In the next place, assuming that the proposed appendix has been in process *in gremio* of the House of Lords case, it has never been put in evidence. The Lord Ordinary did not have it before him when considering the proof. This is fatal to its production now—*Shedden*, 8 D. 1057. Again, the proposed excerpts, as the respondents aver in their note, have never been proved. Presumably the excerpts will consist of those parts of the appeal case which the Lord Ordinary interpelled the reclaimers from attempting to prove. In consequence these excerpts cannot now be used as evidence—*Galbraith*, 5 S.L.T. 164.

Finally, the reclaimers are responsible for the accurate and complete printing of the productions. The House of Lords case is a production which, rightly or wrongly, was allowed to be put in evidence at the close of the proof. This having been done, the reclaimers are probably entitled to print and box the House of Lords case. But they will not be allowed in the absence of consent to print parts of the bound volume only. They must print the whole volume, or so much thereof as satisfies the respondents. The reclaimers may therefore, if they desire to do so, print and box the whole document *quantum valeat*. It must, however, be clearly understood that if the reclaimers print and box this document it does not follow that they will be entitled to use it as evidence in this case, or indeed for any other purpose. On the other hand nothing we are deciding precludes the reclaimers from maintaining, if they see fit to do so, that the Lord Ordinary was wrong in excluding the evidence which the reclaimers desired to obtain from Dr Oberlander. This is a point which does not require the proposed appendix or the appeal case itself for its determination. All we decide is that we must interpel the reclaimers from boxing to the Court the proposed appendix and the Clerk of Court from receiving it if presented.

LORD HUNTER did not hear the case.

The Court pronounced this interlocutor—

"Grant the crave of the note, disallow the defenders and reclaimers printing, boxing, and lodging as an appendix the excerpts referred to therein, and interpel the Clerk of Court and boxing clerks from receiving prints of an appendix consisting of, or partly consisting of, such excerpts: Find the expenses incurred in the present application to be expenses in the cause."

Counsel for the Respondents (Pursuers)—Dean of Faculty (Sandeman, K.C.)—Macmillan, K.C.—Normand. Agents—Webster, Will, & Company, W.S.

Counsel for the Reclaimers (Defenders)—Moncrieff, K.C.—Burn Murdoch. Agents—Davidson & Syme, W.S.

Saturday, January 12, 1924.

SECOND DIVISION.

ANDERSON & MUNRO, LIMITED, PETITIONERS.

Company — Shares — Payment Otherwise than in Cash—Contract not Reduced to Writing — Omission to File Prescribed Particulars Timeously — Relief — Extension of Time for Filing Contract with Registrar — Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 88, *sub-secs.* 1 (*b*), (2), *and* (3).

The Companies (Consolidation) Act 1908 enacts—Section 88 (1)—"Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the Registrar of Companies . . .—(*b*) In the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted." (2) Where such a contract as above mentioned is not reduced to writing "The company shall within one month after the allotment file with the Registrar of Companies the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act 1891, and the registrar may as a condition of filing the particulars require that the duty payable thereon be adjudicated under section 12 of that Act." (3) "If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues: Provided that in case of default in filing with the Registrar of Companies within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court if satisfied that the omission to file the document was accidental or due to inadvertence, or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the Court may think proper."

A company which had made an allotment of shares fully paid up otherwise

than in cash accidentally omitted to file with the Registrar of Companies the particulars prescribed by the Companies (Consolidation) Act 1908, sec. 88, sub-sec. (2), until more than a month after the allotment. In order to remedy the defect in procedure the company reduced the contract to writing, and presented a petition under sub-section (3) for extension of the time during which the document might be filed. The reporter submitted that the procedure adopted by the company to remedy the defect was unnecessary, and that the petition should have taken the form of an application for relief from the penalty prescribed by the Act. The Court *granted* the prayer of the petition, *holding* that the remedy sought by the petitioners was the only remedy under the statute, and that the course proposed was the only safe method for the petitioners to adopt in view of the previous procedure.

Anderson & Munro, Limited, electrical engineers, 136 Bothwell Street, Glasgow, *petitioners*, presented an application to the Court under section 88 (3) of the Companies (Consolidation) Act 1908, in which they stated, *inter alia*—"5. At a meeting of the directors held on 17th May 1920 it was resolved 'to make a bonus distribution of two fully-paid ordinary shares for each one ordinary share presently held, and for this purpose to distribute £2000 from the balance standing at the credit of profit and loss account, this £2000 to be transferred to the credit of the 2000 ordinary shares now being issued.' The said shares, which are numbered 1001 to 3000 inclusive, were duly issued and are now held by Thomas Brown Wright, electrical engineer, 136 Bothwell Street, Glasgow, Alexander Stephen Nairn, electrical engineer, 136 Bothwell Street, Glasgow, and Frederick Charles Stewart, engineer, 55 West Regent Street, Glasgow. 6. The said shares were issued by the company as fully paid, but no contract or document relating thereto was filed with the Registrar of Joint Stock Companies under and in compliance with section 88 of the Companies (Consolidation) Act 1908. 7. The petitioners are advised that in consequence of no contract or document having been filed as above mentioned, it is now necessary to apply to your Lordships to grant relief under section 88 (3) of the said Act by making an order extending the time for filing a contract or document with the Registrar of Joint Stock Companies. The contract or a memorandum setting forth the particulars of the contract proposed to be filed will be lodged in the course of the proceedings to follow hereon. 8. The petitioners submit that in the circumstances the omission to file the contract or document was due to inadvertence, and that it is just and equitable that the relief provided by the said Act should be granted."

The prayer of the petition craved the Court, *inter alia*, "To make an order extending the time for the filing with the Registrar of Joint Stock Companies of such contract in writing relating to the said shares of the company numbered 1001 to 3000 inclusive as shall be deemed by your Lordships to be sufficient under and in terms of section 88 of the Companies (Consolidation) Act 1908, and that to such date as to your Lordships shall seem proper, and to direct that on the filing of such a contract as aforesaid it shall operate in relation to such shares as if it had been duly intimated to the Registrar of Joint Stock Companies before the issue of such shares; or alternatively, to make an order extending the time for the filing with the Registrar of Joint Stock Companies of such memorandum in writing as to your Lordships shall seem proper, the same having been previously duly stamped, relating to said shares, and that to such date as to your Lordships shall seem proper; and to direct that on the filing of such memorandum as aforesaid relating to the said shares the memorandum so filed shall in relation to the said shares operate as if it were a sufficient contract in writing within the meaning of the said section of the said Act, and had been duly filed with the Registrar of Joint Stock Companies before the issue of the shares, all in terms of section 88 of the Companies (Consolidation) Act 1908."

No answers were lodged.

On 17th November 1923 the Court remitted the petition to Mr J. C. Strettell Miller, W.S., Edinburgh, to inquire as to the facts and circumstances set forth therein and as to the regularity of procedure, and to report.

On 30th November 1923 Mr Miller reported, *inter alia*, as follows — "By its memorandum of association the capital of the company was declared to be £3000, divided into 2000 preference shares and 1000 ordinary shares, both of £1 each. The whole of said share capital was issued and fully paid up. By a special resolution of the company passed on 9th and confirmed on 25th March 1920 the share capital was increased to £10,000 by the creation of 7000 additional ordinary shares of £1 each ranking *pari passu* with the existing ordinary shares of the company, and a copy of this special resolution was duly filed with the Registrar of Joint Stock Companies in terms of the statute. By article 12 of the articles of association it is provided—'The directors may, for the purpose of paying off on behalf of the company any person for any property or work or service or for any claim such person may have, or any valuable consideration whatever, issue any shares which may be issuable at the time with whatever amount the directors may think proper credited as paid thereon in payment either in full or in part for said work, property, service, or other consideration.' At a meeting of the directors on 17th May 1920 it was resolved 'to make a bonus distribution of two fully-paid ordinary shares for each one ordinary share presently held, and for this purpose to distribute £2000 from the balance standing at the credit of profit and loss account, this £2000 to be transferred to the credit of the 2000 ordinary shares now being issued.' On this date the shares were actually allotted and are now held by Thomas Brown Wright,

electrical engineer, 136 Bothwell Street, Glasgow, Alexander Stephen Nairn, electrical engineer, 136 Bothwell Street, Glasgow, and Frederick Charles Stewart, engineer, 55 West Regent Street, Glasgow, all designed in the petition. . . . On this date (September 1, 1920) the petitioners presented for filing to the said Registrar the prescribed particulars required by section 88, sub-section 2, of the said Act above set forth. . . . The reporter respectfully submits that a default has been made by non-compliance with the requirements of the said section 88, sub-section 3, by not filing with the Registrar of Joint Stock Companies within one month, as prescribed by the said Act, the said relative particulars prescribed by section 88, sub-section 2, of said Act. . . . The contract or agreement between the company and the holders of the ordinary shares in said company dated 2nd November 1923, relating to the said allotment of shares lodged in process in the course of the proceedings relative to this petition, is in order and might be filed. The reporter, however, respectfully submits that this procedure proposed by the petitioners is rendered unnecessary in respect that the said . . . prescribed particulars of the contract conform to the said Act have been, as hereinbefore stated, already filed though not within the statutory period. The reporter, further, is of opinion from the information submitted to him by the secretary of the said company that the omission to timeously file the said . . . prescribed particulars of the contract conform to the said Act was not intentional. In conclusion the reporter most respectfully submits that the form of this petition should rather have been a petition for a declaration that the default in not timeously filing with said Registrar the said . . . prescribed particulars of the contract conform to the said Act was inadvertent and unintentional, and relief from the penalty prescribed by the said Act might be granted."

At the hearing in the summar roll the petitioner argued—The statutory form of relief was that craved by the petitioners, viz., an extension of time under sec. 88, sub-sec. 3, of the Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69). The form of the interlocutor was set forth in Palmer's Company Precedents (12th ed.), vol. i, p. 1360. The procedure as to filing particulars had been irregular. The Registrar ought never to have received the particulars. Section 277 dealt with the applications of fines, but there was no warrant in the Act for a petition for the remission of the fine, as was suggested by the reporter.

LORD JUSTICE-CLERK (ALNESS)—In this case the company at a meeting of directors on 17th May 1920 resolved, in virtue of powers which were conferred upon them by their articles of association, to make a certain bonus distribution of shares, the precise details of which are set out in the report which we have before us. The particulars of this transaction should have been filed within a month in accordance with the provisions of section 88 of the Companies Act of 1908. That was not done. But on 1st September 1920 certain particulars, which bore to be lodged under the provisions of sub-section (2) of section 88 of the Companies Act, were tendered to the Registrar for registration, and were in point of fact filed by him. Whether the Registrar had any power to accept that tardy tender of particulars is I think more than doubtful, but at any rate he accepted the document and filed it. The petitioners, however, have now reduced the contract—which refers to the transaction which I have mentioned—to writing, and the present petition is brought for the purpose of extending the time during which that document may, in terms of sub-section (1) of section 88, be lodged for filing.

The petition has been intimated and no answers have been lodged, and it was then remitted to a reporter. The reporter suggests that the petition is unnecessary, because particulars have already been put upon the file under sub-section (2) of section 88, but he does not seem to have fully appreciated—it may be through no fault of his—that what the petitioners really want now to do is to register the contract in writing which came into existence after the date of the registration of particulars under sub-section (2). The reporter has said that the omission to register timeously was "not intentional" on the part of the petitioners. The provision of the statute is that it must be "accidental or due to inadvertence." I take it that these phrases have the same meaning, and I think that although the statement in the report is bald it may perhaps in the circumstances be held to be sufficient.

As regards the remedy sought, it appears to me that it is the only remedy under the statute — and we are here exercising a purely statutory jurisdiction — which we have power to give. Inasmuch as it proceeds upon the view that the past procedure in this unfortunate case has been faulty if not entirely null, and that the suggestion made embodies the only safe course which in view of possible litigation or other emerging circumstances would safeguard the position of parties, I propose that the petition should be granted, and the time extended for lodging the document to which I have referred till the 1st February.

LORD ORMIDALE—I concur.

LORD HUNTER— I concur.

LORD ANDERSON—I also concur.

The Court pronounced this interlocutor—

"Extend the time for filing with the Registrar of Joint Stock Companies the contract in writing mentioned in the petition relating to the shares of the petitioning company numbered 1001 to 3000 inclusive to the 1st day of February next 1924, and direct that on the filing of such contract the same shall operate in relation to such shares as if it had been duly intimated to the Registrar of

Joint Stock Companies before the issue of such shares, and decern."

Counsel for the Petitioners—Wark, K.C. — Macdonald. Agents—J. & J. Galletly, S.S.C.

Tuesday, January 22.

SECOND DIVISION.

[Sheriff Court at Paisley.

M'HARG *v.* SPEIRS.

Landlord and Tenant—Outgoing—Compensation for Disturbance—Amount—Arbitration—Damage Proved Less than One Year's Rent—Whether Tenant Entitled to One Year's Rent in Substitution for Damage Proved — "Avoidance of Disputes"—Agriculture Act 1920 (10 *and* 11 *Geo. V, cap.* 76), *sec.* 10 (1) *and* (6).

The Agriculture Act 1920 enacts—Section 10 (1)—"Where the tenancy of a holding terminates after the commencement of this Act by reason of a notice to quit given after the twentieth day of May Nineteen hundred and twenty, by the landlord, and in consequence of such notice the tenant quits the holding, then . . . compensation for the disturbance shall be payable by the landlord to the tenant in accordance with the provisions of this section. . . . . (6) The compensation payable under this section shall be a sum representing such loss or expense directly attributable to the quitting of the holding as the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods, implements of husbandry, fixtures, farm produce, or farm stock on or used in connection with the holding, and shall include any expenses reasonably incurred by him in the preparation of his claim for compensation (not being costs of an arbitration to determine the amount of the compensation), but for the avoidance of disputes such sum shall for the purposes of this Act be computed at an amount equal to one year's rent of the holding, unless it is proved that the loss and expenses so incurred exceed an amount equal to one year's rent of the holding, in which case the sum recoverable shall be such as represents the whole loss and expenses so incurred up to a maximum amount equal to two years' rent of the holding."

A tenant who had claimed from his landlord under section 10 (1) and (6) of the Agriculture Act 1920 compensation for disturbance to an extent greater than one year's rent, entered into an arbitration with him, in the course of which the arbiter held that damage had been proved to the extent of less than one year's rent. In a special case stated by the arbiter the Court *affirmed* the finding of the Sheriff-Substitute that the tenant was entitled to an award of one year's rent in substitution for the smaller amount of damage which the arbiter had held to be proved, *holding* that the tenant was not debarred by reason of his having elected to go to proof from obtaining one year's rent as compensation.

John M'Harg, Nethermagask, St Andrews, Fife, and Archibald Speirs, house factor, Glasgow, entered into an arbitration under the Agricultural Holdings (Scotland) Acts 1908 to 1921, in the course of which the arbiter stated a Special Case for the opinion of the Sheriff on certain questions of law.

The Case stated, *inter alia*—"This is an arbitration under the Agricultural Holdings (Scotland) Acts 1908 to 1921 between the said John M'Harg, formerly tenant of the holding of Plymuir in the parish of Neilston, Renfrewshire, and the said Archibald Speirs, formerly proprietor of the said holding, in respect of claims by each of the parties against the other on the determination of the tenancy of the said John M'Harg at the term of Whitsunday 1921 as to the arable land and the term of Whitsunday 1922 as to the houses, yards, and pasture land. The arbiter was appointed by minute of reference between the parties, dated 26th and 28th October 1922, and immediately entered on the reference. . . . The tenant is claiming in this arbitration, *inter alia*, compensation for disturbance under section 10 (1) of the Agriculture Act 1920. . . . The proprietor counterclaims for compensation in respect of dilapidation of buildings and the cost of putting ditches and sheep drains in a tenantable state of repair, and the cost of repairing fences and putting them in a tenantable state of repair as required by the lease. . . . The claim for the tenant commences with an item representing two years' rent of the farm for compensation for disturbance. The tenant claims, further, the estimated cost of the removal from the farm to the new holding leased by the tenant. At the hearing before the arbiter the agent for the landlord contended that the claim by the tenant was irrelevant, and he founded on section 10 (6) of the Agriculture Act 1920, which is as follows:— . . . [*quoted in rubric*] . . . The landlord contended that on a sound construction of the said sub-section it is open to the tenant under this head without proof to claim one year's rent, but should he elect to prove his damage he may recover only the loss proved to have been sustained by him, but not exceeding an amount equal to two years' rent. The tenant contended that he was entitled to claim a maximum amount of two years' rent of the holding together with the loss which he could actually prove. He further contended that, however the proof resulted, the tenant under the section is bound to be awarded a minimum of one year's rent. The arbiter is prepared to uphold the contention of the landlord, and on the facts is satisfied that the amount of damage proved here amounts to £45, 12s. 10d. The arbiter further rejects the contention of the tenant, and proposes to hold that having set out to prove his damage he must abide by the result, and is not entitled under the Act to claim as an award a minimum of one year's rent."