

the expense caused by the excess of numbers was to be dealt with in any way different from the expense caused by the excess of size.

But the correspondence was continued, and this brings us to what may be called the third period. By April the print was completed, and as it would have been unreasonable to have delayed any longer in making a payment to account, the agents of the respondent wrote to the agents of the liquidators on the 28th of April to the following effect:—"We have now received authority from our client to pay to you £1000 to account of his half of the proportion of Mr Maclehose's account for printing the seven volumes of the large print." We accordingly enclose our cheque on the Commercial Bank of Scotland in your favour for £1000 to account of the print, of which please acknowledge receipt. In sending the enclosed it is on the understanding that Mr Mackinnon does not in the meantime admit the correctness of Mr Maclehose's account, and also that whatever the sum is paid by him in respect of the expense of printing shall be held at the taxation of his account of expenses, in the event of his being held entitled to expenses, to be a proper charge as against the liquidators."

Now, this is a very distinct proposal, and means that whatever sum is paid for the print is to be a charge against the losing party. It was quite open to the liquidators when they received that letter to have replied—"Oh no, that is not our agreement at all;" but what they did say is contained in a letter of the same date written by their agents to the agents of the respondent, and is in these terms:—"You will understand that whatever sum the liquidators have paid or may pay to Mr Maclehose to account of his charges for printing is or will be paid subject to the same condition as you stipulate at the end of your letter, viz., that at the taxation of the liquidators' account of expenses, in the event of their being held entitled to expenses, the account is to be a proper charge as against Mr Mackinnon." That is to say, that parties agree that the entire printer's account is to be dealt with as proper expenses of process. It appears to me, therefore, that Maclehose's account as paid must be considered as a burden on the losing party.

LOKDS DEAS, MURE, and SHAND concurred.

Counsel for Liquidators—Robertson—W. C. Smith. Agents—Davidson & Syme, W.S.

Counsel for Respondent—Lorimer. Agents—Murray, Beith, & Murray, W.S.

Saturday, July 15.

FIRST DIVISION.

NOTE FOR PETER COUPER, LIQUIDATOR OF
CALEDONIAN HERITABLE SECURITY
COMPANY (LIMITED).

*Public Company—Winding-Up—Settling List of
Contributories—Liability of Past Members—
"B" List of Contributories—Act 25 and 26
Vict. c. 89 (Companies Act 1862), sec. 38.*

Circumstances under which decree was
given in a winding-up against the past

members of a limited company who had been such members within one year prior to the commencement of the winding-up, reserving to each such past member the right to open up the question of his liability by application to the Court—and form of note of application for approval of list of such contributories, with procedure thereon.

The Caledonian Heritable Security Company (Limited) went into voluntary liquidation on 13th July 1880. The liquidation was placed under supervision of the Court on 11th December 1880. On 24th August 1880 the liquidator settled a list of contributories of present members (the A list), and on 14th September 1880 made a call of £3 per share, being the whole amount uncalled on the company's shares, payable on 6th October 1880, and proceeded to enforce the call and realise the estate of the company. He also ranked the creditors, and paid them two dividends, one of 6s. 8d. per pound on 11th November 1880, the other of 2s. per pound on 15th May 1881. He made up a report of his actings and dealings for the first year of the liquidation to 13th July 1881.

The report and relative accounts showed that the liabilities of the company as at 31st July 1881 amounted to £107,944, and the assets to £149,615, showing an apparent surplus of £41,671. But the liquidator explained that the principal asset was £135,784, the amount contained in heritable bonds held by the company, and that he was unable to make any estimate of the ultimate outcome from £71,604 of that amount; that he estimated as recoverable £16,247; and that the only amount he considered wholly good was £47,932—£135,784. These estimated recoveries proceeded on the footing of a reasonable time being allowed for realisation. The realisation of the apparent surplus disclosed upon the above estimates was thus postponed and contingent. Meantime the creditors had only received 8s. 8d. per pound upon their debts.

The liquidator thus finding it necessary, in order to provide funds for the payment of the company's debts and the other purposes specified in the Companies Act 1862, to call upon the past members of the company during the year prior to the liquidation (viz., 13th July 1878 to 13th July 1880), after intimation to the parties, prepared the B list of contributories, and submitted it to the Court for approval.

The Companies Act 1862, sec. 38, provides—"In the event of a company formed under this Act being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for the payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following (that is to say)—(1) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up. (2) No member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member. (3) No past member shall be liable to contribute to the assets

of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act. (4) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member."

The note set forth that all the past members entered on the B list had ceased to be members within one year prior to the commencement of the winding-up; that the amount of the liabilities of the company contracted prior to 13th July 1879, and still subsisting at 13th July 1880, was £136,398; that the total amount of the £3 call on the shares contained in the B list was upwards of £3500, but part of the said sum had been paid by the present holders, and the call would only be made in respect of the unpaid portion thereof; and that the liquidator had made careful inquiry into the pecuniary position of such of the present members as had paid no part, or only a part, of the call, and was satisfied that the present holders of the shares specified in the B list (fourteen in number) were unable to pay the said call in full. Six of them had, subject to the sanction of the Court, compromised with the liquidator on the footing of making a complete surrender.

The list was in the form of which the following is a specimen:—

FIRST PART—CONTRIBUTORIES IN THEIR OWN RIGHT.

Col. I	Col. II.	Col. III.	Col. IV.	Col. V.	Col. VI.
Serial No.	Name.	Address.	Description.	No. of Shares.	Names and Addresses of present Holders of Shares mentioned in Col. V.
1	A. B.	Perth.	Merchant.	50	Y. Z., Shoemaker, Glasgow
2	C. D.	Glasgow.	Merchant.	} 70	Do.
3	E. F.	Glasgow.	Merchant.		
4	G. H.	Glasgow.	Merchant.		

A memorandum was prefixed, explaining that where the number of shares in col. 5 stood opposite a group of two or more contributories, such contributories were the successive holders of the shares, the first in order having acquired them from the second, and the second from the third, all within one year of the commencement of the liquidation—the first in order, or in other cases the single contributory, being the transferor to the present shareholder in the A list. To facilitate reference to the A list the names and addresses of such present shareholders are given in col. 6.

The prayer of the note was "to approve of the B list of past members in the schedule hereto, without prejudice to any proceedings that may be competently taken by any contributory in the said list to have his name removed or to have the said list varied or altered; and further, to approve of the liquidator making the said call of £3 per share on the contributories in the said B list."

The Court, without intimation to or service upon the contributories, heard the application in Chambers, the liquidator being in attendance, and thereafter they were satisfied that the prayer

of the note should be granted, but that it was still open to contributories by application to the Court to open up the question.

Authorities—*Helbert v. Banner*, L.R., 5 H. of L. 28; *Kellock v. Guthoven*, L.R., 8 Q.B. 458, 9 Q.B. 241; *Bridger and Neill's cases*, L.R., 4 Ch. 266; *Nevill's case*, L.R., 6 Ch. 43.

Counsel for Liquidator—Lorimer. Agents—Morton, Neilson, & Smart, W.S.

Saturday, July 15.

OUTER HOUSE.

[Lord Fraser.

NEILL v. DOUGLAS' TRUSTEES.

Superior and Vassal—Conveyancing Act 1874 (37 and 38 Vict. cap. 94), sec. 4—Implied Entry—Casualty exigible after Death of Vassal—Disponnee Uninfest Entitled to offer the Heir of the last Vassal.

A person succeeding by singular title to an estate in land was infest in 1850, and continued to hold the estate till her death in 1881. She was never called on to enter or pay a casualty. She conveyed her whole estates to trustees, who did not take infestment. After her death the superior raised action against her trustees for declarator and payment of one casualty due in respect of the implied entry of the truster on the passing of the Conveyancing Act of 1874, and of another in respect of their own right as trustees. *Held (per Lord Fraser)* that the former was due, but that the trustees being uninfest, and therefore unentered, were entitled to put forward the heir of the truster, and were liable in relief-duty only.

Alexander Lang of Overton, who was duly entered with his superior in the said lands of Overton, disposed these lands in 1817 to John Lang. He again conveyed them in 1838 to Peter Douglas, and Peter Douglas in 1840 conveyed them to his daughter Elizabeth Douglas. Elizabeth was infest in the lands by an instrument of sasine dated 2d November 1850. There was no entry with the superior subsequent to that of Alexander Lang.

In 1874 the Conveyancing Act was passed, by the 4th section of which, subsection 2, all proprietors infest were held to be entered with the superior. Miss Douglas lived till 1881, and dying, conveyed the said lands by trust-disposition and settlement to trustees. The trustees did not record that disposition. On 12th April 1882 the pursuer, who was in right of the superiority of the lands, raised an action for declarator and payment of casualties in terms of the 4th subsection of the 2d section of the Conveyancing Act, and of Schedule B of the same Act, against Miss Douglas' trustees for payment of two casualties, pleading in support of his claim for the first—" (1) The said Elizabeth Douglas having been infest in the said lands as descended on, and having survived the last entered vassal, was, in consequence of her implied entry under the 4th section of the Conveyancing (Scotland) Act 1874, liable to the pursuer as superior of said lands in payment of composition,