

cantile cases. These doubts did not prevent me from concurring in the judgment. In the present case I have no doubt as to the decision. The case is governed by the rule which has been laid down that professional employment following on instructions in writing amounts to a written obligation in terms of the statute.

LORD KINNEAR concurred.

The Court recalled the interlocutor of the Lord Ordinary and allowed a proof.

Counsel for the Pursuers and Reclaimers—Clyde K.C.—Guy. Agents—Campbell & Smith, S.S.C.

Counsel for the Defenders and Respondents—W. Campbell, K.C.—M'Lennan. Agent—J. Murray Lawson, S.S.C.

Saturday, June 7.

FIRST DIVISION.

CRAWFORD, PETITIONER.

Company—Voluntary Winding-up—Petition for Supervision Order—Creditor's Petition—Right of Creditor—Companies Act 1862 (25 and 26 Vict. c. 89), sec. 147.

Section 147 of the Companies Act 1862 provides that "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, . . . to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just."

A creditor of a company incorporated under the Companies Acts is not entitled as matter of right to demand that a voluntary liquidation should be placed under the supervision of the Court, and the Court will not grant such a petition if no special cause is shown for doing so.

The creditor of a company which was in the course of being voluntarily wound up petitioned for a supervision order, but made only a general averment to the effect that complicated questions were likely to arise as to the respective rights of security-holders and ordinary trade creditors, and that it was desirable in the interests of the creditors that the petition should be granted. The great majority of the creditors were opposed to the application being granted. The Court refused the petition.

A. R. Cowper, Limited, was incorporated under the Companies Acts in 1899, having its registered office in Glasgow. The objects of the company were to carry on the business of carting and removing contractors.

On 8th March 1902 a resolution was passed at an extraordinary general meet-

ing of the shareholders for the voluntary liquidation of the company, and Mr James Cowan Paterson, C.A., Glasgow, was appointed liquidator.

A petition was presented by Mr John Crawford, printer, Glasgow, an unsecured creditor of the company, craving that the liquidation should be continued subject to the supervision of the Court.

The petitioner averred—"There is no prospect of the creditors of the company being paid in full. Your petitioner is a creditor of the company conform to oath herewith produced. He holds no security. In the circumstances your petitioner is desirous that the liquidation should be put under the supervision of the Court, and he accordingly presents this petition to your Lordships. Complicated questions as to the respective rights of security-holders and ordinary and trade creditors are likely to arise, and in the interests of the creditors it is desirable that the prayer of this petition should be granted. Further, preferences may be running which it is desirable to cut down."

Answers were lodged by the company and the liquidator, in which it was averred that the liquidator was prepared to distribute the whole free assets almost immediately, and that "no question has arisen or will arise between secured and ordinary creditors, and it is the almost unanimous wish of the creditors that all unnecessary expense should be avoided, and that the company should be wound up by way of voluntary liquidation. The petitioner's debt only amounts to £24, 4s. 6d. The respondent James Cowan Paterson submits that the petitioner has no sufficient title to present the present application, and that no relevant or sufficient statement has been made in support thereof. The statement that complicated questions are likely to arise is unfounded in fact, and the prayer of the petition is contrary to the wish of the great majority of the creditors."

Argued for the petitioner—He was entitled as a matter of right to ask for a supervision order. It could not prejudice in any way the general body of creditors, and might be beneficial to them. There was no case where such an application had been refused. This was analogous to the case of creditors under a trust-deed, any one of whom might refuse to agree to the terms.

Argued for the respondents—A creditor was not entitled to an order as a matter of right, but must show some cause. Section 149 of the 1862 Act gave the Court full discretion to grant or refuse such an application.

LORD PRESIDENT—This case seems to raise the question quite sharply and simply, whether one of a number of creditors is entitled as matter of right to ask that a voluntary liquidation should be placed under the supervision of the Court. If the affirmative of that proposition can be established, the prayer of the petition will fall to be granted, but if it cannot, that prayer must be refused, as it is clear, and

indeed it was almost admitted, that no special cause has been shown for granting it.

The question primarily depends upon the 147th section of the Companies Act 1862, which is in the following terms:—[*His Lordship read the section*].

It is to be noted that the Act does not here give a right to the creditor to have his application granted; it only confers a power upon the Court to grant it if the Court thinks fit. Accordingly, in all the cases in which the Court has granted a supervision order some cause has been shown for it, such as the danger of preferences being created, or some impropriety, actual or threatened, in the conduct of the liquidation. But I find nothing of that kind here. The only statements made are that complicated questions as to the respective rights of secured creditors and the ordinary and trade creditors are likely to arise. The petitioner does not say that they have arisen, nor does he state what they are. It is also said that preferences might be secured, but that statement might be made in every liquidation. It is evident that this is a blind petition, not presented under any real apprehension of any known danger. Unless the statute had provided that without any cause being shown any creditor should be entitled as a matter of right to obtain a supervision order, such an application could not be granted, as no attempt has been made here to show any cause, and I think that the application should be refused.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court refused the petition.

Counsel for the Petitioner—Graham Stewart—Macaulay Smith. Agents—Clark & Macdonald, S.S.C.

Counsel for the Respondents—Constable. Agents—Mill, Bonar, & Hunter, W.S.

Friday, June 13.

FIRST DIVISION.

POTTIE AND ANOTHER, PETITIONERS.

Trust—Liferent or Fee—Fiduciary Fee—Application for Special Powers—Destination in Liferent Allenarly with Fee to Heirs and Assignees—Application for Power to Charge and Feu—Nobile Officium—Trusts (Scotland) Act 1867 (30 and 31 Vict. c. 97), sec. 3.

Heritable subjects were conveyed to A and B "in liferent for their or any of their liferent use allenarly, and to their heirs and assignees in fee." A and B presented a petition for authority to borrow money on the security of the subjects, and to feu a certain part of them. The money to be borrowed was to meet outlays they had been obliged to make in carrying out certain improve-

ments on the subjects required by the municipal authorities. The petition was presented under section 3 of the Trusts (Scotland) Act 1867, and alternately at common law. The Court, without deciding whether the right of A and B under the destination was one of liferent or of fee, granted the prayer of the petition.

William Kinghorn, who died in 1874, left a trust-disposition and settlement, with relative codicils, by one of which codicils dated in 1864 he disposed certain heritable subjects in Leith to Hugh Kinghorn, builder in Leith, as trustee. The trustee was directed to dispose and make over the said subjects to the children of the truster's nephew, Alexander Kinghorn, upon the youngest of them attaining the age of twenty-five. By a second codicil dated in 1869 the testator directed as follows:—"And further, I direct and appoint the said Hugh Kinghorn . . . in disposing and making over the said subjects . . . to the children or any of them of my said deceased nephew Alexander Kinghorn . . . to dispose and make over the same to such children or any of them in liferent for their or any of their liferent use allenarly, and to their heirs and assignees in fee, and so as that the *jus mariti* and right of administration of their or any of their husbands shall be effectually excluded, and the said subjects shall not be liable to the deeds or subjected to the legal diligence of the creditors of their or any of their husbands for payment of debts contracted by their or any of their husbands."

Hugh Kinghorn died in 1886, leaving among his papers a disposition, by which he conveyed the said subjects to Catherine Murphy Kinghorn and Alexander Kinghorn, the only surviving children of the Alexander Kinghorn mentioned in the trust-deed. By this disposition the said subjects were conveyed, on the narrative of the provisions contained in the trust-deed, to Catherine and Alexander Kinghorn "equally between them, share and share alike, in liferent for their liferent use allenarly, and to their heirs and assignees in fee." This disposition was recorded in the Register of Sasines.

Catherine Kinghorn (by marriage Mrs George Pottie) and Alexander Kinghorn presented this petition, in which, after narrating the deeds above referred to, they stated that they had been obliged to expend sums amounting to £497 in extraordinary expenses on the subjects conveyed for paving, drainage, and repairs which were necessary in order to keep them in repair and to meet the requirements of the authorities, and that further expenditure on drainage estimated at £72 had been ordered by the sanitary authorities. They also stated that it was desirable that a certain portion of the subjects should be feued.

After these statements the petition proceeded as follows—"The petitioners are advised that under the title on which they hold the said subjects there is some doubt as to their power to deal with the fee of the