

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 allanarly, 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 allanarly, 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.

At advising—

LORD PRESIDENT—The Court some short time ago sanctioned a proposal made by the liquidators to enter into an agreement with the Scotch banks to obtain an advance from them of a sum of money to enable them to make an immediate payment of a dividend making up the total amount paid to the creditors of the bank to 20s. in the £; this dividend to be paid to such creditors as chose to accept of that in full of their claims, abating interest which had accrued upon their debts since the 22d of October 1878. And in carrying out that arrangement which was so sanctioned by the Court, the liquidators were brought into contact with one of the creditors of the bank who may be called for shortness Geddes' trustees, who proposed to take payment of this dividend to make up the full sum of 20s. in the £, abating their interest. But the liquidators, as I understand, have felt some difficulty in accepting of a discharge from these trustees upon this footing, in consequence of some of the beneficiaries under that trust having objected to the trustees entering into such an arrangement. Now, while I think that the liquidators are quite entitled to come to the Court and ask us whether they should in the circumstances complete this arrangement with the trustees, and take a discharge from them, I cannot recognise the right of any other party—for example, Geddes' trustees—to come here and consult the Court; and it must be distinctly understood that in giving an opinion to the liquidators we are giving that opinion to the liquidators only, and within our proper function in the liquidation. The question itself, I think, does not admit of much doubt, whether these trustees have the power in the circumstances to grant such a discharge as will be safe and binding to the liquidators?

The circumstances of the case are somewhat special. The debt arises upon a deposit made by these trustees in the City of Glasgow Bank. The subject of their trust was an heritable estate, and it was conveyed to them in trust for behoof of Mrs Catherine Kidston or Geddes, spouse of William Geddes, in liferent, for her liferent use allenerly, and upon her death or second marriage then for behoof of Mrs Catherine Geddes or Borron, spouse of William Geddes Borron, and after her death then for behoof of her lawful children equally, share and share alike, in fee. Now, the two liferenters are dead, and the period, therefore, of division of the fee has arrived, and with a view to that division the trustees, under a power given to them by the disposition in their favour, sold the estate, and unfortunately they lodged the price, or a great part of it, in the City of Glasgow Bank, and there it stood upon deposit at the time of the commencement of the liquidation. The sum owing upon that deposit is £7320, 18s. 9d., and of course it is upon that sum that the trustees have hitherto received the dividends payable to all the other creditors, and upon which they are now willing to take payment of an additional dividend, which shall bring the sum received by them up to the total principal sum. The effect will be, that having already received £5854, 3s. 1d., they are now to receive £1466, 15s. 8d., which makes the total amount that was due to them, but they are not to receive what they would ultimately be entitled to in this liquidation at some time or other—the interest from the 22d

of October 1878 till the present time, which is £189, 16s. 9d. Now, it must be observed that the bankruptcy of the City of Glasgow Bank had the effect of disturbing the process of division of the trust funds, which was already substantially begun. The liferenters being dead, and the estate being sold for the purpose of distributing the price among the beneficiaries, numbering no less than eleven, the bankruptcy of the City of Glasgow Bank stopped that division; and of course one of the objects the trustees have is to be enabled to proceed with that division instead of having it indefinitely postponed until the liquidators shall be able to pay the whole creditors the full amount of their debts with interest—a period which may not arrive for a very considerable and uncertain time. The abatement of £189 the trustees seem to consider is a small price to pay—it is not a large price to pay—for the immediate advantage of receiving payment of the whole balance of their capital, and so being enabled to hand over the money to the beneficiaries and to put them into instant possession of what they are to get. I must say I am not at all surprised that they should take that view, and having that view, the question is, what is to prevent them from carrying it into effect? If the beneficiaries were all agreed about it, of course there could be no difficulty, but it turns out that three out of the eleven beneficiaries object; and so in respect of three-elevenths of £189 the trustees, it is said, are restrained from being able to carry out this reasonable arrangement.

Now, I am of opinion in point of law that the trustees are quite entitled to carry out such an arrangement as that. I think it is a most beneficial arrangement for the trust-estate in the circumstances in which it is placed; and I take into particular account its circumstances, and the fact in special that it is ready for distribution. That being so, I do not think it at all necessary to enter into any of the questions which were argued about the meaning and effect of certain clauses in the Trusts Act of 1867. This is the acceptance of a composition of a very favourable kind by trustees, which I apprehend they have at common law a perfect right to accept. It is the exercise of a discretionary power which must be vested in all trustees. If the opposite view were to be taken, the effect would be that no body of trustees who owned an heritable estate could grant a shilling of abatement of rent to a tenant, or make any other reasonable arrangement of that kind. My opinion therefore is, that we should authorise the liquidators to complete the arrangement which is in progress.

LORD DEAS and LORD MURE concurred.

LORD SHAND was absent.

The Court authorised the liquidators to complete the arrangement with Geddes' trustees, and to accept their discharge.

Counsel for Liquidators and Geddes' Trustees—Kinnear—Lorimer. Agents—Davidson & Syme, W.S.

Counsel for Objecting Beneficiaries—Mackintosh—J. P. B. Robertson. Agents—Webster, Will, & Ritchie, S.S.C.