Issues were adjusted for the trial of the cause, and on 23rd May 1889 the Lord Ordinary (KYLLACHY) pronounced the following interlocutor:—"Approves of the issues as adjusted and settled for the trial of the cause, and appoints the same to be tried by a jury . . . on Tuesday the 2nd day of July next."

On 29th May the defender moved the Court to vary the issues.

The pursuer objected to the competency of the motion, and argued that it came too late, in respect that the Lord Ordinary had not only approved of the issues, but had fixed a day for trial, which had not been opposed by the defender—*Craig* v. *Jex Blake*, March 16, 1871, 9 Macph. 715; Court of Session Act 1850 (13 and 14 Vict. cap. 36), sec. 40; Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 28.

Counsel for the defender was not called upon.

At advising—

LORD PRESIDENT—The interlocutor of the Lord Ordinary consists of two parts, one approving of the proposed issue, and the other fixing a day for the trial of the cause. For obvious reasons, and in order to allow the party objecting to the terms of the proposed issue an opportunity of appealing, these interlocutors ought to be kept separate, and an interval of six days ought to be allowed to elapse between the two interlocutors. I can quite understand, however, why in the present case the Lord Ordinary approved of the issue and fixed the day for trial in the same interlocutor. It was for the convenience of both parties, and in order that the 2nd of July, which the Lord Ordinary had offered the parties as the day of trial, might not be lost. As the Lord Ordinary had not many available days of trial, if the six days had been allowed to elapse between the approving of the issues and the fixing of the day of trial, then before the parties could again have come before the Lord Ordinary, not only might they have lost the 2nd of July as the day of trial, but the Lord Ordinary might not have been in a position to offer the parties another day this session.

On the other hand, the right of a party, who is dissatisfied with an issue which has been approved by a Lord Ordinary, to move the Inner House to have the terms of such an issue varied, is a very valuable one, and one which must not in any way be interfered with.

The case of *Craig* v. *Jex Blake*, to which we were referred, differs materially from that now before us. There one day elapsed between the approving of the issue and the fixing of the day of trial, and it was the defender who moved the Lord Ordinary to fix a day for the trial of the cause. No objection was then taken by her to the proposed issue, and it was reasonable to suppose upon that account that she was satisfied with its terms. Six days thereafter the defender moved the Court to vary the issue, but the Court in these circumstances held the motion to be incompetent. That, however, as I have already explained, was a very different state of facts from what we have here to deal with, and I am therefore for repelling the objection which has been taken to the present motion.

LORD SHAND—In the case of *Craig* v. *Jex Blake* an issue was lodged for the pursuer, to which no objection was stated by the defender, who on the following day moved the Lord Ordinary to fix a day for trial. To this motion the pursuer objected, and six days after the defender moved the Court to vary the issue which had been approved of by the Lord Ordinary, but the defender in the circumstances was held to be personally barred from stating any objection to the terms of the issue. It does not appear to me therefore that much assistance can be obtained from the case of *Craig* v. *Jex Blake*, as the circumstances were materially different.

As to the Outer House practice in such cases, I would not object to the course which the Lord Ordinary has adopted provided both parties consented to this being done. It might be desirable in such cases that a minute should be framed intimating that the parties consented to the Lord Ordinary approving of the issue and fixing a day for the trial of the cause in the same interlocutor. In the present case, however, I agree with your Lordship that the objection to the competency of this motion cannot be sustained.

LORD ADAM—I am of the same opinion. I think that if the parties are agreed there can be no objection to the Lord Ordinary approving of the issue and fixing the day for trial in one interlocutor, but if the parties are not at one, and if it is to be held on the authority of *Craig* v. *Jex Blake* that by consenting to the Lord Ordinary fixing a day for the trial of the cause all right of objecting to the terms of the issue is removed, then where any difficulty arises as to the terms of an issue, I think that the Lord Ordinary should not fix the day of trial in the same interlocutor in which he approves of the terms of the issue.

LORD MURE was absent.

The Court repelled the objections to the defender's motion to vary issues, and sent the case to the Summar Roll for discussion.

Counsel for the Pursuer—Hay. Agent—James Skinner, S.S.C.

Counsel for the Defender—C. S. Dickson. Agents—Guild & Shepherd, W.S.

Saturday, June 1.

FIRST DIVISION.

TAYLOR *v.* THE UNION HERITABLE SECURITIES COMPANY, LIMITED.

Public Company—Bankruptcy of a Shareholder — Rectification of Register — Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *secs.* 35, 36, 62.

A shareholder in a public company which had a large uncalled capital was sequestrated, and after payment of a composition he was re-invested in his estates. *Held* that the amount unpaid on his shares did not form part of his debts and obligations from which he was discharged in the sequestration proceedings, and an application by him to have the register of the company rectified by the deletion of his name therefrom *refused*.

Robert Taylor, manure merchant, Easter Road, Leith, applied for the rectification of the register of the Union Heritable Securities Company, Limited, by the deletion of his name therefrom as the holder of 75 shares of the company.

Between 1875 and 1877 the petitioner was allotted 75 shares of the Union Heritable Securities Company, Limited, incorporated under the Companies Acts 1862 and 1867. £1 per share was paid on the said shares, and there remained £4 per share uncalled. The company sustained heavy losses from the depression in heritable property. It had paid no dividend since 1885, and in March 1889 a meeting was held to consider whether a call should not be made on the directors.

The petitioner's estates were sequestrated on 29th April 1885, and a trustee was appointed. He paid a composition of 5s. per £, and he was thereafter re-invested in his estate. On 5th May he intimated to the company that he was no longer a shareholder in consequence of the sequestration of his estates.

Argued for the petitioner—Under section 16 of the Companies Act 1862 the £4 per share uncalled formed part of the debt and obligations contracted by the petitioner for which he was liable at the date of his sequestration, and from which he was thereby discharged, and the petitioner was accordingly entitled to have his name removed from the register of members of the company. His intimation to the company was equivalent to a surrender of these shares—*Wishart* v. *City of Glasgow Bank*, March 14, 1879, 6 R. 823; *Galletly's Trustees* v. *Lord Advocate*, November 12, 1880, 8 R. 74; Companies Act 1862 (25 and 26 Vict. cap. 89), secs. 74, 75.

Argued for the respondents—The articles of association contained provisions for the transfer as well as for the surrender of shares. The petitioner had not complied with these, and he had not, in terms thereof, either transferred or surrendered his shares. The shares had since he acquired them stood in the register of shareholders in the name of the petitioner. All the proceedings in the sequestration took place without any intimation of any kind being sent to the company by the petitioner or the trustee on his sequestrated estates. The bankruptcy of the petitioner and his subsequent reinvestiture did not free him from his liability for calls in respect of these shares, for on his reinvestiture he took his estate with all the liabilities as it stood in the trustee—*Gordon* v. *Glen*, January 19, 1828, 6 S. 393.

At advising—

Lord President—In this case the petitioner before his bankruptcy held 75 shares in the Union Heritable Securities Company, Limited, and these shares were thus numbered 7481 to 7530 both inclusive, and 13,214 to 13,238 both inclusive. There is thus no difficulty whatever in identifying these shares as part of the property of the petitioner; and I use the word property advisedly, as shares in a company are property, and in bankruptcy they are often a valuable asset. In the sequestration which followed a trustee was appointed, and a composition of 5s. per £ was paid, and thereafter the bankrupt obtained his discharge all in the usual way. But the respondents say that the petitioner's bankruptcy, his composition settlement, and his subsequent re-investiture in his estate were all unknown to them; that no claim was made in the sequestration on their behalf; and that the first time that they became aware of what had taken place was the service of the petition praying that the petitioner's name might be removed from the list of members of their company.

The name of a shareholder cannot in this summary manner be removed from the list of contributories of a company.

There are only three ways in which this removing can in accordance with the statutes be accomplished—(1) By transfer, (2) by forfeiture, (3) by surrender. The statute does not say that such shares are to cease to exist, but the memorandum and articles of association may and sometimes do make provision for this. In the present case, however, the shares in question must belong to somebody, and it is clear that they belong to the petitioner until he succeeds in getting his name removed from the books of the company. I am therefore for refusing the prayer of this petition.

Lord Shand—Questions of considerable difficulty are likely to arise in dealing with applications like the present. Both as to the extent and mode of ascertainment of the petitioner's liability, and also as to whether, if the liability of the petitioner is to be limited, intimation to that effect ought not to be made to the company within a specified time. In the present case, however, I agree with your Lordship that this application cannot be granted, as no sufficient reason for so doing has been suggested. Bankruptcy followed by retrocession is certainly no sufficient ground, nor is there here anything of the nature of a surrender.

Lord Adam concurred.

Lord Mure was absent.

The Court refused the petition.

Counsel for the Petitioner—Lorimer. Agent—P. Morison, S.S.C.

Counsel for the Respondents—Crole. Agents—J. & R. A. Robertson, S.S.C.

HIGH COURT OF JUSTICIARY.

Monday, June 3.

(Before the Lord Justice-Clerk, Lord M'Laren, and Lord Kinnear.)

GRANT *v.* ALLAN.

Justiciary Cases—Sentence—Suspension—Sentence proceeding upon Bad Previous Conviction.

A boy of nine years of age was charged with the crime of theft aggravated by two previous convictions. He pleaded guilty, and was convicted and sentenced. One of the previous convictions charged against him had been obtained when he was five years of age. In a suspension, *held* that this pre-