payment was proved by a cheque. It dealt with the question whether a person paying money by cheque is entitled to rear up an obligation of loan. But indeed it is rather against the pursuer here than for him, for from the opinion delivered by the Lord President, his Lordship's view appears to have been that a cheque is *prima facie* evidence of payment of an antecedent debt—Starkie on Evidence (3d. ed.) vol. 2, p. 79.

Now, is parole evidence admissible to prove the object for which this cheque was given. I think in point of law and equity that it is. I base my judgment without hesitation on this, that payment being proved *scripto*, parole is competent to prove why it was made. It seems to have been an afterthought given effect to by the Sheriff that it is incompetent to prove the object of payment by parole. It would be most unjust not to allow parole to that effect if the payment itself is proved *scripto*.

Lord Gifford—This is a very important case. Cheques are evidence of the passing of money. If I thought that in this judgment we were disturbing the judgment in the case of *Haldane* v. *Speirs* I would be for consulting the other Division of the Court, but in the view I take of that case we are not doing so at all. There an attempt was made to rear up a new contract—one of loan—by parole, and no doubt it was held that parole is not competent to prove a loan, but it was expressly said that the presumption raised by a cheque is payment of the debt—the Lord President observing that in ninety-nine cases out of one hundred a cheque is given as payment. I concur in that statement. It would be a very unjust result were we to hold anything else, and accordingly Starkie on Evidence (vol. 2, p. 79), sets forth that "a receipt of money by a defendant on a cheque drawn by the plaintiff on his banker *prima facie* imports a payment and not a loan." If a gentleman sends a cheque to his grocer, that is evidence that he means to pay him, and to refuse to allow parole proof in support of that, in case it is denied, would be very unjust. Here we have competent evidence that money passed from a creditor to a debtor, and that payment being proved *scripto* it may be proved by parole why it was made.

Lord Justice-Clerk—I wish to add that on this question of the admissibility of parole I take the same view as your Lordships, and though I did not rest my judgment on that ground, I do so now.

The Court pronounced the following interlocutor:—

"Recal the judgment appealed from: Find that the cheques in question were granted by William Reid and received by Alexander Reid in payment of the account libelled: Find that the endorsation of these cheques to Alexander Reid proves that he received the proceeds thereof; and that the presumption is, in the absence of any other cause of granting being alleged, that the said cheques were granted and received in payment of the admitted debt: Find, *separatim*, that it has been proved by the parole testimony that the said cheques were so granted and received: Therefore decern against the appellant (defender) for payment to the respondent (pursuer) of the sum of £24, 8s. 10d., being the balance of £66. 8s. 10d. sued for, after deduction of £42, being the amount of the said cheques, with interest on the said sum of £24, 8s. 10d. at 5 per cent. per annum from the date of citation until payment thereof, &c.

Counsel for Pursuer (Respondent)—M'Laren—J. A. Reid. Agents—Ronald & Ritchie, S.S.C.

Counsel for Defender (Appellant)—Balfour—Strachan. Agents—Macbean & Malloch, W.S.

Wednesday, November 27.

FIRST DIVISION.

* CITY OF GLASGOW BANK LIQUIDATION—BRIGHTWEN & CO. AND OTHERS, PETITIONERS, *v.* THE LIQUIDATORS.

Public Company — Voluntary Winding-up under Supervision of the Court—Appointment of Additional Liquidator—Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *secs.* 147, 149, *and* 150.

A company was in process of voluntary winding-up, and it had been agreed that an order should be pronounced making the winding-up subject to the supervision of the Court. Four liquidators had been appointed in the winding-up. The debts amounted in all to not less than twelve millions, ten and a-half millions of which were due in Scotland, the rest in England and elsewhere, but the assets were stated by the liquidators in open Court to be sufficient to pay all creditors. Creditors to the amount of £455,000 presented a petition to the Court praying, *inter alia*, under the 150th section of the Companies Act 1862, for the appointment of an additional liquidator or of a creditors' representative to attend specially to the interests of the creditors out of Scotland. This liquidator was to be appointed either to act with the existing liquidators or to come in the place of one or more of them. Looking to the circumstances of the case, the Court, in the exercise of its discretion, *refused* to grant the prayer of the petition.

Observed per Lord President (Inglis) that it would not in all cases be incompetent for the Court to appoint a person resident beyond the jurisdiction of the Court as liquidator of an incorporated company under the 150th section of the Companies Act 1862.

Observations upon the office and appointment of a "creditors' representative."

The City of Glasgow Bank suspended payment on 2d October 1878. On 22d October a special general meeting of the shareholders of the company was held in Glasgow, when it was resolved, *inter alia*—(1) That the bank be wound up voluntarily; (2) that liquidators should be appointed for the purpose of winding-up the affairs of the bank. Liquidators, four in number, were also nominated and appointed. On October 29th a petition was presented to the Court by Messrs Brightwen & Company, bill brokers, London, which prayed for a winding-up by the Court, or

* The City of Glasgow Bank liquidation cases, decided prior to the rising of the Court for the Christmas recess 1878-79, here follow, taking precedence of all others up to that date.

otherwise "to make all such orders as may be necessary in the winding-up of the said company, or otherwise to make an order for continuing the voluntary winding-up of the said bank subject to the supervision of the Court, and to appoint Mr John Young, of No. 16 Tokenhouse Yard, London, public accountant, to be a liquidator along with the liquidators appointed by the shareholders or in substitution for one or more of them."

To this petition the liquidators lodged answers opposing the prayer on all points.

On November 19th another petition was presented by Archibald Russell and others, contributories of the bank, praying for an order that the voluntary winding-up should be continued subject to the supervision of the Court. Subsequently all the parties to the proceedings agreed that the prayer of this latter petition should at least be granted, and that the craving for a winding-up by the Court be dropped.

Answers meanwhile had been lodged by certain creditors of the bank, viz., two French companies, the National Discount Company, the London & Westminster Bank, &c., to the petition of Brightwen & Company, adopting the prayer of that petition so far as not departed from, and some of them suggesting that as a part of the terms under which the voluntary winding-up should be continued a "creditors' representative" should be appointed to act along with the liquidators.

The total indebtedness of the bank amounted to not less than twelve millions. Of this sum the great bulk, amounting to about ten and a-half millions, was owed in Scotland. The petitioners Brightwen & Company and the other creditors of the bank who entered appearance in support of their petition represented debts due to them by the bank to the aggregate amount of £455,000.

The application of the petitioners for the appointment of an additional liquidator was based upon the following sections of the Companies Act 1862:—"Section 147—When a resolution has been passed by a company to wind up voluntarily the Court may make an order directing that the voluntary winding-up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just." "Section 149—The Court may, in determining whether a company is to be wound up altogether by the Court or subject to the supervision of the Court in the appointment of liquidator or liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court; in the case of creditors, regard shall be had to the value of the debts due to each creditor; and in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company." "Section 150—Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may in such order appoint any additional liquidator or liquidators; and any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company. The Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal or by death or resignation."

At advising—

LORD PRESIDENT—There are two petitions before us, one at the instance of Brightwen & Co., asking the Court to appoint a certain party named as liquidator along with the liquidators already appointed, or in substitution for one or more of them; and a second, praying for a winding-up under the supervision of the Court, the granting of the prayer in which is not now opposed. A further application has also to be considered, which is not dealt with in the prayer of either petition, but was suggested in the answers, viz., that the Court should appoint a "creditors' representative," failing their appointing an additional liquidator.

In regard to the appointment of an additional liquidator, there are various subjects which in the exercise of our discretion on this matter it is quite fair we should take into consideration. The matter is regulated by secs. 147, 149, and 150 of the Act of 1862—[*His Lordship then read the sections quoted above*]. It is obvious from the words of these sections that it is a matter of discretion to the Court entirely whether, in a case like the present, an additional liquidator or liquidators should be appointed, and in dealing with that question we are directed to have regard to the wishes of both creditors and contributories. In considering the weight to be attached to the views of particular classes of creditors and contributories, we are further to have regard to the value of the debts due to the creditors, and the amount of the interest held in the company by the contributories. Now, among the parties represented before us, I think I am right in supposing that the contributories are all of one way of thinking in this matter—that is to say, they are not only all in favour of the voluntary liquidation being continued subject to supervision, but also in favour of continuing the body of liquidators as they stand at present—that is, the liquidators who were appointed by the contributories themselves on the 22d October. As regards creditors, there is a certain number of creditors undoubtedly represented by the petitioners Messrs Brightwen & Co., and various others have entered appearances to support their petition. They represent debts to the aggregate amount of £455,000, a very considerable amount undoubtedly in ordinary circumstances; but of course the weight to be attached to this amount of debt must be judged relatively to the total indebtedness of the bank, and we have been informed on the authority of the liquidators—and the statement is not in any way questioned—that the indebtedness of the bank amounts to not less than twelve millions. We have been further informed that the debts of the creditors out of Scotland amount to about a million and a half, including those of Messrs Brightwen & Co. and the other creditors who appear here along with them. It is clear, there-

fore, that the great bulk of the creditors, as well as of the contributories, are in Scotland. If the figures are accurately stated, there must be ten and a half millions of debt in Scotland.

Now, if anything could be alleged against the suitableness or the ability of the gentlemen who were selected by the shareholders of this bank to be liquidators, we should be disposed, of course, to listen with great attention, and to give it all due weight, but everything of that kind has been disclaimed on the part of the petitioners. We have been told by their counsel that it is impossible to speak too highly either of the honour or professional weight of the gentlemen who have been so selected. But they say that although all this is true, they have an apprehension that the liquidators represent too much one interest, and may, unconsciously to themselves, act in a way prejudicial to other interests involved in this liquidation. That is a very vague allegation, and the only particular in which I think it is made at all more special is this, that it is said there is one class of creditors within Scotland—namely, the Scotch banks—who have an interest that may be not identical with, but perhaps antagonistic to, the interests of the general body of the creditors. It is said that there are a great many shareholders in the City of Glasgow Bank who also hold stock in the other Scotch banks, and that if these stocks are to be very suddenly realised the effect may be a reduction of the market price of the stocks of these Scotch banks, and that there will be probably, on the part of the banks and the contributories and the liquidators, a desire to prevent such a sudden depreciation. I can only say that I think that that is not an illegitimate interest. I think it is for the benefit of all concerned that property should not in a case of this kind be sacrificed and be forced to a hasty sale. It is in the interest of creditors as it is of contributories that the assets both of the bank itself and of the individual partners should be so judiciously realised as to sacrifice as little as possible of their real value; and no one needs to be told that forcing into the market at any particular time a very great quantity of a particular kind of property or of security is certain to be followed by a very great depreciation. The determination of all questions of that kind is for the liquidators, subject to the control of this Court, as the liquidation is now under supervision, and subject also, I apprehend, to the constant and vigilant attention of those who are interested otherwise in the liquidation. But I cannot accept the suggestion that gentlemen who are acknowledged to be of such high honour and such professional distinction as those who have been appointed liquidators here will be influenced in any unworthy manner by considerations of that kind, or will fail to do their duty to all—the realisation and distribution of the assets.

It must be kept in mind that this is not a case where the creditors are assembled merely to distribute among themselves the wreck of an estate which is to give them some small percentage of the debt, but that it has been ascertained, as far as it can be ascertained at this stage of the liquidation, that the assets of the Company and its partners are quite sufficient to pay all the creditors in full and leave a surplus. Now, that being so, I think we are entitled to respect the wishes, not of the creditors only, but of the contributories also; and taking all these things into consideration, and seeing that the creditors who propose another liquidator represent no more than at the utmost about 1-24th of the whole indebtedness of the Bank, I cannot say that I can give very much weight to their proposals.

But then there are other considerations which must be kept in view. The creditors of whom I speak did not come here to ask the Court to appoint some other person whom the Court might think qualified to represent their interests along with the other liquidators, but they come proposing that one particular agent, and no other, shall be added to the body of liquidators, for the purpose, it is said, of representing their special interests, as if they had— which I do not think—any special class interests of their own. The first objection that occurs at once to the gentleman who is so proposed is that he is resident beyond the jurisdiction of the Court, and although I cannot say that it would be in all circumstances incompetent to appoint a liquidator—one of several liquidators, we shall say—resident beyond the jurisdiction of the Court, still I think the Court would require very strong reasons for preferring a person resident beyond its jurisdiction to those perfectly well qualified persons who are within its jurisdiction. It appears to me that a more serious objection arises from the circumstance of this gentleman being resident in London than the mere consideration that he is beyond the jurisdiction of the Court. I should suppose that in a liquidation of this magnitude the meetings of the liquidators will be very frequent, at least for the present. I dare say I am not far wrong in supposing that there may require to be daily meetings of the liquidators; and it certainly would be a very strange thing if it were necessary to summon to every meeting a gentleman resident in London, who, according to the account given of him, is engaged in very extensive business there. I think the effect of joining a gentleman so situated with the other liquidators who have been appointed would be to render this liquidation dilatory, expensive, and probably inharmonious; and for these reasons I think the proposition which is so made one which the Court cannot entertain. I am therefore for refusing the petition of Messrs Brightwen & Co.

With regard to the proposal that has been made in course of the arguments, to appoint some one as a representative of the creditors, I am not quite sure that I exactly understand the position which it is proposed that he should occupy. If he is to attend the meetings of the liquidators, and to have all the knowledge of the affairs of the bank which these liquidators possess, I cannot very well distinguish his position from that of a liquidator, unless it be that he is not to have a vote in their deliberations. Now, that would certainly be a most anomalous position for anyone to occupy. Then, if he is not to be present at the meetings of liquidators, or to be in the confidence of the liquidators, I confess I cannot understand what his functions are to be. I can quite understand that an occasion might hereafter arise in the course of a liquidation on a particular question being raised affecting the interests of the whole creditors, or of a particular body of creditors, that might require the appointment of somebody to attend to the particular interests so

raised, and discuss the questions affecting that interest either with the liquidators or with the shareholders, or with anybody else concerned. An appointment of that kind would be analogous to what very often occurs in the business of this Court, where a common agent is appointed to represent a variety of persons interested in a particular question; and if such a state of circumstances does hereafter emerge, we shall be very glad to listen to any such proposal; but the notion of appointing a representative or common agent, if I may so call him—an agent in the interest of the creditors—when their interests are already represented and attended to by the liquidators, is a proposal which does not commend itself to me as likely to be productive of any useful consequence, and therefore I am for refusing any proposal of that kind also.

LORD DEAS, LORD MURE, and LORD SHAND concurred.

The following supervision order was pronounced in the petition at Brightwen & Company's instance:—

"The Lords having resumed consideration of the cause, and heard counsel for the petitioners and the liquidators of the City of Glasgow Bank, and the compearing creditors of the said bank, direct and ordain the voluntary winding-up of the City of Glasgow Bank, resolved on by the members thereof on 22d October 1878, to be continued, but subject to the supervision of this Court, in terms of the Companies Acts 1862 and 1867, and declare that any of the proceedings under the said voluntary winding-up may be adopted as the Court may think fit, and declare that the creditors, contributories, and liquidators of the said company, and all other persons interested, are to be at liberty to apply to the Court as there may be just occasion; and further direct and ordain that, unless and until it shall be otherwise directed and ordained by the Court, the liquidators shall not effect any compromise with any creditors except with the special leave of Court: *Quoad ultra* refuse the prayer of the petition."

Counsel for Petitioners Brightwen & Company —Trayner — Mackintosh. Agent — John Gill, S.S.C.

Counsel for London and Westminster Bank &c., —M'Laren—Moncreiff—Guthrie Smith — J. A. Reid—Blair, &c. Agents—Philip, Laing, & Company, W.S.—Hunter, Blair, & Cowan, W.S., &c.

Counsel for Liquidators—Lord Advocate (Watson)—Kinnear — Balfour — Jameson. Agents—Davidson & Syme, W.S.

Counsel for Scotch Creditors, including Banks —Balfour. Agents—Davidson & Syme, W.S.

Friday, December 14.

SECOND DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*SHAW'S CASE*)—SHAW PETITIONER *v.* THE LIQUIDATORS.

Public Company—Register of Shareholders—Rectification of Register where trustee had resigned subsequent to winding-up.

A party, entered upon the register of a bank as trustee upon a trust-estate, subsequent to the stoppage of the bank, and when its insolvency was notorious, but prior to the commencement of proceedings for liquidation, resigned his position of trustee by minute of trustees, and intimated the same to the bank. The officials refused to give effect to the resignation, and to remove the name from the register. He then brought a petition for rectification of the register under the 35th section of the Companies Act 1862. *Held* that in the circumstances that section did not apply, as there had been no subsequent board meeting prior to the winding-up resolution, and no "default or unnecessary delay" on the part of the officials.

This was a petition for the rectification of the register of members of the City of Glasgow Bank, presented by James Shaw, surgeon, Glasgow. John Scott, bootcloser in Glasgow, had died in 1849, leaving a trust-deed whereby he nominated the petitioner, Alexander Scott, now dead, and Thomas Scott, as his trustees and executors, with the usual powers, including, *inter alia*, the power to lend out upon such securities as they "see right the monies of the trust, for answering the purposes thereof, and generally to do everything in the premises" the truster could have done himself. The petitioner accepted office, entered upon the management of the estate, and by deed of assumption upon 19th October 1874 he, as the only surviving trustee, assumed three additional trustees into the trust, and by another deed of assumption, dated the 3d of January 1878, two more were assumed. Part of the trust-estate consisted of £162 of the stock of the City of Glasgow Bank, which stood in the bank register in the name of the petitioner as sole surviving trustee.

By the Trusts (Scotland) Act 1867, 30 and 31 Vict. cap. 97, it was enacted (sec. 10) that "any trustee entitled to resign his office may do so by minute of the trust, entered in the sederunt book of the trust, and signed in such sederunt book by such trustee, and by other trustee or trustees acting at the time." The petitioner had resigned his office by minute of the trust dated 21st October 1878, duly entered in the sederunt book of the trust, and signed in that book by himself and by the other trustees. The other trustees (with the exception of William Stout, who was abroad) did the same. The City of Glasgow Bank declined, however, to remove the petitioner's name, or to give effect to the minute of resignation, though a certified copy of it was duly delivered at the head office.

This petition was therefore brought against the bank, which had been, until 29th November 1862, an ordinary copartnery, but which was