

the management, and of benefit to the estate under charge. All these are found here, and I think we may grant the curator the sanction and authority he wishes.

LORD MUEB concurred.

The following interlocutor was pronounced:—

“The Lords, on the report of Lord Rutherford Clark, Ordinary, having heard counsel for the *Curator Bonis*—Remit to the Lord Ordinary to grant the prayer of the curator’s application.”

Counsel for Curator—Black. Agent—D. Curror, S.S.C.

Saturday, March 18.

FIRST DIVISION.

PETITION—CHRISTIE & OTHERS.

(*Ante*, p. 303.)

Company—Voluntary Winding-up under the Supervision of the Court—Companies Act 1862, sections 147, 148, and 151.

In an application under sections 147, 148, and 151 of the Companies Act 1862, for the voluntary winding-up of a company under the supervision of the Court, an order was made for intimation for two days on the walls and in the Minute-Book, and for advertisement, and thereafter the Court ordained the winding-up to continue, subject to its supervision, “with liberty to creditors and contributories to apply to the Court by motion.”

This petition was the sequel of the case reported *ante*, p. 303, and was presented at the instance of G. Fyfe Christie and others, directors of the Glasgow and District Co-operative Society (Limited), with consent of John Wilson, its liquidator. After the judgment of the Court in the previous petition, an extraordinary general meeting of the company had been held, after due notice to the shareholders, on 2d March 1876, and an extraordinary resolution passed in terms of sub-section 3 of section 129 of the “Companies Act 1862.” John Wilson had been further appointed liquidator, and the resolution of 3d May 1875, and the whole actings of Wilson under it, as previously reported, confirmed. The resolution had been advertised and recorded at the office of the Registrar of Joint-Stock Companies for Scotland. It was further stated in the petition that certain creditors of the company were raising actions and using diligence against it with a view to obtaining payment to the prejudice of the general body of creditors.

It was provided by the 147th, 148th, and 151st sections of the “Companies Act 1862,” as follows:—Section 147—“When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others, to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.” Section 148—“A petition,

praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding up the company by the Court.” Section 151—“Where an order is made for a winding-up subject to the supervision of the Court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all their powers without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily; but, save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court, shall for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court, and in the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression official liquidators shall be deemed to mean the liquidators conducting the winding-up subject to the supervision of the Court.”

The petition prayed the Court, after such intimation or service as seemed proper, “to pronounce an order directing that the said voluntary winding up of the said company should continue, but subject to the supervision of the Court, all as is provided in the 147th, 148th, and 151st sections of the ‘Companies Act 1862;’ and farther, to make such orders, decrees, and appointments, and to give such directions as are authorised and warranted by the said ‘Companies Acts 1862 and 1867,’ in so far as may be found necessary or expedient for facilitating the continuance of the said voluntary winding up, subject to the supervision of the Court.”

The Court ordered intimation on the walls and in the Minute-Book for two days, and advertisement once in the *Edinburgh Gazette*, and once in the *Glasgow Herald* and *Daily Mail* newspapers, and thereafter pronounced the following interlocutor:—

“The Lords having resumed consideration of the petition, Direct that the voluntary winding-up of the Glasgow and District Co-operative Society (Limited), mentioned in the petition, shall continue, subject to the supervision of the Court, with liberty to creditors and contributories to apply to the Court by motion.”

Counsel for Petitioners—Henderson. Agents—Mitchell & Baxter, W.S.

HIGH COURT OF JUSTICIARY.

Monday, March 27.

THE LORD ADVOCATE v. JOSEPH DAWSON
WORMALD.

(Before the Lord Justice-General).

Crime—Indictment—Relevancy—Theft—Breach of Trust and Embezzlement.

The major proposition of an indictment charged a prisoner with the crimes of theft, as also breach of trust and embezzlement, under the following circumstances:—The prisoner, who was a law-agent, was alleged to have by his representations induced a client to allow him to uplift certain sums of money lying in bank upon deposit-receipts in the client's name, for the purpose of investing them on heritable security, and having uplifted them by means of the authority so obtained, he was charged with stealing them or otherwise with embezzling and appropriating them to his own uses and purposes. —Held that under the circumstances set forth there was a relevant charge of theft libelled.

Joseph Dawson Wormald was charged with the crime of theft, as also breach of trust and embezzlement, "in so far as (1) you, the said Joseph Dawson Wormald, being a Writer to Her Majesty's Signet, and being, time first after libelled, in practice as a law-agent in Edinburgh, in partnership with Charles Anderson, sometime law-agent in Edinburgh, under the name and firm of Wormald & Anderson, Writers to the Signet, and the said firm of Wormald & Anderson having been employed as law-agents for Andrew Donaldson, causewaylayer, now or lately residing in or near Buccleuch Street, Edinburgh, and you, the said Joseph Dawson Wormald having, as law-agent of the said Andrew Donaldson or otherwise, become aware that he, the said Andrew Donaldson, had certain sums of money belonging to him deposited in his name in the Bank of Scotland at Edinburgh, and in the Union Bank of Scotland at Edinburgh, did, on various occasions in the months of August and September 1871, represent to the said Andrew Donaldson, who was at that time an inmate in the Royal Edinburgh Asylum for the insane at Morningside, near Edinburgh, that the said sums should be uplifted from the said banks and invested in his name on heritable or other sufficient security; and the said Andrew Donaldson having, in consequence of your representations as aforesaid, on or about the 8th September 1871, authorised and entrusted you as law-agent aforesaid, or the said firm of Wormald & Anderson, to uplift the said sums belonging to him and deposited in his name in the Bank of Scotland and Union Bank of Scotland as aforesaid, for the special purpose of investing the same, when so uplifted, in his name on heritable security, with the exception of £100 thereof; and having instructed and entrusted you so to invest the said sums, with the exception aforesaid, when you so uplifted the same, and you, the said Joseph Dawson Wormald having, on the authority aforesaid, on or about the 8th September 1871, uplifted and received, on behalf of the said Andrew Donaldson

from the Bank of Scotland at the office of the said bank in Bank Street, Edinburgh, the sum of £404, 11s. 7d. sterling, being the amount contained in a deposit-receipt of the said bank in name of the said Andrew Donaldson, dated 11th February 1871, and interest thereon, you did, on the said 8th day of September 1871, or on some other of the days of that month, or of the month of October immediately following, and within or near the premises of the said bank in Bank Street aforesaid, or within or near the premises in Princes Street, Edinburgh, then occupied by the said Wormald & Anderson, or elsewhere in the city of Edinburgh to the prosecutor unknown, wickedly and feloniously, steal and theftuously away take the said sum of £404, 11s. 7d. sterling or thereby. Or otherwise, you, the said Joseph Dawson Wormald, did fail to invest the said sum of £404, 11s. 7d. sterling, or any part thereof, on heritable security in the name of the said Andrew Donaldson, or to account therefor to the said Andrew Donaldson, and you did, time and place above libelled, wickedly and feloniously, and in breach of the trust reposed in you as aforesaid, embezzle and appropriate to your own uses and purposes the said sum of £404, 11s. 7d. sterling or thereby."

There was another alternative charge in precisely similar terms relating to a second sum alleged to have been obtained from the same person, besides other separate charges of embezzlement and wilful imposition.

Argued for the prisoner, with reference to the first and second charges in the indictment, that in the circumstances set forth there was no relevant charge of theft. On the face of the indictment there was manifestly a case of trust, whereas in this case there was no obligation to deliver articles *in forma specifica*—the act of appropriation amounted to one of breach of trust and not of theft. The prisoner had power to negotiate as factor with Donaldson's money.

Argued for the Crown—It was necessary in such a case as the present to make the charge alternative, as much depended upon the evidence. Here the charge of theft was relevant. The prisoner had authority to uplift the money for one purpose only—that of investment. The mere fact that there was a degree of trust connected with the possession of money was not in itself sufficient to take the appropriation of the money by the person so entrusted out of the category of theft.

Authorities—*Climie*, 21st May 1838, 2 Swinton, 118; *Smith and Wishart*, 18th May 1842, 1 Broun, 342.

LORD JUSTICE-GENERAL—This objection raises a nice and delicate question—perhaps not one of very great practical importance in so far as the interests of the prisoner are concerned, for the crime remains practically the same in character whether it be theft or breach of trust. But still it is necessary, the question having been raised, that I should dispose of it. Assuming the minor proposition in so far as regards the charge of theft, the whole amounts to this—that Mr Donaldson had money in the bank to the amount of £600, that he was advised by Mr Wormald, as his law-agent, that it would be desirable to have that money invested in heritable security, and in consequence of that he granted the necessary