on 2nd July 1910, be continued, but subject to the supervision of the Court: Confirm the appointment of Charles John Munro, C.A., as liquidator of such company, in terms of and with all the powers conferred by the Companies (Consolidation) Act 1908: Find the petitioner entitled to expenses as these may be taxed by the Auditor, to whom remit the account for taxation; direct these expenses to be chargeable against the liquidation, and decern."

". . . In respect of the supervision order granted of this date in the petition at the instance of Andrew Morrison Eadie for winding up of the Seafield Preserve Company, Limited, find it unnecessary to dispose of the petition except in so far as it craves expenses: Find the petitioners entitled to expenses, but only such as would have been incurred by them had a note been presented in the said application for winding up instead of a petition being presented to the Court; remit to the Auditor for taxation, and declare these expenses to be chargeable against the liquidation."

Counsel for the Petitioner Eadie—J. G. Jameson. Agent—Malcolm Graham Yool, S.S.C.

Counsel for the Petitioners the Seafield Preserve Company, Limited, and the Liquidator thereof—Mair. Agents—Garden & Robertson, S.S.C.

Thursday, October 20.

FIRST DIVISION.

(SINGLE BILLS).

SCRYMGEOUR WEDDERBURN, PETITIONER.

(See *ante*, in the House of Lords April 7, 1910, 47 S.L.R. 532; in the Court of Session July 18, 1908, 45 S.L.R. 949, and 1908 S.C. 1237.)

Expenses—Taxation—General Finding for Expenses—"Particular Part or Branch of the Litigation" — Disallowance by Auditor of Expenses Connected with Preliminary Pleas—Act of Sederunt 15th July 1876*—General Regulations, Art. V.*

Article V of the General Regulations as to the taxation of judicial accounts appended to the Act of Sederunt of 15th July 1876 enacts—"Notwithstanding that a party shall be found entitled to expenses generally, yet if, on the taxation of the account it shall appear that there is any particular part or branch of the litigation in which such party has proved unsuccessful, or that any part of the expense has been occasioned through his own fault, he shall not be allowed the expense of such parts or branches of the proceedings."

In an action of declarator the Lord Ordinary repelled the defender's preliminary pleas of incompetency, *res judicata*, and no jurisdiction, and appointed the cause to be put to the roll for further hearing. The action was ultimately decided in favour of the defender, who was found entitled to expenses generally. The defender objected to the Auditor's report on the ground that he had disallowed the expenses connected with his, the defender's, preliminary pleas.

The Court *sustained* the objection, *holding* that the preliminary pleas were not a separate part or branch of the case in the sense of Article V of the General Regulations appended to the Act of Sederunt of 15th July 1876.

On 28th April 1902 the Right Honourable Frederick Henry Earl of Lauderdale brought an action against Henry Scrymgeour Wedderburn Esquire of Wedderburn, and another, for declarator that he was entitled to the office of Hereditary Standard Bearer of Scotland. Mr Wedderburn lodged defences, in which he pleaded, *inter alia*, (1) the action is incompetent, (2) *res judicata*, and (3) no jurisdiction.

On 13th December 1902 Lord Kyllachy (Ordinary), after a hearing in the Procedure Roll, repelled the first, second, and third pleas-in-law for the defender, and appointed the cause to be put to the roll for further procedure. Thereafter, on 4th December 1903, his Lordship granted decree in terms of the conclusions of the action. The defender reclaimed to the First Division, who on 18th July 1908 granted decree in the pursuer's favour, and found him entitled to expenses. Mr Wedderburn appealed to the House of Lords, who on 7th April 1910 reversed the interlocutors of 13th December 1902 and 18th July 1908 so far as complained of, and found the appellant entitled to costs both in the House of Lords and in the Court below. A petition to apply the judgment was presented by Mr Wedderburn on 4th June 1910, and on 7th June 1910 their Lordships applied the judgment, found "the pursuer liable to the defender in the expenses incurred by him in this Court," and remitted the account thereof to the Auditor to tax and to report.

In taxing the petitioner's account the Auditor disallowed, *inter alia*, the expenses connected with the defender's pleas of incompetency, *res judicata*, and no jurisdiction, which formed the subject of discussion at the first Procedure Roll debate, and in which the defender had been unsuccessful, amounting in all to £34 odd. To this disallowance the petitioner objected.

Argued for petitioner—The finding of the House of Lords as to costs was equivalent to a general finding of expenses in his (the petitioner's) favour, and that being so the petitioner was entitled to his whole expenses in fighting the case, even though in the course of doing so he had unsuccessfully stated certain pleas.

Argued for respondent—The Auditor was right. The petitioner had been unsuccess-

ful in his preliminary pleas, and therefore in a separate branch of the case in the sense of Article V. of the General Regulations as to the taxation of judicial accounts. That being so, the expenses connected therewith had been rightly disallowed. He cited *Alston & Orr* v. *Allan*, 1910, S.C. 304, 47 S.L.R. 255.

LORD PRESIDENT—In this note of objections the defender Mr Scrymgeour Wedderburn takes exception in the first place to the disallowance by the Auditor of certain expenses connected with his (the defender's) preliminary pleas of *res judicata*, incompetency, and no jurisdiction, which formed the subject of discussion at the first Procedure Roll debate, and in which he (the defender) was unsuccessful. I do not think there is any difficulty in the matter. The question depends on Article V of the General Regulations as to the taxation of judicial accounts appended to the Act of Sederunt of 15th July 1876. That article reads thus—. . . (*quotes* V. *sup. in rubric*) . . . That is a regulation with which we are familiar, and which in practice we have always followed, but it is news to me that each separate plea constitutes a different branch of the case. So to hold would be quite inconsistent with the ordinary practice of the Court. Now here the finding of the House of Lords as to costs is equivalent to a general finding of expenses in favour of the defender, and that being so we have no discretion in the matter. Their Lordships' order in the defender's favour carries the expenses incurred by him in fighting the case, even though he may have in the course of that defence put forward certain pleas in which he was not successful. This objection therefore must I think be sustained.

[*His Lordship then dealt with certain other objections on which the case is not reported.*]

LORD KINNEAR and LORD ARDWALL concurred.

LORD JOHNSTON gave no opinion, his Lordship having at one time been counsel in the case.

LORD SALVESEN was sitting in the Second Division.

The Court sustained the objection.

Counsel for Petitioner—Clyde, K.C.—J. H. Stevenson. Agents—D. M. Gibb & Sons, S.S.C.

Counsel for Respondent—Macphail, K.C. —Skelton. Agents—Tods, Murray, & Jamieson, W.S.

Thursday, April 28.

BILL CHAMBER.

[Lord Dundas.

GLASGOW CORPORATION *v.* ASSESSOR OF RAILWAYS AND CANALS.

Valuation — Tramway — Valuation of Tramway by the Assessor of Railways and Canals—Valuation of Lands (Scotland) Amendment Act 1867 (30 *and* 31 *Vict. cap.* 80), *sec.* 3.

The Valuation of Lands (Scotland) Amendment Act 1867—section 3—enacts—"In ascertaining the yearly rent or value . . . of the lands and heritages in any parish, county, or burgh belonging to or leased by any railway company, and forming part of the undertaking of such company, one-half of the expenses incurred in maintaining or repairing the permanent way of railways, and charged to revenue in the published accounts of such railway company for the year preceding that for which the valuation is made, shall be allowed by the Assessor of Railways and Canals as a deduction before the *cumulo* yearly rent or value of each railway is fixed, provided that such assessor is satisfied that such expenses have been truly expended in maintaining or repairing the permanent way of each such railway. . . ."

Held that the word "railway" as used in the section of the statute included "tramway," and that the yearly rent or value of a tramway fell to be ascertained by the Assessor of Railways and Canals.

Opinion (*per* Lord Dundas) that in making the appropriate deduction in respect of the cost of maintenance and repair of the permanent way, to take as the basis of allowance, not the sum actually expended in the previous year, but the sum annually set apart by the company as the average yearly cost, though reasonable, was not in strict conformity with the statute, and that it was still open to the assessor in any future year to take as the basis of the deduction allowed by him the sum which was actually expended in the previous year.

This was an appeal by the Corporation of Glasgow against a valuation of their tramway undertaking by the Assessor of Railways and Canals for the year ending Whitsunday 1911.

The note of appeal set forth that since 1873 tramways had been held to be railways, and as such had been valued by the Assessor of Railways and Canals; that for the year ending Whitsunday 1910 the Assessor's valuation of the undertaking was £261,945, while for the year now in question it was £278,070, but that the valuation for the latter year, if made up on the same basis as that for the former year, was only £258,838.