to come to the conclusion at which he has arrived, and I am of opinion that that judgment, upheld as it was by the Sheriff, should not be altered by this Court.

LORD TRAYNER—It is important in this case to observe that both the Sheriff-Substitute and the Sheriff have decided in favour of the pursuer. That being so, we would not be justified in interfering with their judgments except upon clear and strong grounds. I agree that in this case there are not sufficient grounds for such a course. I adhere to all that I said in the case of *M'Kinven*, but applying the rule which I laid down there, not on my own authority, but on the authority of the late Lord President, I think that that rule has been satisfied in this case. In cases of this kind you cannot as a rule have direct independent evidence—that is, evidence by witnesses other than the parties themselves of the most material fact involved. But even in such cases the evidence of the pursuer by itself is not enough. It must be corroborated as regards one or more of the essential particulars of the case.

On the other hand, the denial by the defender of material facts or circumstances (although not believed) does not corroborate the pursuer's statement. A false statement, or a statement not believed, by whomsoever made, is not corroborative of anything else. But if the pursuer is corroborated as to material statements made by her, and as to which she is contradicted by the defender, his denial, if proved false, or not believed, may give a complexion to the whole evidence adverse to the defender different from what it would have borne had his denial not been disbelieved or shown to be false. Now, I think the pursuer is corroborated in what she says as to certain material circumstances. She says that she and the defender on a certain occasion sat down behind the laundry, on a certain bank, at a place partly surrounded by bushes, and that connection there took place. The defender says he was never there, and never sat down beside the pursuer. But the witness Greig, whose evidence was believed by the Sheriff-Substitute (and I see no reason for doubting it) says that he saw the pursuer and the defender sitting together on the bank, about the time to which the pursuer speaks. Greig's evidence agrees entirely with that of the pursuer. Now, as I have said, the defender denies all that, and when that denial is believed to be false, it tends to show that there was something about that meeting which the defender wishes to conceal, and that something was done then which he does not want disclosed. But even if that element had been absent in this case I should have regarded the evidence of Greig as sufficient corroboration of the pursuer's statement. I admit that the case is a very narrow one, but nevertheless I am of opinion that we have no grounds for altering the judgments appealed against.

LORD MONCREIFF—I am of the same opinion. The Sheriff-Substitute who saw and heard the witnesses believed the pursuer and the witness Greig, and did not believe the defender. I think we have sufficient corroboration of the pursuer's statements to warrant us in finding in her favour. I concur in the reasons for that decision which have been stated by your Lordships.

LORD YOUNG was absent.

The Court pronounced the following interlocutor:—

"Affirm the interlocutors appealed against: Find that the pursuer has proved that the defender is the father of her illegitimate child born on or about 31st August 1895: Therefore of new decern against him in terms of the prayer of the petition: Find the pursuer entitled to expenses in this Court."

Counsel for the Pursuer and Respondent—W. Thomson. Agent—Charles George, S.S.C.

Counsel for the Defender and Appellant—M'Clure. Agent—Alexander Morison, S.S.C.

Tuesday, June 16.

FIRST DIVISION.

[Lord Pearson, Ordinary.

GLADSTONE *v.* M'CALLUM.

Company—Voluntary Winding-Up—Petition for Delivery of Minute-Book—Companies Act 1862 (25 *and* 26 *Vict. c.* 89), *secs.* 100 *and* 138.

Held that a petition presented under sections 100 and 138 of the Companies Act 1862, by the liquidator of a company which was being voluntarily wound-up, craving the Court to ordain the secretary of the company to deliver up its minute-book, was competent.

Retention—Company—Minute-Book.

Held that the secretary of a company has no right of lien over its minute-book.

At a meeting of the shareholders of the Scottish West Australian Land and Exploration Syndicate, Limited, held in March 1896, it was resolved to wind up the company voluntarily, and Mr Andrew Gladstone was appointed liquidator.

A petition was presented by the liquidator against Mr William M'Callum, secretary of the company, craving the Court to ordain the respondent "to deliver forthwith to the petitioner as liquidator foresaid the minute-book" of the company, "without prejudice to any lien competent to him." The application was presented under secs. 100 and 138 of the Companies Act 1862. Sec. 100 provides, *inter alia*—"The Court may at any time after making an order for winding up a company require any . . . . agent or officer of the company to deliver forthwith, or within any such time as the Court directs, into the hands of the official

liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled." Sec. 138 empowers the liquidator or contributories of a company which is being voluntarily wound up to apply to the Court "to determine any question arising in the matter of such winding up, or to exercise as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court; and the Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede wholly or partially to such application on such terms and subject to such conditions as the Court thinks fit."

The respondent lodged answers in which he averred that he had acted as secretary to the company till the date of the petitioner's appointment; and that for the services rendered by him to the company there remained due to him the sum of £17, 11s. He offered to give up the minute-book on receiving payment of this debt from the liquidator, and maintained that he was entitled to retain the book till he received payment.

Argued for petitioner—(1) He was entitled to make this application in terms of the two sections of the Companies Act quoted above. These sections, as interpreted by the cases, showed that the Court might interfere for such a purpose as this in voluntary as well as in other windings-up—*Rance's* case, 1870, 6 Ch. App. 104. (2) The minute-book of a company could not be the subject of a lien. A solicitor had been required to give up the minute-book of a company which had employed him—*In re Capital Fire Assurance Company*, 1883, 24 Ch. Div. 408. There were similar decisions in the cases of *in re South Essex Reclamation Company*, 1869, L.R. 4 Chanc. App. 215, and *Engel* v. *South Metropolitan Brewing Company*, 1892, L.R. Chanc. i., 442.

Argued for respondent—(1) The petition was not warranted by the sections of the Companies Act founded upon by the petitioner. Sec. 138 did not give the Court jurisdiction, in a merely voluntary liquidation in which creditors were unrepresented, to interpose between the company and the common law right of creditors to enforce payment of their debts—*Sherrard* v. *Gardner*, March 10, 1876, 3 R. 577; *British Canadian Lumber Company*, December 3, 1886, 14 R. 160. Sec. 100 only related to books or papers to which the company was *prima facie* entitled, and did not extend to a case like the present, where the respondent was *prima facie* entitled to retain the minute-book. In any view, the Court must be satisfied that it would be equitable to grant the application, and should only grant it subject to the rights of the respondent. (2) The minute-book had come into his hands lawfully in the course of his employment and he was entitled to retain it until his counter obligation under the contract of employment was fulfilled—*Meikle & Wilson* v. *Pollard*, November 6, 1880, 8 R. 69; *Robertson* v. *Ross*, November 17, 1887, 15 R. 67.

LORD PRESIDENT—I do not see any objection to the liquidator of this company proceeding under section 138 of the Companies Act 1862, but he is met by the pretension of the respondent that he had a lien over the minute-book of the company.

Now, the validity of the claim *prima facie* is to be judged by the statement of the respondent in the answers to the petition; and I do not discover more in his averments than that he was the secretary of the company and performed the duties of the secretary until the liquidation.

Now, has any law been shown in support of the proposition that the secretary of a company who has been employed to write up the minutes has a right of lien over the minute-books? There are well-known and well-recognised liens applicable to a different relationship of the parties, and to a different possession of the articles in dispute, from what we find here; and we could not give judgment for the respondent unless we were to affirm—what has not as yet been decided—that every man who has been employed to write in the books in his master's office has a right of lien over the books until he has been paid for his services.

I therefore think that we must grant the prayer of the petition.

LORD M'LAREN—I agree, and merely wish to add, that I think there is no foundation in the facts as stated for any claim either of retention or of lien.

Retention, as I understand it, is the right of an owner of property to withhold delivery of it under an unexecuted contract of sale or agreement of a similar nature until the price due to him has been paid or the counter obligation fulfilled. Lien again is the right of a person who is not the owner of property, but is in possession of it on a lawful title, and whose right of lien, if it is not a general one—of which class of liens there are not many examples—is a right to retain the property until he has been compensated for something which he has done to it. In this case there is no right of retention because the books belong to the company, and there is no right of lien because they are not in the possession of the respondent but of the company. Accordingly this case is in a different category from that of a claim by a writer who is lawfully in possession of his client's papers under a contract of agency.

LORD ADAM and LORD KINNEAR concurred.

The Court granted the prayer of the petition.

Counsel for Petitioner—Gunn. Agent—John Scott, Solicitor.

Counsel for Respondent—Christie. Agents—Simpson & Marwick, W.S.