

the company they dealt with each transaction between them and Cromb separately as it arose, and demanded and received payments to account of the particular transaction. This course of dealing is quite inconsistent with treating these transactions as parts and portions of an account-current. But further, it proves the appropriation of particular payments to particular transactions, and therefore excludes the idea that the payments on August 16th and onwards were payments which the defender is entitled to have imputed towards the debt which had been incurred previous to that date.

On both the grounds above dealt with I am of opinion that the judgment of the Sheriff should be affirmed, and the case remitted back in order that the question of interest may be dealt with.

The Court dismissed the appeal.

Counsel for the Appellant (Defender)—Hunter, K.C.—J. Macdonald. Agents—Menzies, Bruce Low, & Thomson, W.S.

Counsel for the Respondents (Pursuers)—The Dean of Faculty (Campbell, K.C.)—Jameson. Agents—Carmichael & Miller, W.S.

Thursday, December 19.

FIRST DIVISION.

THE TUDOR ACCUMULATOR COMPANY, LIMITED, PETITIONERS.

Company—Petition for Compulsory Winding-up—Petition Subsequently Departed from—Motion by Other Creditors to be Sisted as Petitioners in Place of Creditors Withdrawing—Competency.

Creditors who had presented a petition for the compulsory winding up of a company, having compromised their claim against the company, departed from their petition. Certain other creditors thereupon presented a note stating that they desired to insist in the petition, and craving the Court to sist them as petitioners in room and place of the others. The company lodged answers questioning the competency, but did not oppose the application.

The Court *sisted* the applicants as craved.

On 1st November 1907 Hudson & Kearns, Limited, Stamford Street, London, presented a petition for the compulsory winding up of Scott Stirling & Company, Limited, 13 Campbell Street, Hamilton (of which company they were creditors), and for the appointment of an official liquidator. On 20th November Scott Stirling & Company, who had meantime resolved upon a voluntary winding-up, applied to the Court under sec. 147 of the Companies Act 1862 (25 and 26 Vict. cap. 89) to have the liquida-

tion placed under the supervision of the Court.

Thereafter, on 28th November, the Tudor Accumulator Company, Limited, 119 Victoria Street, Westminster, London, who were creditors of Scott Stirling & Company under a decree against them for £247, presented a note in which they, *inter alia*, stated that Hudson & Kearns, Limited, having discharged their claim against Scott Stirling & Company, did not intend to insist further in their petition; that the affairs of Scott Stirling & Company had been in an involved condition for a considerable time; that during the past year a large number of actions had been brought against them in the Court of Session; that in these circumstances inquiry into the company's affairs was necessary in the interests of the creditors; that such inquiry could not be satisfactorily entrusted to the voluntary liquidators, who were the nominees of the directors; and that accordingly the company should be wound up by the Court and an official liquidator appointed. They accordingly craved the Court to sist them "as petitioners along with or in room and place of the said Hudson & Kearns, Limited," and to order Scott Stirling & Company to be wound up under an official liquidator.

Scott Stirling & Company lodged answers in which they averred, *inter alia*, that the note was incompetent.

Counsel for the Tudor Accumulator Company, in moving that that company be sisted, stated that though the application was a novel one in Scotland it was part of the appropriate procedure in England, where such applications were frequently made and granted; and referred to the Rules of Court (General Rules, March 1893), made pursuant to sec. 26 of the Companies (Winding up) Act 1890 (53 and 54 Vict. cap. 63), *vide* Buckley on the Companies Acts, 8th ed., p. 972.

Counsel for Scott Stirling & Company stated that he did not oppose the application.

The Court *sisted* the Tudor Accumulator Company, Limited, as petitioners in room and place of Hudson & Kearns, Limited, to the effect of enabling them to insist in the petition.

Counsel for the Tudor Accumulator Company, Limited—Scott Dickson, K.C.—Macmillan. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Scott Stirling & Company, Limited—Sandeman. Agents—Deas & Company, W.S.