But vague general statements of that kind will not sustain a charge of fraud. They are statements which point rather to its having been discovered *ex post facto* that the views of the directors had been too sanguine and their management bad. If it was to be shown that the directors in describing the prospects of the business as they did, were guilty of actual fraud, they ought to have been told much more precisely in what respect.

"But the main attack of the pursuer is directed against the first report and balance-sheet issued to the shareholders in February 1890, and the prospectus of May following which led to his third and largest purchase of shares.

"Now, I take leave to observe with regard to the report that in the case of a new company doing insurance business, it is utterly impossible to tell, within the first ten months of its existence, whether the business is to be profitable or not. The period is much too short. There are the premiums out of which a dividend may be paid, but what proportion of these premiums represents profits cannot be ascertained for some time, and the utmost that can be done is to make some sort of estimate on a conservative basis, so as to retain a safe margin for losses without entirely sacrificing the interests of existing shareholders. Anyone reading such a report is bound to know that these are the necessary conditions under which it is framed.

"The pursuer's first charge against the report is that it carried a sum of £85, being the amount of premiums on the issue of new shares, to the credit of revenue account. This may or may not have been bad bookkeeping, but it was certainly not fraud, for it was disclosed on the face of the balance-sheet. Next, it is said that claims which had been 'incurred' prior to 31st December 1889, but had not been actually paid, were 'suppressed' to the extent of £420. I assume, of course, at this stage, that claims to that amount had become due, and that the directors knew it, but I do not see that the mere omission to mention the precise figure could have any appreciable effect on the mind of a reader of the report when it was distinctly stated that the whole balance of £3668 at the credit of revenue account was 'subject to future claims arising under current policies.' What the amount of these claims might be was, rightly enough, left vague, and that it might be large was sufficiently indicated by the fact that the directors proposed to appropriate only a sum of £295 for writing off preliminary expenses, and a sum of £341 to pay a dividend at the modest figure of 4 per cent., thus leaving over £3000 to be carried forward to next account. If the claims already 'incurred' (to use the pursuer's phrase) had been so large as to exhaust the greater part of the available balance, it would not have been honest to pay any dividend at all, but with the figures as they stand on the pursuer's own showing, it is vain to say that at the time there was anything like a paying of dividend out of capital, There is a further allegation that the directors knew the extent to which outstanding claims had eventuated in payment between the close of the year and the date of issuing the report, but I fail to see the relevancy of that unless the pursuer was prepared to aver that these were of so exceptional an amount as to upset all the estimates on what the report was based. In short, when Cond. 8 is analysed, I think it comes to no more than this—that in the light of subsequent events the directors were wrong in paying any dividend, because the business had never been a paying one. But that is very different from saying that they were in possession of this and that fact, which made their conduct in issuing the report and balance-sheet false and fraudulent at the time.

"I say nothing about the prospectus of May, because, apart from mere puffing of the business, it is not challenged except as being founded on the report and balance-sheet. It is said that an extract from the report giving the balance of £3668 on revenue account made no reference to the fact that it was subject to future claims arising out of current policies. But this could not possibly deceive the pursuer, who was already in possession of the report containing a notice to that effect.

"The remaining articles of the condescendence deal with the subsequent management of the company, and have no bearing on the inducements which led the pursuer to become a shareholder. My opinion is that he had not stated a relevant case of fraud, and that the action should be dismissed."

Counsel for the Pursuer — Salvesen. Agents — Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Defender — Chree. Agents — Morton, Smart, & Macdonald, W.S.

Friday, November 13.

OUTER HOUSE.

[Lord Kyllachy.

A. B. AND OTHERS, PETITIONERS.

Process—Law-Agent—Notary Public—Law-Agents (Scotland) Act Amendment Act 1896 (59 *and* 60 *Vict. cap.* 49), *sec.* 3.

Procedure to be followed in a petition by a notary-public who has been in practice for not less than seven years, for admission as a law-agent without examination, under section 3 of the Law-Agents (Scotland) Act Amendment Act 1896.

This was one of several petitions by certain notaries public who had been in practice as such for not less than seven years, praying for admission as law-agents without examination, under the provisions of the Law-Agents (Scotland) Act Amendment Act 1896.

By section 3 of of that Act it is provided—"After the passing of this Act any notary-public may at any time present a petition

to the Court praying to be admitted as a law-agent under the Law-Agents (Scotland) Act 1873, and any Act or Acts explaining or amending the same, and on the presentation of such petition the Court shall dispense with the rules as to examinations, indentures, and service required by the said Acts, and remit the petitioner for examination in forms of process to the examiners appointed in virtue of said Acts, and on his producing a certificate by said examiners that he has passed the said examination, and without making the affidavit of apprenticeship prescribed by the said Act, the Court may admit such notary-public as a law-agent and authorise his name to be enrolled as a law-agent under the said Act, and any Act or Acts explaining or amending the same. The Court may in its discretion dispense with the examination in the case of any notary-public who has regularly taken out the licence certificate required by law, and has been in practice as a notary-public for not less than seven years immediately preceding the date of the passing of this Act."

Intimation of the petition was ordered to be made to the Society of Writers to the Signet, the Solicitors before the Supreme Courts, and the Incorporated Society of Law-Agents. These societies lodged minutes whereby, without opposing the prayer of the petition, they suggested that such petitions should be granted only in the case of persons whose experience afforded a presumption of such a practical knowledge of the forms of process as might justify the Court in dispensing with the examination. This, they suggested, might in each case be ascertained by a remit to such person as the Court might appoint to inquire into and report upon the qualifications of the petitioner.

Lord Kyllachy—The Court is much obliged to the Writers to the Signet and the other societies for the aid which their minutes have afforded in the consideration of these applications. I have had an opportunity not only of reading those minutes but of consulting with some of my colleagues upon the whole matter, and the conclusion we have arrived at is this—In the first place, we consider that when an application is presented, whether it appears on the rolls or is presented, like applications under the Act of 1873, through the clerk, the first order should be for intimation to the W.S. and S.S.C. Societies if the applicant is in Edinburgh, or to the Incorporated Law Society if he is in the country. Then if after a fixed number of days it appears that none of those societies think fit to intervene in respect of some disqualification known to them, the Court will proceed to consider the application. The Court has of course to exercise a discretion, and that discretion will not be exercised to the effect of admitting as a matter of course. At the same time it will fall to be exercised upon grounds which may vary in different cases, and as to which all that can be said is that they must be satisfactory to the mind of the Court. It will not be assumed absolutely and as a matter of course that a notary-public who has practised for seven years is sufficiently conversant with the forms of process to be admitted as a law-agent, but at the same time it will not in the general case be necessary to have a remit to one professional man to report on the qualifications of another. It appears to us that such a course would be somewhat invidious, and will be as a rule unnecessary. At the same time, a man cannot be admitted as a law-agent who has not some knowledge of the forms of process, and therefore the Court must in each case have information as to the applicant's knowledge of forms of process—information which is sufficient to enable us to dispense with his examination on the subject. That being so, what will be required in the cases now before me will be (1) that the applicant shall state in his petition that he is conversant with the forms of process, and shall set forth the experience which in his view justifies that statement, and (2) that the Court shall have before it evidence that the applicant has had such a business training as presumably involves a reasonable acquaintance with the forms of process. That evidence need not in general be in the form of a report from somebody to whom a remit may be made. As a rule, it will be enough if a certificate is produced from some person, official or otherwise, known to the Court—a certificate satisfactory to the mind of the Court as vouching the statement in the petition. On such a certificate being presented along with the petition, the result in general will be that the applicant will be admitted *de plano*. There may, of course, be exceptions to this procedure, as for example in cases where the judge has personal knowledge that the applicant is sufficiently conversant with process business, and is accordingly satisfied that there is no need for examination. Each case must, in short, be considered on its own merits, the one requisite being that the Court shall be satisfied that the applicant is a suitable person to be admitted to the roll, and that it is not necessary that he should undergo further examination.

Counsel for the Petitioners—Jameson—Craigie—Gunn—W. E. Mackintosh. Agents—Whigham & M'Leod, S.S.C., and Macpherson & Mackay, S.S.C.

Counsel for the W.S. and S.S.C. Societies—Dundas. Agents—R. L. Stuart, W.S., and W. B. Glen, S.S.C.

Counsel for the Incorporated Society of Law-Agents — Macfarlane. Agents — Carment, Wedderburn, & Watson, W.S.