

necessarily to postpone the period of vesting. Until that period none of the beneficiaries acquired any indefeasible right, and consequently by their predecease Mrs Hartley's trust resulted in favour of the heir *ab intestato*.

SKELTON appeared for the trustees.

The Court, by a majority, adhered to the interlocutor of the Lord Ordinary. They were of opinion that the effect of the codicil was to remove the *punctum temporis* at which vesting took place in the grandsons to the death of the liferentrix. The settlement was framed first on the footing that a realisation and division indicated the time of vesting. No doubt the testatrix did not contemplate that her grandsons would all die in the interval, but that could not affect the meaning of the terms employed.

Lord NEAVES differed. He thought the majority were giving an effect and importance to the codicil, as overruling the principal deed, which was never contemplated by the testatrix, and was not fairly deducible from its own terms.

Agent for Pursuer—John Walker, W.S.

Agent for Assignees—William Mitchell, S.S.C.

Agents for Trustees—Tods, Murray, & Jamieson, W.S.

Friday, Dec. 14.

SECOND DIVISION.

UDNY v. UDNY.

Domicile—Succession—Legitimation per subsequens matrimonium. Circumstances in which held that a grandfather, not having lost his Scotch domicile of origin, transmitted the same to his son, who, not having lost the same, legitimated his son born out of wedlock *per subsequens matrimonium*. Held unnecessary to consider whether a Scotch domicile at the date of the marriage sufficient for legitimation *per subsequens matrimonium*.

This is a declarator of bastardy, at the instance of Mr George Udny, barrister in London, against John Henry Udny, who, upon the assumption of his legitimacy, is the heir entitled to succeed to the entailed estate of Udny in Aberdeenshire. The pursuer is son of a younger brother of the defender's grandfather. The defender was born at Boulogne in 1853, and his parents, Colonel John Robert Udny and Mrs Ann Allat, were married in Scotland in January 1854. The questions of fact involved, as to which a long proof was led, were—Whether the domicile of Colonel Udny was English or Scotch at the date of his marriage with Ann Allat in 1854, and at the date of the defender's birth in 1853? The pursuer contended that it was English at both dates, and maintained, in point of law, that, if it were so either at the time of the defender's birth or of the subsequent marriage of his parents, he was not made legitimate by that marriage. The Lord Ordinary (Jerviswoode) pronounced an interlocutor, finding—*Primo*—1st, That John Udny, grandfather of the defender (Consul Udny), was born in Scotland in 1727, of Scottish parents, and that his domicile of origin was in Scotland; 2d, That he went, early in life, to Italy, and for several years prior to 1760 lived at Venice with Mr Smith, British Consul there, succeeded to his house and business, and was, in the said year or early in 1761, appointed British Consul at Venice in his place; 3d, That he continued to act as Consul at Venice until 1777, when he was appointed Consul at Leghorn, which office

he held until his death at London, while there on leave in 1800; 4th, That he was married at Leghorn in 1777 to Miss S. S. Cleveland, and that of the said marriage John Robert Udny, father of the defender, was born there in 1779; and, 5th, That the said Consul John Udny, during his employment in Italy, retained his domicile of origin in Scotland. *Secundo*—That his son, John Robert Udny, took, through his father, a domicile of origin in Scotland, and retained it prior to and at his marriage to the mother of the defender at Ormiston, in Scotland, on 2d January 1854. *Tertio et separatim*—That from and after the 13th November 1853, or thereby, when the said John Robert Udny returned to Scotland from Boulogne, he had, and continued until his death to have, his domicile in Scotland. With reference to these findings, his Lordship sustained the defences, and assoilized the defender from the conclusions of the action, with expenses.

His Lordship appended to his interlocutor a long note, in which he stated the grounds on which his opinion was founded. These were substantially similar to those upon which the judgment of the Inner House proceeded.

The pursuer reclaimed, and after hearing parties at great length, the Court adhered.

The following is the opinion of Lord Neaves, from which the whole facts and pleas of parties sufficiently appear:—

Lord NEAVES said—The interests at stake in this case are considerable, and the materials for deciding it are voluminous and multifarious. But the questions at issue are not complicated, and they do not appear to me to be attended with much real difficulty. The action is one of declarator of bastardy brought by the pursuer, a substitute heir of entail to the estates of Udny and others, to have it found that the defender, who would otherwise be a nearer heir, is illegitimate, and so not entitled to succeed to those estates.

The defender was born in England of parents who were not then married. His parents were afterwards married in Scotland, and the question is whether he was thereby legitimated. The locality of the birth and of the marriage is on both sides admitted to be immaterial. The important inquiry is as to the domicile of the defender's parents, or rather of the defender's father, at the date of these two events.

The point has at the same time been raised whether, if the domicile was not the same both at the birth and at the marriage, the father's domicile in Scotland at the time of the marriage would of itself be sufficient to support the legitimation, though at the date of the birth the domicile was in England. But upon the facts of the case I am of opinion that no such question arises.

The defender's father is known in this discussion as Colonel Udny, having held the rank of lieutenant-colonel in the British army. His domicile at the two periods referred to is the immediate matter to be determined, but this can only be done by taking a review of his whole history, including the circumstances which regulate his domicile of origin, and that makes it necessary to go back on the history of his father, the defender's grandfather, who was British consul at Leghorn when his son was born there, and who had previously been British consul at Venice.

John Udny, the consul, was born in Scotland about the year 1725, and was the son of an Aberdeen advocate. His domicile of origin was thus

undoubtedly Scotch, and the question is, whether he ever changed it. He applied himself to mercantile pursuits, but the evidence as to his proceedings does not prove that he ever permanently or properly established himself in any place as a merchant. The whole evidence on this subject consists of certain documents connected with his appointment to be British consul at Venice. The previous consul at Venice was Mr Joseph Smith, who, it appears from the evidence in process, carried on some kind of merchandise there, and who, in October 1760, became desirous of resigning the office of consul and getting Mr Udney appointed in his place. With that view two applications were made to Mr Pitt (afterwards Lord Chatham), dated 27th and 29th October 1760, the one by General Græme, then residing in Venice, the other by Mr Smith himself.

Of Mr Smith himself, something is said in a document produced, being an opinion given by some heads of the mercantile body in Venice, containing their report on a petition which he had presented to the Cinque Savij, or five sages of commerce, who seem to have remitted it for consideration to the mercantile community. The documents relating to Mr Udney's own appointment as consul contain nothing particular. He laid his commission before the college or governing body of Venice, and they remitted it to the five sages, by whom it was reported to be in all respects formal and correct.

Upon the data thus furnished I make these observations as to Mr Udney's position when thus made consul at Venice:—

1. It is impossible to hold that there is here sufficient evidence that he ever changed his Scotch domicile for an English one. Supposing we could infer that, while a young man, he had been for some time learning business in London with a view to becoming a merchant, that would not be an adoption of England as his domicile. It would require something much more explicit and permanent before such a result could be effected.

2. We do not know enough of Mr Udney's Venetian life to determine what his views or plans had been before being appointed consul, but there is no proof whatever that he had become domiciled in Venice. He was not then married. We do not know how long he had been in Venice. We do not know the character of his trade, if he had any. We learn from the documents very little of the business which he is said to have taken up as succeeding to Mr Smith. But, in any view, it must be remembered that a merchant is not necessarily domiciled where he is bodily present for purposes of merchandise. A man may be a merchant in Venice without becoming truly a Venetian merchant. A merchant may be in a foreign country solely with British views to facilitate transactions which have a reference to Britain alone. Venice, we know, was always in its best days much resorted to by foreigners, though I believe that foreigners could only acquire the rights of citizenship there by a long residence, such as John Udney at the age of thirty-five could not have had. His connection with Smith, who was British consul, had a tendency to keep up Udney's British connection, and the terms in which his loyalty and attachment to British interests are spoken of have the same bearing. He was obviously appointed consul not as a Venetian but as a native of Britain, who was identified with British, not with Venetian, views. It is not likely that Mr Pitt, engaged as he was in a war with France, and making strenuous exertions to maintain the ascendancy of

this country in the Mediterranean as an object of paramount importance, would appoint any one consul in Venice except a native of Britain, and one who had no sympathies that could interfere with his official duty. It was on this ground that Mr Udney was recommended and appointed, and the appointment in such circumstances speaks strongly in favour of his having preserved his nationality while there.

We might perhaps have had more evidence here as to the British consular system then prevailing, particularly in Italy, and of Mr Udney's colleagues and predecessors in that department. But parties are not bound to prove matters of history, and we know from historical sources a good deal upon these points which it is impossible to overlook in any such question. It is certain from public documents that in Consul Udney's time the British Government employed the consuls in the Mediterranean and South of Europe as political agents on the most confidential terms, whose duty it was to observe and report on every political movement that could affect British interests.

In 1761, at the time when the family compact between France and Spain was in progress, Mr Pitt's information as to the Spanish design of surprising Gibraltar was derived, we know, from a communication by the British consul at Cadiz; and considering the many enemies, open and secret, that Great Britain then had on the Continent, there was every necessity for the greatest vigilance and the strictest fidelity in collecting information as to the movements of foreign Powers.

The state of Italy, too, rendered it peculiarly necessary at that period that any representative of Britain should be closely identified with his country's interests and feelings, and with the Government then established. In 1760, we were at war with France, while Germany was distracted by the hostilities of the seven years' war between Austria and Prussia. The exiled family of the Stuarts had not yet abandoned their designs upon the British crown, and a serious attempt to invade Britain by the French, in which the Toulon fleet was intended to take a part, had only recently been frustrated. Great numbers of English at this time resorted to Italy, being shut out in a great measure from other countries, and attracted at the same time by the various objects of interest which Italy presented, and these visitors it was necessary, on the one hand, to protect and assist where they were loyal and well affected, and to watch and keep in check where they were suspected of sympathy with the dethroned dynasty. It is doubtless in this view that Mr Smith, in his letter to Mr Pitt, recommends Mr Udney as one "whose affection and zeal for his Majesty's service and the present happy and wise administration is second to none."

This passage sufficiently shows also the feelings of Mr Smith himself, who would not have spoken thus in praise of Udney's loyalty and attachment to the existing order of things in England, if his own reputation as a faithful servant of the reigning family had not been fully approved in the course of his official position at Venice in very trying times. We know enough, indeed, of Consul Smith from contemporary history to understand how much he was identified with British connections. In many respects he is an historical personage of some celebrity, and what we thus know of him throws additional light upon the allusions made to his acting in the documents before us. He was the brother-in-law of Mr Murray, then British resident at Venice, and besides being thus

bound to the British Government by a family tie, he was thus likely to possess additional interest with that Government to procure the successor that he wished. The mercantile report of the five sages of Venice, already referred to, speaks of Mr Smith as having promoted the interests of Venetian art in Great Britain—an encomium not inappropriately bestowed on one who has the reputation of having been the first to introduce the paintings of Canaletto to the notice of the British public, though perhaps this patronage may have been exercised in a spirit rather too mercantile, if it be true, what is generally believed, that he engaged Canaletto to work for him for a term of years at low prices, and retailed the pictures at an enormous profit to English travellers. His encouragement also of other branches of Venetian art, referred to in the sages' report, would be justified by the valuable collection of gems and curiosities which he is known to have ultimately sold to George III. at a large price, along with the choicest volumes of early editions and specimens of early printing, which he had collected, and which are contained in his catalogue entitled "Bibliotheca Smithiana," a well known and interesting book, to be found in our own library here. The books which Consul Smith thus sold to his Majesty (and which would be all the more valuable as Smith never read his books) formed the nucleus or foundation of what is known as the King's Library, presented at a later period to the British Museum by George IV. From all we know and see of him in the proof or in the public incidents of his life, Smith was not a Venetian chosen to be consul in consequence of Venetian connections, but an Englishman placed at Venice in a responsible public situation, the duties of which he faithfully discharged as the servant of his country, while at the same time he availed himself of that position to improve his private fortune. At the period to which we refer any traffic in such Italian commodities as he is known to have collected must have been a source of great profit, from the growing taste for such articles among Englishmen, coupled on their part with an equal ignorance and indifference as to the value or proper price of such things. An Englishman on the spot, in an official character, about the period when Herculaneum had just been discovered, and afterwards when the libraries of Jesuit colleges began to be dispersed, would have many facilities for dealing in this species of trade to great advantage.

It is not unlikely that Udny, after his appointment as consul, attempted the same sort of artistic speculations as those in which Smith had engaged. He is said, in Smith's letter to Mr Pitt, to have succeeded to Smith's house and business; and in the correspondence of a later date, which has been preserved, we see a great deal about his buying and sending home pictures for sale. Counterfeits of all kinds were then abroad, and any one who held an official position would possess a guarantee for his respectability and honesty. At the time of his Venetian appointment there was abundant room for such dealings, and for turning them to good account. We have certainly no evidence that at Venice Udny engaged in any trade that implies the purpose to disconnect himself with his own country and become a domiciled Venetian.

But an important and perhaps a decisive feature in Consul Udny's position is his removal to Leghorn, which took place in 1776. The year 1777 is mentioned in these proceedings as the year of

his appointment; but it appears from the *London Gazette* that he was appointed on 16th July 1776, in the room of Sir John Dick, who had previously held the office for some years, and who, it is well known, had shortly before that time been served heir to a Scotch baronetcy. Now, where a foreigner is chosen British consul in any country, the choice must in general be made from his peculiar acquaintance with the special locality; and it is not in the usual course of things that he should be removed to the same office in a different country with which he is unconnected. But it is quite regular and usual for a native of Britain appointed as consul in one place to be removed to another of more importance, when his experience and ability have already been tested, and seem to qualify him for the change. The removal of Consul Udny to Leghorn was undoubtedly a step in the way of his promotion, as a person in the service of the British Government in a confidential and *quasi* diplomatic character. For Leghorn was then one of the largest and most valuable seats of commerce in the Mediterranean. The change thus made illustrates the slender hold which connected Udny with Venice, and shows that he had not properly taken root in that place, but held merely an official position there such as he was ready and willing to assume elsewhere. Consul Udny soon afterwards married at Leghorn an English lady, and Colonel Udny was the fruit of that marriage.

It is well known that at this time there was a British factory at Leghorn, with a regular chaplain and other accompaniments of such an establishment, and to this state of things allusion is made in various letters and documents in process. Residence in a British factory abroad has always been looked upon as tending to preserve the nationality and native forum of British merchants or agents so situated; and at Leghorn, even more than at Venice, the consul must then have acted as an important political agent. In 1776 we were at war with our colonies; in two years more we had France arrayed in arms against us, and our ascendancy in the Mediterranean was the subject of anxious interest while these hostilities lasted. Afterwards, again, when a new and more deadly contest broke out with the France of the Revolution, the Mediterranean was a principal scene of our naval exertions, and the utmost efforts were made to maintain our commerce and our naval supremacy in that quarter, until its final triumph by the victories of Nelson.

In the measures adopted during this period by Buonaparte against the British, the importance of Leghorn was specially evinced. It is correctly stated in a historical work ("M'Pherson's Annals of Commerce") as to the French Government in 1796, that, "as they rightly considered the British commerce as the feeder and support of the war, they took possession of the port of Leghorn, the capital station of the British trade in the Mediterranean Sea, and seized all the British property found in it."

The property of Udny, as consul, seems to have been seized among the rest; and he is warned repeatedly by his brother in the correspondence to have his effects removed from Leghorn as effectually as possible.

During all this time we have no evidence of any trade or branch of commerce carried on by Udny that could tend to give him a Tuscan domicile. He purchased occasionally some pictures to send home to his brother for sale in this country. He supplied his Majesty's ships with fresh provisions when they touched at Leghorn, which was a per-

quise of the consulship; and he seems further, in partnership with some other English parties at Leghorn, to have entered into contracts for victualling the Mediterranean fleet, an arrangement which could not fail of being attended with considerable profit, as all branches of the commissariat service then were. We have a good deal of evidence on this point in process, including Udny's correspondence with Nelson and other British admirals with whom he communicated. This kind of business could not, any more than the other transactions, confer a Tuscan character upon Udny's position. He was then at Leghorn, as he had been at Venice, a political agent of his country, and he could not by his residence in Italy in that character acquire a new domicile, or lose the one which he previously possessed.

I might, perhaps, have dealt with this part of the case much more shortly, as the substance and true character of the facts are to be found in the very explicit and important letter of Consul Udny to Lord Granville, dated at London the 8th November 1799.

This statement, supported as it is by the evidence, seems to be just the picture and history of a man who passes an official life in the service of his country in different localities, and whose official residence can never affect his domicile. It follows that Consul Udny, who is not shown to have ever acquired an English domicile, and who died in the anticipation of immediately returning to his official duties, from which he had only a temporary leave of absence, must be held to have retained all along his domicile of origin, which was Scotland. It may be added, that while in Britain he visited his friends in Aberdeenshire, and seems all along to have continued his interest in those estates which one day or other were to belong to him or his son, but which he did not himself live to succeed to.

The conclusion thus reached as to Consul Udny's retention of his original domicile, is decisive at the same time as to the domicile of origin of Colonel Udny, the consul's son, and the father of the defender. His birth in Tuscany was of no legal importance as giving him a domicile, and it need scarcely be added that the circumstances could create little attachment to a locality with which his father's connection was purely official, and from which he himself was very soon separated. From an early period, indeed, young Udny was looked forward to as the future representative of the Udny family, and as the heir of those estates which are now in dispute. He was sent to Scotland to be educated and to see his family friends, and every anxiety was shown by his father and uncle to bring him up as a Scotchman and as a Scotch laird. For three years he attended the University of Edinburgh, and during that time was boarded in the family of the excellent person who afterwards became the bishop of the Scottish Episcopal Church in Edinburgh. Great care was used to impress upon him his prospects of succession to the family estates in Scotland, and to interest him in the arrangements which his father and uncle were making for improving and extending that property by new purchases and by paying off burdens. It was even wished by them that young Udny should come to the Scottish bar; but his predilection was for another profession, and he entered the army, in which he continued for several years.

That step could not, of course, affect his domicile, and consequently the only question that here arises relates to the course of life which he

adopted after leaving the army in 1812. It is true that at this time he removed to and took a house in London, which he continued to rent and occupy for many years, and he resided there for a considerable period of each year. But it is a fair observation that a residence in London, though locally an English residence, is not unequivocally an English domicile. London, being the metropolis of the United Kingdom and seat of the Imperial Parliament, and of the highest judicial tribunal of the country, as well as the place in which the greatest national institutions are concentrated, is a common field for natives of all parts of the empire who may be connected with, or interested in, the business there transacted, or in the pursuits of science or art, or fashion, or pleasure, which are there to be met with in the greatest perfection. It is therefore nothing new, but, on the contrary, quite in the common course of things, that persons residing and having houses in London should yet maintain such a connection with Scotland or other parts of the United Kingdom as to possess a domicile elsewhere than in London, particularly when their original domicile was in a different place.

Now, what was Colonel Udny's position in this respect? He lived in London after leaving the army and marrying; but he had no fixed employment or occupation of any kind in England, except what might arise from his taste for the turf, with the occasional diversity, as it would appear, of a resort to the card table. These propensities might more fully be indulged in London than elsewhere, and this apparently was the attraction which drew him into that circle. But even there, and in the midst of these pursuits, his friends seem chiefly to have been countrymen of his own; and his status was that of a Scotch proprietor, who was proud of his Scotch estates and of his ancient Aberdeenshire family. We have scarcely any details as to his sporting life, and know chiefly that the gratification of his racing and gambling propensities involved him ultimately in deep embarrassments which drove him entirely from England. He had no estate in that country; he had no establishment there beyond a rented house in Grosvenor Street. Any horses he had were kept at Newmarket; but it is as probable that his difficulties arose from betting on the horses of others as from the expense of keeping a stable of his own. His losses at cards can be regarded only as the result of the expensive follies of an idle man.

Compare this career, on the one hand, with his course of life, in reference to his connection with Scotland, on the other. Regarded as he was in England as a Scotchman and a Scottish proprietor, whose only claim to a social position arose from that source, we find him at the same time maintaining in Scotland the character which thus belonged to him. He took an active and minute personal interest in the management of his estates, and came to Scotland almost every year to look after his affairs there. His house at Udny Castle was not in such repair as to enable him to live there, but this did not prevent him from exercising the rights and discharging the duties of a landowner. He was a freeholder of the county of Aberdeen from 1802. He was a justice of peace, and latterly a deputy-lieutenant of the county for a number of years. He was a member of various local clubs and associations which could not have had any attraction for him except as an Aberdeenshire proprietor desirous to mix with his neighbours, and take an interest and a part in county

matters. He had many such neighbours of good rank and position, to whose houses he was ever welcome while thus employed, and his correspondence with his men of business, as well as the evidence of tenants and others connected with his estates, shows a warm and persistent desire to meet the various duties and demands of his position. I agree with the Lord Ordinary in thinking that these interests and ties were more permanent and important than any that bound Colonel Udny to England.

If it be held that his residence in London did not in the circumstances destroy Colonel Udny's Scotch domicile of origin, as little could this be done by the residence at Boulogne, which was obviously adopted for a special end, it might be, a temporary purpose, to avoid the prosecutions or persecutions of creditors.

It seems, therefore, to be clear that at the time of the defender's birth, in May 1853, his father, Colonel Udny, though then at Boulogne, was a domiciled Scotchman; and it need not be argued that he continued to be so at the date of the marriage in 1854, when he was living at Ormiston, in Scotland. If this be so, it follows, on the undoubted law established by the authorities, that the defender was thereby legitimated.

It can be of no consequence, though it should be thought that Colonel Udny was partly moved to take this step by the prospect of facilitating an intended plan for disentailing his estates and paying his debts. The fact of the marriage is sufficient, whatever the motive may be, and the influence of concurring motive is too vague a consideration to be entered upon.

The continued residence of Colonel Udny in Scotland after his marriage is not immaterial, as showing how slight was the bond that connected him with France, and how completely he had thrown off any connection with England.

In holding that the domicile of Colonel Udny was Scotch, both at the date of the defender's birth and at the date of the Colonel's marriage, it becomes unnecessary to consider the separate question, how far it would be sufficient for the defender's case if his father's domicile was Scotch at the date of the marriage, though not so at the date of the birth. That question, as involving a point of general law, is important, and may or may not be difficult; but it does not arise upon the facts as I view them, and therefore need not be decided.

The other Judges concurred.

The Court therefore found that the defender, though illegitimate at his birth, was legitimated by the subsequent marriage of his parents—Assolized the defender, and found him entitled to expenses.

Counsel for Pursuer—Mr Young, Mr Clark, and Mr Duncan. Agents—Horne, Horne, & Lyell, W.S.

Counsel for Defender—The Dean of Faculty, the Solicitor-General, and Mr Fraser. Agent—William Skinner, W.S.

M'EWAN v. MIDDLETON.

Retention—Copartnership—Decree-Arbitral—Liquid Counter Claims. Held in a suspension of a charge on a decree-arbitral that a partner taking over the business, &c., was entitled to retain a sum ascertained in the submission to be due to him by the retiring partner, and which had been taken into account as an asset in striking the balance, as against the

amount he was decreed to pay to the retiring partner. *Observations* upon the jurisdiction of arbiters, especially in regard to questions of compensation.

The parties to this case had, in the year 1859, entered into a contract of copartnership for carrying on the business of calenderers in Glasgow. The endurance of the contract was to be ten years, but it was provided that upon the death or insolvency of either partner during its currency, the whole trade, stock, &c., was, in the option of the surviving or solvent partner, to devolve upon him, and that he should in that case be bound "to pay out the deceased's or insolvent's share and interest," as the same should be ascertained by a balance. It was further provided that in case any dispute or difference should arise relative to the meaning of the contract or in relation to the business, the striking of annual balances, the winding-up of the business, or the subject-matter of the contract, the same was to be referred to the decision of arbiters therein named who were to act in succession.

In 1862 M'Ewan found it necessary to have recourse to these provisions of the contract, and after certain procedure, the arbiter found that Middleton was insolvent *in the sense of the contract*. M'Ewan elected to take over the business and estate of the company, and the parties thereafter proceeded before the arbiter to ascertain and adjust their respective rights and interests. The date of dissolution was fixed as at 15th December 1862, and the parties had in April previous adjusted and subscribed a balance-sheet bringing down their accounts to 31st March 1862.

Middleton was proprietor of the tenement in part of which the company carried on their business, and the remainder of it was leased out. The company acted as factors for the property, the account being known as the "property account." Upon that account there stood at Middleton's debit, as at 31st March 1862, the sum of £1485, 4s. 5d., consisting partly of cash advances and expenditure by the company upon the property, and partly of the sum in a cash credit bond which the company had signed for Middleton's behoof, to enable him to make the purchase of the property. This sum was treated in the accounts of the company as an asset, and consequently formed part of the *data* upon which the capital accounts of the partners were made up.

After a remit to an accountant and various procedure before the arbiter, he found that the sum which M'Ewan had to pay Middleton, as at the date of the dissolution of the company, was £406, 1s. 1d. The sum at debit of Middleton on the property account had by this time been reduced to £968, 6s., and was still dealt with as an asset of the company.

M'Ewan objected to the arbiter pronouncing decree absolutely for the sum at Middleton's credit, and asked him to record the fact that the sum of £968, 6s. was due on the other hand by Middleton to M'Ewan as the remaining solvent partner. The arbiter thereupon expressed his views to the effect that while there was no power conferred upon him by the submission to deal further with the property account, it was true that "incidentally" the state of that account fell to be ascertained, "as the partnership accounts could not otherwise be adjusted." He then said, "It may be stated that, as at the date of dissolution, the amount at Mr Middleton's debit on that account amounted to £968, 6s., consisting partly, however, of the amount due under a cash credit