

operates *ipso jure*, then it was absolutely inapplicable to ground-annuals. And the Court, in deciding that *confusio* did not take place *ipso jure* decided that *confusio* did not apply to ground-annuals. In agreeing with Lord Johnston I hold that Lord Kinnear's opinion is quite unassailable—that a ground-annual, being an *ex facie* irredeemable right, cannot be held to be extinguished *confusione*. It is an irredeemable right in land completed by infestment, and, as Lord Kinnear points out, there is no authority in principle for holding that it can be extinguished *confusione*. No doubt Lord Kinnear's view was combated by Lord Rutherford Clark, but on a ground on which Lord Kinnear did not rest his opinion. If Lord Rutherford Clark had approached a criticism of Lord Kinnear's opinion on the ground on which Lord Kinnear rested it, I do not know to what conclusion he would have come, but I rather suspect that, great lawyer as he was, he would have expressed himself, as Lord Trayner did, to the effect that the Lord Ordinary's view that ground-annuals being irredeemable rights perfected by infestment cannot be extinguished *confusione* could not be gainsaid.

It may, no doubt, be true that so long as Ross's trustees held the ground-annual and were also the owners of the property James Watson might not be sued for payment of the ground-annual, but that would not be on the ground that the right was extinguished or temporarily suspended. The right still existed, but it would be idle to enforce it when there would be immediate relief against the property which the trustees continued to hold.

Upon these grounds I concur with your Lordships in thinking we ought to answer the questions as Lord Johnston proposes.

LORD MACKENZIE was not present.

The Court answered branch (a) of the question of law in the affirmative and branch (b) in the negative.

Counsel for the First Party—Chree, K.C.—Crawford. Agents—M. J. Brown, Son, & Company, S.S.C.

Counsel for the Second Parties—Paton. Agents—Alex. Morison & Company, W.S.

Thursday, July 9.

FIRST DIVISION.

ARGYLLS LIMITED, PETITIONERS.

Company—Liquidation—Liquidator—Joint Liquidators—Conflict of Interest.

In an application for the appointment of an additional liquidator and for a supervision order, objection was taken to the person suggested for the office on the grounds (1) that his firm acted as auditors of the company, and (2) that the existing liquidator was also an interested party, he being the managing director of the company.

The Court superseded the appointment of the existing liquidator, confirmed the appointment of the person suggested for the office of additional liquidator, and conjoined with him as joint liquidator a person unconnected with the company.

On June 19, 1914, Argylls Limited, and Robert W. Blackwell, Argyll Works, Alexandria, the liquidator thereof, presented a petition under sections 151, 199 to 204, and 213 of the Companies Consolidation Act 1908 (8 Edw. VII, cap. 69), in which they craved the Court to order that the voluntary winding-up of "Argylls Limited" should be continued, but subject to the supervision of the Court, and that the liquidator should be authorised to carry on the business of the company for a period not exceeding one year. From the petition it appeared that the capital of the company, all of which has been issued and paid up, amounted to £209,802, divided into 419,604 ordinary shares of 10s. each; that the debenture stock outstanding was £142,964; that there were also debenture bonds outstanding to the extent of £74,016; that it had been proved that the company could not by reason of its liabilities continue its business, and that a voluntary winding-up had been resolved on.

On 9th July 1814 a note was presented by the petitioners, in which they stated that at a meeting of creditors of the company, held on 3rd July 1914, in terms of section 188 of the Companies Consolidation Act 1908, it was decided by a majority that Mr J. M. MacLeod, C.A., Glasgow, should be appointed additional liquidator, and craving his appointment accordingly.

The application was opposed by Ritchie & Whiteman, metal merchants, Glasgow, and S. Stevenson & Company, timber merchants, Glasgow, creditors to the extent respectively of £1126, 7s. and £352, 3s. 4d., who objected to Mr MacLeod's appointment.

In their minute the respondents stated—"The minuters object to the appointment of Mr John M. MacLeod as additional liquidator of the company, for the following among other reasons, viz.—1. That his firm of Kerr, Andersons, & MacLeod, C.A., Glasgow, are the present auditors of the company. No proper allowance has been made for depreciation in the annual balance-sheets, and this matter will require to be investigated by the liquidators. There have been many serious complaints with regard to the management of the company, and these also should be independently investigated. Mr Blackwell, the existing liquidator, is its chairman, and the result of appointing Mr MacLeod as additional liquidator would be that there would be no independent officer to investigate the affairs of the company in the interests of the creditors, although the creditors would be put to the expense of two liquidators. The shareholders of the company have no real interest in the liquidation, as the assets will be insufficient to pay the creditors in full. 2. In the course of the liquidation questions are bound to arise between the company and the Motor Vehicles Finance

Company, Limited, with whom Argylls Limited had extensive dealings. The Motor Vehicles Finance Company, Limited, was formed to finance sales by Argylls Limited of their motor cabs to cabmen who were not able to pay the whole price of the vehicles. This transaction, which was concurred in by Mr Blackwell, the voluntary liquidator, and Mr MacLeod, has proved financially disastrous to Argylls Limited, and the whole circumstances ought to receive careful and independent investigation. In cases where the cabmen fail to pay the balance of the price of the vehicles the Finance Company claim on Argylls Limited for the balance of the sum advanced by the former company; and questions also arise, and will continue to arise, as to the contract quality of the cabs supplied by them, and the liability of Argylls Limited for the cabs going out of order while in the cabmen's possession. Mr MacLeod and the other partners of his said firm of Kerr, Andersons, & MacLeod are the sole managers and directors of the Finance Company, and consequently if Mr MacLeod were appointed liquidator a direct conflict of interest would arise between him as liquidator of Argylls Limited and as a manager of the Motor Vehicles Finance Company, Limited."

Argued for petitioners—It was competent for the Court in appointing an additional liquidator to have regard to the wishes of the creditors—Companies (Consolidation) Act 1908 (8 Edw. VII, c. 69), sec. 201. The additional liquidator suggested had the support of a large majority of the creditors, the figures being, for Mr MacLeod £176,000, against £76,000. *Esto* that his firm were the auditors of the company and that they were also directors of the Finance Company above referred to, no conflict of interest was necessarily involved. When, as here, it was desired to carry on the business and to sell it as a going concern it was an advantage to have as liquidators men fully versed in the affairs of both companies.

Argued for respondents—Where, as here, the existing liquidator was the managing director of the company, it was desirable that the additional liquidator should be an independent person. On that ground, and for the reasons stated in the minute (*vide supra*), the respondents objected to Mr MacLeod's appointment. They cited *Liquidators of Bruce Peebles & Company, Limited v. Shiells*, 1908 S.C. 692, at p. 696, 45 S.L.R. 537.

LORD PRESIDENT—With regard to the placing of the liquidation under the supervision of the Court, no objection has been made by either side of the Bar, and accordingly the usual order will be pronounced.

So far as regards the appointment of liquidator, the Court always desires, if it can consistently with the just administration of this statute, to give effect to the wishes of creditors, and accordingly we think that Mr MacLeod should be appointed liquidator, but that Mr Blackwell should be superseded, and for this reason, that we do not consider it desirable that both liqui-

dators should be men who have been closely associated in the past with the company, although it is eminently desirable that one of them should be versed in the affairs of the company.

On the whole, we think it preferable that Mr MacLeod should be selected because of his knowledge of the working of this company, and that the works manager should be superseded, although, of course, parties will understand that that implies no reflection of any kind upon the character and ability of Mr Blackwell.

We shall appoint a neutral liquidator, a gentleman of our own nomination, to act along with Mr MacLeod, and we propose that Mr Robert J. Smith, chartered accountant, Glasgow, should be conjoined with him.

LORD JOHNSTON and LORD SKERRINGTON concurred.

LORD MACKENZIE was absent.

The Court pronounced this interlocutor—

"Order that the voluntary winding-up of Argylls Limited resolved on by extraordinary resolution passed on 16th June 1914 be continued, but subject to the supervision of the Court, in terms of and with the powers conferred by the Companies (Consolidation) Act 1908; confirm the appointment of John Mackintosh MacLeod, C.A., Glasgow, as liquidator made at the meeting of creditors held on 3rd July 1914; conjoin with him as joint-liquidator Robert J. Smith, C.A., 163 West George Street, Glasgow; appoint the said Robert J. Smith to be joint-liquidator accordingly with all the powers conferred by the statute, he finding caution for his actings and intromissions, before extract, as joint liquidator, and decern; further sanction the joint-liquidators of the company carrying on the business of the same for such time and to such an extent as they may think proper, but not for a period of more than twelve months from this date: . . . Supersede the appointment of Robert Winthrop Blackwell as liquidator: Find petitioners, William Brodie Galbraith, C.A., who reports the result of the meeting of creditors, and also the comparing minuters, Ritchie & Whiteman and S. Stevenson & Company, entitled to expenses," &c.

Counsel for Petitioners—A. M. Hamilton. Agents—Robson & M'Lean, W.S.

Counsel for Respondents—Solicitor-General (Morison, K.C.)—D. P. Fleming. Agents—Smith & Watt, W.S.