

Tuesday, October 22.

SECOND DIVISION.

PATULLO v. CAITHNESS FLAGSTONE COMPANY, LIMITED.

*Expenses — Company — Winding-up — Creditor's Petition for Judicial Winding-up—Company's Petition for Supervision Order—Company Successful—Creditor's Expenses.*

One of the creditors of a company presented a petition for the judicial winding-up of the company and the appointment of an official liquidator. Thereafter the company passed an extraordinary resolution in favour of a voluntary winding-up under the supervision of the Court and appointed a liquidator. They also presented a petition for a supervision order and lodged answers to the creditor's petition. Answers to the company's petition were lodged by the creditor. At the hearing of the petitions and answers parties agreed that the voluntary liquidation should be continued under supervision, but the creditor moved that the liquidator appointed by the company should be superseded. The Court granted the supervision order but refused the creditor's motion.

*Held* that the expenses of the creditor in his petition for judicial winding-up prior to the date of the petition for the supervision order were expenses in the winding-up.

On the 12th of July 1907 James Adam Pattullo presented a petition for the judicial winding-up of the Caithness Flagstone Company, Limited, and for the appointment of an official liquidator. The petitioner was a creditor of the company to the extent of over £500, as the registered holder of two debenture bonds by the company, the interest on which, due on 15th May and 11th November 1905, had not been paid.

On 30th July 1907, at an extraordinary general meeting of shareholders, an extraordinary resolution was unanimously passed in favour of a voluntary winding-up subject to the supervision of the Court, and Thomas Dingwall, C.A., Edinburgh, was appointed liquidator and subsequently accepted office.

On August 12th, 1907, the company lodged answers to the petition of Pattullo, in which they maintained that a compulsory winding-up was unnecessary and incompetent, and on the same day they presented a petition craving that the voluntary winding-up already resolved on should be continued under the supervision of the Court. Answers were lodged by Pattullo in which he submitted that Mr Dingwall was not an independent and unbiassed party, and that some other person should be appointed liquidator by the Court.

The petitions and answers were heard together, and parties' counsel stated that they had agreed that the voluntary liquidation should be continued under supervision.

Counsel for Pattullo, however, moved that Mr Dingwall should be superseded by a liquidator appointed by the Court. Counsel for the company opposed.

The Court refused to grant the motion.

Thereafter counsel for Pattullo moved that the expenses he had incurred should form part of the expenses of the winding-up, arguing that his petition was a legitimate and appropriate method of bringing the whole matter into Court, and that there was no necessity for another petition at the instance of the company. Counsel for the company opposed.

The following cases were referred to:—*Drysdale & Gilmour v. Liquidator International Exhibition*, November 13, 1890, 18 R. 98, 28 S.L.R. 91; *Pattisons, Limited v. Kinnear*, February 4, 1899, 1 F. 551, 36 S.L.R. 402; *Elsnie & Son v. Tomatin Spey District Distillery, Limited*, January 30, 1906, 8 F. 434, 43 S.L.R. 324; *M'Gregor v. Ballachulish Slate Quarries, Limited*, October 16, 1907, 45 S.L.R. 9.

LORD JUSTICE-CLERK — We allow the expenses of initiating the petition for a judicial winding-up, but not of any after proceedings.

LORD STORMONTH DARLING and LORD LOW concurred.

The Court pronounced the following interlocutor:—

“Refuse the prayer of the petition and decern: Find the petitioner entitled to his expenses up to 12th August last, and find that these form expenses in the winding-up.”

Counsel for the Petitioner—Murray—Lyon Mackenzie. Agents—M'Neil & Sime, S.S.C.

Counsel for the Respondents—Hunter, K.C.—D. Anderson. Agents—John C. Brodie & Sons, W.S.

Thursday, October 24.

FIRST DIVISION.

[Lord Johnston, Ordinary.]

SELKIRK v. FERGUSON.

*Contract—Error in Essentialibus—Difference between Draft and Signed Agreement—Error Induced by Other Party.*

The owner of the patent rights in a machine, which he proposed to assign to a company, entered into an agreement for the working of the machine. As drafted, the agreement stipulated that upon the assignment his obligations under the agreement should cease, but as signed, it stipulated that notwithstanding the assignment his obligations should continue. The patent-owner knew that alterations had been made on the draft, but did not read the extended deed before signing, accepting the opinion of a law agent