

in the liquidation, and in the whole circumstances an independent liquidator should be appointed by the Court to act along with the liquidators appointed at the meeting of shareholders.

Argued for the petitioners—There were no circumstances here of any special difficulty or needing particular investigation. All the information was to be found in written documents, and the ability and fitness of the two liquidators appointed by the company was not in question. It was not enough for the respondents to say that there were conflicting interests; they must show that the liquidators were in some way partial or biassed, and that the interests of the minority were likely to be prejudiced. If the liquidators failed in their duty the respondents had their remedy by applying to the Court under section 115 of the Companies Act 1862.

LORD PRESIDENT—I do not see any reason for interfering with the discretion which the Lord Ordinary has exercised. He has refused to remove the liquidators appointed by the company or to appoint an additional liquidator. The liquidators are two gentlemen of undoubted ability and fitness for the duties with which they are charged, and after giving all attention to the argument which has been submitted to us we do not see any reason for disturbing the Lord Ordinary's interlocutor.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court adhered.

Counsel for the Reclaimers and Respondents—The Lord Advocate (Dickson, K.C.)—Laing. Agents—Laing & Harley, W.S.

Counsel for the Petitioners—Constable. Agents—W. & F. Haldane, W.S.

Counsel for the Ecuadorian Association Limited—Ure, K.C.—Lyon Mackenzie. Agents—Bonar, Hunter, & Johnstone, W.S.

Counsel for Glyn, Mills, Currie, & Company, Compearing Creditors—Macphail. Agents—Tods Murray, & Jamieson, W.S.

Saturday, June 4.

FIRST DIVISION.

THE KIRKCALDY STEAM LAUNDRY COMPANY, LIMITED, PETITIONERS.

Company—Resolution to Alter Memorandum of Association—Confirmation by Court—Companies (Memorandum of Association) Act 1890 (53 and 54 Vict. cap. 62), sec. 1—Change of Name.

A petition presented by a laundry company for confirmation of a resolution to alter its memorandum of association to the effect of enabling it

to carry on its business in a largely extended district *granted* without any condition as to the name of the company being altered so as to indicate the alteration in the area of its operations.

The Kirkcaldy Steam Laundry Company, Limited, incorporated under the Companies Act 1862 to 1890, presented a petition for confirmation of an alteration of its memorandum of association under the Companies (Memorandum of Association) Act 1890, sec. 1.

The company was established under its memorandum of association for the purpose of carrying on a laundry in "Kirkcaldy and its neighbourhood." The alterations proposed to be made in the memorandum of association were designed to enable the company to extend its operations into a larger district by allowing it to carry on a laundry or laundries in "Kirkcaldy and Leven, and elsewhere in the county of Fife." No change of name was proposed.

The Companies (Memorandum of Association) Act 1890, sec. 1, empowers companies to alter the provisions of their memorandum of association subject to the confirmation of the Court. Sub-section (3) enacts—"An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit." . . .

Sir Charles B. Logan, W.S., to whom the Court had remitted the petition for inquiry, drew attention in the following paragraph of his report to the question whether a change in the name of the company should not be made so as to indicate the extended area of the company's operations:—"It has been the practice of your Lordships to grant an extension of objects to a company only upon the name of the company being changed, so as to indicate the addition of new business or the extended area of its operations, and there are decisions in the English Courts shewing that the same practice obtains there. I brought this matter under the notice of the petitioners, but they have submitted that as the object of the alterations on the memorandum of association is not to enable the company to take up a new class of business, but only to carry on business in other towns in the county of Fife besides Kirkcaldy, an alteration of the name is not required. In the circumstances, and as it does not appear to me that anyone dealing with the company would be misled by the present name, your Lordships may perhaps take the view that no change is necessary."

He reported that the proceedings had been regular, and that the reasons for the proposed alterations on the company's memorandum being sufficient their Lordships might (subject to the disposal of the question as to the name of the company) be pleased to confirm the alterations of the provisions of the memorandum of association.

The petitioners expressed at the bar their desire not to change the name of

the company, and argued that such a change was unnecessary here, for the alteration proposed to be made was not in the character of the business—*Scottish Accident Insurance Company*, March 12, 1896, 23 R. 586, 33 S.L.R. 414; *Foreign and Colonial Government Trust Company* [1891], 2 Ch. 395.

The Court (LORD M'LAREN absent) made no condition as to the alteration of the company's name, and confirmed the alteration of the memorandum of association.

Counsel for the Petitioners—J. B. Young.
Agents—Wishart & Sanderson, W.S.

Saturday, June 4.

SECOND DIVISION.

MARTIN'S TRUSTEES v. MARTIN.

Trust—Administration of Trust—Making up Trust Accounts—“Free Annual Proceeds”—Income Becoming Due in One Year but not Received by Trustees till Following Year.

Held that in making up trust accounts, and dealing with the “free annual proceeds” of a trust estate, sums of income becoming due and payable during one financial year, but not actually received by the trustees until the following year, must be treated as part of the revenue of the first year and not of the second.

By his trust-disposition and settlement, dated 17th February 1898, and relative codicils dated respectively 24th and 25th January 1899, James Martin conveyed his whole estate, heritable and moveable, to trustees for the purposes therein mentioned. *Inter alia* he directed his trustees to pay an annuity of £500 to his wife Mrs Mary Spence Christie or Martin, and in addition to pay to her the “free annual proceeds of the residue of my whole means and estate” after payment of certain legacies and annuities.

The testator died on 2nd July 1899, survived by his widow. The trustees entered on the administration of the trust, and in succeeding years were in use to make up their accounts annually as at 2nd July. The revenue of the trust was variable, and certain items of income (consisting of rents and of interests on loans) which became due and payable in one trust year were not received until a succeeding year.

In these circumstances a question arose between the trustees and Mrs Martin as to whether in calculating the revenue of each year the above items should be treated as belonging to the income of the year in which they became due or of the year in which they were received.

For the settlement of this, among other points, a special case was presented to the Court by, *inter alios*, (1) the trustees, and (2) Mrs Martin.

The questions of law were—“(12) In ascertaining and disposing of the income of each

year, are the first parties bound to have regard only to the income which has actually been received during the year? or (13) Are they bound to include income becoming due during the year but not paid to them until after its close?”

Argued for the first parties—In ascertaining and disposing of the income of each year they were bound to have regard only to the income actually received during the year, and not to income becoming due but not received during the year. In striking the “free annual proceeds” of the residue it was impossible for the trustees to take account of sums which although due might never be paid.

Argued for the second party—The first parties in ascertaining and disposing of the income of any one year were bound to take into account all the sums that became due and payable during that year, although the same might not be received till afterwards. Such sums were part of the free annual proceeds of the year in which they became due and payable. The trustees might not be able to pay them till they received them, but that did not change the character of such sums. In the case of the death of a life-renter, her representatives would be entitled to all revenue which became due and payable before her death whether it had been received by her or not, and the same principle applied to sums which had become due but had not been paid before the date of making up the trust accounts.

At advising—

LORD TRAYNER—. . . *Ques.* 12, 13—In my opinion the income of the estate in each year is not confined to the money actually received in each year by the trustees. A sum of income due and payable in one year but not actually received until the following year is income of the former year, and should be so treated in dealing with the interests of the respective beneficiaries. The 12th question therefore will be negatived and the 13th affirmed. . . .

The LORD JUSTICE-CLERK and LORD YOUNG concurred.

The LORD JUSTICE-CLERK read the following opinion of LORD MONCREIFF, who was present at the hearing of the case but was absent at the advising:—. . . Under the practice of the trust the financial year has hitherto run from the 2nd of July, and my opinion is that if at the end of the financial year sums were due but not paid they fell to be considered as part of the revenue of that year and not of the next. . . .

The Court answered the 12th question in the negative and the 13th in the affirmative.

Counsel for the First Parties—Chree. Agent—J. P. Watson, W.S.

Counsel for the Second Party—J. H. Henderson. Agents—Bruce & Stoddart, S.S.C.