it in that sense, I think the section I have alluded to has a distinct application to the case in question. I think the petitioner is endeavouring to lay out and build upon this court in a way which the statute, in the section I am reading, does not permit.

The two questions that your Lordship in the chair has alluded to—one of them perfectly free from doubt, and the other involved in some difficulty—are of importance, and I am inclined with your Lordship to indicate an opinion upon them. I think the word "house" in section 177 means tenement, and not a separate dwelling-place, and I think so for this reason, among others, that the immediately following section uses the same word "house" or "houses" in the sense which, from its context, must mean tenement. Therefore I am disposed to read in section 177 the word "house" in the same way as it obviously is intended to be read in section 178, and the other sections that your Lordship referred to I think make this still clearer, and that is in the sense of its being a tenement, and not a separate dwelling-house.

But I agree with your Lordship that it is enough for the decision of this case to apply the last proviso of section 177, with regard to the passage to the court, which has to be open to the full width of the court. Upon that ground I think the Dean of Guild was quite right in holding that the proposed buildings were in violation of that section, and consequently that his judgment to that effect ought to be affirmed.

The Court adhered.

Counsel for the Appellant—M'Lennan—Glegg. Agent—James Skinner, S.S.C.

Counsel for the Respondent—Vary Campbell. Agents—Maitland & Lyon, W.S.

Wednesday, March 11.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

CLAVERING, SON, & COMPANY *v.* GOODWINS, JARDINE, & COMPANY, LIMITED.

Company—Reparation—Bona fide Holder for Value of Certificate for Fully Paid-up Shares—Share Certificate Issued by Secretary by Mistake—Scope of Employment—Fraud.

One of the managing directors of a company held, in addition to certain other shares in the company, 500 £10 shares upon which only £1 per share had been paid up. The secretary of the company sent him by mistake, along with other documents, certificates for these shares duly attested bearing that they were fully paid up. He wrote to the secretary saying he would like to keep the certificates, and enclosing his cheque for £4500, the amount still unpaid, but with the request that it should not be presented until he sent his consent, which was never given. He subsequently became bankrupt, and his cheque upon presentation was dishonoured. Meanwhile he borrowed £4500 from C, in whose favour he executed a transfer of the said 500 shares, which he delivered to him along with the certificates under an agreement that if the loan was not repaid within a month, the shares might be sold by him. After the month had elapsed and the loan remained unpaid, C sent the transfer and certificates to the secretary of the company, who duly noted the transfer and retained the certificates. Repeated requests were made by C to the secretary to have his name entered in the register of shareholders, and certificates issued in his favour with a view to getting the shares sold, but without effect. The shares afterwards became practically valueless, and C thereupon brought an action of damages against the company for not having been put in a position to dispose of the shares as fully paid-up shares at a time when they were a good marketable commodity. The company pleaded that their secretary had committed a fraud, and had acted outwith the scope of his employment, and that for these actings they were not responsible.

Held that the pursuer as a *bona fide* holder for value of certificates of fully paid-up shares bearing on the face of them to have been issued by the secretary in the ordinary course of business, was entitled to damages from the company for the loss he had sustained.

Damages — Interest on Damages — Time from which such Interest Begins to Run.

Held that interest upon damages does not run from the date when the damage was sustained, but only from the date of the final decree awarding said damages.

In the beginning of September 1889, William Jardine, iron merchant, Coatbridge, and one of the managing directors of Goodwins, Jardine, & Company, Limited, incorporated under the Companies Act 1862-1886, having their registered office at 79½ Gracechurch Street, London, and carrying on business as iron and steel manufacturers at Glasgow, held certain debentures and shares in said company, including 140 fully paid-up £10 shares, and 500 £10 shares upon which only £1 a share had been paid up.

Mr Francis Stobbs, the secretary of the company, sent to him by mistake along with the debenture certificates and the certificates of the fully paid-up shares, certificates for the said 500 shares duly signed by two directors and the secretary, and bearing that the said shares were fully paid up. Thereupon Jardine wrote to the secretary as follows:—"*5th Sept.* 1889.—My dear Sir—In sending me debenture certificates, you have enclosed certificate

for 500 preference shares, on which I have as yet only paid £500. If it is not asking too much, I would like to retain the certificate for a little, as I think I might with it and my other certificates raise £4500, and let you have same by end of month. This would give you plenty of funds for dividend, &c." At the same time he sent his cheque for £4500, but with the request that it should not be presented until he gave permission. This cheque was subsequently dishonoured.

Upon 13th September 1889 Jardine obtained a cash advance of £4500 from Messrs Thomas Clavering, Son, & Company, merchants and bankers, Glasgow. In security he executed and delivered to them a transfer of these 640 shares in favour of Mr Thomas Clavering, and he also delivered to them the certificates which he held for these shares, under an agreement that if the advance was not repaid within a month they were to be at liberty to sell the shares.

Upon 24th October 1889, the advance not having been repaid, Mr Thomas Clavering wrote to the secretary of the company in the following terms:—"Herewith I enclose you transfer by William Jardine in my favour for six hundred and forty (640) 7 per cent. preference shares of £10 each, fully paid, in your company, and certificates for the same. Have the goodness to mark receipt of same as having been lodged with you on the margin of the transfer, and return same to me in course of post."

To this letter the secretary of the company replied as follows:—"*25th October* 1889.—I return herewith transfer, Jardine to Clavering, 640 preference shares duly certified." The certificates were retained by the secretary. The docquet put upon the transfer was in the following terms:—"Certificates of six hundred and forty shares at office, 79½ Gracechurch Street, London, E.C. F. STOBBS, Secretary. 25/10/89."

On 2nd November 1889 Clavering & Company claimed payment from Goodwins, Jardine, & Company of a dividend on the said 640 shares, which was payable on the 11th of November. To this letter the secretary, on 5th November, replied as follows:—"Referring to your esteemed favour of the 2nd inst. I note that you claim the dividend on 640 shares as per transfer certified by me on the 25th ult."

On 20th November Clavering & Company again wrote for payment of the dividend, and enclosed the transfer of the 640 shares, certified as above mentioned, with a request to register the same, and that a certificate in Mr Clavering's favour should be sent to them in due course. To this letter the secretary replied as follows:—"*21st Novenber* 1889. Your favour of the 20th inst. to hand enclosing transfer, which has attention. The transfer of these shares was not lodged with me until 25th October, whereas the dividend is made up to 30th September 1889. I have named the matter to Mr Jardine, and he promised to arrange with you in respect to the dividend on these shares. I am again writing him to-day. No doubt he will see you at once about the same." Clavering & Company continued to press for payment of the said dividend, and for delivery of the certificates for the 640 shares especially from 6th February 1890 onwards, but without effect.

Upon 27th May 1890 the law-agents of Goodwins, Jardine, & Company wrote Mr Clavering as follows:—"Dear Sir,—By instructions of the board of directors, which met yesterday, we beg to inform you that the company decline to recognise the alleged transfer by Mr William Jardine in your favour, dated 13th September 1889, of 640 preference shares of £10 each therein described as fully paid, in respect that only 140 of the shares therein mentioned were fully paid, and upon the remaining 500 only £1 per share had been paid; as also, that the secretary had no power to give, and Mr Jardine had no right to get, delivery of full paid certificates where full payment had not been made, that the delivery was illegal and contrary to orders, that the company cannot recognise certificates unlawfully obtained, nor can they recognise the marking on the transfer indicating lodgment of the certificates. We are to add that the board were entirely ignorant of these proceedings until a few days ago."

In consequence of this refusal Clavering & Company brought an action of damages in September 1890 against Goodwins, Jardine, & Company, concluding for £7000. They averred that Jardine's total indebtedness to them exceeded £9000, that the full value of the shares when acquired by them as appeared on the face of the certificates was £6400, that two dividends payable at 11th November 1889 and 1st July 1890 had since been declared, amounting together to the sum of £448, and that owing to the refusal of the defenders to register the transfer and issue new certificates they had been prevented from selling the shares as they would have done if they had had the certificates. They pleaded—"(2) The defenders having illegally and unwarrantably refused to register the said transfer and issue share certificates for the shares so transferred to Mr Clavering for the pursuers' behoof, they are liable to the pursuers in damages. (3) The pursuers having suffered loss and damage to the extent sued for, they are entitled to decree in terms of the conclusions of the summons."

The defenders averred that Stobbs acted fraudulently and outwith the scope of his duty in permitting Jardine to keep the certificates, which he had obtained by mistake and inadvertence as above mentioned; that for his fraudulent conduct he had been dismissed from the service of the defenders; that Jardine having become bankrupt, and his estates having been sequestrated on 9th April 1890, had been interdicted from acting as managing director of the company; and that until the end of May 1890 the defenders had no knowledge whatever of the transactions in question. And they pleaded —"(4) The actings of the said F. Stobbs having been fraudulent and outwith the scope of his duty as the defenders' secretary, the defenders are not in any way bound

thereby. In any view, the damages claimed are excessive."

The Lord Ordinary (KYLLACHY) allowed a proof, which brought out the facts given above, and from which it appeared that in February 1890 the shares were selling at about £6, but that in April 1890, after Jardine's bankruptcy, they fell to £3, and thereafter pronounced the following interlocutor:—"Decerns against the defenders for the sum of £4000, with interest thereon at the rate of 5 per cent. from 6th February 1890 until payment, the pursuers being bound, in exchange for said payment, to transfer to the defenders or their nominee or nominees the 500 £1 paid shares and the 140 fully paid shares mentioned on record: Finds the pursuers entitled to expenses, &c."

"*Opinion.*—The pursuer of this action lent to Mr W. Jardine in September 1889 a sum of £4500, on the security, as he believed, of *inter alia* 500 fully paid £10 preference shares in the defender's company. He subsequently discovered that these shares were not fully paid, being in fact paid up only to the extent of £1 per share. But having had handed to him at the time of the loan a certificate under the company's seal and signed in terms of its articles bearing that the shares stood registered as fully paid shares in the borrower's name, he brings the present action against the company, seeking damages for the company's failure (or inability) to place him on the register as transferee of 500 fully paid shares, in terms of the certificate . . . the measure of the damage being said to be the market value of the company's fully paid shares at the date when the company were called on to register the transfer in the pursuer's favour.

"A proof has been led, from which it appears thst the history of the certificate and the manner in which it found its way into Mr Jardine's hands was as follows:—Mr Jardine was one of the managing directors of the defenders' company, and he and his relatives held a number of debentures and fully paid shares in the company, distinct altogether from the shares in question. In September 1889 he wrote asking the secretary of the company to send him certificates applicable to those debentures and shares, and, by what appears to have been the mistake of a clerk, there was at the same time sent him a certificate for the 500 shares now in question, for which certificate he did not ask, and which ought not to have been sent him until he had paid up the £9 per share still due on those shares. The mistake arose, or rather became possible, in this way. The whole £10 per share payable on the company's preference shares was it appears due, and had been so since the month of June 1889, and in June 1889, in anticipation of Mr Jardine and the other shareholders paying their calls and taking up their scrip, the directors and secretary had (following, they say, a usual practice) sealed and signed the share certificates by anticipation, leaving them in a book, attached to counterfoils, from which they fell to be separated as payment was made by the several shareholders. The clerk who was directed to send the share and debenture certificates for which Mr Jardine asked, omitted to notice that the 500 shares in question were in a different position, and accordingly Mr Jardine was, by the carelessness of the company, or one of its officers, put in possession not only of the certificates to which he was entitled, but also of the certificate in question applying to these 500 shares, which certificate should not of course have been issued to him until he had paid the full amount of his calls.

"Had matters stopped here—that is to say, had Mr Jardine gone straightway to the pursuer, and, making a fraudulent use of the certificate which he had thus got, obtained the loan which has given rise to the action, the question between the pursuer and the company might not have been clear, but it would have been considerably simplified. It happened, however, that the affair took a further turn. Mr Jardine at once discovered the mistake, but, instead of at once returning the certificate, he wrote the following letter to Mr Stobbs the secretary [see letter of 5th September 1889, *supra*]. The secretary unfortunately had not the moral courage to deal with this proposal as he ought. He looked to Mr Jardine as his superior, and did not, as was his clear duty, communicate with the other directors or insist personally on the immediate return of the certificate. On the contrary, he allowed Mr Jardine to retain the certificate, having apparently had his scruples satisfied in a very inadequate manner by the receipt from Mr Jardine of a cheque for the amount of his calls, which cheque, however, he was requested not to cash until Mr Jardine gave him leave. The result was that Mr Jardine was allowed to keep the certificate, that the cheque remained in the secretary's private drawer till Mr Jardine became bankrupt in the following April, and that in the meantime Mr Jardine made the use of the certificate which has given rise to the present action.

"In these circumstances the question to be decided is, What are the pursuer's rights as against the company, having in view the terms of the certificate, but having also in view that those terms are inconsistent with the share register, and that the certificate left the hands of the company in the manner which I have just described?

"It will be, in the first place, convenient to see what are the relative rights which arise upon the issue in regular course of a certificate of shares or stock in a limited company.

"Such certificate, it will be observed, is a statutory document—that is to say, it is recognised by the Companies Acts. By section 31 of the Act of 1862 it is provided—'A certificate under the common seal of the company specifying any share or shares of stock held by any member of a company shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.'

"And by the articles of association of this (the defenders') company, section 11, it is provided—'Every member shall be en-

titled to receive, gratis, a certificate under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.'

"The certificate here, therefore, is a certificate by the company, and is a document by which the company is bound as by any other document issued in the course of its business. And, looking to the terms of the document, there seems no difficulty in carrying its operation and effect at least this length, that it implied, if it did not express, a contract as between the company and the person to whom the certificate was issued, that the company should recognise the latter as a shareholder to the extent set forth in the certificate, or otherwise, should make good to him the pecuniary value of that position. In short, as between the company and the recipient of the certificate in regular course, it seems not doubtful that the company impliedly warrants the facts set forth in the certificate. On the other hand, of course, the recipient is open to all exceptions arising from his own conduct or his own knowledge. If, for example, as has happened (see *Simm and Others* v. *The Anglo-American Telegraph Company*, L.R. 5, Q.B.D. 188), the transfer in his (the recipient's) favour, on the faith of which he has been registered and obtained his certificate, turns out, although unknown to him, to be a forgery, or if he has obtained the issue of the certificate by fraud, or if he is in any way open to any other personal exception—in all such cases the company is free, and has a good answer to any action at the instance of the recipient of the certificate. All this is probably clear enough.

"But *quid juris*, when the question arises not with the recipient of the certificate, but as here with a second transferee—a third party—to whom the certificate has not been issued, who has had no communication with the company, but to whom the certificate has been handed or exhibited, and who in reliance thereon and the relative transfer—and in good faith—has made an advance of money—is he, when he lodges his transfer and demands registration according to the certificate, to be held open to all the exceptions pleadable against his transferor? Is he, in other words, to be treated as an ordinary assignee having no higher rights than his cedent? or is he, on the other hand, in the position of having an independent claim against the company, founded on the certificate as a document addressed to all the world and warranting to everybody concerned that the shares mentioned exist and are held as mentioned in the certificate?

"On principle, and if the question were open, I acknowledge that there seems much to be said against putting a certificate of shares in the position practically of a negotiable instrument. The statute only declares that it shall be *prima facie* evidence, and it may be doubted whether a proposed transferee ought to be in safety to rely on such *prima facie* evidence, and ought not to be required for his safety to take the precaution of consulting the company's register.

"It appears, however, to be settled by a long course of decisions in England, and as I see no reason to doubt, on sound views of commercial expediency, that a certificate of shares, once regularly issued, is a document binding the company to make good its representation to any *bona fide* transferee for value into whose hands it (the certificate) comes. The way it is expressed is that the company is 'estopped' in a question with such transferee from disputing the truth of the certificate, and the translation of that seems to be that the company is held to warrant the truth of the statements which the certificate makes, and so to be liable, *ex contractu*, in specific performance, if that is possible, or in pecuniary reparation, if that is impossible. The cases referred to will be found collected in Lindley, i., 145, and Buckley's Notes, to section 31 of the Companies Act. They are—*Shaw* v. *The Port Philip Gold Mining Company*, 13 Q.B.D. 103; *Bahia and San Francisco Railway Company*, L.R., 3 Q.B.D. 584; *British Mutual Banking Company* v. *Charnwood Forest Railway Company*, L.R., 18 Q.B.D. 714; *Bishop* v. *The Balkis Consolidated Company*, L.R., 25 Q.B.D. 512; *Burkingshaw* v. *Nicolls*, 3 App. Cas. 1004.

"What, therefore, the pursuer here got, or was entitled to believe he had got, was an obligation of this company, duly sealed and signed, and giving him the right to sue the company, *ex contractu*, on an implied warranty, or as it is put in England on the principle of estoppel. The question which remains, and on which the case really turns, is whether the fact that the certificate was irregularly or fraudulently issued by the officials of the company can affect the legal operativeness of the document as an obligation of the company duly signed and sealed, and put in circulation by the negligence or fraud of the company's officials.

"I confess I am unable to see how the pursuers can be affected by these considerations. If the document found its way into what I may call circulation by the negligence of the company's officials, that of itself seems to afford a fairly sufficient ground of liability. And if, on the other hand, what happened amounted to fraud on the part of the officials, it was, it seems to me, fraud committed, not against the pursuer, but against the company. A negotiable instrument or document of title—say to goods—duly executed by a company would not, I apprehend, be the less binding on the company—I mean in the hands of a *bona fide* holder for value—because it had been issued by the company's officials in violation of their duty, or for a fraudulent purpose of their own. And although of course a certificate of shares is not properly a negotiable instrument, nor in a proper sense a document of title, it is yet, as we have seen, substantially in the same position, so far as regards what in this question is the essential matter, viz., the company's inability to plead against a *bona fide* transferee for value that he has no better title than his transferer.

"It is not necessary to consider what would have been the result if the certificate had been forged. The case of *Shaw* v. *Port Philip Gold Mining Company*, 13 Q.B.D. 103, one of the cases I referred to a little ago, goes the length of holding that even in that case the company would be liable—at least if the document was issued by the proper officer of the company, although fraudulently and for his own purposes. But I confess I somewhat hesitate to accept that decision as ruling the case of forgery, which involves some very special considerations. Neither do I think it necessary to consider what would have been the result if the certificate here had been stolen from the company's repositories. It may be that in that case the company would only be liable on the ground of negligence. But there also—I mean in the case of theft—different considerations come in. In the present case the certificate was not only genuine, but it was transmitted to Jardine along with a letter from the proper officer of the company, and although it is not proved that that letter was exhibited to the pursuer, it yet existed, and the pursuer would have been none the wiser if he had called for it.

"I am therefore of opinion that the pursuer here is entitled to the remedy which he asks. But I desire to add that I do not place my judgment on the ground urged in argument, that the pursuer has his redress against the company as having been defrauded by the company acting through its authorised agents. If that had been the ground of action, I should, I confess, have had great difficulty—I should indeed have been disposed to hold the defender's answer a good one, viz., that the fraud, if committed, having been committed by the company's agents for their own purposes, and in their own interests, the company was not responsible except in so far as it took benefit. But here, if I am right, the pursuer was not defrauded at all, at least as regards his pecuniary interests. He got, if I am right, a valid document effectually binding the company, and the fraud was not therefore a fraud committed upon him, but a fraud committed against the company.

"On the question of damages there is a good deal of difficulty. But upon the proof I am disposed to come to the conclusion (1) that the pursuer did not seriously press for registration of his transfer so as to put the company in default until the month of February 1890; and (2) that while the evidence is somewhat imperfect, the value of the paid-up shares at that time was not more than £6 per share. It has to be noticed that Jardine's difficulties had by that time become public, and according to the pursuer himself his sequestration in April following brought the shares down to about £3. Altogether, I think I do the pursuer full justice by fixing his damage on this head at £3000, with interest from 6th February 1890.

"There is another parcel of shares—140 in number—which were part of the security for the loan, and as to which the question is entirely separate. These shares were in fact fully paid up, and the pursuer's only complaint as to these is that the company delayed to register the transfer until the shares had greatly depreciated in value. I think that, for the reasons already stated, the company here were not in default until the month of February, and that the damage suffered is the difference between the then value of the shares and the value at the date of the defences when the company offered to register. That difference I do not think I have the means of estimating, because the company contend that their shares have still a substantial value, but I think I shall do justice by giving the pursuer decree for £6 per share, the assumed value in February, he being bound to transfer the shares to the company or its nominee as a condition of receiving that payment. The 500 shares I shall also require to be transferred, if the defenders desire it. But they (not being paid up) are, I should suppose, of no value, and were of no value at any time during the controversy.

"On the whole, the pursuer will have decree for £4000, with interest from 6th February 1890."

The defenders reclaimed, and argued—There was here a clear swindle by Jardine & Stobbs by which the company had in no way benefited, and for which the company were not responsible—*Western Bank of Scotland* v. *Adie*, May 20, 1867, 5 Macph. (H. of L.) 80. In issuing certificates as for fully paid-up shares, when they were not, the secretary had done what it would have been *ultra vires* of the company to do (*cf. Klenck* v. *East India Company for Exploration, &c.*, December 21, 1888, 16 R. 271)—and in so doing, and in allowing Jardine to return these certificates, he was acting outwith the scope of his employment; for these actings the company were not liable—*Limpus* v. *London General Omnibus Company, Limited*, June 25, 1862, 32 L.J. Exch. 34; *British Mutual Banking Company* v. *Charnwood Forest Railway Company*, March 21, 1887, L.R., 18 Q.B.D., 714—(decided more recently than *Shaw* (*infra*) and by a higher Court). The measure of damages (if any) was to be ascertained not by the market value of the shares at the time of the transaction, but by the light of subsequent events, including the effect of Jardine's bankruptcy—*Peek* v. *Derry* (1887), L.R., 37 Ch. Div. 541.

Argued for respondents—The secretary may have been perpetrating a fraud against the company, but he was acting in this transaction towards the pursuer, in the ordinary course of business as the agent of the company for whom they were responsible — *Barwick* v. *English Joint - Stock Bank*, May 18, 1867, L.R., 2 Ex. 259; *Mackay* v. *Commercial Bank of New Brunswick*, March 14, 1874, 5 P.C. Ap. 394. This however was not so much a case of representation by an agent as of issuing certificates of stock in ordinary form which estopped or barred the company from denying the truth of such certificates, and made them

liable in damages for the consequences of having refused to acknowledge the validity of the certificates—Lindley on Company Law (5th ed.) p. 484; Buckley's Notes to sec. 31 of the Companies Act 1862; *in re Bahia and San Francisco Railway Company*, May 29, 1868, L.R., 3 Q.B. 584 (although transfer forged); *in re British Farmers Pure Linseed Cake Company*, January 16, 1878, L.R., 7 Ch. Div. 533; *Burkinshaw* v. *Nicolls*, July 12, 1878, L.R., 3 App. Ca. 1004; *Shaw* v. *The Port Philip and Colonial Gold Mining Company, Limited*, May 19, 1884, L.R., 13 Q.B.D. 103. In *Bishop* v. *Balkis Consolidated Company*, July 1890, L.R., 25 Q.B.D. 512, there was only "certification;" here there was also the issue of "certificates." The measure of damages was to be ascertained by seeing what the respondents could have obtained for the shares if they had been put in a position to sell in the end of 1889 or beginning of 1890 as they ought to have been. They would have taken care not to flood the market. The fall due to Jardine's bankruptcy was not till the end of April 1890. The amount fixed by the Lord Ordinary if altered should be increased.

At advising—

LORD JUSTICE-CLERK—The pursuer in this case asks for damages in respect that a transfer which he received of certain shares in the defenders' company, which were certified to him by the secretary of the company on 25th September 1889 was not registered by the company, and which shares he has been unable to get rid of in the market.

The circumstances are very peculiar. It appears that Mr Jardine, who was one of the managing directors of the company, had induced the secretary of the company—a Mr Stobbs—who had sent him the shares in question by mistake as if Mr Jardine had paid for them, while in point of fact he had only paid a small part of the price of them to allow him to retain those shares, he taking from Mr Jardine a cheque for the amount to be paid upon them, with the understanding that he was not to use the cheque till Mr Jardine allowed him to do so. Mr Jardine thereupon proceeded to transfer the shares with a view to raising money, and he did succeed in raising money from Mr Clavering upon those shares.

Now in that state of circumstances, Mr Clavering maintains that he is entitled to damages in respect of the position in which he has been placed with regard to those shares, and the Lord Ordinary has found that he is. The defence maintained upon the part of the company is that the secretary was not acting within his duty as their servant in doing what he did, and that as what was done was a fraud, they are not liable for his fraud. I cannot accept that. Their servant the secretary was authorised by them to conduct their business, and it was his duty to issue such certificates as were issued in this case, and he did issue the certificate which is duly signed by two directors as being a certificate for these shares, and on the transfer being intimated by Mr Clavering to the company, he, as the officer of the company, wrote upon the margin the words which have been quoted in the course of the debate. Now in doing these things, I hold that he was acting as the representative of the company whose duty it was to do such acts, and that the company must be responsible for the acts so done. I concur with the Lord Ordinary upon that matter.

The only remaining question is as to the damages sustained by the pursuer as the result of those acts, and certainly the defenders have something to say on the question of the amount of damages. The Lord Ordinary takes as the time at which he must consider the question of damages, the month of February 1890. The transaction took place in 1889, and the Lord Ordinary, fixing the period at February 1890, comes to the conclusion that the sum of damages that ought to be given is £4000. If that was the exact time at which the computation of damages was to be made, I am not sure that I would agree with the Lord Ordinary in the amount; but the opinion I have formed after hearing the case is that Mr Clavering is entitled to claim damages at an earlier period than that—in point of fact, the time from which he is entitled to claim damages is the time at which he made his demand, in November 1889. Now it is perfectly true, as is maintained by the defenders, that a large number of shares like these, if suddenly thrown on the market, would tend to bring the market down, and probably they would not realise anything like the sum which the pursuer represents; but it is also equally clear that if the pursuer had had his shares placed on the register in 1889, he would have been able, without doing anything so sudden as to throw the whole of them into the market, to make a good realisation of them; and accordingly, that being so, I am inclined to hold that the sum of damages which the Lord Ordinary has allowed in this case is not excessive, but is a reasonable sum in the circumstances.

I understand that the defenders are quite willing to transfer the 140 shares which are fully paid-up to the pursuer, and that the pursuer cannot have any objection because the shares being fully paid-up no liability can be incurred under them. But that is a matter really of no practical consequence in the case, although it will be necessary slightly to alter the Lord Ordinary's interlocutor. The general result, however, at which we have arrived is practically the same as that at which the Lord Ordinary has arrived, viz., that the sum of damages should be as in his Lordship's interlocutor.

LORD YOUNG—I am of the same opinion. I have not much hesitation in rejecting the argument which was addressed to us by the reclaimers here, to the effect that the company are not responsible for the consequences of the misconduct of their directors and secretary, or any two of their

directors and secretary, or of their secretary alone. It was, so far as we can judge, quite an intelligible and proper transaction between the pursuer here and Mr Jardine, whereby Mr Jardine got an advance of £4500 from the pursuer upon the security of a certain number of paid-up shares in this company, of which Mr Jardine was a director. It may have been a rash loan on the part of the lender, but it is a commonplace business transaction of loan of money on the security of a transfer of fully paid-up shares in the company. He got a transfer of 140 really fully paid-up shares, and he also got a transfer of 500 shares from Mr Jardine which were not fully paid-up, but in regard to which Mr Jardine had a certificate that they were fully paid-up, under the hands of two directors and the secretary of the company. I do not need to explain in detail the circumstances under which Mr Jardine got that certificate with respect to the 500 shares. In point of fact, he got it from the proper officers of the company to grant and issue such a certificate. It was signed by two directors and by the secretary, and issued by the secretary, the proper officer of this mercantile company to perform that duty. If they had been fully paid-up shares, and the company when required had registered the pursuer as the transferee, then there would, of course, have been no ground of complaint on the part of the pursuer at all. But after the lapse of a month from the date of the loan, the borrower having a month to pay it—according to the contract of loan it was to be paid in a month—when it was not paid at the end of the month, he sent the transference of the 500 shares and the 140 shares—640 shares in all—to the secretary of the company to be registered in his name, and if everything had been properly done by the officers of the company, he would have been entitled to be registered in respect of those 640 shares. There was an application at an earlier date, on 24th October, but I do not refer to it. On the 20th November, however, he sent the transfers of those certified fully paid-up shares, 500, and the really paid-up shares, 140, to the secretary of the company, and desired that they should be registered. That was not done, and the company say they could not do it, because the 500 shares were not fully paid up. I do not quite follow their reason for not doing it with respect to the 140 shares, but they declined to do it with regard to these either. The matter was put off and put off by the secretary, who had been a party to this very gross fraud which had been committed; it was put off and put off by him until the month of May following, when the pursuer was informed that the directors declined to recognise the transfer in his favour at all, and declined to put it upon the register.

Now, I agree with your Lordship that they were bound to put the transfer upon the register with respect to both sets of shares in November 1889; I think that was their obligation, and that they cannot be permitted to allege that the 500 shares were not fully paid-up, in the face of the certificate of their own directors and secretary that they were fully paid-up. I think they were estopped, or barred, or whatever term you choose to use, from pleading that they were not fully paid-up. The pursuer proceeded, as he was entitled to do, in reliance upon a certificate under the hands of the proper officers of this mercantile company to the effect that they were fully paid up. I therefore regard, with your Lordship, the failure of the company to register when they were requested to do so in the month of November as a wrong committed by them upon the pursuer, and for that wrong he is entitled to compensation in damages. I do not think he is bound to ask that the shares should be registered now. He asked it in November 1889, and we are now in the month of March 1891. I think he is entitled to his remedy in the shape of damages to repair the injury to him by the wrong done him by the defenders.

It is not quite a simple and certain matter to estimate the amount of damage. The Lord Ordinary is of opinion that the wrong was committed in the month of February, and that the damage might properly be estimated at £4000. I think with your Lordship that that would have been too large a sum upon the evidence to give if the wrong had not been done till February, but I think it was done in November, and I do not think that that amount of damage is excessive, for the evidence rather impressed me with the conviction that if registration had taken place on the 20th of November the pursuer might have realised those shares which are now worthless. The defenders might have them, at their own expense, if they want them, but we were informed by their counsel that they do not want them, but would rather go without them. The pursuer is, in my opinion, agreeing with your Lordship and the Lord Ordinary, entitled to be recompensed with a sum of £4000 of damages, of course with the expenses of this process.

LORD RUTHERFURD CLARK concurred.

LORD TRAYNER was absent at the hearing.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the parties on the reclaiming-note for the defenders against Lord Kyllachy's interlocutor of 20th December 1890, Recal the said interlocutor: . . . . . Ordain the defenders to make payment to the pursuers of the sum of £4000 with interest thereon at the rate of 5 per cent. from the date of this decree until payment, the pursuer being bound, in exchange for said payment to transfer to the defenders or their nominee or nominees, the 500 shares on which £1 has been paid and the 140 fully paid shares mentioned on record Find the pursuers entitled to expenses," &c.

Counsel for Pursuers and Respondents—H. Johnston—Dickson. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for Defenders and Reclaimers—Graham Murray—Ure. Agents—Webster, Will, & Ritchie, S.S.C.

Friday, March 13.

FIRST DIVISION

[Lord Kincairney, Ordinary.

THE RENTON FOOTBALL CLUB AND OTHERS *v.* THE SCOTTISH FOOTBALL ASSOCIATION AND OTHERS.

Club—Unincorporated Society—Title to Sue—Instance

The Renton Football Club, an unincorporated society, its president, vice-president, match secretary, honorary secretary and treasurer, seven others described as office-bearers and members of committee, and five persons described as members of the club, sued the Scottish Football Association, its office-bearers, and the members of certain committees, for reduction of a minute of the defenders deciding that the pursuers' club be declared professional and expelled from the association. The defenders averred that the Renton Football Club was composed of a large number of members, that the pursuers did not represent and had no right to use the name of the Renton Football Club for the purposes of this action, that the club was not incorporated or entitled to sue under its name. No personal objection was stated to any of the parties named as pursuers. The pursuers averred—"The Renton Football Club is composed of nearly 200 persons. The pursuers were duly authorised at a meeting of the club to sue the present action."

Held that they were entitled to a proof that the requisite authority to sue was given.

The following narrative is taken from the opinion of the Lord Ordinary (KINCAIRNEY)—"This action by the Renton Football Club against the Scottish Football Association and others, concludes for reduction of a minute of the Business and Professional Committee of the Association, whereby the committee are said to have decided that the Renton Football Club be declared professional, and expelled from the association, and for declarator that the minute was *ultra vires* of the defenders, null, void, and illegal, and that the Renton Football Club are still members of the Scottish Football Association, are not professional, and are entitled to the rights, privileges and benefits of membership thereof. There is a conclusion for £5000 in name of damages, but any difficulty caused by that conclusion has been removed by its withdrawal by senior counsel for the pursuers; and a minute of restriction has since been lodged in process.

"It may be explained that there are stringent regulations by the Scottish Football Association against what is called professionalism, or playing for remuneration.

"The pursuers are the Renton Football Club, its president, vice-president, match president, honorary secretary, and treasurer, seven other individuals described as office-bearers and members of committee, and five other persons described as members of the club.

"There are called as defenders the Scottish Football Association, the president, vice-president, and honorary secretary and treasurer of the association, twenty-four individuals described as members of the General Committee, and nine individuals described as members of the Professional Committee of the Association.

"Appearance has been entered for the secretary of the association, for certain of the members of the General Committee, and for all the members of the Special Committee called as defenders, and they have lodged preliminary defences. No appearance has been entered in name of the Scottish Football Association.

"It is averred and admitted that the Renton Club has been for several years a member of the Scottish Football Association, which comprises a large number of clubs and affiliated associations, each of which is entitled to send representatives to the annual meeting.

"The pursuers aver that the Scottish Football Association has a constitution and rules, and that it has considerable funds and heritable property, that it leases offices in Glasgow, which are kept for the use of the members, and which all members of the Association have a right to use.

"The pursuers set forth their objections to the resolution under reduction, and the grounds on which they seek to reduce it, which need not be considered at this stage; and they say that the consequences to them of this attempted expulsion are very serious, because they will then cease to have the benefit of the funds and property of the association, and because—which is the real hardship—the other clubs and affiliated associations forming the Scottish Football Association are debarred from playing with them.

"I think there can be no doubt at all that, if their averments are true, the pursuers will gain a considerable advantage if they succeed in this action, and that it is quite worth their while to raise it if they are in law entitled to do so.

"The defenders aver that the Renton Football Club is composed of a large number of members, and that the pursuers do not represent and have no right to use the name of the Renton Football Club for the purposes of this action,—that the club is not incorporated or entitled to sue under its name.

"To this averment the pursuers make this reply—'The Renton Football Club is composed of nearly 200 persons. The pur-