*Saturday, November 4.*

## FIRST DIVISION.

### MACNAUGHTON *v.* BRUNTON.

*Public Company—Voluntary Liquidation—Claim for Reimbursement and Remuneration by Managing Director—Companies Act* 1862 (25 *and* 26 *Vict. c.* 89), *sec.* 165.

A director of a joint-stock company is not entitled to any remuneration for his services to the company unless there is special provision to that effect in the articles of association.

A public company owing to want of success resolved to wind up voluntarily, and appointed one of its directors to attend to the collection of all moneys owing to the company, and as far as possible to discharge all obligations due by it. In a state of intromissions with the funds of the company which was submitted by this director, a sum of £42 was entered by him as retained for time and expenses in attending to and settling the company's business. In a petition against him at the instance of the liquidator appointed in the voluntary liquidation, for payment of the sum so retained—*held* that he was not entitled to retain any sum as remuneration, but any claim which he might have for outlay incurred on behalf of the company *reserved* to him.

The Musselburgh Wire Mills Company (Limited) was in June 1878 incorporated under the Companies Acts of 1862 and 1867. The capital of the company was £11,000 divided into 2000 shares of £5 each. The articles of association contained no provision for the remuneration of the directors otherwise than as fixed by the board of directors or by the company in general meeting. On 3d July 1878 William Nelson Brunton, one of the directors of the company, was at a meeting of the directors appointed to the post of managing director, on the understanding that he was to discharge the duties of that office gratuitously until the company was in a position to pay 5 per cent. dividend to its shareholders. This appointment Brunton continued to hold until the company went into voluntary liquidation on the 4th February 1880, when at a meeting of shareholders it was resolved, as the company was not a successful one, that it should be wound up voluntarily, and the said William Brunton and Matthew Brown, two of the directors, were appointed to carry on the mill till all the orders were made up, with power to advertise and sell it if they could find a purchaser.

In September 1881 Brunton submitted a state of his intromissions with the funds of the company, in which was the following entry—"W. Brunton, time and expenses attending to limited company business and settling up same, August 1881, £42." For this sum credit was taken by him in his account, although neither the board of directors nor the shareholders in general meeting authorised any remuneration to the managing director for services rendered to the company. On the 28th October 1881 the petitioner James Macnaughton was appointed liquidator for the purpose of voluntarily winding up the company, and in this capacity he applied to the respondent Brunton for all moneys in his hands belonging to the company. The respondent handed over the sum of £16, 16s., but refused to make payment of the aforesaid £42, which he retained and declined to hand over to the petitioner.

This petition to have him ordained to pay over that sum was accordingly presented under the 165th section of the Companies Act of 1862, which provides that "When in the course of the winding up of any company under this Act it appears that any past or present director, manager, official, or other liquidator, or any officer of such company, has misapplied or retained in his own hands or become liable or accountable for any monies of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, upon the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any monies so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainance, misfeasance, or breach of trust, as the Court thinks just."

Brunton lodged answers maintaining his right to retain the £42 he claimed.

Authorities—Lindley on Partnership, i., 776; *Gordon*, February 9, 1853, 15 D. 378; *Broun*, Jacob's Ch. Reps. 284.

At advising—

Lord President—This is a small affair altogether, the claim being for a sum of £42. The Musselburgh Wire Mills Company seems never to have got fairly started, as there does not appear at any time to have been more paid-up capital than £1000. But in spite of this there is an important principle involved in the present case of which we must not lose sight. The respondent seeks to retain this sum of £42, partly for services rendered by him to the company, and partly for outlays which he maintains that he made upon its behalf under the authority given to him by the minute of February 4th 1880. Now, the respondent seems to have been a director of the company from the outset, as well as its largest shareholder, and by the first minute before us (which relates to the beginning of the company's existence) we find him offering to undertake the duties of managing director by acting gratuitously along with Mr Fraser, the manager of the works, and thereby relieving his brother directors of any trouble connected therewith. To this arrangement the other directors consented.

On 4th February 1880 there was a meeting of the shareholders of the company, when a report by the directors, with an accompanying balance-sheet, was under consideration. The minute of the meeting was in these terms—"As there does not appear any probability that the mill can be worked with the present capital successfully, with a view of winding up the company voluntarily Mr Brunton moved, and Mr M'Nab seconded, that Messrs Brunton and Brown, two of the directors, be appointed to carry on the mill till all the or-

ders are made up, advancing money should it be required. . . with power to advertise the mill for sale in such papers they may consider best; and should any offer be made, to call a meeting of the directors to consider and dispose of and wind up the same." This was agreed to, and these duties were undertaken by Messrs Brunton and Brown as directors of the company; and the present claim for remuneration is made by the respondent for work done under this appointment. Now, it is well settled in law that anyone standing in a fiduciary position, whether as director of a company or as a trustee, can obtain no remuneration for his services unless there be some special provision to the contrary in the deed under which he is appointed. If we apply this rule in the present case, as I think we are bound to do, then decree must be granted for the £42, but as there seems to be some doubt whether this sum does not include outlay actually incurred on behalf of the company, I think that we ought to reserve to the respondent any claim which he may have in that respect.

Lords Mure and Shand concurred.

Lord Deas was absent.

The Court granted the prayer of the petition, and ordained the respondent to make payment of the sum of £42, reserving to him any claim which he might have for outlay incurred on behalf of the company.

Counsel for Petitioner — Strachan. Agent —Alexander Gordon, S.S.C.

Counsel for Respondent — Rhind — Baxter. Agent—Thomas Sturrock, L.A.

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## SECOND DIVISION.

### BROWNE AND OTHERS, PETITIONERS.

*Succession—Foreign—Will—Informality of Execution—Conveyancing and Land Transfer (Scotland) Act* 1874 (37 *and* 38 *Vict. c.* 94), *sec.* 39—*Titles to Land Act* 1868 (31 *and* 32 *Vict. c.* 101), *sec.* 20.

A person died domiciled in New Zealand possessed of heritable estate situated in Scotland, and leaving a trust-disposition and settlement, good according to the law of New Zealand, but not probative according to Scotch law. The trustees, in order to entitle them to make up a title to the heritable estate in Scotland, presented a petition under section 39 of the Conveyancing (Scotland) Act 1874 for declarator that the settlement was duly subscribed. The Court *granted* the petition, but *held* that the deed was already valid under sec. 20 of the Titles to Lands Consolidation (Scotland) Act 1868.

Section 39 of the Conveyancing Act 1874 provides that "No deed, instrument, or writing subscribed by the grantor or maker thereof, and bearing to be attested by two witnesses subscribing, and whether relating to land or not, shall be deemed invalid or denied effect, according to its legal import, because of any informality of execution; but the burden of proving that such deed, instrument, or writing so attested was subscribed by the grantor or maker thereof, and by the witnesses by whom such deed, instrument, or writing bears to be attested, shall lie upon the party using or upholding the same, and such proof may be led in any action or proceeding in which such deed, instrument, or writing is founded on or objected to, or in a special application to the Court of Session, or to the Sheriff within whose jurisdiction the defender in any such application resides, to have it declared that such deed, instrument, or writing was subscribed by such grantor or maker and witnesses."

This was a petition for declarator that the will and codicil thereto of George Junior Browne were duly subscribed. The petition was presented by the trustees and executors of Mr Browne. They stated that Mr Browne died domiciled in Dunedin, New Zealand, in March 1880, survived by a widow and a pupil daughter, who at the date of the petition were both resident in England, and that he left a will dated 21st February 1880, and a codicil thereto dated 5th March of the same year. By the said will and codicil the testator, after bequeathing certain legacies, directed his trustees and executors to pay the income of the residue of his estate to his widow during her life, and to hold the residue in trust for his children till majority, or marriage in the case of daughters. Their other statements were as follow:—Besides the real and personal estate in New Zealand possessed by the testator, he had a right to a share of certain heritable estate in Scotland still held by his father's trustees. The testator also had right to some personal estate in Scotland. The deed was deposited, in pursuance of the law of New Zealand, in the office at Dunedin of the Supreme Court of New Zealand, where it still remained. That Court would not allow the deed to be removed from its office, so that it could not be produced in Great Britain. The petitioners produced a *facsimile* of it, along with an affidavit by the registrar of the Court at Dunedin as to the description and deposit of the deed, and as to its not being removable, and also bearing that the *facsimile* was correct. Probate of the will and codicil was, on the 18th March 1880, granted in the Supreme Court of the colony of New Zealand to the three trustees, and confirmation in their favour of the Scotch personal estate was granted to them by the Commissary of Edinburgh on the 27th January 1881. The will and codicil were written on six separate sheets of brief paper, attached together at the corner by a silk thread. The will was written on five sheets, and the codicil partly on the fifth and partly on the sixth, only one side of each of the six sheets being written upon. The attesting witnesses to the testator's signature of the will, one of whom was also a witness to his signature of the codicil, signed on each sheet, except the fourth, of the will, adding their designations to their signatures on the last sheet, but the testator signed only on the last sheet at the end of the will. Neither the testator nor the witnesses to his signature of the codicil signed at the foot of the first sheet of the codicil, which was the fifth of the deed, but all signed the second sheet at the end of the codicil, which was the sixth and the last of the deed. The witnesses here also added their designations. The will was subscribed of the date it bore.