case are evidently well considered; they form part of the judgment of the Court; they are laid down as forming a rule for subsequent practice, and they in terms apply to the case before us. I should be slow to depart from so authoritative an expression of opinion, and the argument has failed to satisfy me that it is erroneous,

I am for answering the first query in the affirmative, and the second in the negative.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court answered the first question in the affirmative and the second in the negative.

Counsel for the Company—Ure—Peddie. Agents—J. & A. Peddie & Ivory, W.S.

Counsel for the Inland Revenue—Dean of Faculty Sir Charles Pearson, Q.C.—Young. Agent — Solicitor for Inland Revenue.

Tuesday, December 12.

FIRST DIVISION.

THE INCORPORATED SOCIETY OF LAW AGENTS IN SCOTLAND *v.* STEVENSON AND LAING.

Notary-Public — Misconduct—Striking off the Roll—Jurisdiction of the Court.

On a petition being presented to the Court by the Incorporated Society of Law Agents, craving that two individuals should be struck off the roll of notaries-public, answers were lodged by one of the respondents objecting to the title of the petitioners to raise the petition, and to its competency, and also pleading *mora*.

Held that the petitioners had a good title, and that the Court had jurisdiction over notaries-public to the effect of striking them off the roll for misconduct. The petition was granted.

John Stevenson, a writer and notary-public in Kilmarnock, was on the 14th January 1891 sentenced to five years' penal servitude for embezzlement. Richard Laing, writer and notary-public in Alloa, was on 12th January 1891 sentenced to twelve months' imprisonment for breach of trust and embezzlement, and in May 1891 was, on the petition of the present petitioners, struck off the roll of law-agents. The former of the two was at the date of the present petition still undergoing his sentence, while the latter having served his time in prison had resumed business as a writer in Alloa.

A petition was presented to the Court by the Incorporated Society of Law Agents in Scotland narrating the above facts, and craving that the respondents should be deprived of the office of notary-public, and that their names should be struck off the roll.

The respondent Laing lodged answers to the petition, and pleaded (1) incompetency, (2) *mora*.

Argued for respondent—(1) The petitioners had no title to present this petition, being an incorporated society of law-agents with no special connection with or control over notaries-public, and were exceeding their powers. In the case of *Mitchell*, quoted for the petitioners, the objectors were notaries-public. (2) The petition was incompetent. There was no precedent for asking the Court to interfere with notaries-public, and no principle for doing so, for a notary-public was not a servant of the Court, the office being a Crown appointment just as much as that of a judge. The form of presentation to the Court showed this, the document being superscribed by the Royal sign-manual. The next procedure was to present a petition to the Court, who would then make a remit to see if the petitioner was duly qualified for the office, and on this being shown would admit him as a matter of course. The function of the Court was solely to inquire into a petitioner's qualifications for office, and they had no power to deprive him subsequently of it. The form of commission ran—"I, ——, Notary-Public, appointed by Royal Warrant, and duly admitted by the Court." . . . . The office therefore being *inter regalia*, the Court could not interfere with it—Stat. 1563, chap. 79. (3) There had been *mora* in presenting the petition. It should have been presented when the respondent was struck of the roll of law-agents in 1891.

Argued for petitioners—The Court had jurisdiction over notaries-public. They could obtain a Crown warrant as a matter of course, like any other Crown writ, but their admission was absolutely conditional upon obtaining the sanction of the Court. The Court was charged by the Crown with the duty of superintending the admission of notaries-public, and also their conduct during office. The form of writ showed this—"Provided that you find him duly qualified," . . . referred to his moral character as well as to his legal qualifications, and showed that the Court must superintend his administration of office as well as his admission. The various Acts as to notaries-public pointed to this, viz.—1503, cap. 64; Sir G. Mackenzie on this Act, i. p. 232; 1551, cap. 24; 1551, cap. 22; 1563, cap. 79 (still in force); 1587, cap. 45; Act of Sederunt, July 30, 1691; 1888, Commission upon Notaries-Public. There was a precedent for the Court depriving them of office—*Stuart* v. *Smith*, November 20, 1680, M. 15,928, where this was done (also reported in Stair's Decisions, ii. p. 804); *Hope* v. *Drummond*, February 28, 1749; Acts of Sederunt, Folio Coll. p. 448. In a "Caution to Notaries," Acts of Sederunt, Folio Coll., December 1, 1812, the Court considered the question, but did not deprive the notary of office. As to objections to appointment of notaries-public, these had been raised in *Macaulay* v. *Angus*, February 13, 1783;

Mitchell v. *Gregg*, F. C., December 7, 1815, M. 13,137; *Procurators of Paisley*, March 8, 1823, 2 S. 283. (2) The petitioners had an interest to bring forward the petition, as three-fourths of their number were notaries-public, and there was no association of notaries-public. Law-agents were admitted to the office of notary-public without any examination. In *Mitchell's* case their title was sustained—*Incorporated Society of Law Agents* v. *Clarke*, December 3, 1886, 14 R. 161. (3) There had been no undue *mora*, and the respondent was not entitled to plead it.

At advising—

LORD PRESIDENT—The authorities cited by Mr Dundas satisfy us that the Court of Session has the power of depriving delinquent notaries-public of office. There is the passage from Sir George Mackenzie expressly stating the power of deprivation to reside in the Court, and the two cases of *Stewart* and *Hope* are instances of the exercise of that power.

This being so, it is the duty of the Court to deprive when cases of delinquency are brought to its knowledge; and there is no valid objection to the Court being moved to act by the present petitioners.

The notaries against whom this petition is directed have been convicted of breach of trust and embezzlement—crimes directly within the region of the office in question—and it is quite plain that persons so situated are unfit holders of that office. It is true that in the case of the respondent Laing the conviction was in January 1891, and his sentence expired in January 1892. But it is manifest that if in May 1891, when the name of that respondent was struck off the Register of Law-Agents, he was not deprived of the office of notary, this was merely because the Court was not apprised of his holding it. We are unable to find, in the circumstances which I have mentioned, adequate ground for refusing now to do what we should unquestionably have done then had we been asked.

The prayer of the petition is therefore granted.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court granted the prayer of the petition, and no motion was made as to expenses.

Counsel for the Petitioners—Dundas. Agents—Carment, Wedderburn, & Watson, W.S.

Counsel for the Respondent Laing—W. Campbell—Forsyth. Agent—W. Ritchie Rodger, S.S.C.

Wednesday, December 13.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

RHIND *v.* KEMP & COMPANY.

Reparation—Taking Decree in Absence for Debt Paid after Action brought—Process—Jury Trial—Judicature Act 1825 (6 *Geo. IV. c.* 120), *sec.* 28—*Evidence Act* 1866 (29 *and* 30 *Vict. c.* 112), *sec.* 4.

A brought an action of damages in the Court of Session against B for having taken decree in absence against him in a debts recovery action after he had paid the debt for which he was sued. *Held* (*rev.* Lord Stormonth Darling) that the Court was not entitled to refuse to send the case to trial by jury on the ground that only a small award of damages could be recovered.

Reparation—Taking Decree in Absence for Debt Paid after Action brought—Issue.

A brought an action of damages against B, a debt collector, who had been employed by C to get payment of a debt due to him by A. A averred that after B had caused an action to be raised against him he had paid C a sum in settlement of the debt and expenses; that C had thereupon written to B to stop the proceedings against A, but that B, in disregard of these instructions, had wrongfully and maliciously caused decree in absence to be taken against him. *Held* that A must put malice but not want of probable cause in issue.

John G. Rhind, grocer in Glasgow, raised an action against Messrs John Kemp & Company, Glasgow, for payment of £500 in name of damages.

The pursuer averred, *inter alia*—"(Cond. 1) The defenders are, *inter alia*, a firm of debt-collectors. . . . (Cond. 2) On or about the first week in May 1893 Messrs Meglaughlin, Marshall, & Company, provision merchants, Glasgow, employed the defenders as agents to recover from the pursuer a claim of £14, 1s. . . . The defenders did not make known to pursuer the true sum which Messrs Meglaughlin, Marshall, & Company would accept, but suggested other terms, and illegally demanded payment of expenses which had never been incurred. . . . The defenders thereafter caused a debts recovery summons to be served upon the pursuer for said debt at the instance of Messrs Meglaughlin, Marshall, & Company. . . . The pursuer on Saturday 20th May got a friend to call on Meglaughlin, Marshall, & Company, and arrange terms with them, and the pursuer was to call on Meglaughlin, Marshall, & Company on Monday morning 22nd May and pay the sum arranged for. It is believed and averred that in consequence of this, and in consequence of the pursuer's refusal to pay said fee which the defenders