band out of his heritable estate in Scotland, I should then have supposed it to have been his duty to consider the point, and I do not see why the Sheriff should not have considered the question whether the pursuer was barred from claiming terce by having accepted a provision out of land in Bolivia if it had been raised before him. There might have been some difficulty in obtaining evidence on the subject, but the question was capable of decision, and I do not doubt that the jury, who seem all to have been men of learning, being either advocates or solicitors in Aberdeen, would have paid respect to the Sheriff and have followed his directions. That course, however, was not taken, and it appears to me that the whole proceeding was conducted on the footing that the appellant meant to have the case reviewed in a different form of proceeding altogether.

LORD KINNEAR—I agree in the ground of judgment proposed by your Lordships, and also in the desire to reserve my opinion as to the competency of appealing instead of bringing an action of reduction after the verdict of the inquest has been given.

The Court dismissed the appeal.

Counsel for Pursuer—D.-F. Balfour, Q.C. —Crabb Watt. Agents—R. C. Gray, S.S.C.

Counsel for Defender—Comrie Thomson —Campbell. Agents — Wishart & Macnaughton, W.S.

Saturday, December 19.

FIRST DIVISION.

THE SOLANA MINING COMPANY (LIMITED) AND LIQUIDATOR *v.* CUNNINGHAM.

Company — Winding-up — Supervision Order—Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *secs.* 82, 147, 152.

A limited company resolved to wind up voluntarily, and appointed a liquidator, who applied for a supervision order. A shareholder objected to the application, as he had raised an action of reduction against the resolution of the company. There was no suggestion that the procedure of the company had been in any way irregular.

The Court *granted* the supervision order, leaving it to the objector, in terms of the Companies Act 1862 (25 and 26 Vict. cap. 89), sec. 87, to apply to the Lord Ordinary before whom his action of reduction was called for permission to proceed therewith.

The Solana Mining Company Limited was on 10th July 1889 registered and incorporated under the Companies Acts 1862 to 1883 for the purposes of purchasing or otherwise acquiring and working mineral properties in Spain. The capital of the company was £30,000, divided into 6000 ordinary shares of £5 each. No money was actually raised by the issue of the share capital, and working capital was obtained by the issue of debentures authorised to the amount of £8000, of which £7105 only were issued. At an extraordinary general meeting of the company held on the 25th May 1891 within the offices of Messrs John Mann & Son, C.A., 118 St Vincent Street, Glasgow, the following extraordinary resolution was unanimously adopted:—"That it has been proved to the satisfaction of this meeting that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same, and accordingly that the company be wound up voluntarily." Thereafter a resolution was proposed and carried unanimously that Mr John Mann junior be appointed liquidator of the company. Mr Mann accordingly entered upon his duties as liquidator of the company, and proceeded to take the steps necessary for winding up its affairs.

The liquidator presented the present petition for a supervision order in consequence of certain claims having been made and actions raised by an alleged creditor of the company, and in order that these actions might be restrained, and that preferences might not be acquired.

The Companies Act 1862 (25 and 26 Vict. cap. 89), sec. 87, provides:—"Where any order has been made for winding up a Company under this Act, no suit, action, or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court, and subject to such terms as the Court may impose."

Answers were lodged by John Ralston Cunningham junior, merchant, George Square, Glasgow (who claimed to be a creditor of the company), and who alleged that he had raised an action of reduction *inter alia* of the resolution of the extraordinary general meeting of the company referred to in the petition, and all that had followed thereon. He averred—"The respondent submits that the present petition should be dismissed with expenses, in respect (*first*) that it is altogether unnecessary; (*second*) that the petition is wanting in such specification as will enable the creditors of the company to form any opinion as to whether they should appear and oppose it; (*third*) that only six persons were present when the resolution to wind up the company was passed; (*fourth*) that the said agreement with the respondent was never read to the shareholders; (*fifth*) that the funds said to be at the disposal of the liquidator will not even meet the claims of the debenture-holders, and accordingly that no preferences can be acquired by any of the creditors of the company; and (*sixth*) that most of the creditors of the company disapprove of the liquidation proceedings and all that has followed thereon."

Argued for petitioner — The company were all but unanimous in their approval of the course proposed by the liquidator, the only objector being the respondent; and he stated no relevant ground for

opposing the granting of a supervision order. It was not suggested that the procedure was in any way irregular or incompetent, and in the absence of any such allegation the Court would not refuse the application—*Lawson Seed Company* v. *Lawson & Son*, December 2, 1886, 14 R. 154. It was essential that the proceedings adopted by the respondent should be stayed, and the course proposed by the petitioner was the most effectual for this purpose; without a supervision order the proceedings complained of could not be stayed—*Sdeuard* v. *Gardner*, March 10, 1876, 3 R. 577. The circumstances which induced the Court in the case of *Mitchell* v. *The Rawyards Coal Company*, November 20, 1888, 16 R. 117, to refuse a supervision order were entirely wanting in the present case, and the application should be granted, especially as under it all interests would be fully protected.

Counsel for the debenture-holders stated that it was entirely with their money that the concern was floated, and that the debenture-holders concurred in the application of the liquidator and adopted his arguments.

Argued for respondent—If the petitioner's application was granted, then the respondent's action would be stopped. The action had reached the procedure roll, and the Lord Ordinary was about to determine its relevancy. If it was found irrelevant, then it would be thrown out, and there would be no need of a supervision order; but if it was found relevant, that was the strongest argument in favour of its being allowed to go on; but even if found relevant it could not proceed if the present application was granted. The question of whether such an order should be granted was one for the discretion of the Court, and no sufficient reason had been assigned for its being granted.

At advising—

LORD PRESIDENT—The Solicitor-General is not in a position to challenge the regularity and validity of the initial resolution of the company to go into voluntary liquidation. He says, indeed, that he has an action of reduction which will entirely subvert the present position of the company and give him a dominant influence in it. But the Court must take it that the proceedings of the company stand *ex facie* regular and valid, and the question is now whether the company having resolved on voluntary liquidation, and having resolved to ask for a supervision order, adequate grounds have been stated for refusing the petition; because the cases referred to seem to show that when a resolution of a company so far as the validity is concerned is unimpeached, it requires some strong specific ground to warrant the Court in withholding a supervision order which the company has proceeded to ask.

It has been stated for the petitioners quite plainly that the interest of the company is to stop the action of the respondent Mr Cunningham; but that is perhaps overstating the effect of the proceeding, because under section 87 of the Act the mere effect of the supervision order is to stop proceedings or the commencement of proceedings against the company, "except with the leave of the Court and subject to such terms as the Court may impose." Accordingly if the Court grants the supervision order, the practical effect of it will be that the question whether Mr Cunningham's action should be allowed to proceed becomes matter for judicial consideration, and will be determined on a full consideration of all interests both of Mr Cunningham's and of the company's, and of the debenture holders. If your Lordships are of the same opinion, then I think we ought to grant the order, and leave Mr Cunningham, if so advised, to make application to the Judge before whom his case has already come, whom he may be able to satisfy that he ought to be allowed to proceed with his action.

I am therefore for granting this supervision order, and for remitting the case to Lord Kyllachy, before whom Mr Cunningham's action of reduction has already made some progress.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court granted the prayer of the petition.

Counsel for Petitioners—D.-F. Balfour, Q.C.—Ure.

Counsel for Debenture Holders—Baxter. Agent—J. L. Hill & Company, W.S.

Counsel for Respondents — Sol.-Gen. Graham Murray, Q.C.—Galloway. Agents —Patrick & James, S.S.C.

Tuesday, January 5, 1892.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

M'LAURIN *v.* NORTH BRITISH RAILWAY COMPANY.

Process — Jury Trial — Reparation — New Trial on Ground of Excess of Damage.

A pursuer having obtained a verdict for £1800 in an action of damages for injuries sustained in a railway collision, the defenders applied for a new trial on the ground that the damages awarded were excessive. The evidence showed that the pursuer had received a severe blow on the head, which shattered his nose, and inflicted upon him a serious nervous shock. The shape of his nose was permanently altered, and he was to a certain extent but not greatly disfigured. His health was much broken by the shock he had sustained, and it was a year before he could work a full day at his business, which was that of a yarn and cloth merchant. At the date of the trial, fifteen months after