

opportunity, apparently being of opinion that in the circumstances of this case the burden of vindicating his rights up to that extent must lie upon the objector and not upon the petitioner, whose only desire was to restore things to the *status quo ante*. Whether it was necessary for the Dean of Guild to do that or not we need not consider; he gave the objector an opportunity of doing so and the objector declined to avail himself of it. Where a common proprietor desires to have a building restored to the condition in which it was before the fire and does not make any demand for a contribution from his co-proprietor, and states further that he is willing to consult his co-proprietor as to the adjustment of the new common stair, so that if and when he wishes to use it he may find it suitable for his property, I think that the petitioner is entitled to get the lining he asks, and that the Dean of Guild was right in holding that the proper thing to do was to allow the joint proprietor who desired to restore the building to get it restored, and was right in granting the lining and the necessary warrant to allow the operations to be carried into effect.

LORD ORMIDALE—I agree that the Dean of Guild was right in granting the lining which he was asked to grant. In coming to that conclusion I do not think it is necessary to lay down any general rule of law, for the circumstances are very special. The common property which is the *de quo* had been occupied as a staircase from 1812 down to about 1920, when it was destroyed by fire. I am not at all certain that in seeking to restore it the petitioner in the Dean of Guild Court was really seeking to interfere with the common property. On the contrary, it appears to me that in a very true sense the respondent in the Dean of Guild Court by venturing to oppose its restoration was really interfering with the common property in question. Whether that be so or not, looking to the nature of the subject and to the fact that this small portion of common property has been used from the year in which the staircase was erected as a means of access common to the two adjoining tenements, and not being in the position of the perfect house to which we were so often referred (quite rightly) by Mr Hunter by way of illustrating his argument, the exception stated by Professor Bell in the 1075th section of his Principles, to the general rule *melior est conditio prohibentis*, is in my opinion applicable. I am not surprised that there should be an exception to that rule, and further, the opinion of Lord Rutherford to which we were referred shows that there is room for equity in dealing with this subject. I am satisfied that if we were not able to give the petitioner the relief which he seeks a very grave inequity would arise. I think the petitioner here is asking a lining for no other purpose than the rebuilding of the subjects in the sense in which that term is used by Professor Bell. Accordingly the Dean of Guild was warranted in giving the lining he was asked to give.

LORD SANDS—I agree. This is not a case of a separate and independent property. It is quite clear from the titles of 1812 and 1822 and what we know of the history since that this piece of ground was dedicated to serve as the site of a common stair for the two buildings. It was not intended as property to be held and enjoyed separately; its use was ancillary to the use of the respective buildings. What the objector here proposes is really to prevent the property now being used for the purpose for which it was intended and to serve which this joint ownership was created. I have only to add—and I think your Lordships are all agreed—that no question of liability for contribution here arises. It may be—I express no opinion on the question—that the appellant if he finds no use for the stair will be under no liability to contribute.

LORD DUNDAS was absent.

The Court affirmed the Dean of Guild's interlocutor and dismissed the appeal.

Counsel for the Appellant (Objector)—Hunter. Agents—Laing & Motherwell, W.S.

Counsel for the Respondent (Petitioner)—Hon. W. Watson, K.C.—Jamieson. Agents—Auld & Macdonald, W.S.

Wednesday, February 1.

FIRST DIVISION.

WEBB (ARCHIBALD HALL & COMPANY, LIMITED, IN LIQUIDATION), PETITIONER.

Company—Winding-up—Appointment of Committee of Inspection—Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 188 (2) and (3).

A creditor of a company in voluntary liquidation, acting on behalf of the creditors and with consent of the liquidator, presented a petition under section 188 of the Companies (Consolidation) Act 1908 for the appointment of a joint liquidator and of a committee of inspection. No answers were lodged. The Court granted the application.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts—Section 188—“(1) Every liquidator appointed by a company in a voluntary winding-up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held. . . . (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 any person as liquidator in the place of or jointly with the liquidator appointed by the company, or 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. (3) On any such application the Court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator, or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator, or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just."

Robert W. Webb, yarn agent, 77 Queen Street, Glasgow, a creditor of Archibald Hall & Company, Limited, in liquidation, with the consent and concurrence of H. E. Borland, C.A., Glasgow, the voluntary liquidator, presented a petition to the Court under the Companies (Consolidation) Act 1908, sec. 188, for the appointment of a joint liquidator and of a committee of inspection in the voluntary winding-up of the company.

The petition set forth, *inter alia*—"1. That Archibald Hall & Company, Limited (hereinafter styled the company), was registered in Scotland on 2nd April 1919. The nominal capital of the company was £7500 divided into 7500 ordinary shares of £1 each. 2. That by the memorandum of association the objects for which the company was formed were, *inter alia*, to take over and acquire the hosiery business carried on by Mrs Isabella Wylie, widow, residing in Dean Street, Stewarton, under the firm name of Archibald Hall & Company, with the whole business assets belonging to the said Archibald Hall & Company, and to carry on the said business. 3. That the issued capital of the company is now 5500 shares of £1 each fully paid. 4. That the company began business immediately on its incorporation. The business has been unsuccessful, and the assets of the company are of uncertain value but will not suffice to pay the debts in full. 5. That at a general meeting of the shareholders of the company held on 23rd December 1921 an extraordinary resolution was passed that the company be wound up voluntarily, and that H. E. Borland, chartered accountant, 216 West George Street, Glasgow, be appointed liquidator for the purposes of such winding-up. The said H. E. Borland accepted the office and has since acted as liquidator of the company. 6. That in terms of section 188 of the Companies (Consolidation) Act 1908 the liquidator duly convened a meeting of the creditors of the company to be held within 216 West George Street, Glasgow, on 11th January 1922. The meeting was largely attended, and the following resolution was passed:—'Mr Robert W. Webb was unanimously appointed chairman of the meeting. . . . The creditors unanimously resolved that an application be made to the Court (1) for the appointment of Mr Hugh M. Mackie, C.A., Glasgow, as liquidator jointly with Mr H. E. Borland, the liquidator

appointed by the company, and (2) for the appointment of Mr Robert W. Webb, Mr T. Mackie, and Mr D. Buchanan as a committee of inspection. The chairman was appointed by the meeting to make the necessary application to the Court.' . . . 6. That this petition is presented under and in terms of the Companies (Consolidation) Act 1908, and in particular section 188 thereof."

No answers were lodged.

Argued for the petitioner—There was statutory authority for the appointment of a committee of inspection. It also served a good purpose, for it provided a body with which the liquidators could consult on questions of policy and other matters of difficulty. A committee of advice had frequently been appointed by the Court without the sanction of statute—*Liquidators of Pattisons, Limited*, 1902, 4 F. 1010, *per* Lord Adam at p. 1013, 39 S.L.R. 792. The committee of inspection would discharge the same functions as a committee of advice, and would exercise a general power of inspection. Although the powers of the proposed committee of inspection were undefined, so were the powers of a committee of inspection in a voluntary winding-up in England. Any definite powers given to a committee of inspection in England were limited to cases of winding up by the Court. Counsel also referred to *Belhaven Engineering and Motors, Limited*, October 16, 1912, 50 S.L.R. 19, *per* Lord President Dunedin, and an article entitled *Committees of Inspection and Scottish Liquidations* which appeared in the *Scots Law Times* (21st January 1922, p. 9).

LORD PRESIDENT—There is no doubt that section 188 of the Companies (Consolidation) Act 1908 authorises the appointment of a committee of inspection in Scotland. There is some doubt as to what the committee will be entitled to do once it is appointed, but inasmuch as in this case both the petitioning creditor and the liquidator appointed by the company are of the view that there is a practical purpose to be served, we will grant the prayer of the note.

LORDS MACKENZIE, SKERRINGTON, and CULLEN concurred.

The Court granted the prayer of the petition.

Counsel for the Petitioner—M. J. King. Agents—Dove, Lockhart, & Smart, S.S.C.