

COURT OF SESSION.

Saturday, July 19.

FIRST DIVISION.

[Lord Stormonth Darling,
Ordinary.LIQUIDATORS OF PATTISONS
LIMITED.*Company—Winding-up—Remuneration to
Committee of Advice.*

In ordinary circumstances the Court will not sanction remuneration to a committee of advice appointed to assist the liquidator in the winding-up of a company.

At a meeting of the shareholders of Pattisons Limited, a company having its registered office in Scotland, held on 19th January 1899, it was resolved that the company be wound up voluntarily, and John Scott Tait, C.A., Edinburgh, and Robert Alexander Murray, C.A., Glasgow, were appointed liquidators.

The following resolution was also passed:—"That a committee of shareholders and creditors be appointed to advise with the liquidators, the members of such committee being to be entitled to remuneration for their services out of the liquidation assets."

The following gentlemen were appointed as members of the committee of advice:—James Ainslie, distiller, Leith, Robert Sclater Gray, wine merchant, Leith, Arthur Sanderson, wine merchant, Leith, Thomas Aitken, 5 Grosvenor Crescent, Edinburgh, James Wight, 70 Dundee Street, Edinburgh, and Robert Nicol Robertson, 15 Dudley Avenue, Leith. Of these Mr Gray and Mr Robertson subsequently resigned office.

On February 4th 1899, on the petition of the liquidators, the liquidation was placed under the supervision of the Court.

On July 7th 1902 the liquidators presented a note praying, *inter alia*, for authority to pay such sum as their Lordships should think fit as the remuneration of the committee of advice.

In this note, after stating the realisation of the company's assets and payment of dividends, they set forth that—"At a meeting of the liquidators, the committee of advice, and the law-agents in the liquidation, held on 8th May 1902, it was decided that the remuneration of the committee be £1500, to be divided amongst themselves as the members shall determine—the liquidators to bring this matter before the Court for its approval."

By section 9 of the Companies (Winding-up) Act 1890 (53 and 54 Vict. c. 63), provisions are made for the regulation of a committee of inspection in the winding-up of a company.

By section 31, sub-section 3, of the Act it is provided—"This Act shall not apply to any company unless the registered office of the company is situate in England or Wales.

Section 26, sub-section 1, enacts—"The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of the Act." Rule 160 of the rules made under the authority of section 26 provides—"Where the sanction of the Court to a payment to a member of the committee of inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the Court shall specify the nature of the services, and shall only be given when the service performed is of a special nature. No payment shall under any circumstances be allowed to a member of a committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee."

The Lord Ordinary (STORMONTH DARLING) verbally reported the case to the First Division. In doing so he referred to the sections of the Companies (Winding-up) Act 1890, and to rule 160 quoted above, and also to *Brewis (Liquidator of Scottish Heritages Company, Limited), Petitioner*, December 15, 1899, 37 S.L.R. 669.

Counsel for the committee of advice submitted that this was a case in which the committee had greatly assisted the liquidation, and had acted as experts in the valuation of stock, and were therefore entitled to remuneration. As the Companies Winding-up Act 1890 and the English rules passed under it did not apply to a company registered in Scotland, the matter was entirely in the hands of the Court.

LORD PRESIDENT—This is undoubtedly an important question, not only to the individuals concerned, but also to the general body of traders who may have to do with companies which become insolvent. Company law is statutory in this country, but in England the Courts have power to make rules and orders which, however, derive their authority indirectly from the Legislature. The rules made under this power are directed against, *inter alia*, the passing of any general resolution awarding remuneration to a committee of advice, it being provided that remuneration can only be granted when some special services have been rendered. There is no corresponding legislative provision applicable to Scotland, and what is proposed here is, that without any statute or authority flowing immediately or indirectly from the Legislature we should sanction an arrangement providing for the remuneration of the committee of advice in this case. Upon the general question I agree with what Lord Stormonth Darling said in the case of *Brewis* (37 S.L.R. 669), and I adopt his statement in that case as expressing my opinion. I had the advantage of a consultation with him in that case and fully concurred in his proposed judgment. I have seen no reason to alter my views since. I may add that if it is thought desirable by the trading community that there should be a power to remunerate committees of advice, the judgment of

Parliament can be taken on the point, but I greatly doubt whether Parliament would sanction a power which, though it might be quite proper in a case like the present case, would in many cases be open to grave abuse.

LORD ADAM—I am of the same opinion, and think that we should instruct the Lord Ordinary to refuse remuneration here. As I understand this is a winding-up under supervision of the Court, and therefore is in the same position as a winding-up by the Court, in respect that any such remuneration requires the sanction of the Court. A committee of advice exists merely by custom, and there is no statutory provision on the subject in Scotland. No doubt it arose from the analogy of commissioners appointed to assist the trustee in a sequestration. There are special directions in England, but they are not applicable here. Now no doubt there have been large sums involved in this liquidation, and the committee of advice have had a good deal of trouble. But when these gentlemen undertook the office they must have foreseen that in the ordinary course of things a good deal of trouble would be involved. It is not alleged that they were asked to perform any special or individual work, and they ask for remuneration generally as a committee of advice. I make that observation because, as your Lordship has pointed out, the English rules provide that it is only where some specific work is asked for that remuneration can be given. A different question might arise if a member of the committee of advice were called upon for some specific and individual work, but I agree with your Lordship that a bad precedent would be created if we were to sanction remuneration in such a case as this. It is said that the shareholders made it a condition in appointing a committee of advice that they should receive remuneration, but in my opinion that was a condition that the shareholders had no right to make. I therefore agree with the opinion expressed by Lord Stormonth Darling in the case of *Brewis* (37 S.L.R. 669).

LORD M'LAREN and LORD KINNEAR concurred.

The Lord Ordinary refused the prayer of the note, so far as craving for authority to make a payment to the members of the committee of advice.

Counsel for the Liquidators—Graham—Stewart. Agents—Davidson & Syme, W.S.

Counsel for the Committee of Advice—Dundas, K.C.—Younger. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Friday, July 4.

SECOND DIVISION.

[Lord Low, Ordinary.

BANNATYNE v. THE UNITED FREE CHURCH OF SCOTLAND.

Church—Dissenting Church—Presbyterian Dissenting Church—Property of Church—Union with Another Dissenting Presbyterian Church—Dissent of Minority to Union—Fundamental Principle of Church—Establishment Principle—Voluntary Principle—Claim by Minority to Property of Church in respect of Abandonment of Establishment Principle—Barrier Act—Legislative Power of Dissenting Presbyterian Church.

The Free Church of Scotland and the United Presbyterian Church, two dissenting Presbyterian associations or bodies of Christians in Scotland, entered into a union, and formed the United Free Church of Scotland. A minority of the Free Church dissented from the Union and raised an action in which they claimed declarator that they constituted the Free Church, and as such were entitled to the whole property of the Church, and that the majority had left the Free Church and forfeited their rights in the Church property by uniting with the United Presbyterian Church. The ground of the claim made by the minority was that while the Free Church had maintained as a fundamental principle that the State was bound to maintain and support an establishment of religion, the United Free Church was an association of Christians which did not embody in its constitution, or provide for maintaining the principle of establishment; that the majority of the Free Church who had entered into the union had abandoned the principle of establishment; and that the establishment principle being a fundamental principle of the Free Church was one which a majority of an Assembly of the Free Church had no power to abandon. The Act of Assembly under which the Free Church had entered into the union was passed by the Assembly after the procedure laid down in the Barrier Act of 1697, an Act of the General Assembly of the Church of Scotland, adopted by the Free Church when they quitted the establishment, whereby certain procedure was enacted for preventing any sudden alteration or innovation in "doctrine or worship or discipline or government." On a proof *scripto* the Court *assolized* the defenders (in substance *affirming* but *varying* the judgment of Lord Low, Ordinary, who having heard the case as on relevancy, had dismissed the action)—*per* the Lord Justice-Clerk and Lord Trayner on the ground that although at first the Free Church had maintained the establishment principle it was evident from the