cient, if proved, to entitle a jury to infer malice, and that because it is a rule of law that where statements are made recklessly, without sufficient inquiry and without ordinary and reasonable regard to the character of others, such words may be held to have been uttered maliciously." Now there are no averments here which suggest recklessness on the part of the attendant or any undue disregard of the character of the pursuer.

On the pursuer's own averments the slanderous statement was made only to himself, and he says nothing to exclude the case of the defenders—that the attendant in making it proceeded on the information of a young lady who had made a complaint to him as to the conduct of the pursuer. It is perfectly obvious that if a complaint of that sort is made and is believed by the attendant it is his duty to remonstrate with the person against whom the charge is made. It is, no doubt, said that the statement was repeated, but the circumstances in which it was repeated, as disclosed by the pursuer's own record, indicate to my mind conclusively that the attendant was not going beyond his proper duty. The pursuer says that he was taken to a private room, and that there the charge was repeated to the under-manager. That is exactly what one would expect where, as here, the charge had been denied by the pursuer, in order that it might be investigated and the proper course to follow determined by a superior authority. Beyond that there is absolutely no averment against this attendant. So far as one can gather from the pursuer's averments, he acted with perfect propriety, assuming that he was in the *bona fide* execution of his duty—which is the only assumption upon which the pursuer has a case at all against the defenders.

Accordingly, it being now conceded, as was decided in *Finburgh's* case, that the attendant was privileged, there are no averments in this record to deprive him of his privilege—there is nothing from which one would be entitled to infer that he acted recklessly or that would justify the insertion of the word malice in the issue. I agree, therefore, that we must dismiss the action.

LORD GUTHRIE—I am of the same opinion. The pursuer's pleadings not only disclose a case of apparent privilege on the part of the defenders, but they show that the pursuer is not in a position to meet that defence with the necessary answer, namely, an averment which, if proved, will destroy the defenders' apparent privilege.

In the case of a limited company it has not yet been held that antecedent and independent malice on the part of one of their servants will infer liability on them, and in this case it is not necessary to consider that question, for nothing of the kind is suggested. All that is put forward is that there was recklessness, in the way of word and conduct, which would make the limited company liable. The recklessness in the way of word is in the shape of an alleged repetition of the slander. But that repetition was to the under-manager, who is said by the pursuer himself to have been one of those who were in charge of the establishment. The recklessness in the way of conduct might conceivably infer liability on the part of a limited company. But it does not appear to me that the averment of an altercation, as the pursuer narrates the circumstances, would suggest anything to throw a light back on what the servant had previously said in the way of inferring malice, but rather the reverse.

LORD JUSTICE-CLERK—I entirely concur in the opinions which your Lordships have expressed.

The Court recalled the interlocutor of the Sheriff, sustained the first plea-in-law for the defenders, and dismissed the action.

Counsel for the Pursuer and Appellant—Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Defenders and Respondents — Macdonald. Agents — Menzies, Bruce-Low, & Thomson, W.S.

Wednesday, October 16.

FIRST DIVISION.

(SINGLE BILLS).

GANDY, PETITIONER.

Company—Winding-up—Inability to Pay Debts—Proof—Bill Dishonoured but not Protested—Other Evidence—Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 130, *sub-secs.* 3 *and* 4.

In a petition under the Companies (Consolidation) Act 1908 for the winding-up of a company, the petitioner produced (1) a dishonoured bill of exchange, and (2) a correspondence which showed that, though the petitioner had repeatedly asked for payment of the bill, payment had not been made. The bill had not been protested, nor had any charge for payment been given thereon.

The Court *granted* the first order.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts:—Section 129—"A company may be wound up by the Court, . . . (v) if the company is unable to pay its debts. . . ." Section 130—"A company shall be deemed to be unable to pay its debts—(iii) if, in Scotland, the *induciæ* of a charge for payment on an extract decree or an extract registered bond or an extract registered protest have expired without payment being made; or (iv) if it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company."

On 3rd October 1912 James Gandy, assistant-registrar, Neath, presented a

petition under the Companies (Consolidation) Act 1908 for the winding-up by the Court of W. M. Mollison & Company, Limited, carrying on business as lithograpic printers at Anniesland, Glasgow.

The petition (as amended at the bar) stated—"That the said company is a private company with a nominal capital of £15,000, divided into 5000 6 per cent. cumulative preference shares of £1 each, and 10,000 ordinary shares of £1 each. Of these shares there have been issued 3880 preference shares, of which 3660 have been fully paid in cash, and 220 have been issued as fully paid up otherwise than in cash, and 4080 ordinary shares, of which 3750 have been fully paid in cash, and 330 upon which 10s. per share has been paid. That the petitioner is a creditor of the said company to the extent of £50, 12s. 3d., with interest thereon from 7th July 1912 to date. The said sum is due by the company to the petitioner as holder of a bill, dated 4th June 1912, for £50, 12s. 3d., payable one month after date, and drawn by R. S. Griffiths on, and accepted by, the said company. . . . That the said company is unable to pay its debts. That the said bill for £50, 12s. 3d. was duly presented for payment and was dishonoured. On 10th July 1912 the petitioner's solicitors wrote to the said company demanding payment of the said bill, and on 12th July the company's solicitor replied admitting that the company was unable to meet the bill, and asking for delay to enable the company to take steps to secure the payment. A correspondence then ensued, and continued until 23rd September 1912, in which the petitioner repeatedly asked for payment, and the company repeatedly promised payment in a few days when certain arrangements had been completed. No arrangements have been made to enable the company to meet its liabilities, and the said bill still remains unpaid. The said bill and correspondence are produced herewith. That in these circumstances the petitioner humbly submits that the said company ought now to be wound up by the Court, and that an official liquidator should be appointed for that purpose."

Argued for petitioner—*Esto* that the bill of which the petitioner was the holder had not been protested, there was sufficient evidence in the correspondence that this company was unable to pay its debts. To require protestation in these circumstances would be to put the petitioner to unnecessary expense, expense which he was not likely to recover from the company.

The Court without delivering opinions ordered intimation and service.

Counsel for Petitioner—A. C. Black. Agents—Fraser & Davidson, W.S.

Friday, October 18.

FIRST DIVISION.

(SINGLE BILLS.)

MONTGOMERIE-FLEMING'S TRUSTEES *v.* KENNEDY.

(*Ante*, July 13, 1912, vol. xlix, p. 925.)

Expenses — Taxation — Photographs Obtained by Pursuer—Small Sums Involved.

In an action for the enforcement of certain restrictions in the defender's title, in which the pursuers were substantially successful, the defender objected to the Auditor's report on the pursuers' account of expenses, in so far as he (the Auditor) had allowed an item of £9 odd, being the cost of certain photographs which the pursuers had obtained at their own hand, for the purpose of illustrating the subjects in dispute.

The Court *repelled* the objection.

Observed (*per* the Lord President) that it would be *pessimi exempli* to allow an objection involving a sum of only £9 odd upon a matter about which the Auditor was perfectly able to make up his mind.

[The case is reported *ante ut supra.*]

The Act of Sederunt, 15th July 1876, Table of Fees, chapter v (Jury Trials and Proofs), sec. 2, enacts—"Plans.—No allowance shall be made for plans lodged in process, or prepared for use of counsel, except such as are either ordered, or subsequently sanctioned, by the Court, prepared by mutual arrangement of parties, or proved and put in at the trial or proof."

Hugh Tennant, Holland House, West Kilbride, and others, testamentary trustees of the late J. B. Montgomerie-Fleming, of Kelvinside, Glasgow, *pursuers*, brought an action of declarator and interdict against Alexander Kennedy, cabinetmaker and upholsterer, Byres Road, Glasgow, *defender*, in order to enforce certain restrictions in the title of his (the defender's) house.

On 13th July the First Division recalled the interlocutor of the Lord Ordinary (SKERRINGTON), who had dismissed the action, and found that the defender as proprietor of the subjects in question was not entitled to occupy them otherwise than as a self-contained lodging, and granted interdict against their being converted into a cabinetmaking or upholstery business.

The Auditor having lodged his report on the pursuers' account of expenses, the defender objected thereto in so far as he (the Auditor) had allowed an item of £9 odd, being the cost of certain photographs which the pursuers had obtained for the purpose of showing the alterations which the defender proposed to make.

Argued for defender—The cost of the photographs in question was an unnecessary expense, as the case had never gone to proof. Moreover, they had been obtained