was intemperate in his habits, and had strong pecuniary interests to communicate with his friends. But to hold that he must have died in 1843 would, I think, be a very strong measure, and what your Lordship has suggested, in my opinion, we can safely do in the circumstances.

The general principles of the law of presumption are remarkably well stated by Lord Deas in the case of *Bruce* v. *Smith*, November 24, 1871, 10 Macph. 130. Dealing with this case as a jury, I think we are entitled to fix a period as your Lordship suggests; and with this variation we should adhere to the Lord Ordinary's interlocutor.

Lord Gifford—I concur. I think your Lordships, sitting as a jury, have fixed a very fair time, not as the actual time of Thomas Rhind's death, but as the time which in the absence of facts we fix as the time of his death for the purposes of this case.

The Court pronounced this interlocutor:—

"The Lords having heard counsel on the reclaiming note for William Bell and Others, claimants, against Lord Curriehill's interlocutor of 4th July 1877, Find that it must be presumed that Thomas Rhind died prior to 1st January 1850, and that the funds in this case must be divided on the footing that he died on that date; and, with this variation, adhere to the Lord Ordinary's interlocutor: *Quoad ultra* remit to the Lord Ordinary, and reserve all further questions of expenses to be dealt with by him."

Counsel for Bell and Others (Reclaimers)—Kinnear—Robertson. Agents—Webster, Will, & Ritchie, S.S.C.

Tuesday, January 15.

FIRST DIVISION.

[Lord Rutherfurd Clark, Ordinary.

BURGH OF KINGHORN *v.* COMMON AGENT OF THE KINGHORN LOCALITY.

Process—Teinds—Locality.

Where a scheme of locality had been made final after a process extending over about sixteen years, towards the close of which, after various other opportunities had been offered, it had been opened up of consent for the purpose of allowing an heritor who objected to the locality to prove the tenor of a sub-valuation, and where that opportunity had not been taken advantage of, the Court, on his applying to have the interlocutor pronouncing the scheme final recalled, *refused* the motion.

The miniter of Kinghorn procured an augmentation of stipend in the year 1862, and a remit was made to prepare a locality. In 1867 the case was wakened of consent, and in 1868 a rectified scheme was ordered to be prepared. Interlocutors continuing the cause were pronounced in each of the three following years, and in 1872 the scheme was allowed to be seen and objected to. No objections were made to it, and it was made final on March 5, 1872. The burgh of Kinghorn then intimated for the first time by a minute that they wished to found on a sub-valuation of teinds. The Common Agent then consented to the opening of the locality, which was done on July 5, 1872. On 4th July 1873 an interlocutor was pronounced continuing the case, and thereafter it went to sleep till 9th March 1877, when it was wakened of consent. On 18th May of that year the Lord Ordinary again allowed the rectified scheme to be seen and objected to. No objections were lodged by the burgh, and on 21st December 1877 the following interlocutor was pronounced, the burgh of Kinghorn having appeared and asked to be allowed to lodge objections, after the Lord Ordinary had intimated that he would pronounce decree in absence:—

"*21st December* 1877.—The Lord Ordinary having advised the scheme of locality, No. 71 of process, and heard counsel for the Common Agent and the burgh of Kinghorn—Approves of said scheme as a final locality, and decerns: Further, remits to the Auditor to tax the Common Agent's account of expenses, and to report."

Against this interlocutor the burgh of Kinghorn reclaimed, with a view of having the scheme reconsidered. A motion to that effect, which was tantamount to a motion to be reponed, was made in the Single Bills.

At advising—

Lord President—This is rather an interesting process of locality. It so happens that there is no question to be discussed except this of the burgh of Kinghorn. There was no record closed between the Common Agent and the heritors, and there was no interlocutor pronounced in a contentious form. The process has been dragging its slow length along from the year 1862 till 1878, nothing being done in it but purely formal matters. The rectified state was ordered by Lord Ormidale in 1868, and as soon as it was submitted to the Lord Ordinary it was approved of as a state, and then came an order allowing it to be seen. No objection was raised against it by anybody, and consequently the case was kept hanging on, and it was more than once continued so that it might not fall asleep altogether. At length the Lord Ordinary, on 5th March 1872, issued an interlocutor approving of the scheme. I think that to open up that interlocutor was a very strong step, for the matter had been depending for ten years, and nothing had been done in that time but to make a scheme, and in it there was no contentious matter. Nevertheless that interlocutor was opened up on the motion of the burgh of Kinghorn on 5th July of that year on representation being made that that burgh found that it was to their interest to have the scheme altered in respect of a sub-valuation of which they desired to have an approbation. To this the Common Agent agreed—whether he was entitled to do so or not I do not know—and the Lord Ordinary recalled his interlocutor. But what happened next? Within a day of one year the Lord Ordinary was again moved to continue the case, and from that date till the 9th March 1877 the process slept very soundly indeed. But then a minute was put in, and the Lord Ordinary held the case to be wakened by consent, a proceeding and expense caused entirely by the action of the burgh. Then on 18th May the Lord Ordinary allows all con-

cerned to see and to object. So at this time another opportunity was allowed to the burgh to raise the question, but they did not do so; they lay on their oars till 28th December last, when the scheme was made final. When this is done, they now come before us and cry—"Let us in yet; we are going to raise an action of proving of the tenor." Such an abuse of process is not to be allowed, and I am for refusing the application.

LORD DEAS and LORD MURE concurred.

LORD SHAND concurred, and added—I may say that I think this case is one of some importance. There is no difficulty in disposing of it, but it may be of advantage in drawing the attention of members of the profession to the fact that there is no difficulty in preventing delay in the carrying through of localities. We have seen cases in which great hardship arose from such delay. The remarks I made in the case of *Sinclair* v. *Fletcher's Trs.* July 18, 1877, 14 Scot. Law Rep. 662, are directly applicable here.

The Court refused the motion.

Counsel for Burgh of Kinghorn (Reclaimers)—Balfour—Mackay. Agents—Dundas & Wilson, C.S.

Counsel for Common Agent—Kinnear. Agent—William Montgomery, W.S.

Thursday, January 17.

SECOND DIVISION.

CONSOLIDATED COPPER COMPANY OF CANADA *v.* PEDDIE AND OTHERS (DIRECTORS' CASE).

(*Vide ante*, November 10, 1877, p. 81).

Public Company—Settlement of List of Contributories—Liability of Nominated Directors for Qualifying Number of Shares.

In the winding-up of a limited company it was sought to put the original directors who had been nominated in the articles of association upon the list of contributories to the extent of thirty shares, under this clause in the articles—"No person shall be eligible to or shall continue in the office of director unless he be the holder in his own right of shares representing at par the nominal sum of £300 in the capital of the company." *Held* that the original directors, although they had acted as such, could not be put upon the list of contributories to the qualifying amount, in respect that the clause could not be so read as to apply to directors nominated by the articles of association, but merely to those who might be afterwards formally elected by the company.

Observed per Lord Ormidale, that persons nominated to the directorate in the articles of association of a limited company do not require to hold stock for the purpose of qualifying themselves.

Expenses—Winding-up of a Limited Company—Liability of a Liquidator.

Where a number of parties who had substantially the same interests were called as respondents in a petition to settle the list of contributories brought by the official liquidator of a limited company, and where the latter was unsuccessful in his contention, the Court found the respondents entitled to expenses, but declined to allow more than one set of these to be charged against the petitioner.

This was another question arising out of the winding-up of the Consolidated Copper Company of Canada, already reported in the former question in regard to the shareholders (*ante*, November 10, 1877, p. 81).

It related to the liability of four of the directors of the Company — viz., Messrs H. B. Crum, John Miller, Thomas Dickson, and D. P. Mackenzie — under the 18th article of the articles of association. These gentlemen with several others were unconditionally nominated directors in the 17th article of association. The 18th article was in the following terms—"No person shall be eligible to or shall continue in the office of director unless he be the holder in his own right of shares representing at par the nominal sum of £300 in the capital of the Company." The 3d article, "dealing with the applications for shares in the concern," was as follows—"An application signed by or on behalf of the applicant for any share or shares in the Company, shall, if an allotment of any share or shares be made thereon, and information of such allotment be given to or received by the applicant, be an acceptance of the share or shares so allotted; and every person to whom such allotment shall be so made, and whose name is on the register, shall be a member for the number of shares so allotted." It was admitted that these gentlemen had attended several meetings as directors of the Company, and that they were applicants for shares to a large amount. The petitioner sought to have it found that they must be ranked as contributories to the extent of thirty shares each. The shares were £10 each.

Argued for the petitioner—By the articles of association there was an obligation on the directors to hold thirty shares, or they could not continue in office. The gentlemen in question acted as directors, and continued to act till the dissolution of the Company; besides, three of them (Mr Dickson did not) signed the memorandum and articles of association, and these three expressed themselves willing to be put upon the list for a share each. It was therefore a legal possibility and an admitted fact that the directors could have shares allotted to them. They must therefore be held to be contributories to the extent of thirty shares, the qualifying number.

Authorities—*Karuth*, L.R., 20 Equity, 506; *Miller*, L.R., 3 Chan. Div. 661 (and *Brown's* case there referred to); *Kincaid*, 11 Equity, 192; *Forbes*, 19 Equity, 353; *Harward*, 13 Equity, 30 (and *M. of Abercorn* there referred to); *Fowler*, 14 Equity, 316; *Leake*, 6 Chan. Appeals, 469; *Brown's* case, L.R., 9 Chan. Appeals, 102.

Argued for the directors—The directors could get shares no sooner than the public. The Court had held that the allotment to the public was conditional; it must therefore have been conditional to the directors. It was enough for them that they were not under an obligation to take shares from the Company, and the Company was not bound to give them shares. In these circum-