either to himself or to any other person. There is a similar objection by the respondent Donald Grant, who avers that he is incorrectly designed as a smallholder, although he has no land whatsoever. There being no doubt as to the persons intended to be made respondents in the action of interdict, no satisfactory reason was stated and no authority was cited which required us to treat the interdict as a nullity, with the result of bringing about a plain miscarriage of justice. The respondents do not deny that they knew that they were the persons referred to in the interdict proceedings, and they do not deny that they deliberately and systematically did the things which the Court had prohibited. I therefore suggest to your Lordships that the objections should be repelled.

LORD CULLEN—I concur.

LORD SANDS—I concur.

LORD PRESIDENT—I concur in Lord Skerrington's opinion.

The Court ordained the respondents to appear at the bar.

Counsel for the Petitioners—Macmillan, K.C.—Scott. Agents—Aitken, Methuen, & Aikman, W.S.

Counsel for the Respondents—N. M. L. Walker. Agent—Donald Shaw, S.S.C.

Friday, May 25.

FIRST DIVISION.

(SINGLE BILLS.)

YOUNG AND OTHERS *v.* BURGH OF DARVEL.

(Reported *ante*, 60 S.L.R. 48.)

Expenses—Joint and Several Liability—Finding for Expenses in General Terms—Motion for Joint and Several Decree Conjoined with Motion for Approval of Auditor's Report—Whether Motion for Joint and Several Liability Timeously Made.

The successful defenders in an action moved for and obtained a finding for expenses generally against several pursuers without mention of joint and several liability among them. When moving for approval of the Auditor's report they craved decree against the pursuers jointly and severally. *Held* that where a joint and several award of expenses against a group of pursuers is desired, it must be moved for when the motion for expenses is made; that it is too late to make good the omission when the Auditor's report comes up for approval; and motion *refused*.

Thomas Young, Turf Hotel, Darvel, and other licence-holders, brought an action against the Provost, Magistrates, and Council of Darvel. The Lord Ordinary's judgment dismissing the action was affirmed by the First Division and by the House of Lords. The successful defenders having moved for expenses without applying for a finding of joint and several liability, the finding was made in ordinary course against the pursuers simply. Thereafter, on the motion for approval of the Auditor's report and for decree for payment of the taxed amount of the expenses, the defenders moved for decree "against the pursuers jointly and severally."

Counsel for pursuers argued that as the defenders had moved for and obtained a finding for expenses, simple and unqualified in its terms, it was too late to ask for the insertion of the words "jointly and severally."

The following authorities were cited:—Bell's Prin., section 59; *Countess of Sutherland* v. *Cuthbert*, 1776, 5 Br. Supp. 439; *Warrand* v. *Watson*, 1907, S.C. 432, 44 S.L.R. 311; *Glas* v. *Stewart*, 1832, 10 S. 351; *Macgown* v. *Cramb*, 25 R. 634, 35 S.L.R. 494.

LORD PRESIDENT—This action was raised at the instance of a group of licence-holders who sought to reduce a resolution under the Temperance (Scotland) Act 1913. So far as at present appears each member of the group had an identical interest with all the others in the action. The pursuers were unsuccessful and expenses were found against them. No application was made at the time with regard to the form of the finding, which was therefore in ordinary course made against the pursuers simply and without any express reference to joint and several liability among them. On the motion for approval of the Auditor's report and for decree for payment of the taxed amount of the expenses, the defenders moved for decree for payment of the taxed amount "against the pursuers jointly and severally." The pursuers object that this motion comes too late, and maintain that in view of the simple and unqualified form in which the defenders moved for and obtained the finding of expenses, it is now too late to ask for the insertion of the words "joint and severally" in this decree.

So long ago as 1776, in the case of the *Countess of Sutherland* v. *Cuthbert* (5 Br. Supp. 439) it was held that "where two persons concur in bringing an action upon the same *medium*, and with the same conclusion, they are liable in expenses *in solidum*, even although the words conjunctly and severally are not added." It appears from an examination of the session papers in the Advocates' Library (Campbell's Collection, vol. 28, No. 33) that the point was raised and debated before decision. In reliance upon this precedent Professor Bell enunciates in his Principles (section 59) the general proposition that "even joint pursuers in an action in which expenses are found due to the defender are each *in solidum* bound for the whole." The difficulty and inconvenience of executing *in solidum* a decree which is not in terms joint and several are obvious. But the soundness of the rule laid down in the *Countess of Sutherland* is not impugned in the present case. If it be sound (and I must not be

supposed to hint that it is not), and if there is no specialty in the position of any one or more of the group of pursuers which distinguishes his or their relation to the process from that of the others, then the present defenders will—without having the words "jointly and severally" inserted in the decree—be in no other position, either for better or for worse, than the party in the *Countess of Sutherland* was. They will have the benefit (such as it is) of a decree conform to the finding they asked and obtained, which is joint and several by implication though not expressly.

The point raised is one of practice purely. It is plainly much more convenient that a question which depends on the nature of the action and the relation in which the various pursuers stand to it and to the grounds on which it is supported, should be raised and decided when the motion for expenses is made immediately after delivery of judgment. The circumstances of the case are then fresh in the minds of the Court and of parties alike, and a question concerning the form in which expenses should be awarded, and to which according to ordinary practice the later operative decree will be made to conform, ought therefore to be raised at the earlier stage. This view is consonant with that which was taken in *Warrand* v. *Watson* (1907 S.C. 432) and with the rule laid down there. It is true that the circumstances to which the rule was made to apply were not completely on all fours with those presented in this action inasmuch as the case of the respondents in *Warrand* was not covered by any such principle as that which, under the *Countess of Sutherland*, applies to the case of the joint pursuers here. It may be said in the present case that the Court is only asked to make express, in the decree, that which was implicit in the finding; while in *Warrand* v. *Watson* the Court was asked to make for the first time the liability for expenses a joint and several one at the stage of approval and decerniture. The complete discretionary power of the Court in the matter of expenses, however, makes this distinction of but little moment from the point of view of practice. It seems to me that the best course in cases such as the present is to apply the rule so recently laid down in *Warrand* v. *Watson*, even though that course may involve a slight extension of the rule. If therefore a successful defender wishes a decree which is in terms a joint and several one for expenses against a group of pursuers, he must in moving for the award of expenses ask that the award be against the pursuers jointly and severally.

I think therefore that the defenders' motion should be refused, and that the decree must conform to the finding for expenses.

LORD SKERRINGTON—I concur.

LORD CULLEN—The making of an award of expenses in general terms against a plurality of litigants, without mention of joint and several liability or *pro rata* liability on their part, and of a corresponding general decerniture following thereon, is, I think, quite in accordance with the practice of the Court where a finding in general terms is all that is asked for, as was the case in *Countess of Sutherland* v. *Cuthbert*, 5 Br. Supp. 439. In the case of *Warrand* v. *Watson*, 1907, S.C. 432, a considered general rule was laid down by the Court to the effect that if it be desired to have a plurality of litigants not merely made liable in expenses generally, but explicitly made liable jointly and severally, the proper stage to ask for this is when the motion for expenses is made, and that it is too late to ask for it at the subsequent stage when the Auditor's report comes up for approval. This rule, as a rule of procedure, may not perhaps fall to be regarded as absolute and inflexible, but, be it so, I can see no stateable grounds on which the present case can be represented as an exceptional case to which it ought not to be applied. It is just the plain case of a party ignoring or neglecting the rule. I accordingly agree with your Lordships in thinking that the defenders' motion should be refused.

LORD SANDS—I concur.

The Court refused the defenders' motion.

Counsel for Pursuer—Duffes. Agents—Bruce & Stoddart, S.S.C.

Counsel for Defenders—Patrick. Agents—Alexander Morison & Co., W.S.

Saturday, May 26.

FIRST DIVISION.

[Lord Murray, Ordinary.

NAKESKI-CUMMING *v.* GORDON'S JUDICIAL FACTOR.

Expenses—Caution for Expenses—Motion that Pursuer be Ordained to Find Caution—Motion Based on Expired Charge, Four Years Old, and on Parties' Relation to Past Litigation—Necessity for Statement of Grounds of Motion either on Record or by Minute.

Where a motion for an order upon a pursuer, who was conducting his own case, to find caution for expenses was based upon the expiry of a charge upon a decree for expenses executed four years previously, and upon circumstances arising out of a former litigation between the parties, *held* that some formal and definite statement of the grounds of the motion, either on record or by way of minute, was necessary.

Michael Nakeski-Cumming, Edinburgh, *pursuer*, brought an action against J. Harold Macdonald, W.S., judicial factor upon the estate of the late Charles Gordon of Halmyre, *defender*, for payment of £960.

After the case had been called the defender lodged in process a copy of an extract of a decree against pursuer for the taxed amount of expenses for which he had been