alone upon the other. Whether the dismissal of the respondent has been right or wrong, or whether the mode of his dismissal was in accordance with the rules or otherwise I cannot but hold, as between him and the Society, that he has been dismissed, and therefore that he cannot be permitted to continue in the performance of the employment from which he has been discharged. Nothing could be more embarrassing or more detrimental to the interests of the Society, than that a person whom they decline to recognise as their secretary should be allowed to levy the contributions of the members, or to interfere in any other way in the management of their business.

"I shall therefore give interdict in terms of the first conclusions of the note; but the remaining conclusions are too wide. I am not in a position to say that, apart from the question I have decided, there cannot be any dispute or difference with reference to the dismissal which could be submitted to arbitration. If any such dispute should be raised, it will be for the arbitrators—at all events in the first instance—to say whether it ought to be entertained."

The respondent Munro reclaimed, and argued—By the laws of the Society, Munro was wrongfully dismissed. It required a vote of nine-tenths of the membership effectually to remove him from office, and this vote was not obtained. The matter in dispute should not have been brought before the Court of Session, as the Sheriff Court had final jurisdiction in all cases arising under the Building Societies Act of 1874. But if it was held that this Court had jurisdiction, some proof on the matter at issue should have been allowed by the Lord Ordinary. In any view, the terms of the interdict craved were too wide.

Authorities — Building Societies Act 1874; *Davie and Others* v. *Colinton Friendly Society*, November 10, 1870, 9 Macph. 96; *Leitch* v. *Scottish Legal Burial Society*, October 21, 1870, 9 Macph. 40; *Johnston*, 24 D. 973; *M'Kernan* v. *Greenock Masons Association*, March 19, 1873, 11 Macph. 548.

Counsel for the suspenders were not called upon.

At advising—

Lord President—I think that the view which the Lord Ordinary has taken of this case is the right one, and I am for adhering to the interlocutor reclaimed against. There are two facts in this case which are, I think, beyond dispute; the first of these is, that Munro was *de facto* dismissed by the Society in virtue of the resolution passed at the meeting of 27th April 1883; and the second fact is, that in spite of this dismissal he continued to act as secretary of the Society in the way of receiving contributions from the various members. Now, taking these two facts together, I do not see how we can refuse to give this Society the remedy of the interdict which it here seeks. Munro, no doubt alleges that he was dismissed illegally, and he further adds that by the laws of the Society this Court has no jurisdiction to decide any dispute arising between him and the Society. I assume that this Court has not jurisdiction to decide whether or not Munro was regularly dismissed, and that as alleged by Munro the arbitrators nominated and appointed by the laws of the Society are the only parties entitled to decide this question. Had the matter been decided by the arbitrators, and after their decision was obtained had the dispute then been brought here, a question of jurisdiction might have arisen. But Munro has been a party to the proceedings in this Court, and he has not established any irregularity in the proceedings attending his dismissal. The only facts therefore before us are his dismissal, and his continuing to act as secretary by receiving contributions from the members. In these circumstances I am not disposed to refuse to this Society the remedy of interdict which it seeks.

Lord Deas—I am of the same opinion, and in arriving at this conclusion I have proceeded upon the same assumptions as your Lordship. That will not, however, entitle us to refuse to this Society its remedy, but in granting this interdict craved, I am for reserving to the respondent in the fullest way all questions which may arise relating to claims of damages and arrears of salary against the Society.

Lord Shand—I agree in the opinion expressed by your Lordships. As Munro has been dismissed by the Society, it is clear that he cannot be permitted to retain his office as secretary to the effect of interfering with the work of the Society.

An employer of labour is entitled to dismiss his servant if he is so disposed, while the servant on his part has a money claim for wages, and for damages if he can make out a case of wrongous dismissal, but he cannot claim to remain in the office from which he has been dismissed, or to continue to do the work of that office. Upon that ground alone I am for adhering to the Lord Ordinary's interlocutor, all the more as I think it unnecessary in the present case to consider the question of jurisdiction.

Lord Mure was absent on Circuit.

The Court adhered.

Counsel for Complainer — Lord Adv. Balfour, Q.C.—Brand. Agent—R. Ainslie Brown, S.S.C.

Counsel for Respondent — Campbell Smith. Agent—Donald Macpherson, L.A.

Tuesday, January 15.

FIRST DIVISION.

MOLLESON (LIQUIDATOR OF THE EDINBURGH AND GLASGOW HERITABLE COMPANY, LIMITED) *v.* LECK AND OTHERS.

Public Company—Voluntary Liquidation—Payment of Dividend — Secured and Unsecured Creditors—Principles of Ranking—Companies Act 1862—*Supreme Court of Jurisdiction Act* 1875 (38 *and* 39 *Vict. cap.* 76).

Held that in the winding-up of a public company under the Companies Acts, the creditors fell to be ranked according to the rules of the common law, and not the rules of the Bankruptcy Acts, and therefore that secured credi-

tors were entitled to rank *pari passu* with those unsecured without being obliged to value and deduct their securities.

Section 138 of the Companies Act 1862 provides —"Where a company is being wound up voluntarily, the liquidators or any contributory of the company may apply to the Court in England, Ireland, or Scotland, or to the Lord Ordinary on the Bills in Scotland in time of vacation, to determine any question arising in the matter of such winding-up, or to exercise as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court, and the Court or Lord Ordinary, in the case aforesaid, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order, interlocutor, or decree, on such application, as the Court thinks just."

The Edinburgh and Glasgow Heritable Company (Limited) was formed under memorandum and articles of association, dated 2d November 1874, and was incorporated under the Companies Acts of 1862 and 1867. The objects of the company were, *inter alia*, to purchase or acquire heritable subjects within the United Kingdom, and manage and dispose of the same, and do all incidental thereto, including borrowing money on security of the Company's property, on debenture or otherwise.

The capital of the company was £250,000, divided into 50,000 shares of £5 each. 10,000 shares were taken up, of which £3 a share was called up in various instalments by the directors. The company having become financially embarrassed, an extraordinary general meeting of the shareholders was held in Edinburgh upon 3d May 1880, at which it was resolved that the company should be wound up voluntarily, and that James Alexander Molleson, chartered accountant, Edinburgh, should be appointed liquidator, with all the powers conferred by the Companies Act of 1862, and Acts amending and extending the same.

On 21st July 1880 the liquidator made a call of £2 per share upon the contributories, and from this and other sources funds to the extent of £13,220 were realised, available for division among the creditors of the company.

The debts of the company as estimated by the liquidators amounted to £135,195, 3s. 7d., of which £84,100, 1s. were secured heritably. The liquidator was in the course of distributing the sum in his hands *pari passu* among the creditors of the company, secured and unsecured, in respect of their debts as at the commencement of the liquidation, without deducting the value of the respective securities of the heritable creditors. This course was objected to by the unsecured creditors, some of whom also maintained that the period for making payment of a dividend did not arise until the secured creditors had realised their securities, and they objected to the liquidator dividing the funds in hands on the principles which he proposed. A question also arose regarding the position of Henry Leck, one of the heritable creditors, who held a postponed bond for £45,750 over St Mary's Buildings, Glasgow, a property which had belonged to the company. The total debt secured on this property was £77,750, and the property was sold by the prior bondholder after the commencement of the liquidation for £70,000, thus causing a loss to Leck of £7750. He claimed to be ranked and draw a dividend for the full sum in his bond, £45,750, while, on the other hand, it was maintained that he was only entitled to be ranked for the deficiency of £7750.

In these circumstances the liquidator presented this petition to the First Division of the Court under sec. 138 of the Companies Act of 1862 (quoted *supra*), praying the Court to determine the questions just stated.

Answers were lodged for Leck, in which he averred, in addition to what has been stated above, that at the date when the company agreed to wind up voluntarily he was their creditor in a sum (1) of £17,000 contained in and due by bond and disposition in security over certain heritable subjects at Merryflats, Glasgow; (2) the £45,750 already referred to. A claim for the two debts amounting to £62,750 had been intimated to the liquidator in December 1880. The heritable subjects at Merryflats had not been realised, and as regarded the subjects called St Mary's Buildings, and which were sold by the prior bondholder on 26th October 1881, he had been prevented by the company in 1879 from then proceeding to sell and realise his security.

The respondent further claimed to be ranked on the funds in the hands of the liquidator for both his debts, amounting to £62,750, but to the effect of his not drawing more than full payment of his debts. He moved the Court also that a division of the funds should at once be made.

Argued for petitioner—Under sec. 138 of the Companies Act 1867 an application such as this might competently be made in a voluntary liquidation—*Monkland Iron Co.* v. *Henderson*, January 25, 1883, 10 R. 494. The heritable creditors here were not bound to value and deduct their securities before claiming, as would be done in the case of a bankruptcy — see sec. 133 of the Act of 1862, sub-sec. 1, also 2 Bell's Com., 5th edition, 526, where the common law principles of division were laid down, and *Kirkcaldy* v. *Middleton*, December 8, 1841, 4 D. 202, and *Melrose* v. *Black*, February 29, 1840, 2 D. 706.

Two of the unsecured creditors compeared by minute.

Argued for them—The proper principle to apply to a case such as this was to value and deduct any security held by the creditor, and admit him to a dividend on the balance. As the Companies Acts applied to England and Scotland alike, the English Judicature Act 1875 (38 and 39 Vict. c. 77), sec. 10, by the generality of the language used in it, might also be made applicable to Scotland, as it was desirable to have uniformity of decisions in both countries on these Acts. The result of doing so would be that the creditors would be bound to value and deduct their securities, which was the English rule in liquidations like the present.

Argued for Leck—Payment of any sum of money after sequestration could not affect the question of the amount due as at the date of the sequestration—2 Bell's Com. 531. Here there was no

sequestration, only insolvency and a claim, and therefore there could be no transference of any portion of the debt to each creditor.

At advising—

LORD PRESIDENT—This is a question which it may be right to bring under the notice of the Court as not yet decided in a case where under a voluntary liquidation creditors seek to rank upon the bankrupt estate. The question is not a difficult one. It must be decided upon the common law, without having regard to the rules of the sequestration statutes. All the creditors, secured and unsecured, are entitled to rank upon the insolvent estate for their debts as they stand at the time when the competition arises. A payment to account prior to that date will go to diminish the amount of the debt, and the creditor will only rank for the amount remaining after such deduction. Payments after that date stand in a different position. These payments may be recovered to the fullest extent which the creditor can contrive to obtain from his debtor, or payment may be made by a co-obligant of the debtor, but it will not go to diminish the amount owed to him at the time when the claim arose.

If we apply that rule to the present case, it decides the only question which arises, unless there is any force in the argument founded upon the construction of the English Judicature Act of 1875. It is unnecessary to enter into detail in regard to that argument, because nothing can be clearer than that that Act and the preceding one of 1873 are entirely confined to the administration of justice in the High Court of Justice as defined by the earlier statute, the Act of 1873.

LORD DEAS—Upon the general law I have never had any doubt since the decision in the case of *Melrose*. I have just as little doubt that the general law is applicable to the case of a liquidation under the Companies Acts.

LORD SHAND—It may be very desirable that the equalising rules of the bankruptcy law as enacted in England should apply also to cases of judicial and voluntary liquidation. But this can only be done by rules such as those which are applicable in England. The rule of the common law must obtain in Scotland, and there is no doubt as to what it is on both the points which have been argued.

LORD MURE was absent on Circuit.

The Court pronounced the following interlocutor:—

"Find (First) that the petitioner is bound to rank *pari passu* on the assets of the company the creditors secured and unsecured in respect of their debts, with interest thereon as at the commencement of the liquidation; (Second) that the creditors holding securities over the company's estate are not bound in the said ranking to deduct the value of such securities held by them respectively, and that in particular the said Henry Leck is not bound in the ranking to deduct the value of the security held by him for the sum of £17,000 contained in the bond over the subjects at Merryflats, referred to in the petition; (Third) that the said Henry Leck is entitled to be ranked for the sum of £45,750 contained in the bond referred to in the petition, with interest thereon as aforesaid, without deducting the proceeds recovered by him on the sale of the security subjects; and (Fourth) that the petitioner is bound now to proceed to divide the funds in his hands in accordance with the principles above set forth, reserving to the petitioners right to call the creditors holding securities to account if it should appear that such creditors or any of them, from the dividends in the ranking, and from the proceeds of the securities, draw more than full payment of their debt: Find the whole parties entitled to expenses out of the funds in the hands of the liquidator, and decern," &c.

Counsel for Petitioner—Lorimer. Agents—Morton, Neilson, & Smart, W.S.

Counsel for Leck—R. V. Campbell. Agents—Murray, Beith, & Murray, W.S.

Counsel for Unsecured Creditors—Murray. Agents—Davidson & Syme, W.S.

Wednesday, January 16.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

WALKER *v.* MAGISTRATES AND COUNCIL OF THE CITY AND ROYAL BURGH OF GLASGOW.

Burgh—Police—Glasgow Police Act 1866 (29 *and* 30 *Vict. c.* 273), *sec.* 166—*Expense of Extinguishing Fire.*

The 166th section of the Glasgow Police Act provides that "the proprietor and occupier of every land or heritage within the city, in which a fire breaks out, shall be jointly and severally liable to pay to the treasurer as a contribution toward" the expenses of the fire brigade in extinguishing the fire "the sum of £15 sterling, or whatever less sum is equal to one-half of the said expenses." *Held* that on a sound construction of this section a proprietor within the city who had paid a sum of £15 for the services of the fire brigade in extinguishing a fire which broke out in his premises, was further liable to pay a sum equal to one-half of the expenses of extinguishing the fire in a neighbouring house which belonged to him, and to which it had spread.

On the 21st February 1881 a fire broke out in a biscuit factory situated in Cleveland Street and Dorset Street, Glasgow, belonging to John Walker. It extended to a neighbouring tenement which also belonged to him, and which fronted Cleveland Street, and which was separated from the biscuit factory by a court 30 feet in breadth. The Glasgow Fire Brigade was summoned, and assisted to extinguish the fire. Thereafter the Magistrates and Council of the city of Glasgow, acting under the General Police and Improvement (Scotland) Act 1862, Order Confirmation (Glasgow) Act 1877, in execution of the powers and duties of the Glasgow Police Acts 1866, 1872, 1873, 1875, and 1877, rendered Walker an account for the services of the fire brigade, and claimed from