

Thursday, July 3.

FIRST DIVISION.

NOTE FOR WILLIAM BLAIR (LIQUIDATOR
OF THE GREENOCK PROPERTY INVEST-
MENT SOCIETY).

Friendly Society—6 and 7 Will. IV. cap. 32
(Act for the Regulation of Benefit Building
Societies)—Winding-up by Court—Powers of
Liquidator.

An unregistered building society carrying on business in conformity with the Act for the Regulation of Benefit Building Societies (6 and 7 Will. IV. cap. 32) was ordered to be wound up by the Court, and a liquidator appointed. Thereafter a note was presented by the liquidator to have a list of contributories settled, and for the powers necessary to carry out the winding-up order, which the Court granted.

The Greenock Property Investment Society carried on business in conformity with the Act for the Regulation of Benefit Building Societies (6 and 7 Will. IV. cap. 32).

The objects of the society, as described in the rules, were to raise a fund by fixed periodical contributions from the members, out of which fund advances to the amount of their shares should be made to members applying for the same, for the purpose of building or purchasing dwelling-houses, lands, or other heritable subjects (excluding public works), to be secured to the society till repayment of the advances.

Each share of the society was of the nominal or subscribed value of £25. The shares were to be paid up by the members by monthly instalments, generally of 2s. per share. These monthly instalments, together with the proportion of profit credited to each share on the paid-up amount thereof as at the close of each financial year, on 30th November annually, constituted the contributions of each member towards the nominal or subscribed value of his share. No profits were allocated to members as for the year ending 31st December 1883.

While these were the general regulations as to all shares in the society, the members were divided into two classes, according as they did or did not obtain advances from the society. Any member who had at his credit not less than three months' instalments paid upon his shares could obtain an advance equal to the whole nominal value of his shares. For such advances the borrowing member granted bond and disposition in security over his heritable subjects in common form in favour of trustees for behoof of the society, and the said bond contained also an assignation in security to his shares, and an obligation for the punctual payment of the monthly instalments or contributions on his shares payable in terms of the rules of the society. Members who did not take advances from the society, generally known as investing members, were entitled to receive payment of their shares out of the funds of the society when their shares had come to maturity—that is to say, when their monthly payments, with the accumulated profits, amounted to £25 per share. Such members had

also a certain power of withdrawal at the end of twelve months from the date of their entry to the society, or at any time thereafter, on giving one month's previous notice, when the instalments paid by them to account of their shares fell to be repaid. Members who took advances to the amount of their shares (known as borrowing members), could repay their advances in ordinary course by the monthly instalments payable on their shares. They had also a certain power of redemption on giving one month's notice. Further, the directors of the society had power to enter into possession or to exercise the full rights and powers of heritable creditors, by enforcing the personal obligations contained in the bonds granted to the society, and selling the subjects.

The directors of the society had power to receive sums of money on loan or deposit, as also to borrow from bankers such sum or sums as might be necessary to carry on the society's business, it being thereby provided that the total amount to be borrowed should not at any time exceed the sum of one-fourth of the subscribed capital of the society for the time being.

On 6th February 1884 the First Division pronounced an interlocutor ordering the society to be wound up by the Court under the Companies Acts 1862 to 1883, and appointed Mr William Blair, accountant in Greenock, to be the official liquidator. At the date of the liquidation there were 453 non-borrowing or investing members, who had paid to the credit of their shares, including profits to 30th November 1882, £52,578, and 158 borrowing members, who had paid to the credit of their shares, including profits to 30th November 1882, £35,931. There was an estimated deficiency of assets to the amount of £23,576.

The liquidator then presented this note to the Court, the prayer of which was—(1) To settle a list of contributories, in conformity with the list appended to the note [with regard to which list the liquidator stated that his view was that whatever might be the rights and interests of the borrowing members, and investing members, and other classes of members respectively, *inter se*, they must all alike be placed on the list of contributories]; (2) To fix a day for creditors of the society to lodge their claims and vouchers, and, on all the creditors being ascertained, and on funds and assets sufficient for their payment being realised, to authorise the liquidator to make payment; and meantime to authorise him to pay to the depositors the interest due and to become due on their deposits; (3) To authorise the liquidator to make a call; (4) To pronounce an order vesting the whole estates of the society in the liquidator in terms of the Companies Act 1862, sec. 203; (5) To authorise the liquidator to exercise the powers of the 95th section of the Companies Act 1862; “(6) [as amended at the bar] To authorise the official liquidator to call up the bonds and dispositions in security forming part of the estate of the said society, and failing payment, to exercise all the powers of sale competent to heritable creditors;” (7) To authorise the liquidator to purchase heritable rights affecting properties held by the society in security for advances, where such rights were preferable to those of the society; “(8) [as amended at the bar] To authorise the official liquidator to accept repayment of advances made to borrowing members,

at such time or times and in such manner as he may deem most expedient in the interests of the society, and for the speedy liquidation of its affairs, and, under reservation of all questions as to the liability of borrowing members in their capacity as members or contributories, to discharge the bonds and dispositions in security of borrowing members on receiving payment of the respective advances, less the contributions (including profits) standing at the credit of the shares assigned in the bonds, interest at the rate of five pounds per cent. per annum to be charged and allowed as follows—viz., To be charged on the full amount of each advance until 14th January 1884, and on the other side interest to be allowed on the sums at the credit of the shares assigned in the bonds at and from time to time since 30th November 1882 until said 14th January 1884, and from and after the last mentioned date interest to be charged on the balances due by the said borrowing members arising after deducting the sums at the credit of the shares assigned in the bonds from the amount of the said advances until payment;" (9) and (10) To authorise the liquidator to appoint a law-agent, and to pay out of the funds of the society the cost of his appointment and of the winding-up of the society.

Answers were lodged for several members of the society, but it is only material to notice those lodged for David Agnew and others, and for James Glen.

Agnew represented the class of borrowing members of the society, who maintained that they could only be placed on the list of contributories for payment of the balance of the advances made to them by the society. They stated their belief that a call would be unnecessary, and that in any event there was no information before the Court to warrant the liquidator in asking the powers craved under the third head of the prayer. As regarded the eighth head, these respondents contended that the borrowers could not be compelled to pay their loans otherwise than by monthly instalments or subscriptions, as provided in the rules and the bonds and dispositions in security, unless their contributions fell into arrear; that they were not in arrear, and therefore submitted that they could not be called on to pay their advances otherwise or sooner than contracted for. Further, these respondents concurred with the liquidator that in the event of its being necessary for them to make payment of their balances, power should be given to him to accept payment at such times and in such manner as they might mutually arrange.

James Glen was entered on the list as an investing shareholder in respect of seven shares, and a borrowing shareholder in respect of eight shares, which were assigned to the society in respect of a loan for £200.

The respondent stated that he had offered to pay the sum due under the bond, under deduction of the instalments on all the fifteen shares already paid by him, with interest, and submitted that the liquidator was therefore not entitled to enter him in the list of contributories, or to make any call upon him; or otherwise, that his name should be taken out of the list of investing members and inserted in the list of borrowing members in respect of his whole fifteen shares.

The Court on 24th June fixed the 4th of July

as the date by which the creditors must prove their debts or claims, and granted the prayer of the note *quoad* the fourth, fifth, and ninth branches thereof, and thereafter on 25th June, after hearing counsel, pronounced this interlocutor, which was signed on 3d July:—

"The Lords having heard counsel for the official liquidator and the respondents Agnew and others and Glen, allow the official liquidator to amend the 6th and 8th heads of the prayer of his note as proposed at the bar, and grant the prayer of said note in terms of said two heads as amended: *Quoad ultra* settle the list of contributories of the Greenock Property Investment Society *quoad* the respondents named and designed in the answers Nos. 35 and 36 of process, and that in the manner specified in the list appended to the said note, and find no expenses due to or by either party, and decern."

Counsel for Liquidator—R. V. Campbell.
Agent—W. B. Glen, S.S.C.

Counsel for Agnew and Others—Strachan.
Agents—Miller & Murray, S.S.C.

Counsel for Glen—Dickson. Agents—Duncan & Black, W.S.

Thursday, July 3.

SECOND DIVISION.

[Sheriff of Stirling, Dumbarton,
and Clackmannan.

MUIRHEADS *v.* NORTH BRITISH RAILWAY
COMPANY.

Reparation—Railway—Train Overshooting Platform—Contributory Negligence.

A passenger train in drawing up at a station where it was necessary to change carriages for a branch line, slightly overshoot the platform. It was the rule of the company that in such a case the train should be put back, but some of the passengers having begun to descend, this was not done. A passenger for the branch line, in the part of the train which overshoot the platform, after waiting to see if the train was to be put back, but without asking that that should be done, descended from the train, but in doing so miscalculated the distance and severely sprained her ankle. The place at which her carriage had stopped was a level-crossing over a road which was hard and level and flush with the rails. In an action by her for reparation for the injury—*held* that the injuries resulted from pure accident, and were not due to the fault of the defenders.

Mrs Jane Muirhead and her husband raised this action in the Sheriff Court of Clackmannanshire against the North British Railway Company for compensation for injury sustained by her from an accident on their line at Cambus Station, which she alleged to have occurred by their fault or negligence. The company denied fault, and maintained that assuming fault on their part there was contributory negligence on the part of the female pursuer.

The facts of the case as admitted or proved were as follows:—The pursuers were third-