scotland, Limited, under an appointment dated 13th August 1890, and he presented this petition to the Court for power under the Companies Acts 1862 to 1886, and particularly under the 95th section of the Act of 1862, to prosecute certain reclaiming-notes either in his own name or in the name of William Albert Davis, as trustee on the sequestrated estates of John Richardson; and in the latter case, to approve of his giving the said William Albert Davis a guarantee or indemnity for expenses incurred or to be incurred of certain actions to which the reclaiming-notes related, or in such other form as the Court might direct.

John Richardson was a registered holder of certain shares in the Property Investment Company, upon which shares calls had been made but without payment, and in the year 1888 the company obtained decree against John Richardson for payment of £660 in respect of said unpaid calls. Upon this decree a charge was made, and thereafter upon 24th April 1889 the company sequestrated John Richardson, and William Albert Davis was appointed trustee in the sequestration. Besides the claim of the Property Investment Company in respect of said calls, the only other claims lodged in the sequestration were two in number, which taken together were considerably less than that of the company. The whole estate recovered by the trustee was insufficient to meet the expenses of the sequestration, and there was no further estate which could be recovered under the sequestration unless the trustee was successful in setting aside certain alienations of property granted by John Richardson between

the years 1881 and 1886 in favour of his wife and daughter. The value of the property so alienated was about £1200, and the supposed reason of the alienation was that the bankrupt might evade payment of calls in respect of his shares in the Property Investment Company.

The trustee being unwilling to sue an action of reduction from want of funds, Mr Peter Couper, manager of the Property Investment Company, gave, with the knowledge and sanction of the directors, a letter of guarantee or indemnity to the trustee in the following terms, viz.—

"*The Property Investment Company of Scotland, Limited, 37 George Street, Edinburgh, 1st August* 1889.

"W. A. DAVIS, Esq.,

"Trustee on Mr John Richardson's Sequestrated Estate.

"*Richardson's Sequestration.*

"Dear Sir,—On behalf of this company I hereby undertake, in the event of your raising proceedings, to reduce the deeds granted by the bankrupt, and generally to ingather the sequestrated estates in terms of the creditors' instructions, to keep you skaithless of all responsibility and liability in the premises, including relief from all disbursements you may personally make in case of there being no funds in the sequestration ingathered by you from which you can obtain payment and relief. I also agree to pay you the usual fee for your trouble as the same shall be fixed by the Commissioners, should no funds be ingathered by you.—Yours truly,

"Adopted as holograph,

"PETER COUPER, *Manager*."

Having received this letter, the trustee raised actions in the Court of Session against the wife and daughter of the bankrupt, but after a proof had been led the defenders were in each case assoilzied by decrees dated 25th July 1890. These judgments were under consideration of the directors of the company upon 29th July 1890 with a view to decide whether they should be reclaimed against, but before any decision had been arrived at the present petitioner was appointed official liquidator under a petition for the winding-up of the company.

The official liquidator on entering upon his duties consulted counsel in reference to said proceedings and his duty in the circumstances, and he was advised that he might either move to be sisted as pursuer in room of the trustee in the sequestration, or might give the trustee a further indemnity for expenses, but that in the former case he must undertake to relieve the trustee of all expenses already incurred, and that in the latter the trustee was entitled to require that the official liquidator should undertake to relieve him of all expenses both incurred and to be incurred in the said actions, so that in either case the trustee might, in the event of a deficiency of funds to meet the whole claims against the company, which the official liquidator anticipated might occur to some extent, obtain a virtual preference for the expenses incurred by him prior to the date of the liquidation. At the date of the official liquidator's application to the Court the trustee had no preference over the other creditors of the company for these expenses. The expenses of both sides in said actions to the date of the liquidation were estimated to amount to £300.

The official liquidator was further advised by counsel that the judgments of the Lord Ordinary were such as ought to be brought under review of the Inner House by reclaiming-note, but that his power to guarantee the expenses of an action carried on, not in the name of the company, but in another name in its interest, with the possible consequence of incurring liability for expenses already incurred, was so doubtful as to render it proper for him to lay the circumstances before the Court and ask special direction as to the course which he should adopt. Having full regard to the pecuniary issues at stake, the official liquidator concluded that in the interests of the company and its creditors a reclaiming-note against each of the said judgments should be prosecuted, and accordingly the application was made as above for the Court's sanction in prosecuting the reclaiming-notes.

The Court took time to consider the application, and thereafter—and especially in view of the opinion of counsel—sanctioned the prosecution of the process by the official liquidator in his name.

Counsel for the Official Liquidator—H. Johnston. Agents—Morton, Smart, & Macdonald, W.S.

Saturday, November 29.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

WHYTE *v.* FORBES.

Sequestration — Petitioning Creditor's Claim — Decree for Interim Execution pending Appeal — Contingent Debt — Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *sec.* 14.

The claim under an order for interim execution pending appeal is a contingent debt, and therefore, in terms of section 14 of the Bankruptcy Act 1856, it cannot be the foundation of a petition for sequestration.

In an action of reduction by George Whyte against Simon Forbes (reported *ante*, vol. xxvii., p. 731, and 17 R. 895) the Lord Ordinary on 9th July 1890 pronounced an interlocutor dismissing the action and finding the pursuer liable in expenses, and on 11th June 1890 the First Division adhered, and found the pursuer liable in additional expenses.

Whyte having appealed against these judgments to the House of Lords, Forbes