justified in putting an interpretation upon it at all. But that I do not think that I am. A medical referee is bound to have convictions and to have the courage of his convictions. I think, therefore, that whether the parties agreed or not, the Sheriff should have declined to accept the medical referee's report, and have returned the case to him with instructions to give a distinct expression of opinion on the point referred to him; and that I think should still be done.

LORD SKERRINGTON concurred.

LORD KINNEAR and LORD MACKENZIE were sitting in the Extra Division.

The Court pronounced this interlocutor—

"*Hoc statu* recal the determination of the Sheriff-Substitute as arbitrator, dated 21st February 1911, and remit the cause to him to remit of new to the medical referee to complete the reference already made to him: Find no expenses due to or by either party."

Counsel for the Appellant—Constable, K.C. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents—Horne, K.C.—Strain. Agents—W & J. Burness, W.S.

Thursday, July 13.

FIRST DIVISION.

THE SHANDON HYDROPATHIC COMPANY, LIMITED, PETITIONERS.

Company — Capital — Arrangement with Debenture-Holders — Power to Sanction Arrangement Changing Terminable Debentures into Perpetual Debenture Stock — Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 120.

The power given to the Court by the Companies (Consolidation) Act 1908, section 120, to sanction a compromise or arrangement between a company and its creditors, or between the company and its members, gives them jurisdiction to sanction an arrangement whereby terminable debentures or debenture bonds are converted into perpetual debenture stock.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), section 120, enacts—"(1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or 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 creditor or member of the company, or in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members as the class 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 creditors, or class of creditors, or 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 all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company, or in the case of a company in the course of being wound up, on the liquidator and contributories of the company. (3) In this section the expression 'company' means any company liable to be wound up under this Act."

The Shandon Hydropathic Company, Limited, incorporated under the Companies Acts, and having its registered office at No. 188 St Vincent Street, Glasgow, presented a petition for authority to call and hold a meeting of debenture-holders, and for sanction of an arrangement.

The petition set forth, *inter alia*—"The objects for which the company was established are set forth in head 3 of the memorandum of association of the company, and were—'The purchasing of the estate known as "West Shandon," situated in the parish of Row and county of Dumbarton. The erecting, fitting up, furnishing, and maintaining thereon all necessary or convenient buildings for a hydropathic establishment, including baths and offices. The carrying on of a hydropathic establishment therein, including hiring, and all other business incident thereto. The erecting of a pier *ex adverso* of the said property. The acquiring of all other property, real or personal, necessary for carrying out all or any of the foresaid objects. The holding, managing, improving, building upon, dealing with, feuing, selling, or disposing of the company's property, or any parts or portions thereof, and the doing all such other things as are incidental or conducive to the attainment of the above objects, including especially the borrowing of money on security of the property purchased or to be purchased, or acquired, or on debenture, and the repaying or liquidating of the same.'

"Head 5 of the memorandum of association of the company makes the following provision as to the capital of the company—'The capital of the company is £35,000, divided into 7000 shares of £5 each.'

"By article 1 of the articles of association of the company the regulations contained in the table marked A in the first schedule to the Companies Act 1862 were, subject to certain alterations and modifications, adopted as the regulations of the company. . . .

"By special resolution passed 19th July and confirmed 6th August 1878, the capital of the company was increased by adding thereto £35,000, divided into 7000 shares of £5 each, thus making the total amount of the capital of the company £70,000, divided into 14,000 shares of £5 each.

"Of the 14,000 shares of £5 each forming the whole share capital of the company, 9290 shares have been issued. They are all fully paid.

"Since its incorporation the company has carried on the business for which it was formed.

"After its incorporation the company, in virtue of the powers conferred on it by its memorandum of association, from time to time borrowed various sums of money on debenture or debenture bond. With the view of borrowing money at a moderate rate of interest, the directors of the company, at a meeting of the board of directors held on June 16, 1884, proposed, subject to the approval of the shareholders of the company, to give the current and future debenture holders or debenture bondholders of the company a preferential right over the heritable property belonging to the company, and to execute a conveyance thereof in favour of trustees for behoof of the debenture holders or debenture bondholders, and thereby entitle them to rank *pari passu* thereon to an extent not exceeding £21,000, but postponed to a sum of £25,000 borrowed on bond and disposition in security granted by the company over the said heritable property. . . .

"At a general meeting of the company held on 30th June 1884 the foregoing proposal was approved of by a resolution passed in the following terms—'That for the security of the present and future lenders to the company upon debenture or debenture bond the shareholders approve of the directors executing a conveyance *ex facie* absolute of the whole heritable estate of the company in favour of a trustee or trustees, for behoof of such person or persons, present or future, as may for the time being hold one or more debenture or debentures, or debenture bond or bonds, already granted or to be granted by the company, whereby the said person or persons shall (subject to the existing feu-duty and to the present or any other heritable bond of £25,000 in lieu thereof, interests and consequents affecting the said estate) rank *pari passu* in priority to all other indebtedness with other lenders upon debenture or debenture bond to an extent not exceeding in all £21,000, to which extent the shareholders approve of debentures or debenture bonds being granted and issued; it being in the power of the company to extinguish or discharge the existing heritable bond in whole or in part, and of new to grant a bond or bonds in lieu thereof, ranking prior to the said trustee or trustees, and also to increase or diminish the amount of said heritable bond; but in the event of an increase the power to grant and issue debentures or debenture bonds, and the right of the holders thereof to rank *pari passu*, shall be restricted by the sum to which the heritable bond shall be so increased; and, on the other hand, in the event of the heritable bond being diminished, the power to grant and issue debentures or debenture bonds, and the right of the holders thereof to rank *pari passu*, shall be increased by the sum to which the heritable bond shall be so diminished; it being understood that the whole sum which may be borrowed by heritable bond, and debentures or debenture bonds, shall not exceed the sum of £46,000 in all; which conveyance shall be qualified by a declaration of trust to be granted by the said trustee or trustees, and shall contain such stipulations and conditions as the directors may approve and provide, for the regulation of the said trust and for payment of the expenses attendant upon the creation and execution thereof and all following thereupon; and further, the directors be empowered to nominate the said trustee or trustees and to allow him or them a suitable remuneration for their trouble.'

"Thereafter a disposition was granted by the company in favour of James Morrison of Ashcraig, Glasgow, and others as trustees therein mentioned, . . . of the lands and others therein described belonging to the company. By agreement and declaration of trust, dated 7th, 8th, 16th, and 19th August, and registered in the Books of Council and Session 5th September 1884, entered into between the company (therein called 'the first party') and the said James Morrison and others as trustees therein mentioned (therein called 'the second parties') the parties thereto agreed, acknowledged, and declared that the foresaid disposition was granted and the lands and others therein contained were thereby assigned and disponed in trust for the security of the debenture holders or debenture bondholders of the company. In August 1884 the sums borrowed by the company on debenture or debenture bond amounted to £20,990. The sums so borrowed now amount to £21,702. The debentures or debenture bonds are of varying amounts and were issued for periods of three or five years. At Whitsunday 1911 £2740 of debentures or debenture bonds fell due and still remain unpaid. A print of the form of debenture or debenture bond issued by the company is herewith produced. The debentures or debenture bonds are all secured by the foresaid agreement and declaration of trust, a copy of which is herewith produced.

"The directors of the company having come to the conclusion that a rearrangement of the terms on which the debenture debt was held was highly expedient in the interests of the company and all concerned, issued a circular to the debenture holders or debenture bondholders of the company convening them to a meeting, to be held for the purpose of considering certain proposals set out in the said circular for a compromise or rearrangement with regard to the company's indebtedness to them. The meeting so convened was held on April 26, 1911, when a resolution was passed in the following terms—"That this meeting, having heard the views of the directors and the proposals made for a compromise or rearrangement between the company and the debenture holders, without finally committing any individual debenture holder, approve generally of the proposal to issue debenture stock, and of the directors taking the necessary steps to have the Court applied to, to summon the debenture holders to consider if they will agree to the compromise or rearrangement as this may be

formulated in detail, giving effect to views expressed at the meeting in an agreement to be entered into between the company and some one on behalf of the debenture holders.'

"The company proposes to vary the terms upon which the debentures or debenture bonds were issued and are payable, and towards this end an agreement dated 15th May 1911 has, subject, *inter alia*, to the sanction of the Court, been entered into between the company of the first part and Charles Neaves, West Shandon House, Shandon, Dumbartonshire, for and on behalf of each and every debenture holder or debenture bondholder of the company of the second part. . . .

"The said agreement provides, *inter alia* —'(1) For the debenture or debenture bonds being converted into debenture stock, bearing interest at 5 per cent. per annum, and repayable on the occurrence of the events specified in the said agreement; (2) for the trustees acting under the said disposition and the said agreement and declaration of trust holding the said lands and others assigned and conveyed by the said disposition as security for the debenture stockholders to the extent of a sum not exceeding £25,000 and interest in the same way as they at present hold the same for the debenture holders or debenture bondholders; (3) that the company is not to increase the preferable burdens, at present amounting *in cumulo* to £18,750, on the said lands and others without the consent of the debenture stockholders, nor to replace bonds which are discharged by payments to account of the sums due thereunder, but with power to it to replace the said bonds if called up; (4) that the company, before paying any dividend to the shareholders, is, out of revenue so far as the same will permit, to reduce the preferable burdens to the extent of at least £500 per annum subsequent to Martinmas 1913, and also to set aside and invest in the names of the said trustees £500 per annum out of the net profits of the company without allowing for depreciation, but after making payment of £500 per annum to the holders of the preferable burdens, and also after payment of interest on the debenture stock and all proper charges, and that the said trustees may, with the consent of the company, apply said sums in purchasing debenture stock at not less then 20 per cent. below par, or hold, apply, or invest the same in the manner prescribed in the said agreement; (5) that the company is not to pay the shareholders any dividend until it has either paid off the preferable burdens to the extent of £2500, or set a sum aside for that purpose, or the trustees have received £2500 as before provided for; and (6) that the company is to pass resolutions (*a*) approving of and confirming the said agreement agreeing to the conversion of the debentures or debenture bonds into debenture stock; (*b*) authorising the directors to borrow as part of the debenture stock such further sums as they see fit up to an issue of debenture stock, including the debentures at present issued, not exceeding in all £25,000; (*c*) authorising the directors to grant all deeds necessary to carry out the conversion of the said debentures or debenture bonds and the issue of the said debenture stock; and (*d*) authorising the debenture stockholders to elect a director of the company from their own number."

The Court on 7th June 1911 pronounced this interlocutor—"The Lords, having considered the petition and heard counsel, direct a meeting of debenture holders of The Shandon Hydropathic Company, Limited, to be summoned and held for the purpose of taking into consideration, and, if so resolved, of approving of the arrangement contained in the agreement set forth in the petition: Authorise the petitioners to fix a day, hour, and place for said meeting, and appoint them or their agents to give seven days' notice thereof by advertisement once in the *Edinburgh Gazette* and once in the *Glasgow Herald* newspaper: Appoint the petitioners or their agents to post seven days at least previous to the date of said meeting a notice stating the object of the proposed meeting and accompanied by a form of proxy and a copy of the present petition to every debenture holder or debenture bondholder to his address as appearing on the register of debenture holders: Further, authorise the said meeting to appoint its own chairman and direct the chairman, so appointed, to report the result of the meeting to the Court."

On June 27th 1911 Frederick L. Morrison, LL.B., writer, Glasgow, who had been appointed chairman of the meeting, submitted to the Court a minute of the meeting of debenture holders of the company convened under the above interlocutor and a relative dissent and protest.

The report, which sufficiently gives the substance of the minute, set forth, *inter alia*—"It will be observed from the minute that there were present personally and by a proxy, debenture holders representing in all £15,992 of debentures, and that the motion for approval of the arrangement was duly carried—eleven persons representing £14,492 of debentures voting therefor, while one person representing £500 of debentures voted against, and one person representing £1000 of debentures declined to vote. As set out in the petition, the total amount of debentures issued by the company is £21,702."

The dissent was as follows—"On behalf of John Tait Gowanlock, minister, Stirling, and others, the trustees of the late Robert Anderson, who are holders of a debenture for five hundred pounds of the Shandon Hydropathic Company, Limited, which debenture matures upon the day of August next, and as holder of a proxy granted by the said trustees, I, Archibald Maclaren Lindsay, writer in Glasgow, do hereby dissent from and protest against any decision of this meeting for the alteration of the term of said debenture converting it into a perpetual debenture or otherwise, and that on the ground, *inter alia*, that the money therein contained was lent for a certain definite

period, and that it is *ultra vires* of the company to convert this into a perpetual debenture; for this and other reasons to be hereafter stated, I protest against the decision come to at this meeting for the conversion of said terminable debenture into a perpetual debenture or otherwise."

No answers were lodged to the petition.

Argued for the petitioners—The scheme was reasonable, and had been approved by the requisite majority. It was not *ultra vires*. Such arrangements might be sanctioned, and though there were not apparently reported cases under section 120 of the Companies (Consolidation) Act 1908 (8 Edw. VII, cap 69) there were decisions under the earlier statutes. The history of the matter was as follows—The Joint Stock Companies Arrangement Act 1870 (33 and 34 Vict. cap. 104) enacted similar provisions, but only where a company was being wound up and between the company and its creditors. The Companies Act 1900 (63 and 64 Vict. cap. 48), sec. 24, extended the provisions of section 2 of the 1870 Act, and applied them as between the company and its members. Section 120 of the 1908 Act applied as between the company and its creditors or between the company and its members, although the company was not being wound up. They referred to *in re Empire Mining Company*, 1890, L.R. 44, Ch. D. 402, which was followed in *in re Alabama, New Orleans, Texas, and Pacific Junction Railway Company*, [1891] 1 Ch. 213, which were decided under section 2 of the Joint Stock Companies Arrangement Act 1870—Palmer's Co. Prev., 10th ed., part iii, p. 766; and also to *Willey* v. *Stocks*, 26 T.L.R. 41, which was decided upon contractual terms similar to those of the statute.

At advising—

LORD PRESIDENT—This is a petition for sanction of an arrangement with creditors of the Shandon Hydropathic Company, Limited, the principal creditors with whom the arrangement is being made being the company's own debenture-holders. The petition, which is presented under the 120th section of the Companies Act of 1908, craves the Court to direct the petitioners to call a meeting of the company's own debenture-holders. That has been done, and the meeting has been held. A majority in number representing three-fourths in value of the class of creditors present there approved of the proposal, and your Lordships are now asked to sanction it. No answers have been lodged, and therefore the application is not opposed. But it was brought before your Lordships' notice, quite properly, that at the meeting of the debenture-holders one gentleman appeared and tabled a protest as to the competency of the arrangement here proposed, and his objection to the competency of the arrangement was based upon this, that it is part of the arrangement that a terminable debenture should be changed into debenture stock.

Now I think this particular section, 120, is new, but it is really the outgrowth of former legislation. By the Companies Arrangements Act, arrangements between the creditors of a company and the company were made possible when the company was in liquidation, and the only new feature that we find in section 120 is that these arrangements may now be made by a company before it goes into liquidation. I think in these circumstances that one may with safety refer to the authority of the cases which were decided under the Companies Arrangements Act. I find in the case of *in re Alabama, New Orleans, Texas, and Pacific Junction Railway Company*, [1891] 1 Ch. 213, at p. 238, that Lord Justice Lindley makes the following observations—"What the Court has to do is to see, first of all, that the provisions of that statute have been complied with; and secondly, that the majority has been acting *bona fide*. The Court also has to see that the minority is not being overridden by a majority having interests of its own clashing with those of the minority whom they seek to coerce. Further than that, the Court has to look at the scheme and see whether it is one as to which persons acting honestly, and viewing the scheme laid before them in the interests of those whom they represent, take a view which can be reasonably taken by business men. The Court must look at the scheme, and see whether the Act has been complied with, whether the majority are acting *bona fide*, and whether they are coercing the minority in order to promote interests adverse to those of the class whom they purport to represent; and then see whether the scheme is a reasonable one or whether there is any reasonable objection to it, or such an objection to it as that any reasonable man might say that he could not approve of it."

I entirely adopt the words of that high authority, and I think that they are directly applicable to our duty under section 120. That being so, it seems to me that there is no reason why we should not approve of the proposal. There is nothing *ultra vires* in the proposal, and there is no hint here of the majority being swayed by ulterior interests—that is, not interests as debenture-holders, but by ulterior interests as shareholders or as creditors of some other sort; and as to whether the scheme is a reasonable one, I think one is entitled to take into consideration that three-fourths of the creditors whose names we have got are business men in Glasgow. I am therefore for granting the prayer of the petition.

LORD JOHNSTON—I concur.

LORD MACKENZIE—I also concur. The question really is a business one, and as Lord Justice Bowen pointed out in the *Alabama* case (*cit.*), business men generally know what is for their own interests. In this case one finds that out of debenture-holders representing in all £15,992 of debentures the motion for approval of the arrangement was carried by eleven persons representing £14,492 of debentures voting therefor, while one person representing

£500 of debentures voted against, and one person representing £1000 of debentures declined to vote; and when one looks at the list of those who were present at the meeting and took part in the division, one sees that they were persons who were very well qualified to judge of the matter that was put before them. If there had been any suggestion that the persons so voting had interests in different capacities from that of debenture-holders which might lead them to sacrifice to a certain extent their interests as holders of the debentures in order that they might preserve their interests as shareholders, then it would have been necessary to look very closely into what is proposed to be done. But there is no suggestion of any interest of that kind. There is no suggestion that the vote was not given *bona fide* in the interests of the debenture-holders. The only point made by the single dissentient is that what is proposed is *ultra vires*. One quite appreciates the difficulty that the dissentient may find himself placed in. One of a body of trustees finds that instead of having a debenture payable at a fixed term he is now to be placed in the position of a holder of debenture stock which he can only realise by placing it on the market, with the possibility of his not getting its full face value. But the ground of his objection is that the proposal is *ultra vires*, and a reference to the cases decided on this matter show that that ground of objection is untenable. I should point out that the present position is that at Whitsunday, 1911, £2740 of debentures or debenture bonds had fallen due and were still unpaid. That shows the wisdom of endeavouring to re-arrange the debenture debt. I keep in view that the Court has to be satisfied that the re-arrangement proposed is a reasonable one. After considering the terms of the agreement, the proposal for conversion, and the proposal that a certain amount should be set apart out of income in order to reduce the preferable burden, I am of opinion that the proposed arrangement is reasonable, and that the prayer of the petition should be granted.

LORD KINNEAR was absent.

The Court pronounced this interlocutor—

"The Lords having considered the petition (no answers having been lodged) along with the report by Mr Frederick L. Morrison, and heard counsel for the petitioners, in respect that the proposed arrangement contained in the agreement referred to in the petition has been agreed to by a majority in number representing three-fourths in value of the debenture holders present in person or by proxy at the meeting mentioned in said report, Sanction the said arrangement, and decern," &c.

Counsel for the Petitioners—Macmillan. Agents—J. & J. Ross, W.S.

Saturday, July 14.

SECOND DIVISION.

[Lord Guthrie, Ordinary.

PHILIP *v.* WILLSON (LIQUIDATOR OF BAY OF ISLANDS SLATE SYNDICATE, LIMITED) AND ANOTHER.

Expenses — Agent and Client — Charging Order—Petition Presented after Decree Extracted when Client, a Company now in Voluntary Liquidation, not subject to Jurisdiction and Fund Recovered not within Control of Court—Jurisdiction—Competency — Law Agents and Notaries Public (Scotland) Act 1891 (54 *and* 55 *Vict. cap.* 30), *sec.* 6.

A law agent who had conducted an action in Scotland on behalf of a company registered in England, presented, after decree had been extracted, and after the company had gone into liquidation, a petition for a charging order, under the Law Agents and Notaries Public (Scotland) Act 1891, section 6, on the fund which has been recovered by the action, and which had been paid over to the liquidator in England. *Held* (1) that the Court had power to grant the order, though neither the company nor the liquidator were subject to the jurisdiction, and (2) that the voluntary liquidation was no bar to the granting of the order.

The Law Agents and Notaries Public (Scotland) Act 1891 (54 and 55 Vict. cap. 30) enacts—Section 6—"In every case in which a law agent shall be employed to pursue or defend any action or proceeding in any court, it shall be lawful for the court or judge before whom any such action has been heard or shall be depending to declare such law agent entitled to a charge upon and against, and a right to payment out of, the property of whatever nature, tenure, or kind the same may be, which shall have been recovered or preserved on behalf of his client by such law agent in such action or proceeding, for the taxed expenses of or in reference to such action or proceeding, and it shall be lawful for such court or judge to make such order or orders for taxation of, and for raising and payment of, such expenses out of the said property as to such court and judge shall appear just and proper; and all acts done or deeds granted by the client after the date of declaration, except acts or deeds in favour of a *bona fide* purchaser, shall be absolutely void and of no effect as against such charge or right."

David Philip, S.S.C., presented a petition for a charging order in terms of the foregoing section on the sums recovered and remaining due under decrees in actions conducted by him in the Court of Session on behalf of the Bay of Islands Slate Syndicate, Limited, against the Reid Newfoundland Company.

Answers were lodged for Christopher Charles Willson, accountant, London,