had been notified to the Bank, Mr B had gone with the instructions of his clients to uplift the deposit-receipt for the purpose of paying it over to those clients, the Bank would still have been responsible if in fact he did not carry out these instructions. I think that is an untenable proposition. I think this was a matter connected with the liquidation of the affairs of the dissolved firm, in regard to which one of the partners was entitled to adhibit the signature of the firm, and that being so the Bank had no concern with the application of the proceeds provided they made payment to the person who *ex facie* of the document was entitled to receive it.

A question might have arisen from the two circumstances that are stated upon the record, namely, that Mr B did not adhibit his individual signature but the signature of a firm which had succeeded to some of the business of the dissolved firm, and that the transaction took place eight years after the dissolution of the firm; and if there had been pointed averments on the lines stated by the Lord Ordinary in his note, to the effect that these circumstances put the Bank on their inquiry, and that they were negligent in making the payment on the endorsation of the dissolved firm without ascertaining whether the dissolved firm had the authority of the true owners to uplift the contents of the deposit-receipt, I would not have been indisposed to allow inquiry. We asked council for the respondents whether they desired to make an amendment on the lines suggested by the Lord Ordinary, which in his view stated a separate ground for liability against the Bank, and we were told that they had definitely decided that they would make no change upon the record. There being thus no averment of negligence and no plea of negligence I do not think we are entitled to consider such a case as the Lord Ordinary figures and upon which in the absence of averment as to the facts he has in effect decided this case.

The point at issue therefore, as I take it, is limited by the pursuers' attitude to the one question whether a partner of a dissolved firm is entitled to adhibit the signature of the old firm for the purpose of uplifting a deposit-receipt which has been made out in their name or has been made payable to them in accordance with the instructions of a client of the firm; and on that point I have no hesitation in holding that so far as the Bank is concerned they were entirely warranted in making the payment on that endorsation.

LORD DUNDAS and LORD GUTHRIE concurred.

The Court recalled the interlocutor of the Lord Ordinary, sustained the second plea-in-law for the defenders, and dismissed the action.

Counsel for the Pursuers (Respondents)—W. T. Watson—Graham Robertson. Agents—Wylie, Robertson, & Scott, S.S.C.

Counsel for the Defenders (Reclaimers)—Hon. William Watson, K.C.—Wilton. Agents—Mackenzie, Innes, & Logan, W.S.

Thursday, March 16.

FIRST DIVISION.

[Lord Ormidale, Ordinary.

MACKENZIE *v.* MACLENNAN.

Process—Suspension—Lawburrows—Competency of Suspension of Decree of Lawburrows—Civil Imprisonment (Scotland) Act 1882 (45 *and* 46 *Vict. cap.* 42), *sec.* 6.

Since the passing of the Civil Imprisonment (Scotland) Act 1882 a suspension of a decree of lawburrows is *incompetent.*

The Civil Imprisonment (Scotland) Act 1882 (45 and 46 Vict. cap. 42), sec. 6, enacts—"In order to amend the law in regard to imprisonment in the process of lawburrows, the following provisions shall have effect, that is say—(1) It shall not be competent to issue letters of lawburrows under the Signet in the Court of Session or Court of Justiciary. (2) Upon an application for lawburrows being presented, the sheriff or sheriff-substitute or justice of the peace shall immediately, and without taking the oath of the applicant, order the petition to be served upon the person complained against, and shall at the same time grant warrant to both parties to cite witnesses. (3) At the diet of proof appointed, or at any adjourned diet, the application shall be disposed of summarily under the provisions of the Summary Jurisdiction Acts and without any written pleadings or record of the evidence being kept. . . . Provided always that, except in so far as expressly altered by this section, nothing in this Act shall affect the existing law and practice in regard to the process of lawburrows."

Kenneth Mackenzie, *complainer*, brought a note of suspension against Kenneth Maclennan, *respondent*, craving the Court to suspend *simpliciter* a decree of lawburrows granted on 27th October 1915 by the Sheriff-Substitute (SQUAIR) at Stornoway against the complainer in an application for lawburrows at the instance of the respondent against the complainer.

The respondent pleaded—"(2) The present application being incompetent ought to be refused."

On 1st February 1916 the Lord Ordinary (ORMIDALE) allowed the parties a proof of their averments and to the complainer a conjunct probation.

Opinion.—"The procedure in a petition for lawburrows is now regulated by the Civil Imprisonment Act 1882 (45 and 46 Vict. cap. 42).

"Under the older law and practice the party taking out letters of lawburrows was not bound to give, and in practice did not give, any notice at all to the alleged wrongdoer. The letters passed on a bill without the production of any warrant, and all that was required was that before execution the messenger should take the complainer's oath that he dreaded bodily harm, injury, and oppression. There was absolutely no inquiry of any sort. Further, if the charge under the letters to find caution

was disobeyed, then the alleged wrongdoer might be denounced as a rebel and put to the horn and caption taken on the registered letters.

"It is not surprising that long prior to 1882 it had come to be recognised that the exercise of the process, which dated from the fifteenth century, was subject to equitable restraint. Bills for caption in applications by one spouse against the other, and by a parent against his child, were invariably refused unless some cause was disclosed for the alleged apprehension of bodily harm, and the cases cited at the discussion illustrate the frequency with which in suspensions inquiry was allowed where the complainer in the suspension made averments relevant to infer that the letters had been obtained not from any genuine apprehension of bodily or other harm but from motives of malice or ill-will—*Gadois* v. *Baird*, 1856, 28 S. Jurist 682; *Randall*, 1867, 40 S. Jurist 554; *Aitchison*, 1869, 6 S.L.R. 604; *Taylor*, 1829, 7 S. 794. It had come to be recognised that some inquiry was essential to meet the ends of justice. An example of the circumstances in which suspension will be refused is found in *Brock* v. *Rankine*, 1 R. 991, 11 S.L.R. 571.

"Accordingly it was not disputed by Mr Crawford that prior to 1882 suspension was a competent form of relief open to a party who undertook to prove and did prove that the letters of lawburrows had been taken out and executed merely from malice and without probable cause.

"The old procedure was entirely displaced by the Act of 1882. Under that statute it is now necessary for the application for lawburrows to be made before a sheriff or justice of the peace, and it has to be served on the party against whom the complaint is made. The application is to be disposed of summarily, but both parties are entitled to lead proof. Lawburrows can no longer therefore be obtained without an opportunity being given for inquiry into the facts.

"That being so, Mr Crawford maintained that the remedy by way of suspension is no longer competent. I am not prepared to affirm that contention either in respect of the reference to the Summary Jurisdiction Acts in section 6, sub-section 3, of the statute of 1882, or on general principles. On the other hand it is very obvious that where there has already been an inquiry into the circumstances the Court will not be so ready as formerly to suspend the proceedings complained of. Still I see no reason for refusing the relief sought if there is a clear and satisfactory statement of facts in the note of suspension relevant to infer that the proceedings were taken from motives of malice and without any probable cause."

[*His Lordship then dealt with a matter not reported.*]

The respondent reclaimed, and argued—The suspension was incompetent. The procedure in an application for lawburrows was now regulated by the Civil Imprisonment Act 1882 (45 and 46 Vict. cap. 42), section 6. That abolished the issue of letters of lawburrows. While letters were in use they were granted as a matter of course without intimation. This procedure was open to abuse, and the remedy of suspension was appropriate to it and was allowed, as it provided a means of bringing the merits of the cause for the first time before a court. But when the use of letters was abolished, this remedy, appropriate only where there had been no inquiry into the merits, became useless and was necessarily abolished also. Further, the Civil Imprisonment Act 1882 enacted that application for lawburrows should be disposed of under the Summary Jurisdiction Acts without written pleadings or recording of the evidence. Consequently the right of appeal was regulated by these Acts if any such right existed. In 1882 the Summary Jurisdiction Acts were defined by the Summary Jurisdiction (Scotland) Act 1881 (44 and 45 Vict. cap. 33), which was now superseded by the Summary Jurisdiction (Scotland) Act 1908 (8 Edw. VII, cap. 65). This was a "cause" in the sense of section 2 of that Act, and appeal was by section 60 to be by stated case. The present case was simply an appeal against the Sheriff's decree, and was therefore incompetent.

Argued for the complainer—Suspension was competent. Prior to 1882 the letters were followed up by a charge; suspension of the charge was then competent—*Gadois* v. *Baird*, 1856, 28 S.J. 682; *Randall* v. *Johnston*, 1867, 40 S.J. 554. A charge was still competent and so was the remedy of suspension. But in any event the Civil Imprisonment Act 1882 (*cit.*), section 6, altered the law only in so far as it did so expressly, while the argument for the respondent was based on an implied repeal of the remedy of suspension.

LORD PRESIDENT — This is a note of suspension of a decree of lawburrows pronounced in the Sheriff Court at Stornoway on 27th October 1915.

The question we have to consider is whether or no this is a competent form of procedure, because the respondent maintains that the remedy by way of suspension is no longer competent. With a slight variation on the expression used by the Lord Ordinary, I say that I am prepared to affirm that contention in respect of the reference to the Summary Jurisdiction Acts in section 6 (3) of the Statute of 1882.

It is common ground that the old procedure of lawburrows is entirely displaced by the Act of 1882, and that an entirely new code of procedure is there laid down. At the very outset the sixth section distinctly provides that "it shall not be competent to issue letters of lawburrows under the Signet in the Court of Session or Court of Justiciary," and, as we all know, that was, according to the old form of procedure, the appropriate step by which an application for lawburrows was initiated. And by sub-section 2 it is expressly provided that the application is to be presented to the Sheriff or the Sheriff-Substitute or a Justice of the Peace, and that he is not to grant a decree and not to ordain the

respondent to find caution upon the mere oath of the applicant for lawburrows, but the application is to be served upon the respondent in the ordinary way. And then by sub-section 3 an inquiry takes place, and it is expressly provided that the inquiry is to take place in terms of the provisions of the Summary Jurisdiction Act, and, in particular, that there are to be no written pleadings, and there is to be no record of the evidence kept.

In these circumstances, to say that the old remedy and the old form of procedure are still preserved seems to me to be entirely out of the question. We are now thrown back upon the Summary Jurisdiction Act of 1908, for, unquestionably, this is a cause within the meaning of section 2 of that Act; and if so, and if an investigation takes place into the facts before an inferior judicatory, and no note or written record of the facts disclosed in the evidence is kept, then there is one way and one way only by which an appeal may be taken against the decision of the inferior judicatory, namely, by way of stated case under section 60 of the Act.

It was urged to-day by Mr Lippe that his old remedies were all open to him in respect of the proviso in the sixth section of the Act of 1882, which runs as follows:—"That except in so far as expressly altered by this section, nothing in this Act shall affect the existing law and practice in regard to the process of lawburrows." But then, as I have pointed out, the procedure has been expressly altered by that section, for letters of lawburrows under the Signet may no longer be issued, and an investigation of the facts must take place now before a decree is pronounced, and no record of the evidence given is to be kept. Accordingly it appears to me that the old remedies are gone with the old procedure, and that an entirely new code of procedure has been brought into existence by the statute of 1882 by which the old suspension is abrogated entirely.

Accordingly I think the second plea-in-law for the respondent ought to be sustained, that the Lord Ordinary's interlocutor ought to be recalled, and that this note of suspension ought to be refused.

LORDS JOHNSTON, MACKENZIE, and SKERRINGTON concurred.

The Court recalled the interlocutor of the Lord Ordinary, sustained the second plea-in-law for the respondent, and dismissed the action.

Counsel for the Complainer—Watson, K.C. — Lippe. Agents — Inglis, Orr, & Bruce, W.S.

Counsel for the Respondent—Moncrieff, K.C. — Christie — Crawford. Agents — St Clair Swanson & Manson, W.S.

Friday, March 17.

FIRST DIVISION.

COLLINS BROTHERS & COMPANY, LIMITED, AND ANOTHER, PETITIONERS.

Company—Winding-Up—Nobile Officium — Company Dissolved by Voluntary Liquidation while under Obligation to Convey Estate to a New Company which more than Two Years after the Dissolution Requires a Formal Conveyance of the Estate.

A company was dissolved after voluntary liquidation at the beginning of the year 1906. At that date it owned heritable property which it was under obligation to convey to a new company. In 1915 the new company required a formal title to the property and presented a petition craving that the dissolution of the old company should be declared void, and its liquidator authorised to grant the necessary conveyance. The Court, in exercise of its *nobile officium*, the power conferred by the Companies Consolidation Act 1908, sec. 223 (1), not being available since the application was made more than two years after the dissolution, *granted* decree as craved.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 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."

Collins Brothers & Company, Limited, wholesale and export stationers, incorporated under the Companies Acts 1862 to 1900, and having its registered office at No. 4 Bridewell Place, London, and Hugh Allan, publisher, 144 Cathedral Street, Glasgow, *petitioners*, presented a petition to the First Division of the Court of Session craving the Court to declare the dissolution of a former company of Collins Brothers & Company, Limited, to have been void, and to authorise the said Hugh Allan as liquidator of the former company to grant a conveyance of the property 105 Clarence Street, Sydney, to the petitioners first mentioned.

On 31st December 1887 Collins Brothers & Company, Limited, was incorporated under the Companies Acts 1862 to 1886, with its registered office situated in Scotland. The company was formed to take over and carry on the business of publishers, bookbinders, and stationers previously carried on in Glasgow, Australia, and New Zealand and elsewhere by the firm of Collins Brothers & Company. In the year 1904 it was considered advisable, in the interests