what would be the position of the Dean of Guild Court? All that is required in a damp-course is that it shall be of durable material and impervious to moisture. How could the Dean of Guild Court ever refuse this material as not conform to their requirements when we had declared that it was? I think such a finding is quite out of the question, and agree with your Lordship that the action should be dismissed.

LORD KINNEAR—I am quite of the same opinion, and have nothing to add, except that when the reclaimer's counsel says that he has no remedy unless we grant this declarator that only shows that he complains of no wrong. He has not made any relevant averment of any legal wrong. His case as stated is that Mr White is Master of Works in Glasgow, and that one of his duties is to see that buildings erected under warrant from the Dean of Guild are built of proper material. He goes on to show that in the ordinary course of the procedure by which that duty is executed the builder brings within the knowledge of the Master of Works the material which he is going to use for a damp-course. He then goes on to say that in Glasgow builders do not propose to the Master of Works to use his damp-course, because they have no sufficient interest to do so. He further says that builders will not appeal from the decision of the Master of Works, because the expense makes it not worth their while. The second complaint seems to us rather contradictory of the first, since it implies that some builders have proposed to use the damp-course and that Mr White has refused to allow it. The procedure which is followed is quite clearly brought out. The builder asks the Master of Works for approval of his plans, and the Master of Works is bound to consider each case. If he refuses to approve, the builder may appeal to the Dean of Guild Court. The pursuers complain that nobody will appeal when their damp-course is disapproved, and they ask this Court to supersede this whole procedure, and to declare *ab ante* that their damp-course does and always will satisfy the requirements of the Corporation bye-law. I think it is quite impossible for the Court to entertain any such action. It is perfectly clear that by refusing this declarator we do not refuse any remedy for any legal wrong. If the pursuers were wronged by slander of their goods, or if the Master of Works instead of discharging his duty refused their material arbitrarily, or from an indirect motive, they might or might not have a remedy; but if they have, it will certainly not be the remedy they ask in this petition. Whether they would in any such case have an action of damages it is unnecessary to consider. As it is, they have an appeal against his decision, provided that somebody wants to use their damp-course. If nobody wants to use it they have suffered no injury, for they have no legal right to compel a builder to adopt it.

On the whole matter I am quite clearly of opinion that this action ought not to be entertained.

LORD M'LAREN was absent.

The Court adhered.

Counsel for the Pursuers—Salvesen, Q.C. —Horne. Agents—H. B. & F. J. Dewar, W.S.

Counsel for the Defenders—Shaw, Q.C.—Lees—Craigie. Agents—Campbell & Smith, S.S.C.

Friday, January 19.

FIRST DIVISION.

DONALD *v.* EGLINTON CHEMICAL COMPANY, LIMITED.

Company — Winding-up Voluntarily — Supervision Order—Application for Appointment of Joint Liquidator — Dissentient Shareholder.

Where a shareholder of a company in voluntary liquidation presented a petition for a supervision order and for the appointment of a joint-liquidator, on the averment that the existing liquidator and the directors proposed to sell the whole assets to a new company in which they held the controlling interest, and answers were lodged for the company in liquidation, and the liquidator stating that this was the best way to dispose of the assets, the Court pronounced a supervision order, but refused to appoint a joint-liquidator.

In December 1898 the shareholders of the Eglinton Chemical Company, Limited, passed a resolution that the company should be wound up voluntarily, and Mr Patrick Graham, C.A., Glasgow, was appointed liquidator.

William John Alexander Donald, manufacturer, 8 Firhill Road, Glasgow, a shareholder in the company, presented a petition under the Companies Acts 1862 to 1898, and especially by the Act 25 and 26 Vict. cap. 89, secs. 147 to 152, 138 and 82, in which he prayed the Court "to order the voluntary winding-up of the said The Eglinton Chemical Company, Limited, resolved on by the special resolution above referred to, to be continued, but subject to the supervision of the Court, in terms of the Companies Acts 1862 to 1898, and to appoint the said David Guthrie, or such other fit person or persons as your Lordships may select, as additional liquidator or liquidators of the said company, and to determine whether any and what security or caution is to be given by such additional liquidator or liquidators; and further, if your Lordships think fit, to direct all subsequent proceedings in the winding-up to be taken before one of the permanent Lords Ordinary, and to remit the winding-up to him accordingly; or alternatively, to interdict, prohibit, and restrain the said Patrick Graham, as liquidator foresaid, from selling or otherwise disposing of the assets of the said The Eglinton Chemical Company, Limited, to the said Eglinton Limestone Company, Limited, and to order such report as to the

present position of the affairs of the said The Eglinton Chemical Company, Limited, and as to the best method of disposing thereof, and such valuation of its assets as to your Lordships shall seem proper, and to order the sale of the company's assets to be carried out in terms of said report and valuation, or otherwise as your Lordships shall direct, and in any event to order that no sale or transfer of the assets of the said The Eglinton Chemical Company, Limited, shall take place without the sanction of your Lordships."

The petitioner averred that the capital of the company was £33,000, divided into 6600 shares of £5 each; that he was the registered holder of 220 shares, and was also beneficially interested in 2012 shares, which had been transferred to and stood in the name of another party. With reference to the proceedings in the liquidation he made the following averments:—"The petitioner believes and avers that the assets of the company are amply sufficient to pay in full all the creditors of the company if said assets be properly realised. He also believes and avers that not only can the creditors be paid in full, but that there will or should be realised sufficient not only to repay the shareholders their capital in full, but that there will be a surplus to divide amongst the shareholders. In order to accomplish this the essential element in a proper realisation of the company's assets is either to effect a judicious sale of the company's business or to adjust new leases in the company's name of the harbour and quarries. The petitioner believes that the latter could easily be effected. But should the former course be adopted, the petitioner believes and avers that the company's assets constitute a valuable property, and that especially the business connections and goodwill would command a good price. The demand for the company's productions has largely increased, and the price obtainable has also considerably advanced. The petitioner believes and avers that if it were known that the company's business could be acquired, there would be competition to obtain it, and it would command a good price. It has recently come to the petitioner's knowledge that the said liquidator is negotiating for the disposal of the company's assets privately and for an inadequate consideration. The following is believed to be the present position of matters. A company has been or is being incorporated under the Companies Acts under the name of The Eglinton Limestone Company, Limited, for the purpose of acquiring the contracts and assets of the company now in liquidation, with a capital of £12,000 in 12,000 shares of £1 each. The directors of this company are to be William S. Brown of the Clydesdale Tube Company, Limited, 53 Bothwell Street, Glasgow. Robert Watson, tube manufacturer, Linwood, Johnstone; and James Armour, Clippens Oil Company, Limited, Glasgow. The solicitors of the company are to be Messrs Carruthers & Gemmill, 62 Bath Street, Glasgow, the auditors Messrs Grahams & Company, C.A., Glasgow, and the secretary of the company, Mr Patrick Graham, C.A., Glasgow. A prospectus stating these facts is produced herewith. This prospectus also states that the terms of a lease have been arranged, and that the price of the assets taken over is to be £5050. The petitioner calls the attention of the Court to the fact that two of the directors of this new company, Messrs Brown and Watson, are also directors of the company now in liquidation, and that the solicitors and auditors are the same as those who acted for the liquidating company, and that the liquidator himself, Mr Patrick Graham, is to be secretary of the new company, his firm of Grahams & Company, who were the auditors of the old company, are also to be auditors of the new company, and his office is to be the office of the new company."

Answers were lodged for the company in liquidation, and Mr Graham, its liquidator, in which they stated that the price at which it was proposed to sell was a fair one, and more than would be obtained were the assets of the company put up to auction. They also stated that they were willing to advertise for offers before accepting any private offer, and submitted that the petition should be refused.

It was argued for the petitioner that the liquidator and directors practically proposed to sell the assets to themselves, and that in these circumstances he was entitled to demand the intervention of the Court—*in re Irrigation Company of France*, Jan. 19, 1871, L.R., 6 Ch. 176; *in re Chillington Iron Co.*, Feb. 6, 1885, 29 Ch. D. 159.

The respondents argued that one shareholder had no right to insist on a liquidation being placed under the supervision of the Court unless some special cause was shown—*in re London and Mercantile Discount Co.*, 1865, L.R., 1 Eq. 277; *in re Beaujolais Wine Co.*, Nov. 22, 1867, L.R., 3 Ch. 15.

Counsel for the petitioner stated that they would be satisfied by a remit to an auctioneer or man of business to sell the company's assets by public auction.

Counsel for the respondents refused to assent to this.

LORD PRESIDENT—We think that this liquidation should be placed under the supervision of the Court. It is, however, proper to say that our only reason for doing so is that in the proposed sale of the company's assets the purchasers—the representatives of the new company—are very much the same persons as those who now control the liquidation, and it might be suggested that such a transaction is not the best mode of realising the full value of the assets. This, however, will be open to the consideration of the judge to whom the liquidation will be remitted. We do not reflect on the conduct of anyone, but merely consider, in view of the somewhat exceptional state of things which exists in this liquidation, it should be put under supervision. We do not appoint an additional liquidator.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court pronounced this interlocutor—

"Direct and ordain that the voluntary winding-up of the Eglinton Chemical Company, Limited, resolved on by the special resolution of the shareholders of the company on 7th and confirmed 28th, both days of December 1898, be continued, with Patrick Graham, C.A., Glasgow, as liquidator, but subject to the supervision of the Court in terms of the Companies Acts 1862 and 1898, declaring that any of the proceedings under the said winding-up may be adopted as the Court may think fit: And declare that the creditors, contributories, and liquidator, and all other persons interested, are to be at liberty to apply to the Court as there may be just occasion: And declare that unless and until it shall be otherwise directed and ordained by the Court, no sale of the assets of the said company shall take place, and no compromise with any contributory shall be effected without the sanction of the Court: Find the petitioner W. J. A. Donald entitled to the expenses of the petition, as the same shall be taxed by the Auditor, and ordain the said expenses to be expenses in the liquidation, and remit to Lord Stormonth Darling, Ordinary, in terms of the Companies Act 1886, to proceed in the subsequent proceedings in the winding-up, and decern."

Counsel for the Petitioners—Shaw, Q.C. —Fraser—Spens. Agents—Cuthbert & Marchbank, S.S.C.

Counsel for the Respondents—Hunter. Agents—Wallace & Begg, W.S.

Friday, January 19.

SECOND DIVISION.

[Lord Stormonth-Darling, Ordinary.

ROBSON *v.* HAWICK SCHOOL BOARD.

School—Teacher—Appointment—Interim Appointment — Dismissal — Education (Scotland) Act 1872 (35 *and* 36 *Vict. c.* 62), *sec.* 55 *—Public Schools (Scotland) Teachers Act* 1882 (45 *and* 46 *Vict. c.* 18), *sec.* 3 (1).

Notwithstanding the terms of the Education (Scotland) Act 1872, sec. 55, which enacts that every appointment of a teacher in a public school "shall be during the pleasure of the School Board," it is within the powers of a School Board to appoint an interim teacher to act for a definite period during the temporary absence of the ordinary teacher, and the provisions of the Public Schools (Scotland) Teachers Act 1882, sec. 3 (1), as to the dismissal of teachers do not apply to such interim appointments, no further or other notice of their termination being required than what is involved in the terms of the appointment.

School — Teacher — Suspension — Public Schools (Scotland) Teachers Act 1882 (45 *and* 46 *Vict. c.* 18), *sec.* 4—*Reparation — Wrongous Suspension of Teacher — Malice.*

A school board is entitled in their absolute discretion to suspend a teacher summarily, and such suspension will not afford ground for an action of damages by the teacher against the school board, even if the teacher avers malice and special damage.

Process—Poor's Roll—Memorial to Reporters — Conclusions not Mentioned in Memorial—Act of Sederunt 21*st December* 1842, *sec.* 11.

A litigant who had obtained the benefit of the poor's roll brought an action, in which she claimed (1) salary, (2) damages for wrongous dismissal, or alternatively for wrongous suspension, and (3) damages for assault and wrongous imprisonment. Although the facts upon which the third conclusion was based were mentioned in the memorial which had been presented to the reporters, in terms of the Act of Sederunt 21st December 1842, section 11, the pursuer only claimed in that memorial that she had a relevant action for wrongous dismissal. *Held* that the case must be sisted until the pursuer had had an opportunity, if so advised, of applying for admission to the poor's roll to enable her to follow forth the action so far as the third conclusion was concerned.

This was an action at the instance of Miss Jane Robson, formerly school teacher, and now residing in Edinburgh, against the School Board of Hawick, and the individuals who composed that Board in October 1896, in which the pursuer concluded (1) for payment by the School Board of £200 as salary due to her; (2) for payment by the School Board of £500 as damages and *solatium* (*a*) for wrongous dismissal and defamation, or for wrongous suspension and defamation, and (*b*) for assault committed by the clerk to the School Board; and (3) for payment by the individual defenders of £500 as damages and *solatium* for assault and wrongous imprisonment.

In August 1896 the School Board of Hawick inserted the following advertisement in the *Scotsman* and *Glasgow Herald*—"Teachers wanted by the Burgh of Hawick School Board, viz., one interim female certificated teacher to take charge of infant school for two or three months during absence of principal. Salary £80." . . .

The pursuer, who was a Government parchment certificated teacher, applied for this appointment, and received the following telegram from the clerk to the School Board:—"Board appointed you interim head-mistress. Engagement three months, salary £80. Commence Monday. Wire