that the defenders must be liable because they have been unable to account for the accident, and show what its precise cause was. It was suggested as not being quite clear whether the Lord Ordinary may not have proceeded upon some such ground of liability as this; but if he did, I must own my inability to concur with him. Nor can I hold that it is sufficient to subject the defenders in liability that possibly there was something deficient in the carriage which was broken to pieces, and that this may have been the cause of the accident. I cannot adopt any such ground in the face of the proof, which shows that the defenders used all necessary and proper precautions to ensure that nothing was defective or wrong.

The result, according to my opinion, is, that the Lord Ordinary's interlocutor falls to be affirmed in regard to the pursuer's first, and recalled in regard to his second, claim of damages.

Lords NEAVES and GIFFORD concurred.

The Court pronounced the following interlocutor —

"The Lords having heard counsel on the reclaiming note for the North British Railway Company against Lord Young's interlocutor of 25th November 1874, Adhere to the said interlocutor as regards the first claim of the pursuer, and of new decern against the defenders therefor, amounting to £28 sterling, with interest at the rate of 5 per cent., from 8th October 1872 till payment, in terms of the conclusion of the summons; alter the said interlocutor as regards the second claim of the pursuer, and assoilzie the defenders from the conclusions of the summons relative thereto, and decern: Find the pursuer entitled to one-half of his taxed expenses, and remit to the Auditor to tax the expenses, and to report."

Counsel for Railway Company—Dean of Faculty (Clark), Q.C., and Moncreiff. Agents—Dalmahoy & Cowan, W.S.

Counsel for Anderson—Guthrie-Smith and Reid. Agents—Renton & Gray, S.S.C.

Friday, February 19.

FIRST DIVISION.

JANE TAYLOR OR YOUNG *v.* THOS. BROWN.

Appeal—Failure to print Note of Appeal along with Record, &c.—Act of Sederunt, 10th March 1870.

Held that it is within the discretion of the Court to relax the provision of the Act of Sederunt as to printing on cause shown.

This was an appeal from the Sheriff-Court of Lanarkshire under the Court of Session Act, 1868. The process and note of appeal were received by the Clerk on 9th January 1875, and duly marked by him of that date. The appellant on 22d January timeously printed, boxed, and lodged with the Clerk a print of the record, proof, and interlocutors, and on the following day the case was in the Single Bills, and, no objections being stated by the respondent, was sent to the roll. It was afterwards discovered that the appellant in his print omitted to include the note of appeal itself, which is a separate paper, and *not* on the interlocutor sheet, the 66th section of the Court of Session Act, 1868, permitting the appeal to be minuted in either way. The appellant, on 16th February 1875, printed, boxed, and afterwards lodged an appendix containing the note of appeal. To-day a note for the respondent was moved in the Single Bills praying that, in respect the appellant had failed to print the note of appeal in terms of the Act of Sederunt of 10th March 1870, section 3 (sub-section 1), the appeal should either be dismissed or the Clerk instructed to retransmit the process to the Sheriff-Clerk, with the necessary certificate of abandonment, in terms of the 3d section (sub-section 5) of the said Act of Sederunt. After hearing counsel for both parties, the Court unanimously held, that as the present omission to print the note of appeal is not an infringement of any of the provisions of the statute itself, it was within the discretion of the Court to relax the provisions of the Act of Sederunt on cause shown that the omission to print some part of the papers required to be printed was an oversight—the Lord President stating that the present objection was a very narrow and critical one. The Court pronounced the following interlocutor:—

"The Lords having considered the note for respondent, No. 20 of process, and heard counsel for both parties, refuse the prayer of said note; hold the omission to print, box, and lodge the note of appeal obviated by the print appendix of 16th February current, now lodged, containing the note of appeal; but find the appellant liable in the expenses of the said note, No. 20 of process, and the discussion thereon, which modify to £3, 3s., and for which decern against the appellant for payment to the respondent."

Counsel for Appellant—Campion. Agent—R. A. Veitch, S.S.C.

Counsel for Respondent—Alison. Agent—John Gill, L.A.

M., Clerk.

Tuesday, March 2.

SECOND DIVISION.

PATERSON *v.* MACFARLANE & HUTTON.

Joint Stock Companies—Companies Acts 1862, 25 *and* 26 *Vict. cap.* 89*—Voluntary Liquidation—Contributory—Call—Paid up Shareholder.*

A holder of fully paid up shares is a "contributory" in the sense of the statute; therefore *held* that in a voluntary winding up after the payment of all debts and expenses the liquidator was bound, in order to "adjust the rights of contributories among themselves," to make a call upon the ordinary unpaid up shareholders, to equalise the payments of the ordinary sharholders with the nominal advances of shareholders who had taken fully paid up shares in exchange for property sold to the Company.

This was a petition presented by Robert Paterson of 5 Radnor Terrace, Dumbarton Road, Glasgow, against George Macfarlane and James Hutton, chartered accountants, as liquidators of Hamilton & Paterson's Patent Cask Company (Limited).

The petitioner set forth that the Company was duly incorporated on 28th May 1872 for the purpose of acquiring certain inventions patented by the late John Hamilton. The price payable to the petitioner and Mr Hamilton by the Company was £5000, payable £1000 in cash and £4000 in fully paid-up shares of £1 each in the capital stock of the Company. Paterson & Hamilton accordingly assigned their right to the patent on these terms, receiving also £2049, 1s. 10d. for the stock-in-trade. The petitioner's proportion of these 4000 shares was 900, and at the present time he holds 830. By resolutions of extraordinary meetings of the Company, held on 29th April and 14th May 1874, it was unanimously resolved to wind-up voluntarily, and the respondents in the petition were appointed liquidators.

On 22d January 1875 the liquidators issued the following circular to the petitioner:—

"Gentlemen,—We have now disposed of the business, stock, and patents of the Company, and propose making an interim payment to the shareholders.

"Our accounts have been made up to the 31st ult., and from the available funds at that date we are enabled to declare a dividend of *two shillings and threepence per pound* on the amount of capital contributed by the shareholders, which dividend will be paid at our Chambers here *on Friday the 29th current, or on any Tuesday or Friday thereafter.*

"The capital of the Company consisted of—

"4000 vendors' shares of £1 each, fully paid,	£4000	0 0
"14,795 ordinary shares, 10s. per share paid,	7397	10 0
"18,795 shares. Total,	£11,397	10 0

"We enclose a receipt for £93, 7s. 6d., being 2s. 3d. per pound on £830, the amount of calls paid on the 830 shares you hold. Receipts must be signed by principals only, and certificates of shares produced on presentation of receipt. If you cannot attend we shall remit the dividend due to you on the 29th current if you sign and return enclosed receipt.

"There are yet a few outstanding debts to be realised, but we fear any further dividend to be got therefrom will be very trifling, probably threepence per pound or thereby.

"We regret the unfortunate result of the liquidation. It was found impossible to dispose of the stock and patents on favourable terms, and after repeated advertising and various attempts to get a purchaser, we were obliged to accept a private tender of £1115 for the casks and patent rights, to prevent a further sacrifice of same by a public sale.

"So soon as we get in the remaining debts we shall make a final payment to the shareholders, and terminate the liquidation."

By section 38 of the Companies Act 1862, 25 and 26 Vict. chap. 89, it is enacted that in the event of a company formed under this Act being wound-up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient, *inter alia*, for the payment of such sums as may be required for the adjustment of the rights of the contributories among themselves.

By section 133 it is enacted that the following consequences shall ensue upon the voluntary winding-up of a company; *inter alia*, sub-section 9, the liquidators may at any time after the passing of the resolution for winding-up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability to pay all or any sums they deem necessary for the adjustment of the rights of the contributories amongst themselves; and, sub-section 10, the liquidators shall pay the debts of the company, and adjust the rights of the contributories among themselves.

By section 138 it is enacted that where a company is being wound-up voluntarily, the liquidators or any contributor of the company may apply to the Court in England, Ireland, or Scotland, or to the Lord Ordinary on the Bills in Scotland in time of vacation, to determine any question arising in the matter of such winding-up, or to exercise as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound-up by the Court, and the Court or the Lord Ordinary in the case aforesaid, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede wholly or partially to such application. Section 109 provides that the Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

There were issued 4000 £1 shares of the Company fully paid up, and 14,795 upon which 10s. per share was paid up. The assets of the Company were sufficient to pay the whole debts, and leave a balance of over £1300 for distribution among the contributories. This sum the liquidators proposed to divide equally amongst the contributories according to the amounts paid up by them respectively.

The prayer of the petition sought to have the liquidators ordained to make a call of 10s. per share on all those shareholders who had not paid more than 10s. on each of their shares, and then to proceed with the adjustment of the rights of the contributors among themselves. Further, Mr Paterson asked interdict against any interim payment such as was proposed in the circular.

To this petition the respondents Macfarlane & Hutton, C.A., put in answers, in which they stated that after their appointment in May 1874 as liquidators they advertised the patents, plants, stock-in-trade, &c., repeatedly for sale, but receiving no offer, ultimately sold them for £1115 by private bargain.

The purchase was made, it was averred, for a new limited liability company, to be carried on under the old name, the petitioner being manager, and one of the principal shareholders.

After realising the assets and paying off liabilities, it was found that there would be a surplus of about £1400, out of which the liquidators resolved to pay an interim dividend, as explained in their circular of 22d January 1875.

The directors of the Company did not resolve to call up the 10s. unpaid on the ordinary shares, and it was never even proposed by or among them to call up the money. On the contrary, the intention was that the money should be called up only if required for the prosecution of the Company's business. Neither did the petitioner propose to the directors that they should make a call, nor did he request the respondents as liquidators to do so.

Furthermore, in the prospectus of the Company it was stated:—"The capital of the Company has

been fixed at £20,000, in 20,000 shares of £1 each. Of these the vendors are to take 4000 fully paid up, as above mentioned, and the remaining 16,000 are to be issued to the public; and it is not expected that more than 10s. per share will require to be called up.'

Argued for the petitioner—We hold fully paid-up shares, that is to say, we have paid on each share 20s.; the other shareholders have only paid 10s. per share though they became liable for 20s. If the liquidators' plan be followed we loose 17s. 9d. on each of our shares, while those who have paid but 10s. per share only loose 8s. 10½d. [Lord Justice-Clerk—Each share must contribute its portion to the debts before it receives any part of the dividend]. There is no suggestion of fraud here, nor is it maintained that the Company is not bound by the agreement into which it entered. We have here a class of shareholders entirely different from the petitioner, a class who have not paid in full, but have only paid half of what we contributed. The ordinary shareholder paid 5s. on application and 5s. more on allotment, and then he got "10s. paid-up" shares with the obligation to pay 10s. more if called on to do so. A limited liability company is, up to the point of the limit, in the same position as an ordinary unlimited company. We do not say that a company may not be so arranged that there may be for a time unequal contributions among the partners, and then in that case there would be an unequal division of profit. [Lord Gifford—The Lord Chancellor denied that in the *Anglesea* case]. [Lord Justice-Clerk—A man who holds an equal share is entitled to an equal dividend; if he has not paid up all his share that is a counter-claim against him. It might be a plausible contention that the liquidation was a contract to wind up, each contributory to draw out as he put in]. In a winding up where you have to pay debts you must take care that they are contributed in due proportion. Dividends are payable in proportion to the amount subscribed, and if his shares be not fully paid up the partner is debtor to the company in the amount of the interest on the unpaid capital. When we come to pay debts, that money must be paid from capital, and the partners must contribute equally and be on an equal footing.

Argued for respondents—There was no call made by the directors on the ordinary 10s. paid-up shares. [Lord Justice-Clerk—There being 4000 shares, and the debts being about £15,000, they should have paid in the proportion of £4, 15s., and the question here comes to be whether having paid in the proportion of £8, 15s. they are entitled to be free from further contributions until the £4, 15s. proportion is restored]. We may enquire whether under the statute the liquidators are entitled to make a call on the "10s. paid up" shares so as to relieve these vendors' shares. Now, under section 38 the call may be made for three purposes—(1) To pay outside creditors; (2) to pay the expenses of winding up, &c.; (3) to adjust the rights of the contributories among themselves. In the *Anglesea Colliery Coy.* case the measure of profit was the measure of loss, but here when these vendors stipulated for 4000 fully paid-up shares they secured certain advantages.—(1) A larger profit than if £1 had been called up on the other shares; (2) That in no possible way could they have incurred any liability. Yet this argument they would press further, to the unjust conclusion that they should suffer no loss.

Authorities referred to—*Graham* v. *Western Bank* 4 Macph. 484; *Anglesea Colliery Company*, 1 L. R. Ch. 555, 2 L. R. Eq. 379; *Pell*, Nov. 30, 1869, 5 L. R. Ch. 11; *Penzance Mining Company*, Nov., 1870, 6 L. R. Ch. 48; *Hollifer Mining Company*, 1869, Irish Rep., 3 Eq. 208; Bell's Pr., § 380; Companies Act, 1862, 25 and 26 Vict., cap. 89, § 38, § 132, 133, art. 9.

At advising—

Lord Justice-Clerk—The present is a petition at the instance of an alleged shareholder of a Company called Hamilton & Paterson's Patent Cask Company (Limited), constituted under the Companies Acts of 1862 and 1867. It is directed against the liquidators of the Company, and has for its object to have the liquidators ordained to make a call on the other shareholders in order to equalise the payments made by the petitioner in liquidation.

It is enough to state for the purposes of this advising that this Company was started in the year 1872 for the purpose of working a patent of which the petitioner was one of the patentees. The capital of the concern was £20,000 in £1 shares. The patentees transferred their patent to the Company for £1000 in cash and £4000 to be paid to that amount in shares of the Company, which were to be held as paid up, and the remaining shares, to the extent of £14,795, were taken up by the public, and on those, in terms of the Articles of Association, 10s. a share was paid.

The concern proved a failure, and is in the course of liquidation under the statute. The debts have all been paid, the patent sold for £1115, including the casks, and there remained a sum of £1300, which the liquidators now propose to divide among the Company in proportion to the sums advanced. In other words, in the proportion of £4000 to £7397. On the other hand, it is maintained by the petitioner before any division of this surplus takes place the payments which have been made to account of capital which have been applied in payment of the debts must be equalised, that is to say, that the patentees holding £4000 of the stock ought only to bear a proportion of the debt corresponding to their shares, in other words, the proportion, not of £4000 to £7397, but the proportion of £4000 to £14,795, or about one-fourth instead of more than one-half of the whole amount.

If this be right it is certainly a hard case for the shareholders, for while the patent was valued at £5000 it has, along with the plant and stock-in-trade, only produced £1115, while the only money that was ever paid into the concern was the £7397 paid by the other shareholders, who have thus in reality furnished seven-eights of the funds out of which the debts were paid. But, notwithstanding that I am very sensible of the hardship, I am of opinion that the petitioner must prevail; and I am confirmed in this opinion by the decisions in the Courts in England, which hardly leave us any alternative in this matter.

In the first place, we must assume that the patentees were holders of 4000 shares of the Company, and that their shares were paid up, and it is not competent now to enquire what the value given for these shares was. That has been conclusively fixed in the cases of *Pell* and the *Anglesea Colliery Coy.*, which were quoted from the bar. The shareholders had full notice of the transaction in the Memorandum of Association, and no ground can be stated on which it can be impeached. I could

have understood an argument directed to show that the nature of the arrangement by which the Company was constituted, and under which the resolution to wind up was arrived at, implied that the shareholders were not to be called on to constitute any more than 10s. per share unless the rest of the capital were required for the purposes of the business as a going concern. But that contention, and indeed the rest of the argument which was submitted to us, seems entirely excluded by the decision in the *Anglesea Colliery Coy.*, decided first by Lord Hatherley when Vice-Chancellor, and confirmed by the Lords Justices on appeal. The facts of that case were precisely similar:—the company under liquidation purchased the rights of another company and paid for them in a certain amount of shares, the calls on which were to be held as paid up. The liquidators in that case made a call upon the other shareholders who had only paid a certain proportion per share, in order to equalise the payments, and it was held, first, that the holders of paid-up shares were contributories in the sense of the statute; secondly, that the liquidation included an equalising of the contributions among shareholders; thirdly, that there was no ground for impeaching the amount represented by the paid-up shares; and lastly, that the call had been properly made. The decision is so completely in point that it is not necessary that we should affirm all the propositions laid down by Lord Hatherley in giving his judgment. It is enough that it forms a precedent on the construction of this imperial statute which we cannot disregard. At the same time, my own opinion entirely coincides with the ground of that judgment. I cannot entertain the argument maintained in that case, and maintained here, that the holder of paid up shares in such a concern is liable in a greater proportion of the company's debts than those who have only paid up half their calls. How the case might be adjusted as regards the division of profits while the company was a going concern, is perhaps a different question. At common law, where the shares of a trading company are equal, a partner superadvancing his capital is credited with interest on the advance before the balance of profit and loss is struck; and there is a provision very much to the same effect in table A of the first schedule annexed to the Act in question, No. 7 of which provides "that the directors may, if they think fit, receive from any member willing to advance the same, all or any part of the monies due upon the shares held by him beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares, in respect of which such advance has been made, the company may pay interest as the member paying such sum in advance and the directors agree upon." In regard to dividends, again, it is provided by section 72 that "the directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares." These provisions seem entirely consistent with Lord Hatherley's views, and to negative the idea that a superadvance of capital of the nature in question creates a larger stake or interest in the concern itself, or a larger responsibility *inter socios*, than is enjoyed or incurred by the other shareholders. But contenting myself with indicating the impression which I have on the subject, I think it enough to say that the case of the *Anglesea Colliery Coy.* is precisely in point, and that I think we ought to follow that precedent.

LORD GIFFORD—I do not differ from the judgment proposed by your Lordships, but I have felt the case to be attended with very considerable difficulty in point of principle and, but for the decision in the case of the *Anglesea Colliery Company*, as confirmed by the case of the *Hollyford Mining Company*, I should have been inclined to think that the holders of shares in this Patent Cask Company, held as paid-up shares, have no claim for equalization in questions *inter socios* against the holders of shares not fully paid-up, but on which shares no farther call had been found necessary either for carrying on the business or for paying the debts due by the Company.

The ground of my difficulty is this:—I think that in this joint stock Company it was part of the contract that the vendors should accept the price of their patents and of the goodwill sold, or part of said price, in fully paid-up shares—that is, in shares held to be fully paid-up, while other partners were only to be required to pay up such calls as were necessary for carrying on the business. I think this is equivalent to a stipulation and special contract that while the capital was distributed in shares, some shareholders, for certain good and sufficient reasons, were taken bound to pay up their shares in full, while other partners were not so bound. Now, in principle, I think the effect of such a stipulation is that the partners who are specially taken bound to contribute a larger capital than the other partners must be held to undertake a larger risk, so that if the whole paid-up capital be lost the holders of fully paid-up shares shall have no claim for equalization against the other shareholders, but each shareholder shall lose precisely the capital which he became bound to pay in. In short, while the profits are divisable rateably per share, the bargain is that some shareholders shall pay in more on each share than others. The special contract makes the case quite different from a voluntary advance by a partner, or an advance by consent of the directors under the statute.

Suppose the case of an ordinary trading company not incorporated, and not under the statutes at all—suppose that in the contract of copartnery it is stipulated that each partner shall be equally interested in the profit and loss, but that one or more of the partners is taken bound, for some reason or other, to contribute twice as much capital as the others. Of course all the partners are liable *in solidum* for the debts of the Company—but suppose the debts all paid, and at the winding-up that the whole capital has been simply lost, I have the greatest possible doubts whether the partners who by express contract had contributed double capital would have any claim for equalization *inter socios*. They expressly agreed to run double risk, and they must accept all consequences.

I do not think the case is different in questions *inter socios* with a joint stock company under the statutes. The Legislature looks with considerable suspicion on shares simply "held as paid up," for the Act of 1867 provides that they must be actually paid up in cash unless there be an agreement in writing prior to the issue of the shares, and duly registered, that the value is to be something else than cash (30 and 31 Vict., c. 131, sec. 25). I presume that this requisite exists in the present case, as I have heard nothing to the contrary. The

agreement of the vendors to take their price, or part thereof, in paid-up shares, was an inducement to the general public to contribute, and it is somewhat difficult to see in what the inducement consisted if not in this, that the vendors had such confidence in the company that they were willing to run a greater risk than the ordinary partners.

While, however, I cannot help entertaining these difficulties, the point seems so nearly foreclosed by the cases cited that I defer to the opinion of your Lordship.

LORDS NEAVES and ORMIDALE concurred.

The Court pronounced the following interlocutor:—

"The Lords having resumed consideration of the petition, with the answers thereto, Ordain George Macfarlane and James Hutton, the liquidators, to make a call of as much per share upon all the shareholders of the Company who have not paid more than 10s. per share as will, with the funds in the hands of the liquidators, be sufficient to equalise the contributions of the shareholders, and thereafter to proceed in terms of the statute with the adjustment of the rights of the contributories among themselves, and decern: Find the expenses of both parties payable out of the first of the funds, and remit to the Auditor to tax the same, and to report."

Counsel for the Petitioner—Dean of Faculty (Clark), Q.C., and Maclean. Agent—John Wright.

Counsel for Respondents—Guthrie-Smith and Harper. Agents—Mitchell & Baxter, W.S.

ERRATUM.—Page 320, left column, eighteen and twenty-one lines from foot, *for* £4, 15s. *read* 4:15; line nineteen, *for* £8, 15s. *read* 8:15.

FIRST DIVISION.

THE GLASGOW ROYAL BOTANIC INSTITUTION *v.* KIBBLE.*

Agreement, construction of.

The proprietor of a conservatory presented it to the Royal Botanic Institution of Glasgow, to be erected in the Botanic Gardens there, on terms set forth in a deed of agreement between the parties. In article 8 of the deed of agreement it was, *inter alia*, provided that "all parties having right of admission to the gardens shall, every lawful day, have equal access to the conservatory during garden hours, except when the conservatory is required for the concerts and entertainments after-mentioned." In article 9 of the agreement it was *inter alia* provided that the proprietor of the conservatory should have right "to use, on lawful days, the conservatory for concerts and other entertainments." *Held* that these provisions, taken in connection with the whole circumstances of the case, entitled the proprietor of the conservatory to give entertainments therein every evening during the summer season, and that the Botanic Institution was not entitled to limit such use to three evenings in the week.

* This case was advised on December 12, 1874.

This was a note of suspension and interdict brought by the Glasgow Royal Botanic Institution against John Kibble, Esquire of Coulport, Dumbartonshire, to have the respondent interdicted from "using the conservatory in the complainers' Botanic Gardens at Kelvinside, Glasgow, for the purpose of holding concerts or other entertainments, or for any other purpose, every lawful evening, to the exclusion of the proprietors of, or subscribers to, the said gardens, or persons otherwise lawfully entitled to have access thereto, unless upon the condition of the said proprietors, subscribers, or other persons making payments of money to the respondent or others in his behalf, and to interdict, prohibit, and discharge the respondent from using the said conservatory for the said purposes, or any other purposes, to the exclusion of the said proprietors, subscribers, or other persons foresaid, unless upon the condition foresaid, upon any greater number of lawful evenings in each week than three, or such other number of evenings as shall be fixed by your Lordships; or at all events to interdict, prohibit, and discharge the respondent from using the said conservatory for the purposes foresaid, or any other purposes, to the exclusion of the said proprietors, subscribers, and other persons foresaid, unless upon the condition above specified, on every lawful evening, or on any greater number of evenings than three in each week, or such other number of evenings in each week as your Lordships shall fix, unless and until the respondent shall obtain authority for such use on every lawful evening from the joint-committee constituted under minute of agreement entered into between the respondent, on the first part, and the complainers, the Glasgow Royal Botanic Institution, of the second part, dated 13th, 16th, and 17th October 1871, or unless and until he shall establish his right to such use on every lawful evening by an award of the arbiter or arbiters appointed under the said agreement, or by decree of declarator, or otherwise."

The circumstances in which the note was brought were as follows—The complainers were proprietors of the Botanic Gardens in Glasgow, to which shareholders or proprietors in the Institution, as well as subscribers to the gardens, and certain persons authorised by shareholders or proprietors, were admitted. The respondent had a large conservatory at his residence at Coulport, containing a number of rare shrubs and plants, and also a number of statues of considerable value. In 1871 the respondent presented this conservatory to the Glasgow Royal Botanic Institution on certain conditions set forth in the following deed of agreement:—

"This agreement, entered into and executed by and between John Kibble, Esquire of Coulport, on the one and first part, and the Royal Botanic Institution of Glasgow on the other and second part, witnesseth, that the first party having given, as he hereby gives, to the second parties as a free, absolute and irrevocable gift, his conservatory at Coulport and the contents thereof, and both parties having agreed upon the stipulations underwritten in reference thereto, they do hereby bind themselves to each other as follows, that is to say:—

"*First*, The first party binds himself at his own expense forthwith to remove from Coulport the said conservatory and the contents thereof to the Botanic Gardens in Glasgow, and to erect the said conservatory on the piece of ground, part of the Royal Botanic Gardens, and presently occupied by the herbaceous collection and curling pond, which piece