such proceedings may be taken as might have been taken if the company had not been dissolved." It is because the statutory law regulating the constitution, affairs, and dissolution of limited companies restricts the power of the Court to revive the liquidation of a dissolved company by imposing a two-year limit that the present appeal to the *nobile officium* is made. The case of *Collins Brothers & Company* (1916 S.C. 620) was cited as a precedent. It is enough to say with regard to that case that it concerned heritable property belonging to a dissolved Scottish company, but situated in New South Wales, and taken over by a purchaser there subject to a mortgage by the dissolved company, which mortgage the purchaser had contracted to take over. The peculiar difficulties and complications thence arising, which were held to be special circumstances warranting the Court in treating the application as one dealing with a *casus improvisus*, find no counterpart in the present case. The vassal in the feus to which the present application relates was a corporation which has ceased to exist and has no heir unless it be the Crown. The feus, in short, constitute what are known to the law of Scotland as *bona vacantia*, and there seems to be no reason whatever for interfering by an exercise of the *nobile officium* with the law of Scotland which applies to caduciary estate. The remarks made by Lord President Inglis in *Campbell* (18 R. 149, at p. 151) apply to the present case—"It is not a case in which there can be any appeal to the *nobile officium*, because it is a matter depending entirely on the construction of the words of the statute. If we were to grant this power it might turn out that what we had done was after all of no avail." His Lordship goes on to point out that so far as title is concerned objections (which in the present case might be stated by a purchaser from Lord Macdonald) would be quite open notwithstanding that the Court had declared the dissolution void and authorised the former liquidator to grant a conveyance. I think therefore the petition must be refused.

LORD CULLEN—This application, in my opinion, lays a strain upon the *nobile officium* of the Court which it plainly will not bear, and I agree that it must be refused.

LORD SANDS—I concur with your Lordships in thinking that the petition must be dismissed on the ground that the *nobile officium* can only be called into play if matters are inextricable. One cannot but regret this result, because considerable trouble and expense have been incurred, and in view of the report in the case of *Collins Brothers & Company* (1916 S.C. 620) the action of the petitioners in presenting the petition was not unreasonable.

LORD SKERRINGTON was absent.

The Court refused the petition.

Counsel for the Petitioners—Maconochie. Agents—Dundas & Wilson, C.S.

Wednesday, January 9.

FIRST DIVISION.

CHAMPDANY JUTE COMPANY, LIMITED. PETITIONERS.

Company — Winding-Up — Declaring Dissolution Void — Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 223 (1).

In a petition under the Companies (Consolidation) Act 1908, section 223, to have the dissolution of a company declared void for the purpose of enabling the company to receive repayment from the Inland Revenue of excess profits duty, and to authorise the former liquidator to receive the money and grant a receipt therefor, the Court, after the prayer of the petition had been amended by deletion of the words specifying the purpose for which the voidance of the dissolution was craved, *declared* the dissolution to have been void.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap 69), section 223 (1), enacts —"Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved."

The Champdany Jute Company, Limited, incorporated under the Companies Acts 1862 to 1867, in liquidation, and James Finlay Muir, Glasgow, the sole liquidator, *petitioners*, presented a petition craving the Court to declare the dissolution of the company to have been void "*for the purpose of the authority hereinafter mentioned being exercised, and to authorise the petitioner James Finlay Muir, as surviving liquidator of the said company, to receive payment of the sum of* £6026, 1s. *and to grant receipt therefor.*"

The company, after a voluntary liquidation, was dissolved on 12th July 1922.

The petition was duly intimated on the walls and in the minute book and served upon the Right Hon. William Watson, K.C., His Majesty's Advocate, as representing the Crown. No answers were lodged. Thereafter a remit was made to Irvine R. Stirling, Esq., S.S.C., to inquire into the facts and circumstances and to report.

In his report Mr Stirling stated—"On 1st October 1923 there was received at the office formerly occupied by the company a letter from the Comptroller of Inland Revenue intimating that a sum of £8914 had been certified as repayable to the company by the Inland Revenue in respect of excess profits duty, but that from that sum there fell to be deducted a sum of £2887, 19s., being arrears of income tax and corporation

profits tax due by them to the Inland Revenue, leaving a nett sum due and payable by the Inland Revenue to the company of £6026, 1s. The reporter has called for an explanation why the liquidators closed the liquidation without taking into account the claim for repayment of excess profits duty, and it has been explained to him that while under the Finance Act 1921 (section 35) seven accounting periods, or 84 months, had to be taken for excess profits duty purposes, the liquidators had assumed that these periods terminated on the 31st day of March 1921—the date of the closing of the company's financial year—whereas they did not terminate until the 30th day of April 1921, thus leaving one month to be accounted for, and it is in respect of this month that the present sum of £6026, 1s. falls to be repaid by the Inland Revenue to the liquidator. The company having been dissolved the petitioners are not in a position to give an effectual receipt to the Inland Revenue for the said sum. The present application is accordingly brought under section 223 of the Companies (Consolidation) Act 1908 to have the dissolution of the company declared void for the purpose of authorising the petitioner James Finlay Muir to receive repayment of the said sum of £6026, 1s."

At the hearing in the Single Bills counsel for the petitioners, on the suggestion of the Court, moved their Lordships to allow the petition to be amended by deleting from the prayer the words quoted above in italics and to grant the prayer of the petition.

LORD PRESIDENT (CLYDE)—This is a petition presented under section 233 of the Companies (Consolidation) Act 1908 for a declaration that the dissolution of the company—which occurred less than two years ago—be declared void. The purpose is to enable the company to receive a considerable repayment of excess profits duty paid by it prior to its dissolution.

The reporter explains that the possibility of a repayment had not been foreseen owing to a misapprehension on the part of the company as to the true closing date of the accounting periods under section 35 of the Finance Act 1921. The case thus falls within section 223 of the Companies (Consolidation) Act 1908. The liquidation was a voluntary one, and, as it happens, the liquidator appointed by the shareholders is still surviving. Besides asking that the dissolution shall be declared to have been void, the prayer goes on to crave authority to the liquidator (who, as I have said, happens to survive) to receive the money and grant a receipt therefor. There is no warrant for this crave in the Act. I understand a similar crave has sometimes been granted in petitions of this kind under similar circumstances. But section 223 itself defines the only statutory consequences of the dissolution being declared void, namely—"thereupon such proceedings may be taken as might have been taken if the company had not been dissolved." It will be for the petitioners to consider what are the rights and powers of the liquidator consequent on the voidance of the dissolution.

We shall grant the prayer, as amended, to declare the dissolution to have been void.

LORD SKERRINGTON—I concur.

LORD CULLEN—I concur.

LORD SANDS—I concur.

The Court allowed the petition to be amended as proposed and declared the dissolution of the company to have been void.

Counsel for the Petitioners — Russell. Agents—J. & J. Ross, W.S.

Saturday, January 12.

FIRST DIVISION.

[Lord Constable, Lord Ordinary officiating on the Bills.

NAKESKI-CUMMING *v.* GORDON AND OTHERS.

Bankruptcy—Sequestration—Recal—Irregularity—Affidavit—Failure to Specify Security—Arrestment—Latent Defect—Bankruptcy (Scotland) Act 1913 (3 *and* 4 *Geo. V, cap.* 20), *secs.* 20, 21, *and* 30.

Sequestration of a bankrupt was obtained by creditors whose debts, amounting to £661, 7s. 6d., were constituted by decree against the bankrupt and his wife jointly and severally. In their affidavits the creditors omitted to specify a security held by them over the estate of the bankrupt's wife, consisting of an arrestment which had attached a sum of £23, and stated that they held no security for their debts. In a petition for recal of the sequestration, *held* that the omission to specify the security being a latent defect in the affidavit, the question of recal was one for the discretion of the Court, and, the irregularity complained of not having prejudiced the bankrupt *quoad* the granting of the sequestration, petition *refused.*

Michael Nakeski-Cumming, Edinburgh, *petitioner*, presented a petition in the Bill Chamber for recal of the sequestration of his estates. Miss Mary Guilia Gordon, Miss Alice Magdalene Gordon, and Miss Isabella Gordon, the creditors on whose application the sequestration was obtained, *respondents*, lodged answers.

The *facts* of the case are narrated in the opinion (*infra*) of the Lord Ordinary.

On 28th November 1923 the Lord Ordinary officiating on the Bills (CONSTABLE) refused the petition.

Opinion.—"This petition is based upon two grounds—(1) that the sequestration proceedings were nimious and oppressive, and (2) that the oath of the petitioning creditors failed to comply with the statute by specifying certain securities held for the debt.

"I am unable, either from the petition itself or from the argument of the petitioner, to discover anything which would support the first ground. The petitioner questions