sion that the proceedings fall to be recorded in a formal minute, and I suppose the election would have been quite good although no written record of it had been kept. In a properly managed society, of course, one would imagine that such a record would exist, from which it might have been seen that those who were acting on the board of management had been duly elected after the proper procedure, but that again would be a mere record of what had taken place. It is not alleged that it is a certificate that each of the members so elected was qualified to act. But even if it had been so I do not think it would have been in the least necessary that an action of reduction should be raised. As it was put in argument, the disqualification may have attached after the election was made, whether as a delegate or as a member of the board of management.

Are the members as a whole, then, to have no remedy against unqualified persons acting on the board of management? If the argument of the defenders is worth anything it comes to this, that, once duly elected, a delegate or a member of the board of management may disregard the rules of the Society and subject himself to various disqualifications without any person having the right to call attention to the irregularity and to have the administration put upon a proper footing. The effective remedy which the pursuer seeks, and which he can obtain only from a court of law and not from an arbiter, is an interdict against the person who by the rules of the Society is disqualified from acting continuing to act; and assuming that the pursuer establishes the disqualification as having attached to Mr Boag at the time that this action was brought, I see no reason why he should not get that remedy.

We cannot consider what has taken place since. It may be that Mr Boag is now duly qualified, but the pursuer is entitled to have the judgment of the Court on the question whether his application was properly brought. It may be the best justification of the application that the Society has in consequence put its affairs upon a proper footing. It may, no doubt, affect the terms of the interdict, if any, which the Sheriff-Substitute will pronounce, but it cannot affect the right of a party complaining of a departure from the rules by those who have the administration of the Society to have their conduct inquired into.

There may also be a question whether, assuming Mr Boag was not duly elected, the pursuer was not entitled to the position and the remuneration which Mr Boag has enjoyed. It is always open to a member of a voluntary society to claim damages against the society which has deprived him of patrimonial benefits by acting in violation of its own rules. The case of *Andrews* is an illustration of that, because the pursuer there was suing for damages in respect of his expulsion from the society, on the ground that the expulsion had proceeded without his having received the written notice for which the rules provided.

On these grounds I am clearly of opinion that the Sheriff here has erred in dismissing the action, and that we should revert to the judgment of the Sheriff-Substitute.

The LORD JUSTICE-CLERK and LORD DUNDAS concurred.

LORD GUTHRIE was absent.

The Court recalled the interlocutor of the Sheriff of 20th July 1912, affirmed the interlocutor of the Sheriff-Substitute of 13th June 1912, and remitted to him to proceed.

Counsel for the Pursuer and Appellant—Graham Stewart, K.C.—W. J. Robertson. Agents—Watt & Williamson, S.S.C.

Counsel for the Defender and Respondent Alexander Boag—Gilchrist. Agents—Laing & Motherwell, W.S.

Counsel for the Defenders and Respondents the City of Glasgow Friendly Society—Moncrieff, K.C.—Lippe. Agents—Simpson & Marwick, W.S.

Wednesday, June 25.

SECOND DIVISION.

CITY OF GLASGOW LIFE ASSURANCE COMPANY AND SCOTTISH UNION AND NATIONAL INSURANCE COMPANY, PETITIONERS.

Insurance—Life Assurance—Transfer of Business—Transmission of Statement of Nature of Transfer, Abstract of Agreement, and Reports to Policyholders—Dispensing with Transmission—Assurance Companies Act 1909 (9 *Edw. VII, cap.* 49), *sec.* 13 (3) (*b*).

The Assurance Companies Act 1909, sec. 13, enacts—"(1) Where it is intended . . . to transfer the assurance business of any class from one assurance company to another company the directors of any one or more of such companies may apply to the Court by petition to sanction the proposed arrangement. . . . . (3) Before any such application is made to the Court . . . . (*b*) a statement of the nature of the . . . transfer, . . . together with an abstract containing the material facts embodied in the agreement or deed under which the . . . transfer is proposed to be effected, and copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary, shall, unless the Court otherwise directs, be transmitted to each policyholder of each company in manner provided by section one hundred and thirty-six of the Companies Clauses Consolidation Act 1845 for the transmission to shareholders of notices not requiring to be served personally. . . ."

Where, in a petition by two insurance companies for sanction of a proposed transfer of business under the Life Assurance Companies Act 1909, sec. 13, the petition stated that in terms of sub-section (3) (*b*) the statement, abstract, and reports therein specified had been duly transmitted to the policyholders of the first company, but that the transmission of these documents to the policyholders of the second company, who numbered about 30,000, would cause considerable trouble and expense, and by the terms of the proposed transfer the life funds of the second company would not be liable for sums due under the policies of the first company, the Court *dispensed* with transmission of the documents.

The Assurance Companies Act 1909 (9 Edw. VII. c. 49), sec. 13, enacts—(*as quoted in rubric*).

The directors of the City of Glasgow Life Assurance Company, and the directors of the Scottish Union and National Insurance Company, *petitioners*, presented a petition to the Court under the Assurance Companies Act 1909, sec. 13, for sanction of the transfer of the whole business of the first company to the second company in terms of a provisional agreement entered into between the companies.

The petition stated, *inter alia*—"That the object and business of the first company is the making and effecting of assurances on lives and survivorships, the making or effecting of all other kinds of assurance connected with life, the granting and selling of annuities either for lives or otherwise, and on survivorships, and the purchasing of annuities for lives or otherwise, the granting of endowments for children and other persons, the receiving of investments of money for accumulation, and the purchasing of contingent rights, whether of reversion, remainder, annuities, life policies, or otherwise. . . .

"That the business and objects of the second company are to carry on the business of life, fire, marine, and accident assurance, to grant and sell annuities of all kinds, and to grant and affect other assurances and contracts of guarantee or indemnity against any other description of loss or damage to property or person occasioned in any manner whatsoever. . .

"That as the result of negotiations between the boards of directors of the two companies a provisional agreement was entered into between them dated 5th and 6th March 1913, with an addendum thereto dated 9th May 1913, by which the first company agrees to sell and the second company agrees to purchase on the terms therein mentioned the entire undertaking, business, goodwill, name, rights, and all other assets of the first company, and that as at and from the 1st day of January 1913. . . .

"That by the said provisional agreement it is provided that the contract between the said companies should be conditional on . . . . (*c*) the shareholders of the first company confirming said provisional agreement by a majority of not less than 75 per cent. of the capital of the first company not later than the 30th day of April 1913, (*d*) the transfer being approved by the shareholders of the second company and confirmed by the Court as required under section 13 (2) of the Assurance Companies Act 1909, on or before the 30th November 1913. . . .

"That the shareholders of the first company, by a majority of over 75 per cent. of the capital of the first company, confirmed the foresaid provisional agreement prior to the 30th day of April. . . .

"That the following resolution approving of said transfer was passed at the annual general meeting of the second company on 7th May 1913, viz.—'That the scheme for the transfer of the undertaking of the City of Glasgow Life Assurance Company to this company, on terms embodied in the provisional agreement to be submitted to the Court, dated the 5th and 6th days of March 1913, and made between the Scottish Union and National Insurance Company of the one part, and the City of Glasgow Life Assurance Company of the other part, be, and the same is, hereby approved.'

"That a statement of the nature of the transfer, together with an abstract containing the material facts embodied in the said provisional agreement and addendum, copy of the report of the first company for the year ending 31st December 1912, upon which the said provisional agreement with its addendum is founded, copy of the actuarial report dated 16th April 1913 on the proposed transfer by Mr Gordon Douglas as the independent actuary required by section 13 (3) (*b*) of the Assurance Companies Act 1909, and a copy of the report of the second company for the year ending 31st December 1912, have been transmitted to each policyholder of the first company, as well as to the persons claiming to be interested in any policy who have given to the first company notice in writing of such interest, all in terms of said section 13 (3) (*b*) of said Act. . . .

"That notice of the intention to make this application was published in the *Edinburgh*, *London*, and *Dublin Gazettes* on the 6th day of June 1913, and that the provisional agreement with its addendum remained open for the inspection of the policyholders and shareholders of both Companies at their head offices in Edinburgh and Glasgow respectively for a period of 15 days after the publication of the said Gazette notice, in terms of section 13 (3) (*c*) of said Assurance Companies Act 1909.

"That the present application for sanction is presented under and by virtue of the Assurance Companies Act 1909, and particularly section 13 thereof. By virtue of sub-section (3) (*b*) of the said section, a statement of the nature of the proposed transfer, together with an abstract containing the material facts embodied in the said provisional agreement and addendum,

and copies of the said report of the first company for the year ending 31st December 1912, and of the actuarial report dated 16th April 1913 on the proposed transfer by Mr Gordon Douglas as independent actuary as aforesaid, all as hereinbefore referred to, fall to be transmitted to the policyholders of the second company unless the Court otherwise directs. As it is provided by said provisional agreement that the Life Assurance and Annuity Fund of the first company shall be kept separate and distinct, and as the Life Assurance and Annuity Funds of the second company cannot in any way become liable for nor be affected by the sums due or to become due under the policies of the first company, and as the transmission of the foresaid documents to the policyholders of the second company, about 30,000 in number, would cause considerable trouble and expense, it is humbly submitted that your Lordships should direct that the said transmission may be dispensed with.

"That the petitioners having otherwise complied with the requirements of the statute, are desirous of having the proposed transfer sanctioned and confirmed by your Lordships in terms of the Assurance Companies Act 1909.

"That it is the intention of the first company to proceed by way of voluntary liquidation and a sale under the Companies (Consolidation) Act 1908."

In the petition the petitioners craved, *inter alia*, "to direct that any transmission to the policyholders of the Scottish Union and National Insurance Company foresaid of a statement of the nature of the transfer, together with an abstract containing the material facts embodied in the said provisional agreement and addendum thereto, and copies of said reports, may be dispensed with."

On the petition appearing in the Single Bills on 25th June 1903, counsel for the petitioners moved the Court to dispense with the transmission of the documents mentioned in the prayer of the petition, and referred to *Empire Guarantee and Insurance Corporation, Limited, Petitioners*, 1911 S.C. 1296, 48 S.L.R. 1038.

The Court (consisting of LORDS DUNDAS, SALVESEN and GUTHRIE, the LORD JUSTICE-CLERK being absent) without delivering opinions pronounced an interlocutor appointing the petition to be intimated and advertised, dispensing with the transmission of the documents mentioned in the prayer of the petition, and allowing all persons having interest to lodge answers within eight days after such intimation and advertisement.

Counsel for the Petitioners — Black. Agent—John Cowan, W.S.

Friday, June 27.

SECOND DIVISION.

[Sheriff Court at Falkirk.

NIMMO & COMPANY, LIMITED, *v.* REID.

Expenses — Sheriff Court—Jury Trial — Appeal—New Trial—Expenses of Appeal.

Where a new trial was granted on the grounds that the verdict had been erroneously applied and contrary to the evidence, *held—following Bond* v. *Dalmeny Oil Company, Limited*, July 15, 1909, 46 S.L.R. 920—that the pursuer was liable in the expenses of the appeal.

Peter Reid, pit bottomer, Standburn, by Avonbridge, *pursuer*, brought an action in the Sheriff Court at Falkirk against James Nimmo & Company, Limited, coalmasters, Glasgow, *defenders*, for £260 compensation under the Employers' Liability Act 1880 (43 and 44 Vict. cap. 42).

The cause was tried before a jury, who assessed the damages at £246, 7s., and the Sheriff-Substitute (MOFFATT) applied the verdict on behalf of the pursuer.

The defenders appealed to the Second Division of the Court of Session, on the grounds, *inter alia*, that (1) the verdict had been erroneously applied, as the finding of the jury did not warrant it, and (2) was contrary to the evidence.

On 27th June 1913 the Court set aside the verdict on the above grounds and allowed a new trial, whereupon the appellants moved for the expenses of the appeal, and argued—Where the Court granted a new trial on the grounds that the verdict had been erroneously applied and was contrary to the evidence, the pursuer was liable for the expenses of the appeal—*Bond* v. *Dalmeny Oil Company, Limited*, July 15, 1909, 46 S.L.R. 920.

Argued for the respondent—Where a new trial was granted the expenses should be reserved—*Macdonald* v. *Wyllie & Son*, December 22, 1898, 1 F. 339, 36 S.L.R. 262, followed in *Canavan* v. *John Green & Company*, December 16, 1905, 8 F. 275, 43 S.L.R. 200.

The Court (which consisted of LORD DUNDAS, LORD SALVESEN, and LORD GUTHRIE, the LORD JUSTICE-CLERK being absent), without delivering opinions on the question of expenses, pronounced this interlocutor—

"... Sustain the appeal: Recal the said interlocutor: Set aside the verdict, and remit the cause to the Sheriff to allow the parties a new trial, and to proceed as accords: Find the pursuer liable in expenses in this Court, and remit the same to the Auditor to tax and to report to the Sheriff, to whom grant power to decern for the taxed amount thereof, and the expenses of the first trial to be expenses in the cause and to be disposed of by the Sheriff."