the production of the letter. On that point I agree with your Lordships. I have looked into the session papers of *Rose* v. *M'Leod*, 3 S. 79, and it is quite clear that in that case the Court never had the actual terms of the letter before it.

The Court substituted for issue 3, and approved, an issue in the following terms:—"Whether on or about 15th March 1904 the defenders by their general secretary and manager wrote and despatched to Mr —— the letter printed No. 2 in the appendix. Whether the statements in said letter are of and concerning the pursuer, and are false and calumnious, and were made maliciously, and represent that pursuer had been guilty of such criminal conduct as to warrant his apprehension, to the loss, injury, and damage of the pursuer,"—and disallowed issues 4 and 5.

Counsel for the Pursuer and Respondent—G. Watt, K.C.—Thomas Trotter. Agent—James G. Bryson, Solicitor.

Counsel for Defenders and Reclaimers—Clyde, K.C.—William Thomson. Agents—Balfour & Manson, S.S.C.

Tuesday, May 16.

FIRST DIVISION.

JAMES SOMERVILLE & COMPANY, LIMITED, AND OTHERS, PETITIONERS.

Bankruptcy—Sequestration—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. c.* 79), *sec.* 67—*Failure to Insert Notice of Sequestration in Gazette Sufficiently Long before Day Fixed for Meeting of Creditors—Petition to Fix New Day for Meeting of Creditors—Expenses.*

A deliverance awarding sequestration fixed the day for the meeting of creditors to elect a trustee and commissioners. It was necessary, for the purpose of giving six days from the date of the Gazette notice of the sequestration as required by the Bankruptcy (Scotland) Act 1856, sec. 67, that such notice should appear in the Gazettes of the day following the award of sequestration. The petitioners, having failed to insert a notice in the Gazettes of the day, presented a petition craving the Court to fix a new day for the meeting. The Court granted the crave, but—following *Stark* v. *Hogg*, February 24, 1886, 23 S.L.R. 507—added to the interlocutor a declaration that the expenses of the application should not be charged against the estate.

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), section 67, provides:—"The Lord Ordinary or the Sheriff, by the deliverance which awards the sequestration, shall appoint a meeting of the creditors to be held at a specified hour on a specified day, being not earlier than six nor later than twelve days from the date of the Gazette notice of sequestration having been awarded, at a convenient place within the county of the Sheriff awarding sequestration, or to whom the sequestration is remitted, to elect a trustee or trustees in succession, and do the other acts hereinafter provided."

On the 8th May 1905 the Lord Ordinary officiating on the bills sequestrated the estates of Alexander Ross Mackenzie, hotelkeeper, Drumcudden Inn, Resolis, in the county of Ross and Cromarty, on the application of Messrs John Somerville & Company, Limited, The North British Brewery, Duddingston, Edinburgh, and others. In his deliverance awarding sequestration he appointed a meeting of the creditors to be held on the 18th May 1905 for the purpose of electing a trustee and commissioners.

By inadvertence it was omitted to advertise the meeting in the *Edinburgh Gazette* and the *London Gazette* of Tuesday 9th May, and it would have been difficult, if not impossible, to have had a notice of the meeting inserted in the *London Gazette* of that date, which was the day after the award of sequestration. Advertisements in the Gazettes of Friday the 12th May on the other hand would not have given the six days' notice prior to the meeting required by the statute. The meeting therefore could not competently be called and held.

On the 13th May Messrs Somerville & Company, Limited, and others presented a petition to the Court in which they asked that another day should be appointed for holding the meeting, and that intimation of such meeting in terms of the statute should be ordered.

Counsel for the petitioners referred to the cases of *M'Cosh*, June 17, 1898, 25 R. 1019, 35 S.L.R. 742; and *Wilson*, December 1, 1891, 19 R. 219, 29 S.L.R. 176.

The Court granted the prayer of the petition, but intimated that, following the case of *Stark* v. *Hogg*, February 24, 1886, 23 S.L.R. 507, the expenses of the application would not be allowed, and pronounced this interlocutor:—

"The Lords having considered the petition, fix Saturday, the 27th day of May 1905, at 11·30 o'clock forenoon, within the National Hotel, Dingwall, as the day, hour, and place for holding the meeting for election of a trustee on the estates of the deceased Alexander Ross Mackenzie mentioned in the petition, or separate trustees or trustees in succession and commissioners, in place of the meeting fixed for the 18th day of May 1905: Appoint intimation of the meeting now fixed to be made in the *Edinburgh Gazette* and the *London Gazette* of Friday 19th May 1905: Remit to the Sheriff of the county of Ross and Cromarty at Dingwall to proceed in terms of the Bankruptcy Statutes, and decern; and declare that the expenses of the present appli-

cation and procedure connected therewith are not to be allowed against the estate."

Counsel for the Petitioners—C. D. Murray. Agents—Purves & Barbour, S.S.C.

VALUATION APPEAL COURT.

Monday, February 27.

(Before Lord Stormonth Darling and Lord Low.)

ANGUS *v.* ASSESSOR FOR LANARKSHIRE.

Valuation Cases—Public-House—Consideration other than Rent—Obligation by Tenant to Carry out Alterations Prestable by Licensing Authority — Lands Valuation (Scotland) Act 1854 (17 *and* 18 *Vict. cap.* 91), *sec.* 6.

In a lease of a public-house the tenant bound himself to carry out any alterations required by the licensing authority from time to time at his own expense. *Held* that this obligation warranted the Valuation Committee in disregarding the rent in the actual lease when fixing the yearly value of the subjects.

Valuation Cases—Public-House—Consideration other than Rent — Obligation by Tenant to Carry out Alterations Prestable by Licensing Authority—Obligation of Indeterminate Value.

In a lease of a public-house the tenant bound himself to carry out any alterations required by the licensing authority from time to time at his own expense. *Held* that, since the obligation was indeterminate in value, the Valuation Committee was entitled to exercise its local knowledge in fixing the yearly value of the subjects.

At a meeting of the Valuation Committee of the County Council of Lanarkshire, for the Middle Ward District of the county, held at Hamilton on the 13th day of September 1904, William S. Angus, spirit merchant, Auchinraith, Blantyre, appealed against an entry in the valuation roll, whereby a public-house let to him under lease by Thomas H. Bennett & Company, spirit merchants, Glasgow, was entered as of the yearly value of £80, and craved that the valuation be reduced to the rent stipulated for in the lease, viz., £45.

The facts of the case were—The appellant produced a lease dated 5th and 7th September 1903 between Messrs T. H. Bennett & Company, Limited, of the first part, and himself of the second part, in which, *inter alia*, it was stipulated that the appellant should be bound "to carry out any alterations or improvements which the licensing authority may from time to time require to be made upon the premises" at his own expense.

The appellant had been manager to Messrs Bennett & Company till September 1903, when his connection with them ceased.

For the year 1903-4 the appellant was returned as tenant of the said public-house at a rent of £45, but this had not been accepted by the Assessor, who had continued the valuation of the two years immediately preceding, namely £80 per annum.

The Committee found that the Assessor was entitled to disregard the rent in the lease, as it contained "a consideration other than rent," and from their personal knowledge of the locality fixed the yearly value of the subjects at £60.

Thereupon the appellant expressed his dissatisfaction with this determination, and the present case was stated.

The Lands Valuation (Scotland) Act 1854 (17 and 18 Vict. cap. 91), sec. 6, *inter alia*, enacts that in estimating the yearly value of lands and heritages, "where such lands and heritages are *bona fide* let for a yearly rent conditioned as the fair annual value thereof, without grassum or consideration other than the rent, such rent shall be deemed and taken to be the annual rent or value of such lands and heritages in terms of this Act."

The appellant argued—The obligation in the lease was not a consideration other than rent, but simply the expression of the parties' position at common law. The proper course was for the Assessor to wait till alterations were ordered and then their value could be ascertained—*Shiel* v. *Assessor for Hawick*, February 18, 1898, 25 R. 592, 35 S.L.R. 665.

Counsel for the respondent was not called upon.

LORD STORMONTH DARLING—Mr Haldane has stated everything possible in favour of this appeal, but I am of opinion that it must be dismissed. The question is, whether the Committee are right in disregarding the rent in the actual lease under which the premises are let, and in saying, from their own knowledge of the lettable value of similar public-houses in the same locality, that £60 represents the fair value of the premises. They have thus not adopted the value suggested by the Assessor, which is £80, but have applied their own judgment to the matter. If they are entitled to disregard the lease, there is nothing to be said against the way in which they have exercised their judgment, and therefore the only question for this Court is whether they are entitled to disregard the lease. They have done so because of a stipulation binding the tenant to carry out any alterations or improvements which the licensing authority may from time to time require to be made upon the premises, the proprietors not being in any way bound to execute any improvements or additions to the premises during the currency of the lease, or to contribute towards the cost of any such alterations, improvements, or additions. It is impossible to say that such a stipulation is not of an altogether exceptional kind, and, furthermore, it is altogether indeterminate in amount. If the amount had been determined or determinable the Committee would