

of £500 of new capital to be called up, with the imposition upon the shareholders of an additional liability which does not attach to them at present. It appears to me that the course proposed is irregular, and that the proper course for the company to have adopted (if they desired to raise £500 of new capital) would have been to have passed a resolution reducing their present capital from 1000 founders' shares of £1 each fully paid up to 1000 founders' shares of 15s. each fully paid up, and 1000 ordinary shares of £1 each fully paid up to 1000 ordinary shares of 15s. each fully paid up; and thereafter to have created £500 of new capital in the manner authorised by the Companies Act 1862, and articles 26 to 28 of Table A appended to that Act. It does not appear to me that the resolution of the company is one which your Lordships can be competently called upon to confirm. . . . From the last report and balance-sheet of the company, and information supplied to me, I am satisfied that the amount of loss of capital, and the explanations of the petitioners as to how it has arisen, are substantially correct, and that the reasons so stated are sufficient to warrant the reduction. . . . I am satisfied that the resolutions, if competent in themselves, were regularly passed and confirmed in conformity with the statutes and regulations of the company. . . . If your Lordships should be of opinion that, notwithstanding the doubts I have suggested, the resolution sought to be confirmed is competent, I have humbly to report that the whole proceedings prior to and since the date of the presentation of the petition have been regular, and the proposed reduction appearing to be warranted, an order may be pronounced confirming the reduction, and granting the prayer of the petition."

Argued for the petitioners—They might have reduced their capital by one resolution, and replaced it, in the way suggested by the reporter, after a second resolution. That they had sought to attain their object by a different method set forth in one resolution did not make the resolution to reduce incompetent. That resolution ought to be confirmed.

At advising—

LORD KINNEAR—I am of opinion that the objection, which the reporter has stated to the proposal here, is perfectly well founded, and I do not think that that objection could be more clearly brought out than by comparing the prayer of the petition with the statement of the reporter as to what the company really proposes to do.

We are asked to confirm a special resolution to reduce capital, but when we come to consider the matter we find that the company does not propose to reduce its capital at all, but to raise £500 of new capital to replace what has been lost. That is an incompetent proceeding. The company can do what they desire only by complying with the provisions prescribed by the Companies Acts 1862 and 1886, and they are not entitled under colour of doing

one thing to do something totally different.

I think we cannot grant the prayer of this petition.

LORD ADAM—The resolution founded upon is said to be a resolution to reduce capital, but it is not so at all. There is here only one resolution with reference to one and the same Act to be done at one and the same time. That Act leaves the capital of the company where it was before, the only difference being that at the end of the operation, while the capital will be the same, only £1500 will have been fully paid up, and £500 will remain uncalled up.

This is not a resolution to induce capital, and I agree in thinking we cannot confirm it.

LORD M'LAREN—I agree. What the company propose is to reduce the nominal capital, and to replace by real cash capital which has been actually contributed but has been lost. I agree that we cannot give power to the company to do this in the way they propose, but I have no doubt that by following the course indicated by Mr Logan in his report the end desired may be accomplished.

The LORD PRESIDENT concurred.

The Court refused the prayer of the petition.

Counsel for Petitioner—Neish. Agents—Fife, Ireland, & Dangerfield, S.S.C.

Tuesday, July 19.

FIRST DIVISION.

THE EARL OF ROSEBERY AND OTHERS, PETITIONERS.

Trust—County Hall Held by Trustees—Transference of Trust Property to County Council—Local Government Scotland Act 1889 (52 and 53 Vict. c. 50) sec. 25, sub-sec. (2)—Nobile officium.

A petition by trustees who represented the different public interests of a county, and who held as trust-property for various county purposes a county hall erected about 1819, to be allowed to transfer the said hall to the county council, and for exoneration and discharge, was granted.

The Right Honourable Archibald Philip, Earl of Rosebery, Her Majesty's Lieutenant and High Sheriff of the county of Linlithgow; Peter M'Lagan of Pumpherston, Vice-Lieutenant of the said county, and also Member of Parliament for the said county; Thomas Hope of Bridge Castle, convener of the said county; Alexander Blair, advocate, Sheriff-Depute of the said county; and Andrew Gilmour, Provost of the royal burgh of Linlithgow, as trustees for themselves and in trust for and in name and on behalf of the whole other noblemen, deputy-

lieutenants, freeholders, justices of the peace, and commissioners of supply of the said county of Linlithgow, acting under and in virtue of the trusts created by the feu-disposition dated 9th July 1825, granted by the Town Council of the said burgh in favour of the petitioner's predecessors in office, and also of the disposition dated 16th, 27th, and 28th January 1873, and registered in the Books of Council and Session 22nd June 1888, granted by the trustee and commissioners on the sequestrated estate of the said burgh in favour of the petitioner's predecessors in office, presented a petition to the First Division of the Court of Session, which set forth that by feu-disposition dated 9th July 1825, the Provost, Magistrates, and Town Council of the burgh of Linlithgow, on the narrative that by an Act of Council inserted in the records of said burgh, of date the 24th day of July 1819, the Provost, Magistrates, and Town Council of the said burgh of Linlithgow did, in consideration of the annual feu-duty therein and after mentioned, to be paid and applied for the use and behoof of the said community, agree to convey and make over to His Majesty's Lieutenant and other official characters of the county of Linlithgow, therein and before designed, for the purpose of erecting a hall containing apartments for the meetings of the said county, the area of the ground therein described, and that the said area was in terms of said agreement and Act of Council taken possession of by the said Lord-Lieutenant and others, and a hall for county meetings built and erected thereon at their expense, did therefore feu to the Right Honourable John Earl of Hopetoun, His Majesty's Lieutenant and High Sheriff of the county of Linlithgow, James Dundas, Esquire of Dundas, Vice-Lieutenant of the said county; Lieutenant-General the Honourable Sir Alexander Hope of Waughton, G.C.B., Member of Parliament for the said county; Alexander Majoribanks, Esquire, of Majoribanks, convener of the said county; John Cay, Esquire, Her Majesty's Sheriff-Depute of the said county, and John Boyd, Esquire, provost of the royal burgh of Linlithgow, and to their several successors in office for the time being, as trustees for themselves and in trust for and in name and on behalf of the whole other noblemen, deputy-lieutenants, freeholders, justices of the peace, and commissioners of supply of the said county of Linlithgow, for the yearly feu-duty of 20s., a piece of ground situated within the said burgh, for the purpose of erecting a hall containing apartments for the meetings of the said county, which it was declared should be occupied for the use and accommodation of the said county of Linlithgow altogether, and not convertible to any other purpose. Sasine duly followed upon this disposition.

It was not definitely known at whose expense the County Hall erected on the said site was built, but it was believed that the money was raised by voluntary subscription. The feu-duty and other annual expenses were paid for many years, at first out of the rogue money, subsequently

out of the County General Assessment, and since the passing of the Local Government (Scotland) Act 1889, by the County Council of Linlithgow. By permission of the trustees, and in accordance with the purposes of the trust, the County Hall has been freely made use of by the Commissioners of Supply, the Road Trustees, the local authority, and other county governing bodies, and since the passing of the said Act by the County Council of Linlithgow.

In 1873, the estates of the burgh of Linlithgow having been sequestrated under the Bankruptcy Statutes, the superiority of the above-mentioned feu was purchased from the trustee in the sequestration for £22. The Commissioners of Supply paid the money out of the County General Assessment; but the title to the superiority was taken in name of the above-mentioned body of trustees, in terms precisely similar to those used in the feu-disposition.

In terms of the Local Government (Scotland) Act 1889, section 25, sub-section 1, the whole property of the Commissioners of Supply, including the area of the old prison, became the property of the County Council of Linlithgow. In this way the said County Council owns the present entrance to the County Hall and three apartments opening from it.

The petitioners were advised that three pictures at present hanging in the County Hall were their property, subject to the same trust purposes as the hall itself.

The pictures were of considerable value, and were in need of restoration, involving an immediate outlay of about £55, according to the estimate of an expert, which was produced and referred to. The petitioners had no funds at their disposal, and they understood that there was some reason to doubt whether the County Council of Linlithgow had statutory power to make any outlay upon those pictures in the present circumstances.

By section 25, sub-section 2, of the Local Government (Scotland) Act 1889, it is provided "That the county council shall have full power to manage, alter, and enlarge, and, with the consent of the Secretary for Scotland, to alienate the lands and heritages transferred by this section, but shall from time to time provide such accommodation and rooms, and such furniture, books, and other things, for the transaction of the business of the county council and of the quarter sessions, justices of the peace, and commissioners of supply, as they respectively may from time to time require, provided that . . . the justices of any county may retain pictures or other property, on the ground that the same have been presented to them or otherwise belong to them, and are not held for public purposes of the county."

At a meeting of the County Council of Linlithgow, held on 15th December 1891, a suggestion of the petitioners to transfer their trust property to the County Council was unanimously approved of. At the statutory meeting held on 6th May 1892 the proposal was again approved.

The petition prayed the Court, after due

intimation and advertisement, "to grant warrant to and authorise the petitioners, as the existing trustees of the foresaid property, to dispoise to and in favour of the County Council of Linlithgow the whole trust property held by them under the trust created as aforesaid, . . . and to make and execute all deeds necessary thereto, and thereupon to find that the office of the petitioners as trustees has come to an end, and to exoner and discharge them of the said trust and of their whole actings, intrusions, and management as trustees aforesaid."

In support of the petition it was argued that it was most desirable that the County Council, who now had the main use of this building, should have the title to it. They were bound under the sub-section (2) of section 25 of the Local Government (Scotland) Act to provide themselves with necessary buildings. They were therefore entitled to take over a suitable existing building. But for the peculiarity of this being trust property it would have been transferred under the 1st sub-section of section 25. The only difficulty was as to the right of the trustees to put an end to the trust; but all interests contemplated by the trust were represented by the petitioners. The purpose of the trust had virtually come to an end, and under the doctrine of *cy-près* the Court would authorise the application of trust property to a cognate purpose. The purpose here to be served was so similar as to be virtually identical with that of the original trust. The only difference was that henceforth the administration of the property would be in different hands. All interested were anxious that this petition should be granted, and there was no opposition. The present trustees had no funds out of which to keep up this property. The County Council could always get such funds by rating.

The Court granted the prayer of the petition.

Counsel for Petitioners—D.-F. Balfour, Q.C.—Horn. Agents—Tods, Murray, & Jamieson, W.S.

Tuesday, July 19.

FIRST DIVISION.

BEATSON AND OTHERS (MACKINNON'S TRUSTEES).

Trust—Vesting—Discretion of Trustees to Retain Capital—Right of Trustee in Bankruptcy.

A trustor left all her estate, heritable and moveable, to trustees under direction "to hold, retain, and invest in their own names the residue and remainder of my said means and estate until my son . . . attains the age of twenty-five years complete, at which time they shall . . . make over to him the said

residue and remainder. . . . Declaring that my trustees shall be entitled, so long as they think it expedient to do so, to retain the said residue and remainder in their own hands, . . . and that even after my son shall have attained said age, and only pay him the annual produce or income thereof, it being understood that should they so retain it after he attains twenty-five years, and should he die without said residue and remainder and others having been paid to him, then the same shall be paid to his nearest heirs and representatives whomsoever, my intention being that the same should vest in him at said age of twenty-five." The son became bankrupt before reaching the age of twenty-five, and after he had attained that age, his trustee in bankruptcy claimed from his mother's trustees payment of the remainder and residue of the trust-estate as at that date, together with any income or revenue that had accrued thereafter.

Held that the claim was sound and must be given effect to.

Mrs Mary Stewart Mackenzie Beatson or Mackinnon, widow of Campbell Mackinnon, M.D., C.B., Inspector-General of Hospitals, died at Campbeltown on the 13th day of February 1881, leaving a trust-disposition and settlement, dated the 26th day of February 1883, and registered in the books of Council and Session the 19th day of May 1884. She was survived by one son, John Campbell Mackinnon, who was born on the 29th day of August 1866.

By the said trust-disposition and settlement the said Mrs Mary Stewart Beatson or Mackinnon gave, granted, assigned, and disposed to and in favour of Surgeon-General John Fullarton Beatson, her brother, and certain other persons, all her estate, heritable and moveable, real and personal, at the time of her death, in trust always for the uses, ends, and purposes, and under the conditions, declarations, and provisions thereafter expressed. She directed her trustees by the third purpose of the said trust-disposition and settlement to "hold, retain, and invest in their own names the residue and remainder of my said means and estate until my son John Campbell Mackinnon attains the age of twenty-five years complete, at which time they shall, subject to what is hereinafter contained, pay and make over to him the said residue and remainder, together with any interest or other produce that may have accrued thereon: Declaring that my trustees shall be entitled, so long as they think it expedient to do so, to retain the said residue and remainder in their own hands, excepting my silver plate, jewellery, napery, pictures, and books, as after mentioned, and that even after the said John Campbell Mackinnon shall have attained said age, and only pay him the annual produce or income thereof, it being understood that should they so retain it after he attains twenty-five years, and should he die without said residue and remainder, and others, having been paid to him, then