COURT OF SESSION.

Wednesday, October 16.

FIRST DIVISION.

(SINGLE BILLS.)

BELHAVEN ENGINEERING AND MOTORS, LIMITED, PETITIONERS.

Company—Winding-up—Process—Supervision Order Granted in Vacation—Note for Confirmation of Appointment of Liquidator and Committee of Advice and for Remit to Lord Ordinary—Competency—Companies Consolidation Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 199.

A company which had gone into voluntary liquidation presented a petition in vacation craving that the liquidation should be placed under the supervision of the Court. The Lord Ordinary on the Bills having granted the petition, the petitioners on the first sederunt day thereafter presented a note to the First Division craving the Court to confirm the appointment of (1) the liquidator, and (2) a committee of advice nominated by the shareholders and creditors, and to remit the winding-up to one of the Lords Ordinary.

Held that the note was incompetent as being (*a*) unnecessary, so far as regarded (1) the remit, since the petition in vacation automatically came up in Single Bills on the first day of session, when a remit to a Lord Ordinary might be obtained, and (2) the confirmation of the liquidator's appointment, as no one was objecting to him, and he had become under the supervision order an official of the Court; and (*b*) unauthorised, so far as regarded confirmation of the committee of advice, there being no provision in the Companies Consolidation Act 1908 for the appointment of any such committee.

The Companies Consolidation Act 1908 (8 Edw. VII, cap. 69), section 199, enacts—"When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributors, or others to apply to the Court, and generally on such terms and conditions as the Court thinks just."

On 15th October 1912 Belhaven Engineering and Motors, Limited, Wishaw, then in liquidation, and A. R. Yule, C.A., Edinburgh, the liquidator thereof, presented a note to the Lord President, in which they craved his Lordship to move the Court (1) to confirm Mr Yule's appointment as liquidator, (2) to confirm the appointment of the Committee of Advice after mentioned, and (3) to remit the winding-up to one of the permanent Lords Ordinary.

The *note* stated—"At an extraordinary general meeting of the Belhaven Engineering and Motors, Limited, held on 16th July 1912, it was unanimously resolved that the company be wound up voluntarily, and that Allan R. Yule, C.A., should be appointed liquidator. At said meeting it was further resolved that James Barclay, merchant, Glasgow, and James Gill, solicitor, Edinburgh, should be appointed a committee of shareholders to advise with the liquidator. At a subsequent extraordinary general meeting of the company, held on 5th August 1912, said resolutions were duly confirmed and the appointment of Mr Barclay and Mr Gill approved of.

"On 21st August 1912 a meeting of the company's creditors, convened by the liquidator, was held in Glasgow, at which the creditors unanimously approved the appointment of Mr Yule as liquidator of the company, and nominated W. B. Galbraith, C.A., Glasgow, and Thomas C. Kerr, of Messrs William Kerr & Company, iron and machinery merchants, Glasgow, as representing creditors, to act along with the said James Barclay and James Gill as a committee to advise with the liquidator.

"On 13th August 1912 a petition was presented to the Court for a supervision order in the liquidation, and the petition having been duly intimated and advertised, the Lord Ordinary officiating on the bills, on 28th August 1912, ordered the voluntary winding-up of the company to be continued, but subject to the supervision of the Court."

The *prayer* of the note was as follows—"May it therefore please your Lordship to move the Court to confirm the appointment of the said Allan R. Yule, C.A., as liquidator of the said company, in terms of and with the powers conferred by the Companies Consolidation Act 1908; to confirm the appointment of the said James Barclay, James Gill, W. B. Galbraith, and Thomas C. Kerr as a committee of shareholders and creditors to advise with the liquidator in any matter arising in the liquidation, with power to communicate with the creditors and shareholders generally; to direct that all subsequent proceedings in the winding-up be taken before one of the permanent Lords Ordinary, and to remit the winding-up to him accordingly. . . ."

On the note appearing in the Single Bills counsel for the petitioners stated that the application was presented in terms of sections 199 and 201 of the Companies Consolidation Act 1908 (8 Edw. VII, cap. 69), and that in so far as it craved the confirmation of Mr Yule's appointment and a remit to a Lord Ordinary, the application was in conformity with the practice of the Court. He cited the following authorities—Wilton on the Companies Acts, p. 344; *M'Knight & Company, Limited* v. *Montgomerie*, February 27, 1892, 19 R. 501, 29 S.L.R. 433; *Pattisons Limited* v. *Kinnear*, February 4, 1899, 1 F. 551, 36 S.L.R. 402; *Liquidators of Bruce Peebles & Company, Limited* v. *Shiells*, 1908 S.C. 692, 45 S.L.R. 537.

LORD PRESIDENT—The Belhaven Engineering and Motors, Limited, went into

voluntary liquidation and appointed a certain gentleman, a Mr Yule, as liquidator. In the vacation they presented a petition to your Lordships craving that the liquidation should be continued subject to the supervision of the Court, and upon that petition Lord Guthrie, who was acting as Lord Ordinary on the Bills, pronounced an order subjecting the voluntary liquidation to the supervision of the Court.

Now when petitions are presented to the Inner House in the vacation they are boxed and they automatically appear in the Single Bills on the first day of session; and upon that automatic enrolment of a petition such as this, it is quite competent and is the usual practice for the liquidator, or those acting for him, to appear and to crave a remit to one of the Lords Ordinary. But in this case the company and the liquidator present a note, and the note contains three craves. They crave a confirmation of the appointment of Mr Yule as liquidator; they crave a confirmation of a certain committee which was appointed by the shareholders, with certain added members appointed by the creditors, to advise the liquidator; and the third crave is for a remit to the Lord Ordinary.

So far as the remit to the Lord Ordinary is concerned, it is evident from what I have already said that the note is unnecessary, and is therefore really only a multiplying of expense which we have always tried to avoid. So far as the other two craves are concerned, I do not think that the Court ought to entertain either of them. It is true that there may be found interlocutors in past processes where such a thing has been done as the confirming of a liquidator in a voluntary liquidation, but there is no provision for it in the statute, and the instances given to us are not very recent, and I cannot help thinking that they occurred *per incuriam*. In the case quoted to us the real contest was upon quite a different matter, and I cannot help thinking that that confirmation was inserted in the interlocutor because nobody objected.

When a voluntary liquidation is continued under the supervision of the Court, the Court takes the voluntary liquidation as it finds it, but puts it under supervision. The effect of putting it under the supervision of the Court is that the liquidator, who before was not an officer of the Court, becomes an officer of the Court. If anyone objects to the person who has been appointed as liquidator under the voluntary winding-up he can come to the Court and say so, and your Lordships are exceedingly familiar with such discussions. But nobody comes and says so here, and anything in the nature of a confirmation seems to me quite unnecessary. The liquidator is there, and as such he is put under the supervision of the Court.

Now as regards the joint committee of creditors and shareholders, there is no provision in the statute for the appointment of any such committee. I am rather tempted to suppose, from the way in which the creditors' representatives were added, that there was a floating idea in the minds of those concerned that they were doing something under the provisions of section 188 of the statute (8 Edw. VII, cap. 69). But they certainly were not. Section 188 of the statute provides for the possibility of creditors resolving to approach the Court to appoint a body called the committee of inspection. But a committee of inspection is a very different thing from the class of committee you have got here, and a committee of inspection, as will be found from a perusal of other sections of the statute, has very particular statutory powers. The committee here is a committee composed partly upon appointment by the shareholders alone and partly of members added by the creditors, and is a committee meant to approach the liquidator for conference and advice.

I am not saying anything against the appointment of such a committee. If the creditors and shareholders choose to appoint a committee to confer with the liquidator I do not see why they should not do so, just as any private creditor might arrange that he should appoint his law agent to go and see the liquidator about his interests, but I do not think we as a Court can have anything to do with that. There is no provision in the statute for it, and that is probably enough. But, quite apart from that, we do not know anything about this committee, and I do not think we can be asked to in any way give our imprimatur to the appointment of such a committee. Such a committee will probably, inasmuch as they represent existing shareholders, have a *locus standi* to come to us and complain of anything that the liquidator, who is now under our supervision, may propose to do, but I do not think that we have anything to do with the appointment of such a committee.

Accordingly, upon the whole matter, I am of opinion that this note ought to be refused in all its branches as unnecessary.

LORD KINNEAR—I agree.

LORD JOHNSTON—I agree with your Lordship. But I should like to add that in my opinion an *ex parte* application, after a voluntary liquidation is placed under supervision, for the confirmation of the voluntary liquidator, is quite improper. It may be that where there is a contest as to whether the liquidation to be placed under supervision shall be continued under the voluntary liquidator selected, or whether he is to be superseded or to have another liquidator appointed to act along with him, and where the Court has *causa cognita* come to the conclusion that it is proper to continue the liquidation under the voluntary liquidator who has been selected, it may possibly be convenient that the Court should, in so deciding, formally confirm his appointment, although personally I think that this is unnecessary, for the result of our judgment rejecting the counter proposal would in itself be a confirmation of the voluntary liquidator's appointment. But to make an entirely *ex parte* application for confirmation seems to me to be entirely out of order, because

the Court, although when they merely place a liquidation under supervision they take the responsibility of statutorily supervising the liquidator, take absolutely no responsibility for his selection and appointment. That responsibility remains with the shareholders who have made the original appointment, and with the creditors who have tacitly accepted or acquiesced in it.

I therefore think that an application *ex parte* for confirmation of a voluntary liquidator is quite improper and outside the purview of the statute.

LORD MACKENZIE—I concur.

The Court refused the prayer of the note.

Counsel for Petitioners—Paton. Agents—Maxwell, Gill, & Pringle, W.S.

Friday, October 25.

FIRST DIVISION.

[Sheriff Court at Wigtown

WIGTOWN PARISH COUNCIL *v.* AYR PARISH COUNCIL.

Poor—Settlement—Residential Settlement—Continuous Residence—Absences from Parish of Residence—Poor Law (*Scotland*) *Act* 1898 (61 *and* 62 *Vict. cap.* 21), *sec.* 1.

The Poor Law (Scotland) Act 1898, sec. 1, enacts that "no person shall be held to have acquired a settlement in any parish in Scotland by residence therein unless such person shall . . . have resided for three years continuously in such parish. . . ."

K., who was born in the parish of W., went to reside in the parish of A. in September 1906. He got a job there as a coal-heaver, which afforded him steady employment except in the summer months of each year. He left A. in July 1907, and went into training with the Militia for three or four weeks, and thereafter was engaged in harvesting work for six or seven weeks at a distance from A. He returned to A. in October 1907, and took up his old employment. In the summer of 1908 he was absent from A. for more than three months, the first three weeks of which he spent in training with the Militia, and during the remainder of the time he was engaged in agricultural labour. He returned to A. in October 1908, and from that date until 27th June 1910, when he became chargeable, he was only absent therefrom for two or three days.

Held that K. had not acquired a residential settlement in the parish of A., in respect that he had not resided there for three years continuously within the meaning of the Poor Law (Scotland) Act 1898, sec. 1, and that W., the parish of his birth, was accordingly liable for his support.

The Poor Law (Scotland) Act 1898 (61 and 62 Vict. cap. 21), sec. 1, is quoted *supra in rubric.*

The Parish Council of Ayr, *pursuers*, raised an action in the Sheriff Court at Wigtown against the Parish Council of Wigtown, *defenders*, for payment of £14, 11s. 10d., expended by the pursuers in alimenting a pauper, James Kelly.

The *facts* were as follows—James Kelly, a native of Wigtown and unmarried, left that place early in 1903 in search of work and took up his abode in Ayr. During the following three years, though his residence was mostly in Ayr, he took work elsewhere when he could get it. In particular, he was employed on a job in Kilmarnock for several months in 1905, and he hired himself out for harvest work during 1904, 1905, and 1906. Kelly returned to Ayr in September 1906, the harvest work being finished, and shortly after his return he found employment as a coal-heaver with Mr Wm. Allan, coal merchant, Ayr. The employment lasted during the winter and spring, but failed him during the summer months, when the coal trade was slack. Kelly therefore left Ayr in July 1907, went into training with the Militia for three or four weeks in Dumfriesshire, and thereafter worked at the harvest in Kirkcudbrightshire for six or seven weeks. He returned to Ayr early in October, and continued in Mr Allan's employment during the following winter and spring. In the summer of 1908 Kelly again joined the Militia for three weeks in Dumfriesshire, and thereafter found work in Kirkcudbrightshire, first in thinning turnips and latterly at the harvest. About the beginning of October, after an absence from Ayr of over three months, he resumed his employment with Mr Allan. In the summer of 1909 Kelly went to Dumfries for the Militia training, but having been discharged as medically unfit, he returned to Ayr after an absence of two days, and continued to work in Mr Allan's employment until 27th June 1910, when owing to illness he applied for and received parochial relief from the parish of Ayr.

During the period from October 1908 to 27th June 1910 Kelly was not absent from Ayr for more than two or three days. After September 1906 when in Ayr he resided mostly in a model lodging-house called the "Trades Hotel." When he left Ayr each summer he took his whole possessions with him, and he had no engagement for work on his return. His evidence was to the effect that he returned to Ayr each autumn because he knew where he had a job to go to, that if during his absence from Ayr he had got a job he would have taken it, that it all depended on the pay, and that he returned to Ayr because he could make more money in Ayr.

On 19th December 1911 the Sheriff-Substitute (WATSON) found that Kelly had acquired a residential settlement in the parish of Ayr, which was subsisting at 27th June 1910, when he became chargeable, and therefore found that the defenders were not bound to relieve the pursuers of their disbursements on Kelly's behalf.

The defenders appealed to the Sheriff