

Saturday, March 5.

FIRST DIVISION.

(SINGLE BILLS.)

LIQUIDATOR OF THE CLYDE MARINE  
INSURANCE COMPANY, LIMITED,  
PETITIONER.

*Company — Winding - up — Voluntary  
Winding-up—Appointment of Committee  
of Inspection—Failure to Present Petition  
for their Appointment within Statutory  
Period — Nobile Officium — Companies  
(Consolidation) Act 1908 (8 Edw. VII, cap.  
69), secs. 188 (2) and 193.*

In the course of the voluntary winding-up of a limited company the creditor appointed in terms of section 188 of the Companies (Consolidation) Act 1908 to apply to the Court for appointment of a committee of inspection, failed *per incuriam* to present the petition within the statutory fourteen days. On application thereafter by the liquidator, the Court, in the exercise of its *nobile officium*, granted the prayer of the petition.

The Companies (Consolidation) Act 1908 enacts, section 188, sub-section (1), that the liquidator in a voluntary winding-up shall, within seven days of his appointment, call a meeting of the creditors. Sub-section (2) — “At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the Court for the appointment of . . . a committee of inspection, and if the creditors so resolve, an application may be made accordingly to the Court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.” Section 193—“*Power to Apply to Court*— (1) Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding-up, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.”

Eric Portlock, F.C.A., 186 Bishopsgate, London, *petitioner*, liquidator of the Clyde Marine Insurance Company, Limited, the registered office of which was in Scotland, presented a petition for the appointment of a committee of inspection in the voluntary liquidation of the company.

The petition set forth, *inter alia*—“That in terms of section 188 of the Companies Consolidation Act 1908 the petitioner duly convened a meeting of the creditors of the company to be held within the hall of the Institute of Chartered Accountants, Moor-gate Place, London, E.C., on the 21st January 1921. The meeting was largely attended, and the following resolution was passed :— ‘Proposed by Pickford, Watson, & Hampton, Limited, seconded by Dawson Brothers, that an application be made to the Court

for the appointment of Mr Walter F. Wiseman, Mr S. A. Tokeley, and Mr Maurice Diaz as a committee of inspection to act with Mr Eric Portlock as liquidator, and that Messrs Pickford, Watson, & Hampton, Limited, be appointed to make the application. That after the meeting of creditors a copy of the resolution was handed to the representative of Pickford, Watson, & Hampton, Limited, who was asked whether he proposed to instruct the liquidator’s solicitors. He replied that he presumed his company would make the application to the Court through their own solicitors. In terms of sub-section (2) of section 188 of the Companies Consolidation Act 1908 the application to the Court is to be made by the creditor appointed for the purpose at the meeting not later than fourteen days after the date of the meeting. By an oversight Pickford, Watson, & Hampton, Limited, omitted to instruct their solicitors, and the fourteen days have elapsed. . . . There is no special provision in the Companies Acts for proceedings being taken by any other creditor in circumstances such as have arisen in the present case. Nor is there a provision for convening another meeting to start proceedings *de novo*. The liquidator is anxious to take the creditors along with him in the winding-up of the company, and has indicated to the three creditors whose representatives were nominated in the resolution that he was prepared to act with them, but a question has arisen as to the desirability of the committee of inspection acting without being formally appointed. In these circumstances the petitioner respectfully moves the Court in the exercise of their powers under section 193 of the Companies Consolidation Act 1908, or alternatively, in the exercise of their *nobile officium*, to appoint the said Walter Frederick Wiseman, Sidney Allison Tokeley, and Maurice Diaz to be the committee of inspection in the voluntary liquidation of the Clyde Marine Insurance Company, Limited.”

On 5th March 1921, in the Single Bills of the First Division, counsel for the petitioner was heard. The following cases were referred to :— *Robertson*, 1900 S.C. 444, 46 S.L.R. 356 ; *Marlow*, 1912 S.C. 625, 49 S.L.R. 464.

The opinion of the Court (which consisted of the LORD PRESIDENT, LORD MACKENZIE, and LORD SKERRINGTON) was delivered by the Lord President.

LORD PRESIDENT — We think this is a clear case for the exercise of the power which the *nobile officium* gives us to rectify what is a pure mistake, and to supply machinery which owing to that mistake is deficient.

The Court dispensed with intimation and service and granted the prayer of the petition.

Counsel for Petitioner—T. Graham Robertson. Agents—Lindsay, Howe, & Company, W.S.

Tuesday, March 8.

SECOND DIVISION.

[Lord Sands and a Jury.

STEWART v. DUNCAN.

*Proof—Evidence—Admissibility—Incompetent Question—Jury Trial—Damages—Question as to whether Defender Insured—Motion for New Trial.*

In the course of the evidence for the pursuer in the trial of an action of damages before a jury one of the pursuer's witnesses, being examined as to a visit paid to her by the defender on the day following the accident, deponed that he then said—"Don't be afraid to make a claim, because my car is insured." The defender denied in cross-examination that he had made this statement, but in answer to a further question he admitted that the statement was true. A verdict for the pursuer having been returned, the defender moved for a new trial on the ground of the prejudice created by the questions put. Motion *refused*, on the ground that the questions were not irrelevant on the question of credibility which had been raised.

*Observed* that it would be improper deliberately to bring out before a jury the fact that the defender was insured, and that to so elicit the fact might be a sufficient ground for setting aside the verdict.

Alexander Stewart, Dundee, *pursuer*, a child of six years of age, to whom a curator *ad litem* was appointed, brought an action against Thomas Duncan, Rosefield Street, Dundee, *defender*, to recover damages for personal injuries sustained by being run over by a taxi-cab owned and driven by the defender.

An issue having been allowed the case was tried before Lord Sands and a jury and a verdict was returned in favour of the pursuer. The defender then moved for a new trial on the ground, *inter alia*, that the jury had been influenced by the disclosure in the course of the evidence that the defender was insured against such claims. In the course of her examination the pursuer's mother deponed as to a visit paid to her by the defender on the day after the accident. She was asked the question—"What did he say?" and she replied—"He said 'Don't be afraid to make a claim, because my car is insured up to £1000.'" The witness, however, admitted that the defender denied responsibility for the accident. The next witness, a sister of the pursuer's mother, stated that she was present at the interview, and corroborated the above evidence. The defender, however, when cross-examined denied that he had made such a statement in the presence of the witnesses above mentioned. He was then asked whether it was true that his car was insured up to £1000 and replied in the affirmative. This evidence was subsequently commented on by counsel for the pursuer in his address to the jury.

In moving for a new trial counsel for the defender argued that the questions had been put to elicit the fact that the defender was insured so as to influence the jury in the pursuer's favour, and that such an irregularity had occurred as entitled the defender to a new trial. He referred to *Wright v. Hearson*, 1916, W.N. 216.

LORD JUSTICE-CLERK—[*After expressing the opinion that there was evidence on which the jury were entitled to find for the pursuer*]—The second point which was raised by Mr Paton had reference to the fact that the defender's car was insured. I am perfectly clear upon this, that it is most improper deliberately to bring out before a jury a fact which has no direct bearing on the question at issue, but which is nevertheless calculated, and might even be intended, to influence the jury. But the point to which Mr Paton takes exception was brought out in answer to questions which were unobjectionable in form, and the reference to the matter by the learned counsel for the pursuer in his address to the jury was not illegitimate, having regard to the question of credibility which had been raised. It was pertinent to that topic, and it was legitimate to mention it to the jury in reference to credibility. As the judge who presided at the trial is of opinion that the point was not improperly brought out or put to the jury, I do not think that there is ground upon which this Court should interfere with the verdict on this head.

I think it right, however, to say that if a case were deliberately sought to be made of the fact that a defender was insured, and if this fact were brought before a jury for the purpose of influencing them on the ground that the defender was insured, I should consider it most improper, and in certain circumstances the Court would be justified in setting aside the verdict because prejudice had been created, and improperly created. In my opinion it would be quite within the competency and the duty of the Court to set aside a verdict if the circumstances were such as to show that the fact that the defender was insured was improperly made a point by the pursuer before the jury. [*His Lordship then dealt with the question of procedure.*]

LORD DUNDAS—[*After expressing the opinion that there was evidence which entitled the jury to find against the defender*]—The second matter relates to the allusion before the jury to the fact that the car was insured. I concur with your Lordship in thinking that any allusion to that topic is improper, and it is the duty of counsel to avoid willingly or knowingly letting it transpire before the jury in the course of the trial, and to avoid any reference to it in their addresses to the jury. I concur with the observations made by the judges in the English case of *Wright*, [1916] W.N. 216, and I rather think there is other authority to the same effect in England. I agree with your Lordship that if a clear case was brought before us where there had been improper introduction of or allusion to this