slightest consequence. Where a landed estate is to be sold, and articles are drawn up specifying the upset price and the various conditions of exposure, that is a very formal instrument, not executed by one party alone but by all concerned in the procedure. It is executed anterior to the sale by the exposer, and every step at the auction is recorded in writing and subscribed by the party whose act and deed it is; and accordingly at the end—it may be after many biddings—when the judge declares the purchaser, the contract is complete and binding as a written instrument, because it is subscribed and duly executed both by seller and purchaser. But this document is not of that description. It contains a number of things. It may be described as a paper of instructions by the exposer to the auctioneer, and a general authority to him to deal with the subject as his own, subject to certain conditions which it is the auctioneer's duty to explain at the sale. But people who come to the sale know nothing of the document except what the auctioneer tells them.

Well, what did he tell them? We are told by some witnesses that he read the conditions. But others say that by reading they do not mean that he read every clause, but that he explained the gist of them. It appears to me that that proceeding was merely parole. It was not writing; it was reading. These articles were not made a written contract, and the people who heard them read, and who knew the conditions which were thus announced and published, were not bound by them as by a written instrument. The sale between the auctioneer for the owner and the purchaser is really a verbal contract as regards every one of the lots. Therefore the doctrine of law referred to has no application.

Then comes the question whether the pursuer has proved that in addition to the conditions of sale which the auctioneer read to the bidders there was at the same time another condition agreed upon not contained in the paper. The addition of such a condition is a thing which may competently be proved by witnesses, but it would require to be very distinctly proved. It is not to be readily assumed that the owner and the auctioneer added to the conditions which they had advisedly proposed. The most that the pursuer can say is that there is a conflict of evidence. It was said that the evidence of one or two who say that they have heard a thing said is weightier than that of a multitude who did not hear it. But when both had equal opportunities, the force of the observation is diminished, and especially so when the question is, not whether anything was said, but what was said, for undoubtedly something was said. I should be slow to disturb the judgment of the Sheriff-Substitute, before whom the proof was led, unless I was satisfied that he had gone perfectly wrong on the evidence. But the printed evidence has made very much the same impression on my mind, and I am quite prepared to concur in the judgment.

Lord Deas, Lord Mure, and Lord Shand concurred.

The Court adhered.

Counsel for Pursuer (Appellant)—Trayner—Young. Agents—Begg & Murray, Solicitors.

Counsel for Defender (Respondent)—Dean of Faculty (Fraser) — Scott. Agents — J. & J. Galletly, S.S.C.

Friday, March 19.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*LIQUIDATORS' REMUNERATION CASE*)—JAMIESON & HALDANE *v.* ANDERSON.

Public Company — Voluntary Liquidation — Minute appointing Liquidators—Remuneration of Liquidators — Proof — Parole — Companies Act 1862 (25 *and* 26 *Vict. cap.* 89).

The minute of a meeting of a company registered under the Companies Act 1862, which is made under statutory authority, and an abstract of which is subsequently transmitted to the Registrar of Joint-Stock Companies, is a document which proves itself, and is not to be contradicted or explained by parole evidence.

Where such a minute bore that four liquidators had been appointed with equal powers, and did not draw any distinction between the liquidators in regard to the amount of their remuneration, and where the liquidation had subsequently come under the supervision of the Court, who pronounced an order approving of the previous proceedings in the voluntary liquidation—*held* that the Court, in fixing the amount of the remuneration, could not look at any alleged agreement between the company and the liquidators relating to the terms upon which they had originally offered their services.

Observed that it might have been different had the question related to an agreement among the liquidators *inter se*.

Observed that, in fixing the distribution of remuneration amongst a plurality of liquidators, statements of the time occupied and of the nature of the work done by each will be elements of great importance to the Court.

This was a note in the liquidation of the City of Glasgow Bank by two of the liquidators—Mr Jamieson and Mr Haldane—to have their remuneration as liquidators fixed. The note set forth:—

"That at an extraordinary general meeting of the shareholders of the City of Glasgow Bank, held in Glasgow on 22d October 1878, the petitioners, along with William Anderson, C.A., Glasgow, and John Cameron, banker there, were appointed liquidators for the voluntary winding-up of the said bank.

"At the said meeting it was, *inter alia*, resolved that each of the liquidators so appointed 'may act separately, and exercise every power which by the Companies Act of 1862, and Acts amending and extending the same, is conferred on liquidators; and that the remuneration to be paid to them, and each of them, as such liquidators shall be left to be fixed by the following partners, who are hereby appointed a committee for the purpose, with full powers, viz.'—[*here followed the names*].

"On 27th November 1878 the Court pronounced an order directing and ordaining the

voluntary winding-up of the said bank to be continued, but subject to the supervision of the Court, in terms of the Companies Acts 1862 and 1867, and declaring, *inter alia*, 'that the creditors, contributories, and liquidators of the said company, and all other persons interested, are to be at liberty to apply to the Court as there may be just occasion.'

"Immediately on their appointment the liquidators entered upon the duties of their office, and they have since devoted a very large portion of their time to the conduct of the liquidation. On 22d October 1878 the total indebtedness of the bank to the public amounted to £12,855,560, 3s. 6d. At the close of the first year of the liquidation, ending 22d October 1879 the liquidators had realised from the assets of the bank £4,856,666, and from calls made on contributories £4,452,366, 5s. — making together £9,309,032, 5s.; and during the same period they had reduced the indebtedness of the Bank by payments to creditors amounting to more than £9,000,000. Besides payment of debts preferably or specially secured, the following dividends have been paid to the creditors of the bank, viz.:—

Payable.	Rate.
"1. 28th February 1879,	6s. 8d. per pound.
"2. 20th June 1879,	3s. 4d. ,,
"3. 17th October 1879,	3s. 4d. ,,
Total,	13s. 4d. per pound.

". . . It was a condition of the engagement made with the petitioners that the remuneration to be paid to them and to Mr Anderson should be fixed by way of commission according to the ordinary professional rules applicable to the case of a trustee in a sequestration, and that a fourth liquidator should be appointed to devote his time exclusively to the business of the liquidation, and to be paid by a fixed salary. In accordance with this latter arrangement Mr Cameron was appointed, and has since acted. The petitioners believe that his salary was fixed at £2500 per annum.

"Of the seven partners of the bank who were appointed members of the committee above mentioned, five have surrendered their estates to the liquidators, and have ceased to be partners of the bank, the only two who now remain partners being Mr John Wilson and Mr Archibald Russell, both of Glasgow. The petitioners are advised that the persons nominated on the said committee, upon ceasing to be partners of the bank, became disqualified from acting as members of the committee, and that the powers of the committee are not vested in the remanent members. . . .

"In the month of June 1879 certain communications took place between Messrs Wilson and Russell, who were at that time the only members of the original committee who remained partners, and who were acting in conjunction with certain large contributories of the bank on the one hand, and the liquidators other than Mr Cameron on the other hand, as to the remuneration of the said liquidators. These communications ended with a letter dated 30th June 1879, addressed by Mr John Wilson, Glasgow, to the petitioners and Mr Anderson, stating that he and those acting with him, including Mr Russell, had 'resolved after mature deliberation, to fix as a fair and reasonable remuneration for your services as liquidators, in full, up to the present date, 3-8ths per cent. upon the gross amount of the first and second dividends now declared and paid to the creditors.' The amount paid in respect of the first and second dividends (exclusive of other large sums paid to creditors preferably or specially secured) was £5,581,380; and the commission thereon at the rate of 3-8ths per cent. was £20,931.

"The petitioners, while not admitting that it was competent for Mr Wilson and Mr Russell, as the two remaining members of the original committee, to act under the resolution of 22d October 1878, were willing for their own part, with a view to an amicable settlement and without prejudice, to acquiesce in the terms of the said letter in so far as regards the remuneration there dealt with. On the faith of this letter, and in reliance on the services there dealt with not being remunerated on a lower scale than was there indicated, the petitioners have continued in office as liquidators from 30th June 1879 to this time.

"In the accounts submitted by them to the shareholders for the year to 22d October 1879, the liquidators entered as the amount of their own charge £37,248. This sum was made up thus:—

"1. Commission to Messrs Anderson, Jamieson, & Haldane at 3/8ths per cent. on the amount of the two first dividends, in terms of the said letter of 30th June 1879, .	£20,931	0	0
"2. Commission to Messrs Anderson, Jamieson, & Haldane at 3/4ths per cent. on the amount of the third dividend, which appeared to Mr Anderson and the petitioners to be a fair and moderate rate, ...	13,817	0	0
"3. Salary to Mr Cameron for one year, ...	2,500	0	0
As above,	£37,248	0	0

"It appeared to the petitioners that there was also a fair claim to some commission at a modified rate on sums paid to creditors other than those ranked for dividend, and Mr Cameron indicated that he considered himself entitled to some special consideration. To meet these possible charges, and to provide a margin for any contingency, the liquidators set aside a further sum of £10,000 as 'reserve to meet any further charges to date of balance.'

"To the above entry of £37,248 in the said accounts the following note was appended:—'This is subject to adjustment with the committee of shareholders; of the seven originally appointed, only two now remain partners.' This was stated in view of the contemplated reconstruction of the committee afterwards referred to. . . . . These communications, however, resulted in an arrangement that the vacancies in the original committee should be filled up at the meeting, the selection of the new members being made with the assent of the petitioners; that the committee thus re-constituted should consult with the Accountant of Court; and that both to the committee and the liquidators there should be specially reserved the right of appeal to the Court. On the day of the meeting on 30th December last, however, it was intimated to the petitioners that the stipulations as to consultation with the

Accountant of Court, and as to the appeal to the Court, were unacceptable to the parties who took a lead in these negotiations, and a committee was proposed, to the constitution of which the petitioners could not assent. No committee therefore was appointed.

"On 13th January 1880, therefore, the petitioners addressed a letter to Messrs Wilson and Russell, in which they stated that they had fully expected in October 1879 that the committee of shareholders would have been re-constituted in a manner satisfactory to all parties interested; that they were about to apply to the Court of Session to determine that which they were advised, Messrs Wilson and Russell were no longer competent to decide, viz., the amount of remuneration due to Mr Anderson and themselves, and the proportions in which it should be divided; and setting forth their reasons for taking this course, at the same time indicating their readiness to refer their claims to arbitration, provided always the decision of the arbiters should receive the sanction of the Court.

"The petitioners awaited a reply to this letter; but in place of such reply there has been issued and intimated to them a pretended deliverance or award, dated 18th February 1880, and signed by Messrs Wilson and Russell, bearing to determine the amount of remuneration to be paid to the liquidators, and to each of them, in terms of the authority conferred on the committee by the said resolution of 22d October 1878.

"In this document Messrs Wilson and Russell assume to fix the remuneration to Mr Anderson and the petitioners for the whole period up to 22d October 1879 at £13,906, 13s. 4d., in respect of the *three* dividends then paid, amounting to £7,423,531, whereas by their letter of 30th June 1879 they had fixed the remuneration to the same parties at £20,931, in respect of the *two* dividends then paid, amounting to £5,581,380. The said deliverance was outwith the power of the said Messrs Wilson and Russell, and is not binding upon the petitioners.

"In these circumstances the petitioners are under the necessity of presenting this application to the Court to have the amount of their remuneration fixed, and the proportion due to each of them determined."

The petitioners prayed the Court "to fix and declare the amount of remuneration to be paid to Mr Anderson and the petitioners, or at least to the petitioners, and also the proportions in which such remuneration shall be distributed among them, and to authorise the liquidators to take credit for the payment thereof in their accounts."

The award by Messrs Wilson and Russell above referred to was in these terms:—

"*Glasgow*, 18*th February* 1880.

"As remanent and acting members of the Committee appointed at a meeting of the shareholders held on 22d October 1878, we now proceed, in terms of the authority then conferred, to determine 'the amount of remuneration to be paid to the liquidators, and to each of them.'

"This duty we should willingly defer until after payment of a dividend now stated to be on the eve of declaration, were it not that we are pressed by some of the liquidators to dispose of the matter without further delay.

"We need hardly state that the matter is one which has received our most anxious consideration; nor do we require to add that it has been our earnest wish to do justice alike to the liquidators and to the shareholders.

"The result of the liquidation, in as far as it has gone, has been highly satisfactory. For this result the shareholders must feel that they are indebted mainly to the zeal, the industry, and the professional ability which the liquidators have brought to the discharge of their office.

"The result at which we have arived is—(1) that the remuneration should be on the principle of a commission—indeed, this was the understanding on which Mr Anderson and Mr Jamieson accepted office; and (2) that such commission should be chargeable solely upon the dividends paid to the creditors of the bank, and not upon any other moneys; also that it should be at the following rates, viz.—

"(1) On the first and second dividends, amounting together to 10s. per £, at the rate of one-quarter (or 5s.) per cent. . . .	£13,952	0	0
"(2) On the third dividend, at the rate of three-eighths (or 7s. 6d.) per cent. .	6,908	0	0
	£20,860	0	0

"With regard to the above sum of £20,860, we are of opinion that it falls to be apportioned or allocated thus—

1/3d to Mr Anderson.
1/3d to Mr Cameron; and
1/3d to Messrs Jamieson and Haldane.

"Prior to the meeting at which the liquidators were appointed, it was arranged with Messrs Jamieson and Haldane that in a matter of remuneration they 'should count as for one.' Indeed, it has been the opinion of the shareholders that three liquidators were amply sufficient, and the nomination of Mr Haldane was agreed to solely on the footing of the arrangement to which reference has just been made.

"It will, we believe, not be gainsaid that Mr Anderson and Mr Cameron have each performed his full share of the duties of the liquidation.

"This being so, each of them is entitled to one-third of the total remuneration.

"It remains to state that while giving, as we now give, to Messrs Jamieson and Haldane full credit for the way in which they have discharged their share of the duties, we feel satisfied that that share did not, either in point of labour or in point of responsibility, exceed the share performed by either of their colleagues.

"In a letter dated 13th ultimo, addressed to us by Messrs Jamieson and Haldane, they state that 'the committee made arrangements with Mr Cameron as to his salary, which the comparatively rapid progress of the liquidation may make it desirable to reconsider.'

"At an early stage of the liquidation, and because of his having been taken away from an official appointment, Mr Cameron had expressed his willingness, in conversation with one of the committee—neither of us—to accept £2500 per annum; but this, as he imforms us, and as we believe, proceeded on the assumption that the liquidators were to be dealt with by way of a fixed annual allowance and not by way of commission.

"From anything that may have passed in the conversation referred to, we do not regard

Mr Cameron as either in law or in equity debarred from demanding remuneration at a higher rate than £2500 per annum; but even were the case otherwise, there is nothing to prevent us from enlarging his remuneration to such fair and reasonable extent as we may deem proper, if, as we hold, and as undoubtedly has been the case, he has adequately performed one-third of the entirety of the work.

"If we have not misunderstood Messrs Jamieson and Haldane's letter, those gentlemen appear to think that if any such arrangement as that referred to was truly come to with Mr Cameron, the arrangement is one the benefit resulting from which must accrue solely to his colleagues.

"Now, the question whether any such arrangement was or was not come to, appears to us to be a question solely between Mr Cameron on the one hand and the shareholders on the other—in other words, to be a matter which, while it might be pleadable by the shareholders, would not be pleadable by any of Mr Cameron's colleagues.

"But even assuming that there was an arrangement to the effect stated, it by no means follows that any benefit thence resulting must accrue to Mr Anderson and Messrs Jamieson and Haldane. If made at all, the arrangement was not made for their benefit or in their interest. In particular, it could never have been intended thereby to increase the amount to which otherwise these gentlemen might be entitled. If made at all, it was made solely in the interest of the shareholders, and consequently whatever benefit may thence result must accrue to the shareholders, and to the shareholders alone. . . . .

JOHN WILSON.
ARCH. RUSSELL."

The two other liquidators appeared and lodged answers. One of them (Mr Anderson) concurred generally in the petition but added the following explanation:—"That at and previous to the time when the liquidators were appointed, it was expressly agreed that the respondent should share in the remuneration equally with Messrs Jamieson and Haldane—these gentlemen in the said matter counting as one,—and the fourth liquidator being to be paid by salary, as set forth in the petition." The remaining liquidator (Mr Cameron) submitted that the award of Messrs Wilson and Russell "is binding both on the shareholders and on the liquidators, but if not, that at all events it conclusively shows that he is under no obligation to accept £2500 as full remuneration for his services;" and further, "in the event of the award not being held binding, that in any adjustment of his colleagues' remuneration provision must be made for his receiving one-third share at least of the total sum to be divided among the whole liquidators."

Thirty-three of the remaining solvent shareholders also lodged answers, in which they stated—"(*First*), That looking to the large sums dealt with by the liquidators, remuneration by commission calculated by percentage is inapplicable, and that their remuneration should be fixed on the basis established in England in May 1868, by order sanctioned by the Lord Chancellor, and still in force, viz., of taking according to a given scale—1st, the amount of assets divided among unsecured creditors; 2dly, the number of hours devoted to the business by the liquidator; and 3dly, of leaving it to the Court to determine whether in the special circumstances the sum thus brought out by the given scale should be increased or diminished: (*Secondly*), That in fixing the amount of the remuneration the Court should deal with the petitioners Messrs Jamieson and Haldane as one, and therefore proceed as if there were only three liquidators: (*Thirdly*), That Mr Cameron should not be precluded from claiming an equal third of the said sum: (*Fourthly*), That the sum upon which remuneration should be allowed to the liquidators should be confined to the sums paid to creditors ranked for a dividend: (*Fifthly*), That if the remuneration is to be by way of commission, it should not exceed ¼ per cent. upon the three dividends already paid, and that no commission should be allowed on sums paid to creditors other than those ranked for a dividend. Commission at that rate would yield £18,558 or thereby, which would give £6186 to each liquidator, counting the petitioners as one. This, it appears to the respondents, would be a very liberal allowance, even on the footing, which they are willing to adopt, that the liquidators have had exceptional trouble and shown exceptional despatch. If it is established that Mr Cameron is only entitled to claim a salary of £2500 a-year, the respondents maintain that the difference between that sum and the one-third to which he otherwise would have been entitled does not fall to the other liquidators, but falls to be credited to the shareholders of the company. Otherwise the respondents maintain that the sum to be paid to the liquidators must be reduced by the amount of the said difference." . . . .

The following was the official registered statement of what was done at the meeting of 22d October 1878, at which the liquidators were appointed:—

"THE COMPANIES ACT 1862
(25 *and* 26 *Vict. cap.* 89).

"UNLIMITED COMPANY.

"Copy Resolutions passed at an Extraordinary General Meeting of the City of Glasgow Bank, pursuant to sub-section three of section one hundred and twenty-nine of 'The Companies Act 1862,'

and

Printed and forwarded to the Registrar of Joint-Stock Companies in terms of section fifty-three of the said Act;

with annexed

Copy of Certificate by the Registrar of Joint-Stock Companies for Scotland of the Receipt and Registration of said Resolution.

"THE CITY OF GLASGOW BANK.

"At an Extraordinary General Meeting of the City of Glasgow Bank, held within the City Hall, No. 90 Candleriggs, Glasgow, on Tuesday the 22d day of October 1878, at two o'clock in the afternoon, the following Extraordinary Resolutions, pursuant to sub-section three of section one hundred and twenty-nine of 'The Companies Act 1862,' were passed:—

"1. That it has been proved to the satisfaction of this meeting that the City of Glasgow Bank cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same.

"2. That the City of Glasgow Bank be wound up voluntarily.

"At the same meeting the following motion was unanimously carried:—

"3. That the meeting proceed to appoint liquidators for the purpose of winding up the affairs and distributing the property of the Company, and that each of them so appointed may act separately, and exercise every power which by 'The Companies Act of 1862,' and Acts amending and extending the same, is conferred on liquidators; and that the remuneration to be paid to them, and each of them, as such liquidators, shall be left to be fixed by the following partners, who are hereby appointed a committee for the purpose, with full powers, viz.—John Wilson, Treasurer of the City of Edinburgh; J. H. Annandale, Lasswade; Robert Young, Glasgow; Archibald Russell, Glasgow; John Cunninghame, Ardrossan; G. W. Clark, Glasgow; and John Wilson, Glasgow.

"And thereafter, in virtue of four separate motions, which were also unanimously carried, the following gentlemen were severally appointed liquidators, each with the powers and under the conditions foresaid, viz.—Mr William Anderson, chartered accountant, Glasgow; Mr Auldjo Jamieson, chartered accountant, Edinburgh; Mr John Cameron, banker, Glasgow; and Mr James Haldane, chartered accountant, Edinburgh.

"Rob. S. Aikman, *Law Secretary, Clerk to Meeting.*

"City of Glasgow Bank, Glasgow, 23d October 1878.

"COMPANIES REGISTRATION OFFICE.

"Exchequer Chambers, Edinburgh.

"Received and registered under the Companies Act 1862, this thirtieth day of October 1878, the Extraordinary Resolution of the City of Glasgow Bank to wind up voluntarily. "Stair Agnew,

"Registrar of Joint-Stock Companies for Scotland."

On 12th October 1878 Mr Jamieson had written to Mr Archibald Russell, as one of the committee of shareholders, stating his readiness to place his services if desired at the disposal of the shareholders, and he stated in a postscript to that letter—"Should I be named, it would be agreeable to me, and no doubt advantageous for the business, that my partner Mr Haldane should be named along with me, but of course in any question of emolument we should rank as one." This other letter was subsequently written:—

Letter, Mr Jamieson to Treasurer Wilson, Edinburgh, dated 19th October 1878.

"Dear Sir,—As arranged to-day when I met you, I send you a copy of the memoranda I prepared after learning on Monday that it was likely my name might be mentioned favourably. These were written for my own satisfaction only, and to show to one or two confidential friends on whose advice I rely.

"In sending them to you, I do not expect you to read them all, but you will see from them my reasons for the main resolutions I have formed—first, that I cannot go into the liquidation unless Mr Haldane is associated with me; and second, that I cannot accept a salary, or any method of remuneration equivalent to salary.

"I need not say that I hope you will regard these papers as strictly confidential to yourself, and to such other members of the committee as you may deem it right to select under the same seal of confidentiality.—I remain, yours faithfully,

"Geo. Auldjo Jamieson."

In one of the memoranda referred to in this letter Mr Jamieson stated, *inter alia*, that—"(1) It will be necessary that along with me shall be associated as a liquidator my partner Mr Haldane; in the event of there being a liquidator appointed who undertakes to devote a larger part of his time to the duties than we may be expected to do together, or if another couple of partners are appointed, then Mr Haldane and I are to be regarded as one in any question of remuneration. This, however, will come to be matter rather for arrangement among the liquidators themselves. (3) If the remuneration is to be paid, as has been suggested, in the form of salary, I cannot accept the office. I cannot accept what would imply a corresponding claim on my full time, and it is not consistent with the professional rule on which I have always acted to bargain beforehand as to remuneration, especially when the extent and nature of the work is so perfectly indefinite as it is in this case."

The 93d section of the Companies Act 1862 (25 and 26 Vict. cap. 89) provided—"That there shall be paid to the official liquidator such salary or remuneration by way of percentage or otherwise as the Court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs."

The 151st section of the same statute provided—"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 arguments of parties sufficiently appear from the above narrative.

Authority—*Agra and Masterman's Bank*, Dec. 14, 1868, L.R., 7 Eq. 102, *note.*

At advising—

Lord President—In dealing with the arguments which were addressed to us yesterday in

this application for settling the amount of remuneration to be paid to the liquidators, I think it is indispensably necessary to have in view above all things the terms of the appointment of the liquidators. It was made at the same meeting at which the shareholders of the City of Glasgow Bank resolved upon a voluntary liquidation; and the statute provides that one of the consequences of a voluntary liquidation is this (sec. 133, sub-sec. 3)—"The company in general meeting shall appoint such person or persons as it thinks fit to be liquidators or liquidator, and may fix the remuneration to be paid to them or him; (sub-sec. 4) if one person only is appointed, all the provisions herein contained relative to several liquidators shall apply to him; and (sub-sec. 6) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination, by any number not less than two." The appointment of the liquidators in this case was made at the same meeting that passed the resolution for voluntary winding-up. That was not necessary. It might have been done at a separate meeting, but it was quite competent to do it, and it was quite regularly done, at the same meeting. Now, it will be observed that under these provisions of the statute the company are directed to make such an appointment, and to fix the remuneration to be paid to the liquidators or liquidator; and when several are appointed, every power given may be exercised by such one or more of them as may be determined at the time of their appointment, and if there is no determination on that subject, then by any number not less than two. Now, at the meeting to which I have referred, which was held on the 22d of October 1878, after adopting the resolution to wind-up the company voluntarily, there was a motion made and seconded, and unanimously carried, the terms of which are extremely important — "That the meeting proceed to appoint liquidators for the purpose of winding up the affairs and distributing the property of the company, and that each of them so appointed may act separately, and exercise every power which by the Companies Act of 1862, and Acts amending and extending the same, is conferred on liquidators; and that the remuneration to be paid to them and each of them as such liquidator shall be left to be fixed by the following partners, who are hereby appointed a commitee for the purpose, with full powers;" and then there are seven gentlemen named who are to perform this duty. This motion having been carried, there was a motion made to appoint Mr Anderson to be one of the liquidators, with the powers and under the conditions foresaid, and that was seconded and unanimously carried; and a separate motion was made in reference to the other three gentleman who we know were appointed liquidators precisely in the same terms, and these motions were all unanimously carried. Each of the gentlemen, therefore, was appointed a liquidator, with the powers and under the conditions foresaid. Now, the manner in which the meeting performed the statutory duties imposed upon them was by, in the first place, appointing a plurality of liquidators, the number being four; then resolving that each one of them might act separately as a liquidator, thereby discharging the very important duty which I have said already is imposed upon them by subsection 6 of section 133 of the statute of 1862. And then, in regard to the matter of remuneration, instead of at once disposing of that themselves, they very judiciously and very properly, in my opinion, reserved that as a matter for future determination, but appointed a committee to deal with it.

Now, this is a minute which, in my humble opinion, proves itself; and in that respect it differs very much from many minutes of meetings. A minute of a meeting, at common law, is nothing more than a note of what takes place at the meeting, more or less regular and complete; but it does not prove itself. It needs to be set up by evidence—to be established as a correct record of what passed at the meeting—before it can become evidence, or be received as such by any Court. But this minute stands in a totally different position. It is a minute made under statutory authority, and records in the manner required by the statute that which the statutory company has done in the first stages of its liquidation. It has to be transmitted to the Registrar of Joint-Stock Companies—not indeed in full, as we have it before us here, but in abstract, and that abstract we have in the print before us immediately following the full minute, and the abstract gives every one of those things which are essential to the exercise of the statutory duty very distinctly and very completely, and that abstract is registered on the 30th October 1878 by the Registrar of Joint-Stock Companies. Now, I do not think that it would be regular—not to say competent—to admit of any parole evidence to contradict or explain this statutory minute, and I am therefore prepared to hold that as regards the question before us, and every other question in which that minute may be appealed to as the act and proceeding of the shareholders of this company, we must take that minute, and cannot go beyond it. I find accordingly that in that minute there is no distinction whatever made between the different gentlemen who are appointed liquidators. They are all appointed with the same power, and they consequently all undertake and are liable to the same responsibility. Any one of them may carry on the business of this liquidation in the event of the absence or the failure of the others. And in dealing with the matter of remuneration, it would, I presume, have been quite competent for this company to have said—We intend different duties to be performed by the different liquidators, and we intend that their remuneration shall be proportioned to the duties which we have imposed upon them, and which they have undertaken. But they do nothing of the kind. On the contrary, the mode in which the liquidators are appointed precludes the idea of there being anything but perfect equality among the four—equality as regards power, equality as regards responsibility, equality as regards remuneration.

Now, this voluntary liquidation, as we know, was brought under the supervision of the Court; and at the time when the supervision order was pronounced we had before us a very full representation both of creditors and contributories. I think there were no less than five or six different classes of creditors and contributories, who all compeared by different counsel, and submitted to the Court the various views which they had as to what should be done on the supervision order.

At one time, indeed, they differed as to whether there should be a voluntary liquidation under supervision, or whether there should be a compulsory liquidation; but they all at last agreed in asking the Court to continue the voluntary liquidation under the supervision of the Court. There was also at that time a very full consideration of the propriety of continuing unaltered the appointment of liquidators made by the company in that resolution of the 22d of October; and we were urged to make an alteration upon that arrangement, but we were all of opinion that the appointwhich had then been made was in itself a very desirable and reasonable appointment, and likely to produce a very satisfactory liquidation, and therefore we refused to disturb it. We therefore by our order of supervision substantially confirmed and made a part of the order of this Court the appointment of these liquidators as it had been made upon the 22d of October 1878. The supervision order is expressed in these terms:—"Having resumed consideration of the cause, and heard counsel for the petitioner and the liquidators of the City of Glasgow Bank, and the compearing creditors of the said bank, direct and order the voluntary winding-up of the City of Glasgow Bank, resolved on by the members thereof on the 22d of October, to be continued, but subject to the supervision of the Court, in terms of the Companies Acts 1862 and 1867; and declare that any of the proceedings under the said voluntary winding-up may be adopted as the Court may think fit; and declare that creditors, contributories, and liquidators, and all persons interested, are to be at liberty to apply to the Court." Now, by a subsequent interlocutor, the declaration that "any of the proceedings under the said voluntary winding-up may be adopted," was acted upon to this effect—that on the 21st of December 1878 we approved of the proceedings in the voluntary winding-up of the City of Glasgow Bank before the supervision order, in terms of the prayer of a note presented by the liquidators. So that, in fact, the whole proceedings of the voluntary liquidation prior to the supervision order are adopted by the Court, and become just as much a part of the proceedings and record of this Court as if they had been done by the Court originally. It appears to me, therefore, that it would be very difficult to say that either the Court or the shareholders and contributories of this company can deal with these liquidators, or any of them, except in terms of and consistently with the appointment made on the 22d of October 1878.

But it is said that some arrangements had been made by which some of these liquidators are to be remunerated upon a different principle from that which one would suppose to be in the view of all the parties, from the terms of the appointment to which I have referred. In particular, it is said that Mr Cameron had agreed that he should take his remuneration in the form of a salary, and a salary of fixed amount—£2500 a year; and the other liquidators contend that the effect of this is, that whatever sum beyond that salary of £2500 a year may be fixed on as the proper amount of remuneration to the liquidators is to go to them exclusive of Mr Cameron. Now, I think we have evidence before us to show that at the time when these liquidation proceedings commenced there was some conversation and negotiation with Mr Cameron upon this subject. He was a salaried office-bearer of a banking company in Glasgow—the Clydesdale Bank—and I have no doubt he felt very naturally that if he was to give up that permanent office he must be assured of some present income to come in place of that which he was receiving from his former employers; and therefore the salary which has been mentioned was talked of as something that the company and the contributories might give him either to induce him to relinquish his employment in the Clydesdale Bank, or in consideration of his having done so. I do not know, whether it was the one or the other. But I do not think there was any agreement between Mr Cameron and the shareholders of the bank that he was to be limited to that amount, whatever the amount of labour and work which he might do in the liquidation. Indeed that is disclaimed altogether upon the part of the shareholders who are here as respondents. They do not say there was any such bargain, and if there had been any such bargain, they say they would be by no means inclined to adhere to it to Mr Cameron's prejudice. How, in these circumstances, the other liquidators can say that this agreement, or supposed agreement, between Mr Cameron and the shareholders is to inure to their benefit, I am quite at a loss to understand. It seems to me that even if there had been such an agreement, which I do not think there was, that was a matter with which the other liquidators had no concern whatever, and whatever remuneration Mr Cameron may have agreed to take from the shareholders of this company could not possibly have the effect of increasing the remuneration to be paid to the other liquidators. Now that clears the way so far, and satisfies my mind that all the liquidators must be considered in the question now before us. Each one of the liquidators, I think, must be considered as a person who has worked in the liquidation, and is to be remunerated for his work.

But then Mr Anderson advances another contention, which is embodied in his answers. He says that "at and previous to the time when the liquidators were appointed, it was expressly agreed that the respondent,"—that is, Mr Anderson—"should share in the remuneration equally with Messrs Jamieson & Haldane, these gentlemen in the said matter counting as one, and the fourth liquidator being to be paid by salary, as set forth in the petition." Now, observe the different heads of this alleged agreement. Messrs Jamieson & Haldane are to count as one liquidator, Mr Anderson is to count as one, and the fourth liquidator is to be paid off by a salary, and has no interest in this question. That is the effect of the agreement alleged by Mr Anderson. Now, whether there was such an agreement or not, I do not think we are in a position to determine; and in the view I take of the case it is not only unnecessary to determine it, but it would be quite impossible. One thing, however, is perfectly clear in regard to this alleged agreement, that one of its articles is incapable of fulfilment. One of the conditions of this agreement is removed by what I have already said, namely, that the fourth liquidator is not to be paid off by an inadequate salary, in order to make room for a larger remuneration for the others; and therefore, even if such an agreement was made, I think it would fall to the

ground by reason of one of its conditions being impracticable. But I go further than that. If there was such an agreement, I think neither the Court nor the company—by which I mean its shareholders—had anything to do with it. The shareholders, in regular statutory form, appointed their liquidators, and appointed them all with equal powers and equal responsibility, and consequently with an equal right to remuneration. Whether it may be competent or proper for a plurality of liquidators thus appointed to arrange among themselves that they will contribute their labour and take their remuneration in other proportions than equally, I do not stop to inquire. I can conceive agreements of that kind made in circumstances which would justify them, and which may be binding between these parties themselves, but with that I think we have nothing to do in the liquidation. It may be very proper, if one man, by an arrangement with his brother liquidators, undertakes to do a much greater share of the work, that he should also by arrangement with them be entitled in the end to a larger share of the remuneration, or it may be that other considerations may come into view; but I venture to say at the same time that I can quite see that such private bargains between liquidators may be so carried on as to prejudice the rights and the interests of the company and its shareholders, and to prevent the company and its shareholders from having that full advantage from the appointment of a plurality of liquidators which they are entitled to expect. And therefore it does not by any means follow that every bargain of that kind made between liquidators will receive effect, even in an ordinary action between themselves. All I say at present is that with such bargains and claims we have nothing to do. We have a very plain duty prescribed to us in the 93d section of the statute, which enacts that "there shall be paid to the official liquidator such salary or remuneration by way of percentage or otherwise as the Court may direct, and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs." That applies to official liquidators; but by another section of the statute—section 151—liquidators under a liquidation conducted under the supervision of the Court are placed precisely in the same position; and therefore the duty that we have to perform at present is the same as we should have in the case of an official liquidator. We are to fix his salary or remuneration if he be one, and if there be more than one, then we are to distribute amongst the liquidators this salary or remuneration in such proportions as we think just. In the case of two or more liquidators being appointed, and the total remuneration being fixed, in ordinary circumstances one would say there is a presumption in favour of equality of distribution; but it is very obvious that in some cases such equality of distribution would be most unjust, because one man may have done a great deal more work in the liquidation than another, and it is quite out of the question to say that the man who has done little work is to receive as great a share of remuneration as he who has done much. If that were to be the case, this provision which I have just read in the 93d section would have no meaning at all. If an equal division among the liquidators is in all cases to prevail, of course there would be no room for the exercise of any discretion on the part of the Court at all in the matter of division or of remuneration. But a moment's consideration must satisfy anybody that nothing could be more absurd than to suppose that an equal division is in all cases to be followed. It may have happened that one or more of the liquidators appointed has been incapacitated by bad health or other accident from taking an active part in the liquidation, or for a time may have been so incapacitated. Is that not to receive any effect in this liquidation? In short, it appears to me that when several liquidators are appointed, in the terms which we find in the minute of appointment of the 22d of October 1878, the duty which devolves upon the Court under this 93d section is, after fixing the total amount of remuneration which is to be paid for the entire work done, then to determine what is the proportion of that work done by each of the liquidators, and to distribute the remuneration in corresponding proportions.

Now, if your Lordships agree with me in the views which I have thus suggested, it appears to me that the proper course for us to follow in the present case is to have before us an account of the time and work contributed by each of the liquidators in carrying on the liquidation. When I speak of the time devoted by each of the liquidators to the business of the liquidation, I must not be understood as pointing at time as the single or overruling element in calculating the amount of remuneration which is to be given either to the whole or to each one of these gentlemen. The nature of the work which occupies a man's time has, I think, a great deal to do with the question what the amount of his remuneration is to be, especially when we look to the great variety of work that has been performed in this liquidation. I can quite understand, for example, that if a man is to be carried away from home for a considerable part of the year, or frequently, in the prosecution of his work in this liquidation, that is a matter which may require consideration in fixing what proportion of remuneration he is to receive. If a man is obliged to travel to a foreign country in pursuit of the business of the liquidation, that is another consideration, and a very important consideration. And therefore, while I think that the amount of time which each of the liquidators has been occupied in the business is a very important consideration, I do not think it is by any means the only consideration; nor must it be understood that in requiring a statement of the time I am at all indicating any opinion that this remuneration should be fixed at so much an hour or so much a day, as was done apparently in one case in England, or that we exclude, or intend to exclude, by the order which we are now to make, the fixing of the remuneration by a percentage, because percentage is one of the alternatives in the 93d section of the statute. But what I propose to your Lordships is this, that we should appoint the liquidators, and each of them, to furnish a return of the time occupied in the business of the liquidation, and also a statement of the work in the performance of which that time has been occupied; and when we have these materials before us, I think we shall be in a position to exercise our jurisdiction, if it can be so called, or to perform our official

duty, as it may perhaps be more regularly called, under the 93d section of this statute.

Lord Deas—The question brought before us here relates to the remuneration to be given to the parties who were appointed and have acted as liquidators. After the stoppage of the bank in October 1878, an extraordinary general meeting of the shareholders was held upon the 22d of October 1878, when it was resolved that the winding-up should be voluntary, and that liquidators should be appointed, and, as the resolution read by your Lordship bears, that each liquidator should be entitled to act separately, and exercise all the powers which are conferred by the Act of 1862 and relative Acts. Accordingly, upon separate motions made and carried, four liquidators were appointed, viz.—Mr Anderson, Mr Auldjo Jamieson, Mr Cameron, and Mr Haldane; and it was resolved at the same time that the remuneration to be paid to them, and each of them, should be left to be fixed by seven partners, who were then named. That was done, as your Lordship has pointed out, by a statutory minute, which proves itself, and which is binding in all future stages of the liquidation. I agree with your Lordship in thinking that the presumption which arises on the face of that minute is in favour of equality of remuneration as well as equality of powers and of duties; more particularly, as the proceedings at that stage were, as your Lordship has also pointed out, approved of in this Court on the 21st of December of the same year. But although the presumption is in favour of equality, it certainly does not follow that the distribution of the remuneration is to be equal. On the contrary, the same enactment which gives us the power and duty of fixing the remuneration, gives us also the power and duty of distributing it, and of course of distributing it in such a manner that each liquidator may be fairly and justly paid for the work which he has performed. On the 27th of November 1878 this voluntary winding-up was ordered to be continued under the supervision of the Court, in terms of section 147 of the Act of 1862. Upon that occasion the Court might have appointed additional liquidators under the power expressly given to the Court by section 150 of the statute, but we did not do so. A large body of the creditors applied to the Court for the appointment of an additional liquidator. They were anxious to have an additional liquidator, and they were anxious also that he should reside in England; but after full discussion and consideration we refused to appoint an additional liquidator, either to reside in England or in Scotland. We were of opinion that the four liquidators that were appointed were enough for the probable work to be performed. The fitness and ability of all these four liquidators, their competency for the important duties which they had to perform, is a matter of notoriety, and was well known to this Court and to everybody else. This is admitted in the answers which have been lodged for the solvent shareholders, who are the only shareholders that appear. In their answers they say they "acknowledge the industry and professional ability with which the liquidators, including the petitioners (Mr Jamieson and Mr Haldane), have discharged their duties;" and that that admission is no more than the truth this Court has very good access to know.

It is also admitted, or not disputed, that the liquidation has reached a stage at which it is right to fix the remuneration of the liquidators for their past services. A very large amount of the assets has been realised, and creditors to the extent of about thirteen millions are stated to have been paid, I think, 13s. 4d. per pound, and I understand they have been paid 1s. per pound since. The fund from which this remuneration is to come is fixed by section 144 of the Act of 1862, which is this—"All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority of all claims." We have no choice, therefore, about the fund out of which this is to be paid. That is expressly prescribed in the statute. The duty of fixing and likewise of distributing the remuneration is committed to the Court by section 93 of the statute, which is in these words— . . . "There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs." Then there is a provision in section 149 of the statute that "the Court may, in determining whether a company is to be wound-up altogether by the Court, or subject to the supervision of the Court, in the appointment of a liquidator or liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence." We may have regard to the wishes of the creditors or contributories, but we are not bound to have regard to these wishes, although upon all occasions when these wishes have been brought before the Court we have been in the habit of giving them very full effect. If that resolution, come to at the meeting of 22d October 1878, that the remuneration of the liquidators should be left to be fixed by a committee of seven partners then appointed, had been or could be acted upon, I have no doubt that, although not expressly bound, the Court would, as it has been in the habit of doing, have given full effect to that resolution; but of these seven so appointed, five admittedly have become disqualified by ceasing to be partners, having been discharged upon a surrender of their whole means and estates, and it is too clear for argument that their powers and duties are not vested in the remaining two. In these circumstances the only partners or shareholders the Court have before them are the solvent partners or shareholders, some 33 in number, who have given in answers and appear to support these answers before the Court upon this occasion. Now, we have considered most carefully all that they have said or could say upon this subject; but it is perfectly plain that these partners or shareholders have too deep a personal interest to be impartial in this question, or to make it possible for us, while listening with sympathy to them, to shift from ourselves to them the responsibility which the statute lays upon us in fixing this remuneration. The fund out of which the remuneration is to come is a fund which either belongs to them altogether, or in which they are undoubtedly deeply interested. We are compelled therefore to take

upon ourselves the duty laid upon us by section 93 of the Act of 1862, of fixing, in the first place, in what way, whether by percentage or otherwise, this remuneration is to be estimated—that is of fixing the amount of it, and then of fixing how it is to be distributed, or, in the words of the statutory resolution of the shareholders, in what way it is to be paid to them and each of them.

In this state of matters I look upon all that has passed between the liquidators and the shareholders as not sufficient to relieve us, in any degree, of the responsibility of seeing that the liquidators, and each of them, shall be fairly remunerated for the work which has been done. So that, after we have fixed—and I suppose your Lordships are all of opinion that we ought to fix—that the remuneration is to be by commission, the first thing for us to consider will be what each is to get. We do not require to fix that now, or to say anything about it; but the first thing will then be for us to fix, in our own minds, what sum will be fair remuneration to each for the work which has been performed, and then to add these sums together, and bring out the total amount of commission to be paid. All room and motive, therefore, for contention or argument among the liquidators themselves is totally excluded. Each liquidator will be fairly paid for his work; and the amount that will fairly pay each liquidator separately for his work, will form the aggregate sum that is to come out of the assets in terms of the statute. And if each liquidator is fairly remunerated for his work, it is impossible that he can have either right or interest to interfere with respect to what is to be paid to any of the others. I suppose none of them look for more than is fairly to remunerate them for their work, and it would be a total misapprehension, therefore, to suppose that there is room in this case for any contention between themselves. When we come to the distribution among the liquidators, it certainly is an element of great importance, as your Lordship has pointed out, to ascertain both what time has been occupied by each of them, and what is the nature of the work which each has done; and therefore it is important to obtain from each liquidator, as far as he can specify it, what time he has been occupied, and the kind of work in which he has been occupied. There is no better proof of the necessity of that than what your Lordship has suggested, on the supposition that one of them had to go abroad on the business of the liquidation. It was said that Mr Cameron had to go to America, and surely in taking into account what each has done, it is important to know how he was occupied, whether at home or abroad, and this both out of fairness to himself and likewise with reference to the importance of the work which he has performed. I therefore entirely approve of the suggestion of your Lordship that we ought to have a statement from each liquidator that will enable us to approximate, at least, the time that he has been employed, and the kind of work in which he has been employed. I perfectly agree, at the same time, that that will merely be an element and not a rule as to what the amount of the remuneration is to be.

And in considering what each is to have, I am clearly of opinion that we cannot be tied down by any negotiation or understanding which may have existed at an early period of this liquidation between some of the shareholders and the liquidators themselves. The duty which we have to perform can only be rightly performed, not by considering what was anticipated as requisite to be done, or as practicable to be done, but by considering what has been done. That of course could not be known until the work had been performed. It is only then that we or anybody else can be in a position to say what will be a fair amount of remuneration to the liquidators and each of them. I think the less we look to understandings or negotiations upon that subject before the work was performed, the better for the ends of justice and the right discharge of our duty. There are most important considerations in favour of not making fixed agreements or arrangements at an early period of a liquidation, which may hamper the Court, and might have hampered the seven shareholders if they had been in a position to perform their duties, in considering what the remuneration ought to be. Some of these considerations could not be better stated than they are in Mr Jamieson's memorandum of 17th October 1878. He says—"I cannot accept what would imply a corresponding claim on my full time, and it is not consistent with the professional rule on which I have always acted to bargain beforehand as to remuneration, especially when the extent and nature of the work is so perfectly indefinite as it is in this case. And as I am so decided on that point it enables me to state without reserve my views on the principle of remuneration in such a case as this." Further on he says—"If this liquidation is to be dragged out for many years, it may be best to secure the permanent services of a suitable officer who will devote his whole time to the liquidation. If, however, professional men are employed professionally on salaries payable during the endurance of their office, a direct pecuniary inducement is held out to them to protract the business as long as possible. I do not say they would do so; but if remuneration is calculated to attain its object by stimulating exertion or rewarding activity, and if it be an object in this case to attain speedy results, it is plain that object will not be attained by remunerating services by way of salary, to last as long as the office lasts."

I quite agree with these observations. There is no doubt that an honourable man would not allow any consideration of that kind to influence him; but we all know that when a man's own pecuniary interest is concerned he is unconsciously affected by it; that is only human nature. Then he says in the next article—"From what I know of the affairs of this bank, I believe that the course most advantageous for all parties will be a speedy realisation of available assets, a speedy payment of debt, and then a very careful, probably slow, certainly cautious, realisation of the less available assets—on the favourable realisation of which must come to depend so much of the ultimate interests of the solvent shareholders. I cannot therefore contemplate in any liquidation in which I should have a voice any protracted process which should justify the payment of adequate salaries to liquidators for any length of time. It is impossible to prognosticate, but looking to what I know of the assets, and to what I apprehend as to the shareholders, a comparatively short time should suffice, with energetic action, to bring the affairs of the bank

within such a compass that the liquidation would be on a scale which would afford neither work for nor remuneration to more than one officer at probably a moderate salary. Professional men, if employed, must be dealt with according to professional rule; be employed for the specific purpose, paid for its achievement, and not paid less if they achieve that purpose soon. I am not prepared to say according to what rule or scale the remuneration should be fixed, but it should certainly be on such a scale as to afford liberal remuneration to those who at the commencement of the liquidation must bear the great burden of it—its anxieties and painfulness—and on such principle as to afford at least no inducement to protract the process of liquidation. Those who speedily bring the liquidation within such a compass as to admit of the services of all but one liquidator being dispensed with will merit ample remuneration, because large sums must pass through their hands, and great responsibility, trouble, and anxiety, must have been compressed into a comparatively short period. I think, therefore, that the detail of the question of remuneration should be left over for the present; that it should be stated that the remuneration will be fixed in the same way and on the same principle as the remuneration to a trustee in a sequestration, with such modifications on the rates as may be due (1) to the magnitude of the sums involved; and (2) to the special arrangements" he had previously referred to, "whereby expenses which devolve on trustees are in this case to be paid by the bank."

I cannot entertain any doubt that these are very sound views, and they point to this, that we are to look back at what has been done before we can perform our duty satisfactorily. And therefore erroneous expectations, entertained by Mr Cameron or anybody else, are not the important thing to be considered here. We could not have a better instance of this than the case of Mr Cameron, as to whom the solvent shareholders, much to their credit, are agreed that he ought to be remunerated on the same principle with the others. It would be totally unreasonable to tie down Mr Cameron to a specific salary for two or three years, he having given up a permanent office, yielding him £800 or £1000 a-year, with the sure prospect of a retiring allowance, according to the ordinary custom of banks—all under the erroneous notion that this liquidation might last for twenty or thirty years, whereas it has been performed most expeditiously for the benefit of all concerned, and I must say for the benefit of the country. I am glad, therefore, to agree with your Lordship on that point, and that the solvent shareholders recognise the justice of that principle. For the same reason, it seems to me to follow that any understanding or arrangement as regards Mr Jamieson and Mr Haldane is not to be held conclusive with reference to them any more than the arrangement with reference to Mr Cameron. The question of distribution, therefore, will be an important one, in which all considerations that properly ought to weigh in the matter will fall to be taken into account. I do not say that there may not be considerations with reference to Mr Anderson, for instance, to take into account likewise. If it appears that, in consequence of having no partner conjoined as it were along with him, he has been obliged to employ a superior class of assistants—I do not say that that may not be taken into account in the distribution of the gross amount of remuneration; but in the meantime I agree with your Lordship that the presumption is for equality among the liquidators, and that it will depend upon the whole circumstances when they come before us how that distribution is to be made. But I am very clearly of opinion that we are not to be fettered by understandings or tentative arrangements of such a nature as might naturally, if acted upon, have operated to protract proceedings in such a liquidation.

Lord Mure—I agree with your Lordship in thinking that the statutory minutes must be taken as conclusive of what was actually done at the meeting of the 22d of October 1878, at which the liquidators were appointed, and that these must be taken as fixing the relative position of the liquidators towards the shareholders and towards each other. Now, in that minute no provision is made as to the amount or mode of remuneration. That is referred to a committee. That committee, from circumstances which I need not detail, has failed, and they can no longer discharge the duties imposed upon them. That being so, it appears to me that the presumption upon the face of the minutes is for equality of position as regards the liquidators. I am not prepared to say that it would be absolutely incompetent for the shareholders to make a separate arrangement with the liquidators as to the mode or measure of their remuneration, or for the liquidators to make such an arrangement *inter se*, which would be binding upon them; and if there had been here a clear and distinct written agreement to that effect laid before us, I apprehend it would be the duty of the Court to consider it, and if in proper shape to give full effect to it in this or any other competent action. But no such written agreement has been laid before us either as regards Mr Cameron or Mr Jamieson or Mr Haldane. As your Lordship has pointed out in the case of Mr Cameron, the shareholders who have entered appearance, and who are the parties most interested in the matter, admit that Mr Cameron is not tied down by any arrangement in that respect made by them; while as regards Mr Jamieson and Mr Haldane it was next to conceded that no such obligatory agreement as that alleged in the answers existed. But proof by parole was pointed at of what occurred at a certain meeting of shareholders or of the committee, and which it was said would instruct or tend to instruct the existence of some agreement. Now, I am very clearly of opinion that dealing with this statutory matter of the remuneration payable to the liquidators, it would be inexpedient, if competent, to go into any inquiry of the sort which has been pointed at by parole proof, especially at this stage of the proceedings, and that it should not be allowed. The question which we have to dispose of is one between the liquidators and the shareholders, and what we have to deal with is the amount of the remuneration, which in the circumstances of this case, where the statutory proceedings are so framed as to make no express provision on the subject, the liquidators are entitled to receive. That, I apprehend, is the broad question raised before us, and which alone

can be competently raised before us under this application. Now that, as your Lordship has pointed out, is a matter which falls to be regulated by the 93d section of the Act of 1862, and to that end I concur in thinking that the course which your Lordship has suggested is that which ought in the first instance to be adopted with the view of settling this matter.

The Court appointed the liquidators, and each of them, to put in a statement specifying the amount of time occupied by them, and each of them, in the business of the liquidation down to the date of the deliverance, and also the nature of the work done by them, and each of them, in the time so specified.

Counsel for Jamieson and Haldane—Pearson. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Counsel for Anderson—Mackintosh. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Cameron—Guthrie. Agents—J. & J. Ross, W.S.

Counsel for Shareholders—Dean of Faculty—Moncreiff. Agent—James W. Moncreiff, W.S.

Friday, March 19.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*GEDDES' TRUSTEES' CASE*)—GEDDES' TRUSTEES *v.* THE LIQUIDATORS.

Public Company—Winding-up under Supervision—Powers of the Court to Authorise Compromise of Debt—Where Due to a Trust-Estate.

In the liquidation of the City of Glasgow Bank, under the supervision of the Court, an arrangement was sanctioned to the effect of enabling the creditors upon the bankrupt estate to receive immediate payment of the balance of their debt after dividends to the extent of 13s. 4d. per £1 had been paid, on the footing that they resigned their claims to interest and granted a full discharge. Three out of eleven beneficiaries in a trust-estate which was a creditor of the bank objected to the trustees accepting such an arrangement. Upon a joint-note at the instance of the liquidators and of the trustees, praying the Court to sanction the arrangement, *held* that it was competent for the liquidators to make such an application, and that, looking to the circumstances of the case, the arrangement was one which the Court should authorise.

Observed (*per* Lord President) that in such a case the liquidators alone, and not the trustees, had a right to ask the Court to sanction the proceeding in question.

William Kidston and others were the assumed trustees under a disposition granted in 1835 by John Smith, builder in Glasgow, with special advice and consent of William Geddes, in favour of Archibald Geddes and others, as trustees for behoof of Mrs Catherine Kidston or Geddes, spouse of William Geddes, in liferent for her liferent use allenarly, and on her death or second marriage then for behoof of Mrs Catherine Glen Geddes or Borron, spouse of William Geddes Borron, and daughter of the said William Geddes, in liferent for her liferent use allenarly, and after her death then for behoof of her lawful children equally, share and share alike, in fee. Mrs Catherine Kidston or Geddes died on 9th Jan. 1857, and Mrs Catherine Geddes or Borron died on 18th August 1876 leaving eleven children, who were then the beneficiaries under the above disposition. The trustees proceeded to sell the trust-estate (under a power to that effect in the disposition) with a view to its division. This was done in August 1878, and the proceeds of the sale, after certain small deductions, were lodged on deposit-receipt in the City of Glasgow Bank, amounting as at 22d October 1878, when the resolution to wind-up the bank was passed, to £7320, 18s. 9d.

The trustees duly received payment of the dividends issued by the liquidators to the extent of 13s. 4d. per £1 on their debt. On 7th January 1880 an arrangement received the sanction of the Court by which the liquidators agreed with the Scotch banks to obtain advances whereby the whole creditors of the City of Glasgow Bank who signified within a certain short time their willingness to accept payment of the remaining 6s. 8d. per £1 on the amounts due to them as at 22d October 1878, without interest since that date, were to receive payment thereof at once on granting a full discharge of their debts to the bank and liquidators. Of this arrangement the trustees desired to take advantage, but their proposal to do so was opposed by three out of the eleven beneficiaries among whom the amount realised was to be divided. The amount of interest due to the trustees after 22d October 1878 was £189, 16s. 9d. In these circumstances a note in the liquidation was presented to the Court jointly for the liquidators and for the trustees, under sections 147, 151, 138, and 159 of the Companies Act 1862. A statement embodying the above narrated facts was appended to the note, and the following question of law was added:—"Are the said William Kidston and others, trustees under the disposition of 1835, entitled to take payment of the remaining 6s. 8d. per pound on the amount due to them by the City of Glasgow Bank as at 22d October 1878, without interest from and since that date, in full of their claims against the said bank, under the said deposit-receipts?"

The Trusts Act 1867 (30 and 31 Vict. c. 97), section 2, provided, *inter alia*, that—"In all such trusts the trustees shall have power to do the following acts, where such acts are not at variance with the terms or purposes of the trust, and such acts when done shall be as effectual as if such powers had been contained in the trust-deed, viz., . . . To compromise or to submit and refer all claims connected with the trust-estate."

The objecting beneficiaries urged that the arrangement in question was not a "compromise" in the sense of the Trusts Act 1867, and that it would not be beneficial to the trust-estate.

Authorities—33 and 34 Vict. c. 104 (an Act to facilitate compromises, &c., between joint-stock and other companies in liquidation), sec. 2; Bell's Prin. sec. 1998; Bell's Dictionary, *voce* "Compromise;" M'Laren on Wills and Successions, vol. ii., 245, sec. 1841; *Anderson*, March 7, 1855, 17 D. 596.