

the house unless it is to be occupied by the teacher who is discharging the duties of teacher in the parish. Now, I do not see what real interest these ratepayers have to raise that question. They are only interested in preventing any illegal application of property which improperly adds to the rates. But here if this question were answered in their favour no benefit would accrue to the ratepayers, for the Board would simply change the allowance as regards house and garden into a money allowance in addition to the £60 already given. I could even conceive circumstances in which the course the second parties contend for would be against the interest of the ratepayers.

I am clearly of opinion in law that the School Board may make such an arrangement as they have done with Mr Lawrie, and that no misuse of office has been substantiated which calls upon this Court for interference with their action. They have acted within their powers, and we have no power to control them in a reasonable exercise of the discretion vested in them by the Act.

LORD YOUNG—I am of the same opinion. I think the second parties here have no title and interest to state their objections, and have neither law nor reason to support them. Retiring allowances under the existing law are clearly governed by section 61 of the Act of 1872. Retiring allowances are entirely in the discretion of the School Board, and I do not assent to the view that the allowance fixed in this case was £60, and that the house was a free gift in addition to the retiring allowance. I think that the retiring allowance which the School Board determined upon in the exercise of their discretion was the £60 together with the house and garden. They might, instead of the house and garden, have increased the money allowance so as to enable the old teacher to secure a house for himself, say by making it £75. There could have been no objection on the ground of want of power. It might have been represented as an outrageous use of their discretion, but we should hardly have listened to that suggestion.

If, then, it was within their power, their power was not abused by what they have done, and would not have been abused if they had made the allowance £60, and £15—that is, £75—to enable the retiring teacher to provide a house for himself. But, dealing with an old man, they acted wisely in listening to the suggestion that he should not be turned out of his house, but that an arrangement should be made with his successor to provide a house for himself while the old man lived. The money withheld from the allowance of the old teacher will enable the new teacher to get a house for himself, and in so arranging, the School Board acted reasonably and within their discretion. Even supposing they had put the new teacher into the school-house, they would not have been bound to restrain him from letting it, unless by doing so he neglected his duties. He might, for the sake of his health it may be, have let it, and let it to the old teacher for a sum enabling him to get a more suitable house elsewhere. Would it have been illegal to let it? Schoolhouses are constantly let in summer, so are manses. No doubt the Presbytery might interfere if a minister let his manse

and left the neighbourhood, so that his parish suffered, but not otherwise, and the notion of there being any illegality or indiscretion in a schoolmaster letting his house with the consent of the school board is extravagant. I think the questions submitted to us are needlessly numerous and elaborate, and I propose that we should simply answer that the arrangement made by the School Board with regard to the retiring allowance, both as to the money payment and as to the house and garden, was lawful and in the proper exercise of their discretion.

LORD RUTHERFURD CLARK concurred.

LORD LEE—The objection here taken is that the arrangement is *ultra vires* of the School Board in two particulars—First, as regards the £60, and secondly, as regards the house and garden. I cannot say that I share the view that the ratepayers have no good title to state their objections as affecting the rates, but I agree in thinking that the first objection is unfounded, because the 61st section gives the School Board exclusive discretion in fixing the amount of a retiring allowance. As to the house, my only doubt has been whether a school board, so long as they hold the house, are not bound to use it for the schoolmaster. They may change the site and sell the buildings, but it is not clear to me that they have full right and title to deal with the house as if it were private property belonging to them. While expressing this doubt, I have nothing to add to the opinions expressed by your Lordships.

The Court pronounced an interlocutor finding that the School Board had acted within their powers in fixing the teacher's retiring allowance at £60, and in allowing him the use of the teacher's house and garden.

Counsel for the School Board—Sym. Agents—J. & J. Ross, W.S.

Counsel for the Ratepayers—W. E. Fraser. Agent—J. P. Sym, W.S.

Tuesday, February 5.

FIRST DIVISION.

SIMPSON *v.* HORSBURGH (LIQUIDATOR OF THE BOSON OIL COMPANY, LIMITED).

Public Company—Voluntary Liquidation—Application to Court by Liquidator for Powers—Companies Act 1862 (25 and 26 Vict. c. 89.)

The Companies Act 1862, sec. 138, provides—"When a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the Court in . . . Scotland . . . to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court, and the Court, . . . if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede wholly or partially to such applica-

tion, on such terms and subject to such conditions as the Court thinks fit." . . .

A shareholder in a company which was being voluntarily wound up, applied to the Court for the rectification of the register by the deletion of his name therefrom in respect of certain shares standing therein in his name.

The liquidator of the company came to terms with the petitioner, and by note applied to the Court to sanction the compromise, and the Court, in terms of section 138 above quoted, and without inquiry, approved of the minute of agreement, and authorised the rectification of the register in terms thereof.

On 30th April 1884 the Boson Oil Company (Limited) was incorporated under the Companies Acts 1862 to 1880, and on 15th August 1888 it was duly resolved that the said company should be wound up voluntarily in terms of the said Acts, and Henry Moncreiff Horsburgh, C.A., was appointed liquidator.

George Simpson, Lomond House, Trinity, was entered on the register of members of the said company as proprietor of, *inter alia*, 1440 shares. In October 1888 he presented the present petition to have the register of members rectified and his name deleted as a shareholder of the 1440 shares.

Section 35 of the Companies Act of 1862 provides that "If the name of any person is without sufficient cause entered in . . . the register of members of any company under this Act . . . the member aggrieved . . . may, as respects companies registered in Scotland, by summary petition to the Court of Session, or in such other manner as the said Courts may direct, apply for an order of the Court that the register may be rectified." . . .

The liquidator lodged answers, in which he averred that the shares in respect of which the petitioner's name stood on the register of the company consisted of two lots—(1) A lot of 1391, which were part of a lot of 1441 which had been improperly allotted to the petitioner, and for the calls upon which the directors were advised that the petitioner could not be made liable. (2) 49 shares, which were part of 100 shares which the petitioner acquired by transfer in October 1885; £1 per share had been paid upon these shares, and the balance of £9 per share (amounting in all to £441) was still due.

In January 1889 a note was presented to the Court by the liquidator stating that since his answers to the petition had been lodged he had succeeded in effecting an arrangement with the petitioner of the matters in dispute between them.

The material provisions of this arrangement were (1) that the petitioner was to pay the liquidator the sum of £196, being £5 per share on the foresaid 49 shares (less £1 per share already paid thereon); (2) that both parties agreed that the aforesaid 1440 shares be deleted from the register of the said company in liquidation, and held as cancelled.

The liquidator accordingly prayed the Court to approve of the minute of agreement, and to order the rectification of the register of the Boson Oil Company in terms thereof.

Argued for the liquidator—This was an inci-

dental application in the course of a voluntary liquidation, and was competent under section 138. It was just the kind of application contemplated by the section; and the Court should give effect to the section by sanctioning the agreement come to between the liquidator and the petitioner. — *Sdeuward v. Gardiner*, March 10, 1876, 3 R. 577, and 5 R. 867; *Clark v. Wilson*, June 7, 1878, 5 R. 867; *Gardner v. Hughes*, July 11, 1883, 10 R. 1138.

Argued for the petitioner—The petitioner and the liquidator were at one in desiring that effect should be given to the agreement arrived at, and as the whole facts were before the Court no further inquiry was necessary.

The Court pronounced the following interlocutor:—

"Approve of the said minute of agreement, and on payment of £196 by the petitioner to the said liquidator, order and direct that the register of shareholders or members of the Boson Oil Company, Limited, be rectified by deleting or removing therefrom the name of the petitioner as a shareholder of the said company in so far as the 1440 shares of the said company mentioned in the petition and proceedings are concerned, and that due notice of such rectification be given to the Registrar of Joint-Stock Companies." . . .

Counsel for the Petitioner—C. S. Dickson.
Agents—Richardson & Johnston, W.S.

Counsel for the Respondent—G. W. Burnet.
Agents—George Andrew, S.S.C.

Tuesday, February 5.

SECOND DIVISION.

[Sheriff of Lanarkshire.

GEORGE SMITH & COMPANY AND MILLAR v.
SMYTH AND ANOTHER.

Bankruptcy—Act 1696, c. 5—Illegal Preference—Assignment in Security—Sale of Bankrupt Estate under Deed of Arrangement—Right of Purchaser to Challenge Preferences.

A firm assigned their book debts to the amount of £387, 15s. in security of an advance of £330 and a bill for £57, 15s. previously granted by them to the lender. A further assignment of their book debts was made in respect of other advances, and in security of any possible deficit on the first assignment. Three weeks after the date of the first assignment the firm was sequestrated, but by deed of arrangement the sequestration was wound up, and the whole property of the estate was sold.

In an action by the purchaser against the assignee in security for transference of the book debts, the purchaser objected to the assignee crediting himself with the sum of £57, 15s., the amount of the bill, on the ground that it had been granted within sixty days of bankruptcy. *Held* that as the deed of arrangement did not convey to the pur-