to make this right of mine available I propose to reduce the latter settlement." I think the whole matter is rested upon confusion. It seems to me the present pursuer's title and interest are gone unless he is in a position to say he is as able to get rid of the first settlement as he is of the second. On the contrary he does not say that at all, and therefore I am of opinion that the action ought to be dismissed. Parties are not agreed on the other side as to whether they really have here got the whole of the next-of-kin; and before we could allow an issue, as was done by the Lord Ordinary, that disputed matter of fact would have to be cleared up. But I do not think that is necessary, because the agreement says the first deed, so far from being reduced, still stands; and if the first deed stands it seems to me that the title of the pursuer is gone.

LORD M'LAREN—I agree with your Lordship. I think that the only title put forward in this summons is a title as next-of-kin. You find that title in the first article of the condescendence, and there is no other averment of title. Now, it has always been recognised as a good answer to any claim of reduction at the instance of an heir-at-law or the next-of-kin that the only effect of the reduction would be to set up an earlier deed, and that is the point taken against the pursuer in this case. I am not of opinion that the objection to the title can be obviated by an agreement between the next-of-kin and the parties interested in maintaining an earlier deed, because, while agreeing with your Lordship's observation as to the ground of decision, I should be disposed to go further. I think the only effect of the agreement put forward is to put the pursuer in the position of assignee of the legatees or beneficiaries in the first deed, and as an assignee can be in no better position than the cedent it would be necessary that he should be the pursuer in the action. I should not be disposed to allow the introduction of a new pursuer in an action of reduction to set aside a deed, and I think that is in substance what is here proposed, viz., to introduce as pursuers in the action the beneficiaries in the first deed. What their rights might be if they chose to sue in their own name is another matter, but that would require a new action. This objection is one that is by no means confined to actions of reduction. It applies to cases raising questions of construction of deeds, and it was the subject of a decision in the House of Lords in the case of *Kirkpatrick* in 1874. The view which prevailed was that the attempt to set aside a second deed on the ground of the omission of the word "dispone" must fail, because there was a prior deed in existence which was correctly expressed according to Scots law language. Even in intestate successions it has always been considered to be a good objection to the title of an heir who is claiming a service that you can show that there is a nearer heir in existence, although that nearer heir may not be coming forward to claim in his own name. The ground in all these cases is want of interest in the person who is making the claim. I think that the objection of want of interest must be judged of as at the date of the summons, and that it cannot be cured by an arrangement such as is set forth in this case.

LORD PEARSON—I am of the same opinion.

LORD KINNEAR was absent.

The Court recalled the Lord Ordinary's interlocutor and dismissed the action.

Counsel for the Pursuer and Respondent—Watt, K.C.—C. D. Murray. Agent—S. F. Sutherland, S.S.C.

Counsel for the Defenders and Reclaimers—Hunter, K.C.—W. Thomson. Agents—Macpherson & Mackay, S.S.C.

Saturday, January 19.

SECOND DIVISION.

FORREST.

Poor's Roll—Admission—Declaration and Certificate of Poverty—Applicant a Soldier in India—Remit to Regimental Chaplain.

Where an applicant for admission to the poor's roll was a private soldier stationed in India, with a Scottish domicile, the Court remitted to the chaplain for the time being ministering to his regiment to take the applicant's declaration of poverty, and, if so advised, to grant him a certificate of poverty in usual form.

The Act of Sederunt of 21st December 1842 provides, sec. 2—"That no person shall be entitled to the benefit of the poor's roll unless he shall produce a certificate under the hands of the minister and two elders of the parish where such poor person resides setting forth his or her circumstances according to a formula hereto annexed, Schedule A."

James Forrest, a private in the 17th Lancers, stationed at Meerut, India, presented the following note to the Court:—"My Lord Justice-Clerk—The said James Forrest is desirous of applying for the benefit of the poor's roll to raise an action in the Court of Session against his wife.

"He is, and expects to be, for the next two years or so, with his regiment in India. On that account he cannot obtain the usual certificate of poverty from the minister and elders of a Scottish parish required by the Act of Sederunt of 21st December 1842. He is, however, a domiciled Scotsman.

"He desires to make a declaration of poverty before the chaplain of his regiment, or any other suitable person.

"May it therefore please your Lordship to move the Court to remit to the chaplain for the time being ministering to the 17th Lancers, to receive the said James Forrest's declaration of poverty, and, if so advised,

to grant him a certificate of poverty in usual form, or to do otherwise as to your Lordships may seem good."

There was no opposition, and the Court, without delivering opinions, granted the prayer of the note.

Counsel for Applicant—R. C. Henderson. Agent—R. S. Carmichael, S.S.C.

Saturday, January 19.

SECOND DIVISION.

GAUNT'S EXECUTORS *v.* LIQUIDATORS OF LA MANCHA SYNDICATE, LIMITED.

Company — Voluntary Liquidation — Removal of Liquidator by Court—Due Cause, what Constitutes — The Companies Act 1862 (25 *and* 26 *Vict. c.* 89), *sec.* 141.

Section 141 of the Companies Act 1862 provides—" . . . The Court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up."

Per the Lord Justice-Clerk—"The Court is entitled to take *any* circumstances into account in considering the question of the removal of a liquidator, and is not limited to considerations of misconduct or personal unfitness."

Per Lord Stormonth Darling—"It is an extreme measure to remove a liquidator who has been appointed by the shareholders, and it will only be done when the Court is of opinion that it would be against the interest of the liquidation to allow him to remain."

Adam Eyton, Limited, 1887, 36 Ch.D. 299; *Marseilles Extension and Land Company*, 1867, L.R., 4 Eq. 692; *British Nation Life Assurance Association*, 1872, L.R., 14 Eq. 492, *approved.*

Circumstances in which in a voluntary liquidation the Court refused to remove the liquidators appointed by the shareholders, *holding* that "due cause" for so doing had not been shown.

Charles Henry Slater and others, the executors of the deceased Edwin Gaunt, a contributory of the La Mancha Syndicate, Limited, presented a petition for (1) a supervision order in the voluntary winding-up of the La Mancha Syndicate, Limited; (2) the removal of the present liquidators William Douglas Cairney and George Andrew Robinson, and the appointment of a new liquidator.

The petition was presented under sections 141 and 147 of the Companies Act 1862.

The following statement of facts is taken from the petition—"1. The La Mancha Syndicate Limited was on 18th April 1899 incorporated under the Companies Acts 1862 to 1898, and has its registered office at 163 Hope Street, Glasgow. The nominal capital of the company was £40,000, divided into 40,000 shares of £1 each. Of these shares 35,906 have been issued and are fully paid, and the petitioners are duly registered as holders of 4500 shares.

"2. The principal object for which the company was formed was to adopt, subject to such modifications, if any, as might be agreed upon, and to carry into effect, an agreement made between James Edwards, 14 St Ann's Square, Manchester, and Ralph Robertson Stewart, 45 Renfield Street, Glasgow, as trustee for the company, dated 13th March 1899, for the acquisition of certain mining rights in Spain; and the memorandum of association contained in addition as objects of the company, *inter alia*, the purchase, leasing, developing, sale, and disposal of mines and mining rights.

"3. The company commenced to carry on business immediately after its incorporation. It acquired the business property and assets referred to in the agreement above mentioned, and thereafter carried on business as authorised by the memorandum of association until September 1904, when, in consequence of various circumstances, arrangements were made for the sale of the company's assets to a new company formed in Spain and called the Compania Minera de Villa-gutierrez. This sale was, it is believed and averred, entered into between the two companies, and ultimately carried through shortly thereafter, but the petitioners have been unable to obtain full or authentic information on the subject, or a copy of the agreement of sale.

"4. What purports to be an abstract thereof has been received by them from Mr Wm. D. Cairney, C.A., Glasgow, secretary and formerly chairman of the syndicate, and is in the following terms:—

"The new scheme founded by Mr Abram's friends is substantially the formation of a foreign company, to be under the sole management of the Panarroya Company, in which they retain a controlling interest. The La Mancha Syndicate would have one director (Mr Barris) to represent them and their interests on the board.

"The scheme provides for a capital not exceeding in English money £70,000 6 per cent. preference shares and £35,000 second class shares. The preference shares are entitled to a 6 per cent. dividend and 50 per cent. on the net profits, the remaining 50 per cent. going to the second class shares. A sinking fund would be provided for the purpose of paying off the preference shares over a term of years to be subsequently arranged, based on the possibilities of the mines, which will be at the discretion of the new board. When the preference shares are paid off new shares will be issued to the holders of the preference shares, pound for pound, and these shares will then be entitled to 50 per cent. of the net profits.

"To facilitate the carrying out of this proposition La Mancha board had better give Mr Barris the necessary powers.

"For the purchase or relinquishment of all rights now centred in La Mancha Syndicate it is proposed to give them as consideration £20,000 in preference stock, with the rights and privileges above mentioned.