still he was also entitled to rely on the defenders and their servants refraining from negligently doing anything novel or unusual which was calculated to injure him, as the starting a train with an open door was. To that extent they were bound to take reasonable care of him. I think, therefore, that the bill of exceptions should be refused.

The LORD JUSTICE-CLERK concurred with Lord Salvesen.

LORD DUNDAS was sitting in the Extra Division.

The Court disallowed the exceptions.

Counsel for the Pursuer—George Watt, K.C.—Macquisten. Agent—J. D. Rutherford, W.S.

Counsel for the Defenders—Cooper, K.C. —E. O. Inglis. Agent—James Watson, S.S.C.

Tuesday, February 3.

FIRST DIVISION.

(SINGLE BILLS.)

FERRIS *v.* GLASGOW CORPORATION.

Process — Compromise — Joint Minute of Settlement — Minute Signed by Party — No Appearance for Party Signing Minute —Intimation.

When the Court is asked to interpone authority to a joint minute, and neither the opposite party nor his counsel appears, evidence must be produced of timeous intimation of the motion to the other party by registered letter.

Joseph Ferris, miner, 25 Garngad Avenue, Glasgow, *pursuer*, brought an action against the Corporation of the City of Glasgow, *defenders*, in which he claimed £750 damages for personal injury sustained, as he alleged, through the fault of the defenders' servants in suddenly starting a tram car while he (the pursuer) was boarding it. The cause having been remitted to the First Division for jury trial, the Court on 18th December 1913 ordered issues.

On 21st January 1914, the action having been extrajudicially settled, counsel for the defenders moved the Court to interpone authority to a joint minute in the following terms:—"The pursuer on his own behalf, and Russell for the defenders, concurred in stating to the Court that this action had been settled extrajudicially, and craved the Court to interpone authority to this minute, to assoilzie the defenders from the conclusions of the action, and to find no expenses due to or by either party. In respect whereof, &c. (Signed) JOSEPH FERRIS, ALBERT RUSSELL."

There was no appearance for the pursuer.

The attention of the Court having been called by the Principal Clerk of Session to the provisions of the Codifying Act of Sederunt of 1913, Book A, cap. iii, sec. 14, requiring such minutes to be signed by counsel, the LORD PRESIDENT stated that the Court would consult the Judges of the Second Division before disposing of the matter.

On 28th January 1914 the judgment of the Court (LORD PRESIDENT, LORD JOHNSTON, and LORD SKERRINGTON) was delivered by

LORD PRESIDENT—We have considered this matter with the Judges of the Second Division, and we are of opinion that when the Court is asked to interpone authority to a joint minute, and neither the opposite party nor his counsel appears, evidence must be produced of intimation of the motion to the other party by registered letter. That intimation will be accepted as sufficient notification to the absent party after such interval as the Court shall deem proper.

Thereafter on 3rd February 1914, evidence having been produced of intimation to the pursuer by registered letter, the Court interponed authority to the joint minute, and in respect thereof assoilzied the defenders.

Counsel for the Defenders — Russell. Agents — St Clair Swanson & Manson, W.S.

HOUSE OF LORDS.

Friday, February 6.

(Before Earl of Halsbury, Lord Kinnear, Lord Atkinson, and Lord Shaw.)

BANK OF SCOTLAND *v.* LIQUIDATORS OF HUTCHISON, MAIN, & COMPANY, LIMITED.

(In the Court of Session, November 29, 1912, 50 S.L.R. 151, and 1913 S.C. 255.)

Bankruptcy — Company — Winding-up — Vesting of Assets in Liquidators—Obligation to Grant a Security—Latent Trust.

The solicitors of a limited liability company wrote to a bank—"We further write to say that we are authorised by the directors, and our London correspondents have our instructions, forthwith to procure from Mr Johnson a debenture or floating charge over the whole of his assets in name of this company for the amount required to secure the debt due by Mr Johnson to our clients. So soon as that debenture reaches our hands we have instructions to make it available to the Bank of Scotland as further and additional security for the repayment by our clients of their indebtedness to the bank, and it is understood in respect of the arrangements made that the bank will give to those interested in the company the benefit of the arrangements referred to in past correspondence."

Correspondence followed as to whether an assignation or a mortgage should be given to the bank, but though the debenture in favour of the company was

granted, nothing more was done before the company went into liquidation.

Held that the bank had no preferential claim on the debenture.

This case is reported *ante ut supra.*

The pursuers the Bank of Scotland appealed to the House of Lords.

At delivering judgment—

LORD KINNEAR—The question in this case is raised by a claim made by the appellants in the liquidation of a limited company called Hutchison, Main, & Company. The claim is based on an alleged preferable right in a certain security which is said to have been constituted by a debenture created and issued in favour of Hutchison, Main, & Company, by another limited company styled F. A. Johnson, Limited. This debenture is now in the hands of the liquidators, and would seem, *prima facie*, to be held by them as an asset of the estate for distribution among the creditors *pari passu.* But the appellants claim right to a preference which will exclude the other creditors on two different and inconsistent but alternative grounds. They say, first, that at the date of the liquidation they had obtained a valid and effectual security over this debenture for payment of a debt of £14,000 due to them by the company; and secondly, that the debenture is not part of the distributable estate, but belongs to them, inasmuch as at the date of the liquidation it was held by the company as trustees for them and not as beneficial owners. Both grounds have been rejected as untenable by the Court below, and I think the judgment is right.

It is common ground between the parties that the rights of competing creditors in the liquidation are to be governed by the same rules as regulate the rights of creditors in a sequestrated estate under the Bankruptcy Acts. These are well established and familiar. The general object of the statutes, as Lord President M'Neill states it in *Littlejohn* v. *Black* (18 D. 215), "was to preserve as far as possible all rights and interests in the position in which they stood the moment before bankruptcy." From that moment no preference could be acquired by any creditor or created by the bankrupt. But the Act "abstained from disturbing any securities or preferences honestly obtained and lawfully completed according to the nature of such securities or preferences." I do not understand it to be disputed that in this respect the company in liquidation is exactly in the same position as an individual debtor under the Bankruptcy Acts. Rights in security which have been effectually completed before the liquidation must still receive the effect which the law gives to them. But the company and its liquidators are just as completely disabled by the winding-up from granting new or completing imperfect rights in security as the individual bankrupt is by his bankruptcy. This, indeed, is the necessary effect of the express provision of the Companies Act that the estate is to be distributed among the creditors *pari passu.* Every creditor is to have an equal share unless anyone has already a part of the estate in his hands by virtue of an effectual legal right. The question therefore is, whether at the date of the liquidation the appellants had obtained a valid security legally completed over the debenture issued by F. A. Johnson.

In answering this question the Court did not require to consider whether a floating charge over the assets of a trading company would constitute a valid security according to the law of Scotland except in the cases where it may have been specially authorised by statute, because F. A. Johnson is an English company, and its rights and liabilities must be governed by English law. Nor did they need to inquire, as in other circumstances might have been necessary, how far it was valid and effectual, or by what method it could be effectually transferred in security according to the law of England, because, in fact, it has not been transferred to the appellants at all.

There can be no question that by the law of Scotland the *jus crediti* in debts may be made the subject of an effectual security, provided the debt be assigned and the assignation completed according to the method recognised as proper for the completion of such rights. But to make it effectual the assignee must have a right which he can enforce against the debtor in his own name, because it is indispensable for the efficacy of a security that the secured creditor should have *jus in re.* It is manifest on the face of their own statement, and of the document they produce in support of it, that the appellants have no such right. They say that the company had financial dealings both with the appellants themselves and with the British Linen Bank, and that at a time when the appellants were not satisfied with the state of the account it was arranged that they should transfer to the British Linen Bank certain goods which they held in security, and in lieu thereof should take bills on F. A. Johnson to be held in security, and "as collateral security the company would give the appellants a debenture or floating charge over the assets of F. A. Johnson for the sum of £12,000." This last part of the statement lacks precision. But the nature of the proposed debenture is more clearly brought out in the contractual obligation.

This is expressed in a letter from the company's agents to the appellants, dated 3rd February 1910, in the following terms—"We are authorised by the directors, and our London correspondents have instructions, forthwith to procure from Mr Johnson a debenture or floating charge over the whole of his assets in the name of the company for the amount required to secure the debt due by Mr Johnson to our clients. So soon as that debenture reaches our hands we have instructions to make it available to the Bank of Scotland as further and additional security for the repayment by our clients of their indebtedness to the bank." This is the only writing by way of security which the appellants ever obtained, and it seems to me quite idle to pretend that it is a valid and effectual security in itself. It is a pro-