had shown that had the directors' refusal been timeously intimated to him he could have produced an unobjectionable transference—then a good deal might have been said for his claim to have the register altered, but nothing of that kind could be urged, for it appears that the shares were all but valueless, or at any rate that there was no sale for them in the public market.

It may be observed with reference to the English authorities which were cited, that they all deal with cases where the application was made after the liquidation of the companies had commenced, and that makes an important distinction between them and the present case. There has undoubtedly been unnecessary delay in dealing with the transfer in the present case, but I think the reclaimer has failed to show that he has suffered any prejudice by the delay which has occurred. In that state of matters I am for adhering to the interlocutor of the Lord Ordinary, and I am also for refusing the prayer of the petition.

Lord Mure concurred.

Lord Shand—The transfer here was dealt with and rejected by the directors in April 1884, and intimation of the rejection was made to the broker who had been employed to carry through the transfer. It was not, however, until the lapse of about a year, and when a call had been made upon the shares, that Duncan claimed that effect should be given to his transfer in favour of his wife. The Lord Ordinary is of opinion that, whatever were the reclaimer's rights, he is barred by his acquiescence for so long a time from pleading the long delay on the part of the directors in dealing with his application, and I am disposed to come to the same conclusion. If the reclaimer thought himself aggrieved by the delay of the directors to deal with his transfer, he ought to have pressed his claims under the provisions of sec. 35 of the Act of 1862. That, however, does not touch the question which we have now to consider, namely, whether the reclaimer was, in consequence of the delay in dealing with his transfer, entitled to have the register rectified by the deletion of his name.

It is quite clear that the directors had, in their option, a right of rejection, and it seems to me equally clear that in the present case there was good cause for exercising it. In order to prevail, what the reclaimer here would require to show would be, that owing to the unnecessary delay of the directors in dealing with his transfer he had suffered prejudice. I think your Lordship has said enough to make it clear that nothing of that kind has occurred.

Upon these grounds I concur with your Lordship that we should adhere to the Lord Ordinary's interlocutor.

Lord Adam—I agree with Mr Buckley when he says—"A transfer to which no objection is or can be made on the part of the company, ought to be confirmed by the directors at the first meeting at which in the ordinary course of business it can be confirmed, and thereupon registered. If not so confirmed at the first meeting at which in the ordinary course of business it can be done, there is unnecessary delay within the meaning of the section." But then the only result of this "unnecessary delay" is to bring parties under the provisions of sec. 35, and to enable the party aggrieved to petition the Court for the rectification of the register. The Court will only order a rectification of the register if it is satisfied that the justice of the case demands this, and in coming to a conclusion upon this matter the Court is entitled to take into account all facts and circumstances down to the date of the disposal of the case.

I agree with what your Lordships have said both as to the reclaimer's acquiescence in the decision of the directors and also in regard to his not having shown that he has suffered any prejudice by the undue delay which occurred in having his transfer dealt with, and on the whole matter I concur in the result arrived at by your Lordships.

The Court adhered to the Lord Ordinary's interlocutor, and also refused the prayer of the petition.

Counsel for Pursuer—Gloag—G. W. Burnet. Agents—Watt & Anderson, S.S.C.

Counsel for Defenders — Scott — Jameson. Agent—Alexander Duncan, S.S.C.

Thursday, January 6.

SECOND DIVISION.

MACLEOD AND ANOTHER *v.* DAVIDSON AND ANOTHER.

Process—Expenses—Taxation—Citation Amendment (Scotland) Act 1882 (45 *and* 46 *Vict. c.* 77), *secs.* 3 *and* 4.

In an action of interdict against certain crofters in the island of Skye, the pursuer served the summonses personally on the various defenders by a Sheriff's officer sent from Inverness. In taxing the account of expenses of the pursuer, who was successful, the Auditor only allowed the expense of transmitting the summons by registered letter in terms of the Citation Amendment Act 1882. The pursuer objected, on the ground that as there was no postal delivery in the district, and all the Sheriff's officers in Skye had resigned their commissions, he had adopted the only method of service practicable in the circumstances. The Court *sustained* the objection.

In this case (decided November 17, 1886, reported *supra*, p. 69), which was a petition for interdict brought in the Sheriff Court of Inverness, Elgin, and Nairn at Portree, the Auditor of Court in taxing the account of expenses of the pursuers, who were successful in the action, disallowed an item of £31, 14s. 6d. charged under date 27th November 1884 for service on the defenders, by a Sheriff officer from Inverness, of the petition and deliverance thereon granting interim interdict. Of this sum he only allowed a sum of £1, 18s. 10d. as the fees for service by registered letter in terms of the Citation Amendment (Scotland) Act 1882 (45 and 46 Vict. c. 77), which provides as follows—"Section 3. In any civil action or proceed-

ing in any court, or before any person or body of persons having by law power to cite parties or witnesses, any summons or warrant of citation of a person, whether as a party or witness, or warrant of service or judicial intimation, may be executed in Scotland by any officer of the court from which such summons, warrant, or judicial intimation was issued . . . by sending to the known residence or place of business of the person upon whom such summons, warrant, or judicial intimation is to be served, or to his last known address if it continues to be his legal domicile or proper place of citation . . . a registered letter by post containing the copy of the summons or petition or other document required by law in the particular case to be served, with the proper citation or notice subjoined thereto, or containing such other citation or notice as may be required in the circumstances, and such posting shall constitute a legal and valid citation, unless the person cited shall prove that such letter was not left or tendered at his known residence or place of business, or at his last known address if it continues to be his legal domicile or proper place of citation." "Section 4. The following provisions shall apply to service by registered letter . . . (5) If delivery of the letter be not made because the address cannot be found, or because the house or place of business at the address is shut up . . . or because the address is not within a postal delivery district, and the letter is not called for within twenty-four hours after its receipt at the post-office of the place to which it is addressed, or for any other reason, the letter shall be immediately returned through the post-office to the clerk of court with the reason for the failure to deliver marked thereon, and the clerk shall make intimation to the party at whose instance the summons, warrant, or intimation was issued or obtained, and shall, where the order for service was made by a judge or magistrate, present the letter to a judge or magistrate of the court from which the summons, warrant, or intimation was issued, and he may, if he shall think fit, order service of new, either according to the present law or practice, or in the manner hereinbefore provided, and if need be substitute a new diet of appearance."

Counsel for the pursuer objected—The provisions of the Act of Parliament were unworkable in this particular case. This was an action for interdict, and therefore required the utmost diligence and despatch. There was no postal delivery within the district where the summons had to be served. It was scarcely imaginable, then, that the crofters would come to the Post-Office to fetch their summonses. In these circumstances the only other alternative had to be adopted, and a Sheriff's officer was sent from Inverness, this being rendered necessary as all the Sheriff's officers in Skye had resigned their commissions. The pursuer, then, was entitled to the full expenses of service charged.

Counsel for the defenders replied—There was nothing in the argument that there was no postal delivery within the district. This was applicable in very many parts of Scotland. It could not be assumed that not one of forty crofters would call at the Post-Office for letters. The Act made provision where letters containing summonses were not called for in sub-section 5 of section 4. In respect, then, that the pursuer had resorted to the more expensive method of service, and one not sanctioned by the Citation Amendment Act, the Auditor was right in only allowing the expense of the method sanctioned by the Act.

At advising—

The Lord Justice-Clerk delivered the opinion of the Court (Lord Justice-Clerk, Lord Craighill, and Lord Rutherfurd Clark):—In this case the question has arisen whether the successful party is to be allowed the expense of serving the summons and interdict by means of an ordinary Sheriff's officer going from Inverness and serving the writs personally on the parties concerned, or whether he is only entitled to the expense which would have been incurred by using the provision of the recent statute by sending the summons through the medium of the Post-Office.

It is admitted that the Post-Office does not deliver letters in the particular district in question, and it is almost certain that the summons would not have been delivered if it had been sent through the Post-Office. The letter might possibly have been delivered if called for, but the probability is it would not in this particular district have been a sufficient mode of transmission of an important writ. It is true that the Act of Parliament authorises such writs to be served through the Post-Office, and that there is a provision in a clause of the statute by which, if they do not reach their destination, application may be made to the judge or magistrate before whom the case is called to authorise another mode of service. That is a perfectly proper provision, and manifestly applicable to the cases which it is contemplated to meet. But such application does not exclude such a case as the present, where manifestly the mode of transmission is not a certain or secure one, and where, as I have said, in all probability the summons would never have reached the parties. I think, then, we must sustain the objection.

Lord Young was absent.

The Court sustained the pursuer's objection.

Counsel for Pursuer — Rutherfurd Clark. Agents—Skene, Edwards, & Bilton, W.S.

Counsel for Defenders—Rhind. Agent—Wm. Officer, S.S.C.

Saturday, January 8.

FIRST DIVISION.

[Sheriff of Inverness.

MONCUR *v.* MACDONALD AND OTHERS.

Bankruptcy—Sequestration—Trustee—Review of Interlocutory Judgment of Sheriff before Appointment—Bankruptcy Act 1856 (19 *and* 20 *Vict. c.* 79), *secs.* 69 *and* 170.

In a competition for the office of trustee in a sequestration the Sheriff allowed a proof of certain personal objections taken against one of the claimants. *Held* (1) that appeal against the deliverance was competent, (2) that the allowing such proof was in the discretion of