I am accordingly of opinion that the first question in the case should be answered in the negative, and the second in the affirmative. On that footing it will be unnecessary to answer the third question.

LORD PRESIDENT (CLYDE)—I concur in the opinion which Lord Cullen has delivered and I have nothing to add.

LORD SKERRINGTON—I concur.

LORD SANDS—Where a share of residue lapses, the lapsed share does not in general accrue to the other legatees of residue. If the testator in the present case had left one share of the residue to his niece and the other share to his brother, on failure of the niece her share would not have accrued to the brother. Now there seems to me to be some force in the contention that this is what the testator has done, subject to this observation, that seeing that he wished his niece to get a definite sum, instead of calling her portion a share he specifies a round sum of money. But we must have regard to the exact words of the settlement. I confess that I have a certain impression that what was in the testator's mind when he used the word "net" residue was the residue under deduction of the £10,000 which he had already disposed of. That impression, however, is not a confident one, and it is insufficient to overcome the voracious appetite which the law attributes to the word "residue." I accordingly concur in the opinion of Lord Cullen.

The Court answered the first question of law in the negative, the second in the affirmative, and found it unnecessary to answer the third question.

Counsel for the First Parties—Carmont. Agents—J. & J. Ross, W.S.

Counsel for the Second, Third, Fourth, Fifth, and Seventh Parties—J. M. Hunter. Agents—J. & J. Ross, W.S.

Counsel for the Sixth Party—J. M. Hunter. Agents—T. & W. A. M'Laren, S.S.C.

Counsel for the Eighth Parties—Moncrieff, K.C.—Cooper. Agents—Macpherson & Mackay, W.S.

Saturday, July 12.

FIRST DIVISION.

LAIRD LINE, LIMITED (OWNERS OF S.S. "ROWAN") v. UNITED STATES SHIPPING BOARD (OWNERS OF S.S. "WEST CAMAK").

(Reported *ante*, 1924 S.C. (H.L.) 37, 61 S.L.R. 55.)

Expenses — Taxation — Witnesses — Allowances for Witnesses Brought from Abroad —Standard of Liability.

In an action arising out of a collision between two ships, the Auditor, in taxing the account of expenses of the defenders who had been successful, granted allowances in respect of the expenditure incurred in bringing six members of the crew of one of the ships from San Francisco to give evidence at the trial. *Held*, in respect that the defenders were only entitled to the expenditure which was reasonably necessary for the conduct of the defence, that the expense of bringing two of the witnesses only fell to be allowed, and case remitted back to the Auditor to consider a reasonable allowance for the other witnesses on the basis that they had been examined on commission.

The Laird Line, Limited, owners of the steamship "Rowan," *pursuers*, brought an action against the United States Shipping Board, owners of the steamship "West Camak," *defenders*, for £100,000, restricted in the course of the proceedings to £11,000, as damages sustained by the "Rowan" in collision with the "West Camak." The defenders also brought a counter-action against the pursuers.

After a proof the Lord Ordinary (ANDERSON) assoilzied the defenders and found the defenders entitled to expenses. The pursuers reclaimed, and on 13th January 1923 the First Division recalled the Lord Ordinary's interlocutor finding that the collision was due to the joint fault of those in charge of the vessels, and found no expenses due to or by either party.

The defenders appealed to the House of Lords, who on 18th December 1923 ordered the interlocutor of the Lord Ordinary to be restored and the pursuers to pay to the defenders their costs in the House of Lords and in the Inner House of the Court of Session.

The defenders' account of expenses included allowances in respect of six witnesses who had been brought from San Francisco to this country to attend the proof and had been sent back. The Auditor taxed these allowances as follows:—

Schedule of Witnesses' Fees.

Name and Address.	In Account.	Taxed off.	Allowed by Auditor.
Clifton Curtis, master of the "West Camak" -	£538 17 2	£340 17 2	£198 0 0
C. J. Jones, 2nd engineer, do. - - - -	434 2 3	236 2 3	198 0 0
Charles Kuhn, 3rd do. do.	420 4 5	269 4 5	151 0 0
L. J. Perry, 2nd officer do.	380 6 8	229 6 8	151 0 0
V. J. Brennen, A.B., do.	321 9 11	170 9 11	151 0 0
John Roonlak, A.B., do.	298 1 3	147 1 3	151 0 0
	£2393 1 8	£1393 1 8	£1090 0 0

And in a note to the account stated—"The only question of difficulty arising on the taxation of this account is whether it was necessary in the proper conduct of the case to bring the captain and crew of the American vessel 'West Camak' from San Francisco to this country in order to give evidence at the proof instead of taking what certainly would have been the less expensive course of having these witnesses examined on commission. It is clear that exceptional reasons are required to justify charging the unsuccessful party with such expense. After carefully considering the issues involved, the evidence given, and the opinion of the Lord Ordinary in deciding the case, the Auditor has come to the conclusion that it was essential that these witnesses should be produced at the proof and

give their evidence in presence of the Lord Ordinary and his nautical assessor. The Auditor does not favour the further contention that the evidence of at least certain members of the crew should have been taken on commission. Distinctions between the relative importance of the evidence given by the witnesses can be drawn more easily after the event than before, and if the Auditor is right in principle he does not think it reasonable to make the defenders differentiate between the witnesses in advance.

"As to the expenses to be allowed to the witnesses for attending the proof, these in the Auditor's view fall to be regulated by the allowance and travelling expenses provided under the judicial table of fees. The agents have been good enough (without prejudice) to ascertain the travelling expenses by railway and steamer to and from San Francisco and Edinburgh. There is a slight difference (easily explained, no doubt) between the amounts given to him, and the Auditor has, after consideration, adopted the figures obtained by the defenders' agents. These include, he understands, subsistence on the steamer and sleeping accommodation on the train in the United States. The charge in the witnesses' accounts for subsistence on board the steamer therefore disappears. The charge for wages is also one which falls to be disallowed in a question with the unsuccessful party. There remains the allowance to be given for subsistence while travelling by railway between San Francisco and New York and while on shore in Britain attending the proof. The defenders claim an allowance for a period of seventy days. In the Auditor's view the unsuccesful party is liable only for the time which would be reasonably occupied by these witnesses in travelling to this country, attending the proof, and returning. The defenders had ample notice of the date of the proof, if indeed the date was not fixed to suit them. After allowing for all reasonable contingencies and detentions in the United States and in Great Britain the Auditor considers that an allowance of twenty-eight days is liberal. He has accordingly given the maintenance allowance appropriate to the different classes of witnesses for that period."

The pursuers lodged objections to the Auditor's report, maintaining that the six witnesses brought from San Francisco should have been examined on commission there instead of being brought to this country, in respect that it was not essential that they should be produced at the proof; or, alternatively, that the witnesses Jones, Kuhn, Perry, and Roonlak should have been examined on commission, no reference having been made to them by the Lord Ordinary in his opinion. And they contended that the sum of £1018, 18s., which the Auditor had allowed for witnesses (including one not referred to above), should therefore be reduced to £250, representing the expense of obtaining and executing a commission to examine the six witnesses in San Francisco, or, alternatively, by the difference (£451) between the sum (£651) which the Auditor had allowed as the cost of bringing the witnesses, other than Captain Curtis and Brennen, from San Francisco, and the expenses (which should not have exceeded £200) of obtaining and executing a commission in San Francisco *quoad* them.

The defenders also lodged objections to the Auditor's report in respect of the disallowance of the full expenses of the witnesses.

Counsel were heard in the Single Bills on 12th July 1924.

LORD PRESIDENT (CLYDE) — The most important question raised upon these notes of objections relates to a charge of £2400 odds for the expenses of six witnesses who were brought from America to attend the trial and give evidence here. The charge is a very large one. There are many expenses which it may be prudent for a party to incur in maintaining or defending his rights in a litigation, which may nevertheless exceed the measure of what he is entitled to throw upon his opponent. I think it might be generally stated that the standard of liability to which a party is entitled to subject an opponent who is found liable to him in expenses is to be found, not in the prudent character of the expenditure from the point of view of the party who incurred it, but in its necessary character from the point of view of the case itself. These two standards may differ widely. I am not concerned to inquire whether it really was prudent for Mr Carmont's clients to bring the whole of these six witnesses to this country at a cost of no less than £400 a piece, instead of having some or all of them examined on commission by interrogatories, which would have cost a mere fraction of the expense said to have been incurred. I will assume it was prudent. But the question I have to determine is whether I think the whole of this expenditure can be brought under the head of expenditure reasonably necessary for the conduct of the defence—and I am quite clear that it cannot. I think we should take an indulgent view of the rights of Mr Carmont's clients if we allow them the expense of bringing two of these witnesses to this country, namely, the captain and Brennen. With regard to the others, the case must go back to the Auditor in order that he may consider what would be a reasonable allowance to make in respect of them, on the basis that the alternative course had been taken of examining them on commission. It is better that the Auditor should make up his mind what the standard of that expenditure should be rather than that we should say anything about it on an *ex parte* statement.

[*His Lordship then dealt with other objections with which the present report is not concerned.*]

LORD SKERRINGTON, LORD CULLEN, and LORD SANDS concurred.

The Court approved of the allowances made by the Auditor to the witnesses

Captain Clifton Curtis and V. J. Brennen, and as regards the fees of the other four witnesses, remitted back to the Auditor to consider what would be a reasonable allowance to make in respect of them on the basis that the alternative had been taken of examining them on commission, and to report.

Counsel for the Pursuers — Normand. Agents—J. & J. Ross, W.S.

Counsel for the Defenders — Carmont. Agents—Beveridge, Sutherland, & Smith, W.S.

PRIVY COUNCIL.

Monday, June 2, 1924.

(Before Lord Shaw, Lord Phillimore, and Lord Carson.)

LOCH AND ANOTHER *v.* JOHN BLACKWOOD, LIMITED.

(On Appeal from the West Indian Court of Appeal, Colony of Barbados.)

Company—Winding-up—"Just and Equitable" Cause—Ejusdem generis Rule of Construction—Breach of Statutory Regulations—Irregularities—Companies Consolidation Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 129 (6)—*Companies Act* 1910 *of Barbados, sec.* 127 (6).

Section 127 of the Barbados Companies Act, which is in terms identical with section 129 of the Companies Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts—"A company may be wound up by the Court . . . (6) if the Court is of opinion that it is just and equitable that the company should be wound up."

A testator authorised his trustees to convert his business into a company of which the trustees were to be the directors, and one of whom, the testator's brother-in-law, was to be the managing director. The company, which though taking the form of a public company was practically a domestic and family concern, was duly registered in Barbados under the Companies (Barbados) Act 1910, the capital being so divided that the preponderance of voting power lay with the managing director. In a petition for a winding-up order at the instance of the other members of the company who were not directors it appeared that the statutory conditions as to general meetings had not been observed, that balance-sheets, profit and loss accounts, and reports had not been submitted in terms of the company's articles, that the statutory conditions as to audit had not been complied with, that owing to the preponderance of voting power above referred to it was impossible for the petitioners to obtain relief by calling a general meeting of the company, that, though the company had prospered, the petitioners had not received the dividends to which they were entitled, and that, without notice to the petitioners, the directors had voted to the managing director large sums of money in discharge of deferred salary, and generally so acted as to put an end to any confidence being placed in their management of the company. *Held* that the words "just and equitable" cause were not limited by the *ejusdem generis* rule of construction to the causes enumerated in the preceding sub-heads of section 127, and that in the circumstances it was just and equitable that the company should be wound up, and appeal *allowed.*

Authorities reviewed.

This was an appeal from the West Indian Court of Appeal (Colony of Barbados) reversing an order pronounced by the Chief-Justice of Barbados for the winding-up of the respondent company John Blackwood, Limited. The *facts* sufficiently appear from the opinion (*infra*) of Lord Shaw, who delivered the judgment of the Judicial Committee.

Lord Shaw—This is an appeal from an order dated the 15th March 1923 of the West Indian Court of Appeal presided over by Sir A. Lucie Smith, Chief-Justice of Trinidad, the other members of the Court being Sir Charles Major, Chief-Justice of British Guiana, and Mr W. P. Michelin, Acting Chief-Justice of the Leeward Islands. This Court reversed an order dated 30th October 1922 of His Honour Sir W. H. Greaves, Chief-Justice of Barbados, sitting in the Court of Common Pleas for Barbados, for the winding-up of the respondent company John Blackwood, Limited.

The appellants are petitioners for an order by the Court for the winding-up. The petition is presented under section 127 of the Barbados Companies Act 1910. That section is in terms identical with those of section 129 of the English Companies (Consolidation) Act 1908. The sub-section particularly founded upon is sub-section 6, which declares that a company may be wound up by the Court "if the Court is of opinion that it is just and equitable that the company should be wound up."

A good many years ago Mr John Blackwood established an engineering business in Barbados and carried it on until his death in January 1904. Under the provisions of his will his estate fell to be divided one-half to Mrs Rebecca Thomson M'Laren, the wife of Mr William M'Laren, and one-quarter each to his niece Mrs Loch and to his nephew (Mrs Loch's brother) James Blackwood Rodger, lately deceased, the shares to be paid to Mrs Loch and Mr Rodger when they reached the age of thirty.

Authority was given to his trustees to convert his business into a company, with powers to his trustees to act as directors, and to Mr M'Laren to have the supreme control and management of matters connected with the business. The trustees were James Murphy (who died in 1911 and