

the summons relative to any of the floodings except that of 17th August 1920, and continued the cause for further procedure.

Counsel for Pursuers—Watson, K.C.—Jamieson—G. R. Thomson. Agents—John C. Brodie & Sons, W.S.

Counsel for Defenders—Graham Robertson, K.C.—Ingram. Agent—W. M. Murray, S.S.C.

Wednesday, July 4.

FIRST DIVISION.

MACDONALD, GREENLEES, &
WILLIAMS (DISTILLERS), LIMITED,
PETITIONERS.

Process—Petition—Company—Intimation—Petition for Sanction of Scheme of Arrangement—Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 120.

In a petition by a private company, with consent of a majority in numbers of each class of its shareholders, representing more than three-fourths of the value of the capital in each class, for authority to call and hold meetings and for sanction of a scheme of arrangement under section 120 of the Companies (Consolidation) Act 1908, no crave was made for intimation on the walls and in the minute book. The Court *ordered* intimation on the walls and in the minute book.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts—Section 120—“(1) Where a compromise or arrangement is proposed . . . between the company and its members or any class of them the Court may on the application in a summary way of the company or of . . . any member of the company . . . order a meeting . . . of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs. (2) If a majority in number representing three-fourths in value of the . . . members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on . . . the members or class of members, as the case may be, and also on the company. . . .”

Macdonald, Greenlees, & Williams (Distillers), Limited, *petitioners*, presented a petition under section 120 of the Companies (Consolidation) Act 1908 for authority to convene meetings of the members and shareholders of the company for the purpose of considering and approving a scheme of arrangement prepared with a view to converting the company from a private into a public company, making a public issue of its shares and obtaining a quotation on the Stock Exchange. A majority in number of each class of shareholders, representing more than three-fourths of the value of the capital in each class, were consenters to the petition.

The petition did not contain a crave for intimation on the walls and in the minute book, and when the petition appeared in the Single Bills counsel submitted that in the circumstances such intimation was unnecessary.

The Court pronounced this interlocutor—

“Appoint the petition to be intimated on the walls and in the minute book in common form, and allow all concerned to lodge answers thereto, if so advised, within six days thereafter.”

Counsel for the Petitioner—Wilton, K.C.—Burn Murdoch. Agents—Davidson & Syme, W.S.

Saturday, July 14.

FIRST DIVISION.

TRUSTEES OF DOMESTIC TRAINING
SCHOOL, &c., GLASGOW,
PETITIONERS.

Charitable Trust—Administration—Failure of Objects—Application for Authority to Transfer Funds—Cy près.

The trustees of a charitable society which carried on a home for training friendless or destitute girls as domestic servants and a hostel for girls unable to find temporary accommodation, petitioned the Court for authority to divide its funds and property between a church association which trained orphans and destitute girls for domestic service and a vigilance association for the protection of women and children. Owing to changed conditions the usefulness of the society had been much impaired, the number of girls desirous of receiving domestic training having greatly decreased, and the hostel having become merely a lodging-house for women workers who were in a position to pay for, and did pay for, the board and lodging provided. Further, its financial position had become such that it could not be continued without the payments received from lodgers. The Court *granted* the prayer of the petition.

Mrs Rachel Mitchell Teacher and others, the trustees of the Domestic Training School and Hostel for Women Workers, 260 Renfrew Street, Glasgow, *petitioners*, presented a petition in which they craved the Court to authorise them to transfer the property and funds of the trust to the Church of Scotland Training Home for Servants and to the National Vigilance Association of Scotland in proportions set forth in the petition.

The petition stated—“That in the year 1884 there was founded in Glasgow a society known at its inception as ‘The Glasgow Union for the Care and Help of Girls and Women.’ Its object was ‘to form a centre for all work at present carried on in Glasgow for the care and help of women and girls, and to set on foot from time to time, and after consultation with existing

societies, such new branches of work as may seem desirable.' That as a result of the labours of the said Glasgow Union a variety of schemes were set on foot and amongst them a training home for servant girls, a clothing club, and a free registry. These enterprises were managed at the outset by separate committees but were run in conjunction with each other. A temporary Home for girls was started soon after, and for over thirty years 'The Training School, Temporary Home, and Free Registry for Friendless Servant Girls' were carried on under one management. In the year 1919 the name was changed to 'The Domestic Training School and Hostel for Women Workers.' The objects of the said Training School and Hostel were—(a) The School is to train young girls for domestic service. (b) A free registry is attached to the School to find situations for girls in domestic service. (c) The Hostel is to give board and lodging to any young working woman or girl who shall be approved by the committee. (d) Only girls of good moral character are eligible for admission. That the work of the institution was carried on by a committee with the aid of funds subscribed by the charitable public in the form of annual subscriptions, donations, and legacies supplemented by fees paid by the girls and women residing in the Hostel out of the wages earned by them. That the policy of the committee of management throughout was to co-operate with other philanthropic agencies in Glasgow with the object of avoiding overlapping and to adjust the resources of the institution to the needs of the community. Accordingly during the war board and lodging on reasonable terms was offered to women munition workers, who in considerable numbers availed themselves of this benefit. Since the war the Home has continued to receive women workers as boarders and to derive income from this source. That of recent years the numbers of girls desirous of receiving domestic training has been small. In 1904 26 girls were under training, while at the present there are only 8. On the other hand, the demand for accommodation in the Hostel has largely increased. The petitioners feel that the usefulness of the Domestic Training Home as a means of training friendless or destitute girls has been much impaired owing to modern conditions under which a wider field of occupation is open to girls; they also consider that the Hostel, at one time a refuge for girls unable to find temporary accommodation, has become a lodging-house for women workers who are in a position to pay for, and do pay for, the board and lodging provided. It appears to the petitioners that in the circumstances the original objects of the Home have failed, and that the Hostel has lost the charitable character which it formerly possessed. That at a meeting of the General Committee held on 19th May 1922 it was agreed to submit to the annual meeting of the subscribers to the institution the following resolution:—"That in view of the small number of girls now availing themselves of the Training Home and of the

Hostel as a temporary home when out of a situation, the institution should be wound up and the property and funds divided between Florentine House (Church of Scotland Training Home, Glasgow) and the National Vigilance Association of Scotland, and that the trustees and the executive committee be authorised to take such steps as may be necessary to enable this to be done.' That the foresaid resolution was duly advertised in the *Glasgow Herald* and *Glasgow Citizen* newspapers along with the intimation of the date of the said annual meeting at which it was to be proposed, and that at said annual meeting held on 9th June 1922 it was unanimously carried. . . . That the Sixtieth Annual Report of the Church of Scotland Training Home for Servants presented to and adopted by the annual meeting of those interested in the said Training Home held on 6th December 1921 states that the said Training Home is under the management of 'The Glasgow Elders' Wives and Daughters' Association,' and that the chief work of said Association is 'training orphan and destitute girls as domestic servants in the Home, Florentine House, 53 Hillhead Street, Glasgow.' Seventeen girls were under training in Florentine House at the date of said report. The annual accounts for the year ending 30th November 1921 show a deficiency of income as against expenditure of £167 odd. The petitioners contend that the work of giving domestic training to deserving girls can be aided more effectually by the proposed transference of property and funds to an institution with a wider sphere of opportunity than by continuing to carry on a home which has ceased to be fully occupied. That the National Vigilance Association of Scotland is a society supported by donations and subscriptions at the hands of the public. Its main object is the protection of women and children from becoming the victims of offences of a sexual nature. It seeks to attain this end by assisting to bring to justice those who transgress the law in this respect, and by endeavouring to strengthen the existing law dealing with such matters. The petitioners contend that their house at 260 Renfrew Street, Glasgow, would be of great assistance to the said National Vigilance Association as a temporary home for those whom they seek to rescue or protect, and they crave authority to make over this house, with furniture and fittings, and also a sum of £300 for the purposes of putting the said house in a state of suitable repair, to the said National Vigilance Association. The petitioners are fully conversant with the work carried on by the Church of Scotland Training Home for Servants and the National Vigilance Association of Scotland. They have been in communication with both of them, and have ascertained that they are anxious and ready to accept transference of the property and funds in the proportions specified. In these circumstances they respectfully ask the authority of the Court to the transfer of the property and funds held by them to the two selected associations in the proportions set forth in the petition."

On 10th January 1923 the Court remitted the petition to Mr Oswald Dykes, advocate, to inquire and report.

In his report the reporter stated, *inter alia*, that the objects and history of the charity were correctly set forth in the petition, that the association had ceased to fulfil the useful purpose for which it was started, that the procedure had been regular, and that the granting of the petition would be in conformity with the practice of the Court in analogous cases. The petition was heard on the 20th March and the 14th July 1923. After the first hearing the petitioners lodged a minute setting forth, *inter alia*, the financial position of the society from which it appeared that without the payments received from lodgers it would be impossible to continue the Home.

LORD PRESIDENT—The powers under which it is possible for the Court to deal with petitions such as this are peculiar and delicate. I think it necessary to say that the principle of approximation properly applies only to cases in which the object of a charitable foundation can, owing to changed circumstances, no longer be carried into practical effect in the particular form or by the particular means prescribed by the founder. In such cases the Court has power to vary the means and to substitute for a particular form of charity another form approximating as closely as may be to the old one. But the principle does not apply to cases in which—there being neither failure of object nor obsolescence of method—the changing circumstances of society have made the duties of the trustees and managers of the foundation much more arduous to perform and discouraging in their results. If we opened the door to applications in which the ground for appealing to our jurisdiction was only that owing to a change of circumstances the achievement of the purpose of the charity has come to make heavy demands on the services and persistence of the trustees and managers, then I am afraid we should be very likely to exceed the powers which we possess. The present case is near the border line. The training of young women for domestic service by means of instruction in a home is an object by no means out of date. On the other hand, the financial circumstances in which this institution has found itself since the war do present something like an impossibility of continuance. Without saying more as to the circumstances of the case, I think the application is one that we may pass.

LORD SKERRINGTON—While I doubt whether this petition does not involve an illegitimate extension of the doctrine of *cy près*, it is, in my judgment, impossible to refuse it without reconsidering at the same time certain decisions pronounced by the Court within recent years on applications of a very similar character. The present, however, does not appear to me to be a suitable occasion for taking that course. As regards the merits I confess that at first I felt some difficulty as to the propriety of transferring a Home which

judging from its written constitution, I assumed to have been entirely undenominational, to a body of managers whose duty it will be to subject the inmates of the Home to religious influences of a kind which will be unacceptable to many girls who might otherwise have taken advantage of this charity. It was stated, however, by counsel for the petitioners that their Home has hitherto been managed upon substantially similar lines, and as this was presumably done with the knowledge and approval of the subscribers, this objection disappears. As regards the proposal to hand over a portion of the petitioners' assets to the National Vigilance Association of Scotland, I could not have given my assent to it but for the statement by the petitioners' counsel to the effect that girls taking advantage of the temporary home provided by the Association will not be subjected to instruction of which many of the subscribers would, in my opinion, have disapproved.

LORD SANDS—I agree with your Lordship in the chair. I think the case, as your Lordship has pointed out, is a narrow one. The Court cannot arrogate to itself the authority of a commission with a discretionary power of remodelling a charity. This application reaches the border line, but does not, in my view, go beyond it.

The Court granted the prayer of the petition.

Counsel for the Petitioners—Lord Kinross.
 Agents—Mackenzie & Kermack, W.S.

HIGH COURT OF JUSTICIARY.

Tuesday, July 17.

(Before the Lord Justice-Clerk, Lord Hunter, and Lord Anderson.)

(Sheriff Court at Glasgow.)

TOWNSEND v. STRATHERN.

Justiciary Cases — Proof — Conviction — Insufficient Evidence — Evidence of One Accused Incriminating Another — Evidence of Socius Criminis — Competency — Criminal Evidence Act 1898 (61 and 62 Vict. cap. 36).

In a charge against a husband and wife, and also against a third party, the appellant in the present appeal, of acting in concert to defraud a committee for the administration of a relief fund, all the accused were found guilty. In the case of the appellant the ground of conviction was that she had filled up the application form without proper investigation, and had signed the man's name to it without his authority and in the knowledge that it contained a false statement, viz., that he was out of work at the time. The evidence against the appellant was that of the wife, who stated that she had informed the appellant that her husband was employed at the time when the application for relief