

Counsel for the Complainers—Grainger Stewart. Agents—Millar, Robson, & McLean, W.S.

Counsel for the Respondent—Chree. Agents—J. K. & W. P. Lindsay, W.S.

Friday, December 15.

OUTER HOUSE.

[Lord Stormonth Darling.

BREWIS (LIQUIDATOR OF THE SCOTTISH HERITAGES COMPANY, LIMITED), PETITIONER.

Company—Winding-up under Supervision of the Court—Committee of Advice—Remuneration.

In the liquidation of a company under supervision of the Court certain shareholders and creditors were appointed a committee of advice to act with the liquidator. *Held* that they were not entitled to remuneration for their services out of the assets of the liquidation.

At an extraordinary general meeting of the Scottish Heritages Company, Limited, held on 14th May 1891, it was resolved that the company should be wound up voluntarily. Mr John Brewis, C.A., was appointed liquidator, and three shareholders were nominated as a committee to advise with him. A supervision order was subsequently pronounced by the Court, in which the nomination of the committee was confirmed, with the addition of two creditors to their number. The proceedings in the liquidation lasted for several years, and the committee advised with the liquidator with reference to the various questions that arose for determination.

On 27th April 1899 the liquidator presented a note to the Court craving, *inter alia*, that his accounts should be remitted for audit to an accountant; and he further submitted that the question whether any and what sum should be paid to the members of the advising committee for their services should be included in the remit. He stated that the creditors of the company had received payment of their debts in full, and that there was in his hands a surplus sufficient to pay the interest due thereon.

The petitioner moved the Lord Ordinary to include the question of the committee's remuneration in the remit to an accountant, and argued—Such remuneration was frequently paid in practice, and allowed for in the Accountant's reports, which were approved by the Court. In particular, the Court had expressly sanctioned the payment of fees in the liquidation of *The City of Glasgow Bank* (1883) and *The California Red Wood Company* (1887) (unreported).

The Lord Ordinary (STORMONTH DARLING) refused the motion.

Opinion.—"In my judicial experience of liquidations, now extending over nine years, this is the first time I have had to

consider the question of remunerating a committee of advice out of the funds of the liquidation. If such a payment were ever to be made, this would not be an unfavourable case for making it, because the liquidation has lasted since 1891, and has resulted in the creditors receiving full payment of the principal amount of their claims, in addition to which they may possibly receive the whole or some part of the interest accruing thereon since the date of liquidation. Moreover, there have been questions of difficulty arising in the course of the liquidation which, I have no doubt, have engaged the attention of the committee of advice.

"In the company statutes applicable to Scotland there is no express reference to a committee of advice, and consequently nothing to suggest that remuneration to them should form part of the costs of liquidation. On principle I regard such remuneration as open to serious objection. Whether drawn from the class of creditors or contributories the members of a committee of advice are appointed by their fellow-sufferers to superintend and advise the liquidator, but they are selected rather for their general business capacity and standing, and for their direct personal interest in the winding-up, than for any special qualification as experts. The office which they hold is analogous to the purely gratuitous office of commissioner on a bankrupt estate, and is substantially that of a trustee who is or may be also a beneficiary. That such an office should carry remuneration, with all the consequences which that entails, seems to me not only inconsistent with its essential character, but inexpedient in the interests of those who suffer by unsuccessful joint-stock trading.

"If remuneration were to be sanctioned in one case, there is no reason why it should not be demanded in every other, for it could only be sanctioned as part of the costs of liquidation, and these are of course preferential payments. I do not believe that there has ever been the least difficulty in inducing men of position to act on such committees without remuneration. I speak of the services of the committee as such, because I do not doubt that if it were found advisable to appoint some individual member of the committee possessing special knowledge or skill to perform some special duty, it might be competent to recompense him for his services. That is provided for in England by the 160th of the general rules framed by the Lord Chancellor and the President of the Board of Trade under the Winding-up Act of 1890. But the rule is precise in requiring this to be allowed only by an order of the Court, which shall specify the nature of the special service, and in forbidding any payment out of the assets of the liquidation to members of a committee of inspection for discharging their duties as such. This is all the more significant, because a committee of inspection under the Act of 1890 has regular meetings and prescribed duties, and absence from a certain number of meetings without leave is visited by loss of office. It is most

desirable that the practice in Scottish liquidations should be assimilated to the practice in England so far as that can be done consistently with our less official system, and in this particular I regard the English rule as resting on plain considerations of principle and expediency.

“Mr Lorimer furnished me with a few cases during the last fifteen years in which remuneration to committees had been passed by the Court. I attach no importance to those in which the payment was passed as an item in the liquidation accounts without being specially brought under the notice of the Court. That observation applies to nearly all the cases. Certainly

there is no case since 1890 in which the point has been judicially considered.

“As practice in this matter ought to be uniform, I thought it well not to act on my own opinion merely, and accordingly I consulted the Lord President. I have his Lordship's permission to say that he concurs in the view that remuneration ought not to be allowed to a committee of creditors or contributories out of the assets of the liquidation for discharging their duties as such.”

Counsel for the Petitioner—Lorimer.
Agents—Pearson, Robertson, & Finlay,
W.S.