nition of existing facts and would place the bank in a position to resist any possible challenge on that ground. In the case of the *London and Edinburgh Shipping Company, Limited*, 1909 S.C. 1, 46 S.L.R. 85, similar power had been granted. Power for the amalgamation with other businesses should also be granted for the same reason, although the authorities as to granting such a power varied. Counsel cited the following authorities—*Pool* v. *The National Bank of China*, [1907] A.C. 229; *Caldwell & Company, Limited* v. *Caldwell*, 1916 S.C. (H.L.) 120, 1915 S.C. 527, 53 S.L.R. 251, 52 S.L.R. 450; *Young's Paraffin Light and Mineral Oil Company, Limited*, (1894) 21 R. 384, 31 S.L.R. 303; *King Line, Limited*, (1902) 4 F. 504, 39 S.L.R. 337; *in re Mayfair Property Company*, [1898] 2 Ch. 28; *Scottish Employers' Liability and Accident Assurance Company, Limited*, (1896) 23 R. 1016, 33 S.L.R. 731; *Glasgow Tramway and Omnibus Company, Limited*, (1891) 18 R. 675, *per* Lord Kinnear at p. 682, 28 S.L.R. 467; *Stephens* v. *Mysore Reefs (Kangundy) Mining Company*, [1902] 1 Ch. 745; Palmer's Company Precedents, Part I., p. 1312; and section 247 of the Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69).

The Court, without giving opinions, pronounced the following interlocutor—

"Confirm the alteration of the form of the Bank's constitution by the substitution for the contract of copartnership of the memorandum and articles of association as amended at the bar, the amendments being shown thereon in red ink manuscript, and initialed by the petitioners' counsel; and confirm the alterations made with respect to the objects of the Bank contained in the said memorandum of association as amended, and decern: Direct that the print of memorandum and articles of association as amended be signed by the Clerk of Court, and order that the same shall remain in process."

Counsel for the Petitioners—Macmillan, K.C—Anderson, K.C.—Pitman. Agents—J. & F. Anderson, W.S.

Saturday, July 14.

SECOND DIVISION.

[Sheriff Court at Rothesay.

KELLY AND OTHERS (ANCIENT ORDER OF FORESTERS FRIENDLY SOCIETY'S TRUSTEES) *v.* PEACOCK AND OTHERS.

Friendly Society—Trust—Mora—Dissolution of Branch of Friendly Society without Consent of Central Body—Friendly Societies Act 1896 (59 *and* 60 *Vict. cap.* 25), *sec.* 78 (1) (*c*)—*Rules of the Ancient Order of Foresters Friendly Society.*

On 30th December 1912 a Court of the Ancient Order of Foresters Friendly Society wrote to the central body that it desired to dissolve, that it had the consent of five-sixths of its members, and the necessary form completed, and asking whether the consent of the central body was required, and, if so, how it was to be obtained. The reply came that no dissolution of a Court could be sanctioned, and reference was made to a provision in the general rules as to moneys not used for their particular purpose coming to the High Court Relief Fund. A correspondence followed, but no steps were taken to prevent the Court proceeding to dissolve, or to divide its funds amongst its members, which it did after giving definite notice to the central body. In August 1914, when the funds had been completely divided, the trustees of the central body raised an action to recover the moneys divided, against the Court's trustees, its officials, and the members of a committee of management.

Held, applying *Schultze and Another (Lees' Trustees)* v. *Dun*, 1913 S.C. (H.L.) 12, 50 S.L.R. 520, that the defenders' plea of *mora*, acquiescence, and taciturnity could be of no avail against the pursuers, who were acting as trustees; that as under the Rules and under section 78 (1) (*c*) of the Friendly Societies Act 1896 a dissolution of the Court required the consent of the central body, and that had not been obtained, the defenders were personally liable for the moneys they had divided; and that in the circumstances no distinction as to liability could be drawn between the individual defenders.

The Friendly Societies Act 1896 (59 and 60 Vict, cap. 25), section 78 (1), enacts—"Subject to the provision of this Act as to the dissolution of societies with branches, a registered society or branch may terminate or be dissolved in any of the following ways— . . . (*c*) as respects friendly societies or branches, by the consent of five-sixths in value of the members (including honorary members, if any) testified by their signature to the instrument of dissolution, and also by the written consent of every person receiving or entitled to receive any relief, annuity, or other benefit from the funds of the society or branch unless the claim of that person is first duly satisfied or adequate provision made for satisfying that claim, and in the case of a branch, with the consent of the central body of the society, or in accordance with the general rules of the society."

The *General Law* 29 of the Ancient Order of Foresters Friendly Society provides, section 4—"The account of each Court fund shall be kept separate and distinct; and any Court appropriating any portion of the sick and funeral fund for any other purpose than paying the sick and funeral allowances claimable under the Rules . . . shall forfeit the money so appropriated to the High Court Relief Fund, to be recovered by legal process as a penalty. . . ." Section 6—"No Court shall divide any of its funds or any part thereof, which shall be devoted solely to carry out the objects of the Order.

Any Court violating this section shall forfeit the money so divided to the High Court Relief Fund, to be recovered by legal process as a penalty . . ., and the Court shall also be fined £5, and 10s. per day until the money is paid into the said fund."

The *Special Rule* 48 of the Court North Bute (No. 6216) of the Ancient Order of Foresters Friendly Society, provided—"That the Court may at any time be dissolved by the consent of the central body of the Order, and also the consent of five-sixths in value of the members, including honorary members if any, testified by their signature to some instrument of dissolution in the form provided by the Treasury Regulations in that behalf, and also by the written consent of every person for the time being receiving or entitled to receive any relief or benefit from the funds of the Court, unless the claim of such person be first duly satisfied, or adequate provision made for satisfying such claim; the value of members to be ascertained by giving one vote to every member, and an additional vote for every five years that he has been a member, but to no one member more than five votes in the whole."

In August 1916 George Frederick Kelly and others, trustees of the Ancient Order of Foresters Friendly Society, registered under the Friendly Societies Act 1896, *pursuers*, brought an action in the Sheriff Court at Rothesay against Alexander Robertson Peacock and two others, trustees of the Court North Bute of the Order, William Dallas, secretary of that Court, James Wilson, its treasurer, and John Hogarth and another, two members of the Committee of Management, *defenders*.

The *crave* was—"To decern the defenders jointly and severally or severally to pay to the pursuers, as trustees foresaid, the sum of £715, 8s. 3d. sterling, with interest thereon, being the amount of funds belonging to the said Court North Bute, a branch of the Ancient Order of Foresters Friendly Society, and misapplied or misappropriated by the said Court and the defenders from the objects for which said funds were to be used, contrary to the General Laws of the said Ancient Order of Foresters Friendly Society and the Friendly Societies Act 1896, for which misapplication or misappropriation the said Court and the defenders are liable to pay the amount foresaid to the pursuers, and to find the defenders liable in expenses."

The pursuers pleaded, *inter alia*—"1. The alleged dissolution of the said Court North Bute being invalid and inept, the said Court still remains a registered branch of the pursuers' society, and the actings of the said Court and the defenders, following on said illegal and invalid dissolution, were illegal and contrary to the Friendly Societies Act and the general laws of the pursuers' friendly society. 2. The said Court North Bute being still a subsisting branch of the pursuers' friendly society, the said Court and the defenders or any one of them, were not entitled to appropriate and divide the funds of the said branch or to dispose of or deal with the same except under the general laws of the pursuers' friendly society, and being liable to restore the said funds decree should be granted as craved with expenses. 3. The said Court and the whole defenders having acted with the said funds, being the amount sued for, contrary to the general laws of the pursuers' friendly society and in breach of trust are liable personally in reparation therefor, and decree should be granted as craved, with expenses."

The defenders pleaded, *inter alia*—"3. The pursuers' averments being irrelevant to support the conclusions of the initial writ, the action should be dismissed. 4. *Mora*, acquiescence, and taciturnity."

The *facts* are given in the note (*infra*) of the Sheriff-Substitute (MARTIN), who, on 8th December 1916, found that the pursuers by their actings were personally barred from instituting the proceedings, sustained the defenders' fourth plea-in-law, and dismissed the action.

Note.—"This is an action at the instance of George Frederick Kelly and three others, trustees of the Ancient Order of Foresters Friendly Society, which has its head office in London, against (1) Alexander Robertson Peacock, plumber, Rothesay, and two others, who are designated as trustees of Court North Bute, No. 6216 (a branch of the said Ancient Order of Foresters), (2) against the treasurer and the secretary of the said branch, and (3) against two members of the committee of management of the said Court, and the crave of the initial writ is that the defenders should be decerned, jointly and severally, to pay to the pursuers, as trustees aforesaid, the sum of £715, 8s. 3d.

"The circumstances under which the present claim is made are as follows:—Court North Bute, No. 6216, was constituted in or about April 1876, and it seemed to have carried on its work successfully until 1912, when the National Insurance Act came into operation.

"On 31st December of that year the Court, through their law agent, intimated to the secretary of the Foresters' Association that in consequence of the Insurance Act they were unable to carry on their work satisfactorily and that they proposed to dissolve. They further asked if the consent of the High Court was necessary, and if so, what steps should be taken to obtain it.

"A reply was sent to this letter on 8th January 1913, stating that the Court could not be allowed to dissolve, and referring to certain of the General Rules as to the disposal of the funds of the Court.

"To this letter the Court replied on 9th January 1913 that under the rules a Court might, with the necessary consents, be dissolved at any time, and asking why in this case the Executive Council refused their consent. As no reply was sent to this letter, the Court on 6th February again wrote to the secretary of the Society stating that if no satisfactory reply was given to their letter of 9th January 1913 the Court at *its next meeting would proceed to dissolve.*

"On February 13th, 1913, the secretary of

the Association wrote saying that Court North Bute could not divide the funds among its members, and if they did so, the funds so divided would be forfeited to the High Court, but still evaded answering the questions asked in the Court's letter of 9th January. (Now it may be noted in passing that up to this time there had been no suggestion of a division of the funds; all that the Court had asked was how they could competently dissolve, and upon what grounds the Executive Council refused their consent to this being done.)

"On 22nd February 1913 the Court wrote that it did not intend to secede but to dissolve, and that the instrument of dissolution required by the Friendly Societies and Treasury Regulations had been signed by the requisite number of members. To this a reply was sent by wire, 'No branch has power to dissolve, funds illegally divided will be forfeited.' Various other letters passed between the parties on the same lines as those already referred to, but on 17th March 1913 the Court wrote that they had been informed by the Registrar of Friendly Societies that there had been several cases in which courts of the 'Foresters' had been dissolved by instrument of dissolution, and they again asked for the consent of the central body.

"On 25th March 1913 the Court, in answer to a request for information for the directory, replied that as the Court had been dissolved, there was no information to send.

"On 28th March the Court again wrote asking whether, irrespective of any division of the funds, the High Court would sanction the dissolution of Court North Bute. If information was supplied on this point, the question of the division of the funds would then be taken up. The reply to this was as formerly, that no dissolution could be sanctioned, but the Council still refused to assign any reasons. On 21st April the Court again wrote re-asserting that as Courts had been dissolved in the past, the Executive Council had the power to allow the Courts to dissolve if they chose to do so, and they again reminded the Council that the Court had been dissolved, and that no business was being carried on by it. They further asked the Council if they had any proposals to make, or if they intended to take any action in the matter. In reply to this the Council on 23rd April 1913 repeated their contention of inability to sanction the dissolution of a Court, and they stated that if the funds of the Court were divided, steps would be taken to recover the divided money.

"As the Court was getting tired of the evasive replies of the Council, they formally intimated, by letter of 29th May 1913, that the moneys would be divided on 8th July, and that if the Council wished to take proceedings to stop the division of the money they must commence these before that date.

"On the 3rd June 1913 the Court again wrote repeating the notice in their letter of 29th May, and adding, 'We wish to give you every opportunity of proving your position,' and they further stated that they would found on this intimation in any future proceedings, and also on the fact that the Council declined to take any steps to prevent the distribution of the funds. It would appear from answer 4 of the closed record that Court North Bute, No. 6216, resolved to dissolve on 2nd July 1912, that the consent of *all* the members was obtained to this dissolution, and it further appears that upon that date the Court ceased working.

"In order to allow the Executive Council full time to consider what they would do in the matter, and to give them an opportunity of staying the distribution of the funds by interdict or otherwise, the Court allowed eleven months to elapse before they proceeded to make any division of the money, and even then they only made a nominal division of 2s. 6d. to each member, which payment was duly intimated to the Executive Council, and this intimation was duly acknowledged. Again a considerable time was allowed to elapse before any additional payment was made to members, in order to allow the Executive Council a further opportunity of taking action if so advised.

"After the lapse of sixteen months, and as no proceedings had been instituted, the Court came to the conclusion that the Executive Council acquiesced in what was being done, to the extent at least of not offering any active opposition to it, and so in September 1915 a further distribution of the funds among the members was made. Still the Executive Council remained inactive, and in March 1916 the balance of the fund was paid over to the members. The Court alleges that the total fund thus distributed was £687, 13s. 8d., and not £713, 8s. 3d. as claimed by the Executive Council.

"The claim of the pursuers in the present action is that the defenders should be decerned, jointly and severally, to pay to them the sum sued for, being the amount of the funds belonging to Court North Bute, which they allege the defenders misappropriated or misapplied.

"While neither party has formally renounced probation, it was stated at the Bar that both sides were desirous that I should dispose of the case on the closed record, the correspondence, and the documents in process. I am prepared to do so.

"The pursuers practically base their case on the 'General Laws' of the Foresters Society, as contained in a somewhat bulky volume, but before we reach the consideration of these laws and the interpretation put upon them by the pursuers it is necessary to consider and to dispose of the defenders' fourth plea-in-law, because if I see my way to sustain it, there is an end of the present action.

"That plea is '*Mora*, acquiescence, and taciturnity,' and these three may be conveniently grouped under the general plea of 'personal bar.' The defenders' fourth plea might thus be stated in these terms—The pursuers are personally barred by their actings from pursuing the present action.

"In the House of Lords, Lord Chancellor Campbell, in the case of *Cairncross*, 1860, 3

Macq. 827, thus defined 'personal bar'—'If a man either by words or conduct has intimated that he consents to an act that has been done, and that he will offer no opposition to it although it could not have been done lawfully without his consent, and he thereby induces others to do that from which they might otherwise have abstained, he cannot question the legality of the act he has so sanctioned, to the prejudice of those who have so given faith to his words, or to the fair inference which is to be drawn from his conduct.' Many other dicta to the same effect might be cited from the reported cases on 'personal bar,' but the passage above quoted is exceptionally clear and authoritative.

"Let us now consider how the rules above expressed apply to the facts of the present case.

"Have the pursuers by their conduct 'induced' the defenders 'to do that from which they might otherwise have abstained'? My view of the correspondence and the averments on record is that they have. It cannot be disputed that from beginning to end the defenders have acted in a perfectly open and straightforward manner. They duly intimated to the pursuers what they were proposing to do, and their reasons for doing it, and they even consulted them as to how their purpose could be carried out to the satisfaction of all concerned. And here I may refer to what I may term the fallacy which, in my view, has run through the whole of these negotiations, and which I was rather surprised to hear revived again in the debate, and that is the persistent mixing up by the pursuers of dissolution and the division of funds. It may suit the pursuers' case to confuse the two, but in my view it is unwarranted by their General Laws. The correspondence further establishes, I think, that when the defenders discussed among themselves the question of dissolution, and when they finally decided that it was necessary for them to adopt this course, they had given no consideration to the question of how the funds of the Court should be dealt with. That point only arose after the dissolution proceedings had been carried through.

"The pursuers were duly informed that 'Court North Bute' had *de facto* dissolved. They were also informed that on 8th July 1913 a division of the funds would take place, and they were called upon, by letter of 29th May 1913, if they objected to what was being done, to take proceedings before the money was actually divided.

"Surely this was the proper time for the pursuers, if they seriously challenged the defenders' actings to take proceedings by interdict or otherwise, to prevent them from committing what they persistently term throughout the whole correspondence 'an illegal act,' but they did nothing.

"Eleven months were allowed to elapse to give the Executive Council an opportunity of taking proceedings before any distribution of the funds was made, and then, after due intimation to the pursuers, a small sum was paid to each member.

"On 2nd June 1913 the pursuers' secretary had written to the defenders—'We cannot move in the matter until such illegal division takes place. . . .' In May 1914 what the pursuers term an 'illegal division' actually took place; and one would certainly have expected if their letter of 2nd June 1913 had any meaning that proceedings would at once have been instituted. Again, however, nothing was done. Still, to keep themselves on the safe side, the defenders allowed sixteen months to elapse before making any further distribution of funds, to give the Executive Council full time to take the promised or threatened proceedings against them. Again as on the previous occasion nothing followed, and as the defenders state in answer 4 they assumed that no objection was to be taken to the distribution and division of their funds by the Executive Council. They still had money in hand, but they prudently allowed another six months to elapse to give the pursuers a final chance of taking action before they distributed the remaining balance in March of the present year.

"The defenders' actings have been characterised by the utmost deliberation from beginning to end. They have kept the pursuers fully informed of what they proposed to do, and of what from time to time they were doing, but the pursuers took no action. They allowed what they term an 'illegal act' of which they were fully aware to proceed step by step; they tacitly acquiesced in the funds of this Court being distributed among its members by abstaining from taking any proceedings to interdict the defenders; and it is only six months after the whole funds have been distributed, and three and a-half years after they were made aware of what the defenders proposed to do (for the correspondence begins in December 1912), that the present action is raised.

"In these circumstances it seems to me that the principle laid down in Lord Chancellor Campbell's opinion in the case of *Cairncross* above cited is directly applicable.

"In my view the pursuers might have tested the validity of their contention in the present action at any time after December 1912, when they were made aware of what the defenders proposed to do, and on their own admission (see letter of 2nd June 1913) they could have done so any time after the first division of the funds took place (May 1914). By their failure to take action they practically 'consented' to 'an act which had been done,' and when sixteen months were allowed to elapse and no proceedings were taken, and when the pursuers were aware that further distributions were to be made, I think the defenders were justified in believing that the pursuers would 'offer no opposition' to these. If this be so, then the 'conduct' of the pursuers as distinguished from their letters has 'induced' the defenders 'to do that from which they might otherwise have abstained,' and the pursuers 'cannot question the legality of the acts' they have 'so sanctioned to the prejudice of those who have so given faith . . . to the fair inference which is to be drawn from' their

'conduct.' In my view therefore the pursuers are personally barred by their actings from maintaining the present action, which accordingly fails.

"I refer also to the case of *Pembery*, H.C. of J., Chancery Division, 18th December 1914. That case in many respects closely resembles the present, and a copy of the judgment is in process."

The pursuers appealed to the Second Division of the Court of Session.

At advising—

LORD JUSTICE-CLERK — In this case the trustees of the central body of the Ancient Order of Foresters Friendly Society sue the trustees of the Bute Court of that Order, the secretary and treasurer of that Court, and two members who with the secretary and treasurer acted as the Committee of Management of the Court, for payment of the sum of £715, 8s. 3d., which apparently should be £713, 8s. 3d., being the funds which belonged to the Court, and which are said to have been divided in the years from 1912 downwards. The defenders admit that the funds which were so divided amount to £643, 13s. 3d., and the pursuers are content to accept that as the proper sum which was divided instead of the sum which they claim, and if they are entitled to have decree at all to take decree for that limited sum.

The question arises in these circumstances —It is alleged that the Court North Bute in consequence of the passing of the National Insurance Act got into financial difficulties and could no longer carry on business, and they resolved to dissolve the Court and divide the money which had accumulated amongst the members of the Court. They communicated with the representatives of the central body in Manchester. They began the correspondence so far as it has been placed before us by stating that they had obtained the signatures of the necessary five-sixths of the members to dissolution and had got Form A.O.B. duly filled up, and asking—"Is this sanction of the head Court necessary for this dissolution, and if so what steps must be taken to obtain it?" Then, not having got an answer, they wrote again asking for a reply, and stating that if they did not hear to the contrary they should take it for granted that the Court "consents to the dissolution." The answer they got was "that no dissolution of a court can be sanctioned," and their attention was directed to section 4 of General Law 29 as to what is to be done if the money were diverted from its original purpose.

From time to time in the correspondence there was intimation made from Rothesay that if steps were not taken they would proceed to dissolve the Court and divide the money, and the answer from Manchester always was—"What you propose is illegal, and if you divide the money we will hold you responsible." The Manchester officials, I think mistakenly, intimated the view that they could not act until an "illegal division," as they always term it, had been carried into effect. Thereupon Rothesay, in the full knowledge of what the Manchester position was, proceeded to dissolve the Court and to divide the money, and Rothesay having intimated that all the money had been divided the central body then said, "What you have done gives us a ground to raise our action," and they accordingly brought this action for repetition or recovery of the money which had been improperly divided.

The Sheriff-Substitute, who we are informed had the whole case debated before him, sustained the fourth plea-in-law stated for the defenders to the effect that the pursuers are not entitled to succeed in this action on the grounds of *mora*, acquiescence, and taciturnity. It was admitted that the soundness of that plea depended entirely upon the correspondence, which is printed in the appendix, and which is admitted by a joint-minute printed in the appeal, in which the parties state that they accept copies of the correspondence as correct, dispense with the production of the principal letters, and crave the Court to accept the copies as equivalent to the originals. It appears to me that the pursuers in this case are truly suing as trustees for others and not for any beneficial interest for themselves, and to my mind the reasoning which was successful in the case of *Dunn* v. *Schulze*, 1913 S.C. (H.L.) 12 (50 S.L.R. 520), affirming 1912 S.C. 50 (49 S.L.R. 50), directly applies, and accordingly upon that, the legal ground given effect to in that case, the fourth plea-in-law for the defenders has no substance in it. Apart from that I think it is impossible to say, after reading this correspondence, that there was anything like acquiescence, or that, on the contrary, the Manchester people did not vehemently and persistently protest that what was proposed to be done was illegal, and that if it were done those who did it would be held responsible. Therefore whether we look at the plea from a legal point of view or from the point of view of fact, I think it is bad and ought to have been repelled.

That disposes of the ground of judgment which the Sheriff-Substitute founded upon, but the parties explained to us that the whole case had been argued before him, and they desired us to give judgment on the other points which have now been presented to us so as to avoid further delay and expense in disposing of this action. Both parties expressly stated that they did not desire any further proof, being content to rest their case upon the letters and documents in the case.

It is said by the defenders that an instrument of dissolution was duly executed by the requisite number of members of the Court North Bute and that that minute still exists. It has not been produced, and when an opportunity was given to produce it in this process we were informed that it was not here and so could not be produced. But I am content, so far as I am concerned, to assume that such a document exists, accepting the statement to that effect made by counsel on the instructions which they received, but I do not think it justifies the course which the defenders took. They were

not entitled to divert the funds which had been accumulated since the inauguration of the Court North Bute in 1876, and to divide them in 1914-1915 amongst the then existing members of that Court. The rules of the society provide that if a dissolution takes place, and if the funds of the dissolved Court are divided, they shall be forfeited to the High Court Relief Fund and be recovered by legal process—see General Laws 29 (4) and (6). Therefore it seems to me that assuming that there had been a proper dissolution the correct course would have been to hand the money over to the High Court Relief Fund.

But I think the defenders have failed entirely to show that there was a dissolution of the Court in terms either of the laws of the Society or of the Act of Parliament. For a proper dissolution of the Court two things were necessary—the consent of the central body and an instrument of dissolution—see the Statute of 1896, sec. 78 (1) (*c*) and special rule 48. The latter, as I have said, though it has not been produced, I am prepared to assume exists, but it is quite clear that no consent of the governing body was ever obtained, and indeed no allegation is made to that effect. The only thing that is said is that as the defenders gave notice in the correspondence of what they proposed to do, and were not interpelled by legal proceedings from doing it, neither the central body of the Ancient Order of Foresters nor the trustees acting for them are entitled to complain. I think that is a totally inaccurate view of the position. The defenders were properly certiorated that if they carried out what they proposed they would be acting illegally and that the law would be enforced against them, as it is now attempted to be done in this process. Therefore I am of opinion that those responsible for dividing the money are in such a position that decree should be pronounced against them.

In the latter part of his argument Mr Macgregor Mitchell drew a distinction between the first three defenders, Peacock, Brown, and Alexander, who were trustees of the Court North Bute, and the other four defenders, Dallas, Wilson, Hogarth, and Stewart, and said that they had merely been the officials of the Court, doing what the Court instructed them to do, and were not personally liable. I do not think that a sufficiently specific averment has been made on that point to justify us in making any distinction between the latter four and the first three defenders. Messrs Dallas and Wilson were specifically referred to in the correspondence, and in answer 1 it is stated that John Hogarth and Alexander Stewart acted along with the said William Dallas and James Wilson as members of a committee for winding up said Court. Both parties stated that they did not desire a proof, and wished the case disposed of on the pleadings and documents produced. It thus appears that Messrs Dallas and Wilson acting on a committee, of which Hogarth and Stewart were members, were just some of the hands for carrying out the illegal conduct of the trustees of Court North Bute in distributing improperly the money in question among the individual members of that Court. Accordingly there is no room for drawing any legal distinction between the liability of the last four defenders and that of the first three. I think the case is covered by the reasoning in *Winter* v. *Wilkinson*, [1915] 1 Ch. 317.

In my judgment the proper interlocutor to pronounce is that we should recal the interlocutor of the Sheriff-Substitute, and decern against the defenders jointly and severally or severally as concluded for for the sum of £687, 13s. 8d., and I move your Lordships accordingly.

LORD DUNDAS—I also think this appeal must succeed. I agree with what your Lordship has said, and do not desire to cover the ground again in detail. Apart from the view, which I think is well founded, that the case falls within the decision of the House of Lords in the case of *Schulze*, I find no support in the correspondence for the defenders' argument that the pursuers acquiesced in the dissolution of this branch and the distribution of its funds. On the contrary, it appears to me that they asserted their non-acquiescence, and their intention to hold the defenders liable if distribution took place. Further, it seems to me clear, as your Lordship has said, that no valid dissolution of this branch has ever been effected. Nor do I see any good ground for differentiation as regards the liability of the various defenders. The pursuers are entitled therefore to succeed, and as they are content to accept the sum (less than that sued for) which the defenders admit to have been actually distributed decree will pass for that amount.

LORD SALVESEN—I agree in what your Lordship has said and in the reasons for the proposed judgment. As regards the last point I would only say that it seems to me sufficient to charge the last four defenders with liability that they admit that they acted as a committee for winding up this "Court," and it is nowhere said that they were not cognisant of the correspondence that had passed between the pursuers and the "Court," nor is there any averment, as your Lordship in the chair pointed out, that they were mere servants of the "Court" who were compelled to do its bidding. I think there is sufficient ground for holding that this committee were the instigators of the whole movement, which your Lordship has characterised as illegal in the sense of being in violation of the rules under which this "Court" had come into existence, and so have made themselves liable as being the parties to an improper act of administration.

On the other matter I think it is quite plain that this "Court" could not lawfully dissolve and distribute its funds without the consent of the central body, that it never did obtain such consent, and that therefore no dissolution has taken effect under which there could be a legal distribution of its funds. Accordingly I think the Sheriff-Substitute erred in the decision at which he arrived.

LORD GUTHRIE—I agree.

The Court sustained the appeal, recalled the interlocutor of the Sheriff-Substitute, and gave decree against the defenders jointly and severally for the sum of £687, 13s. 8d., with interest and expenses.

Counsel for the Pursuers (Appellants)—Johnston, K.C.—C. H. Brown. Agents—W. & W. Finlay, W.S.

Counsel for the Defenders (Respondents)—Roberton Christie, K.C.—Macgregor Mitchell. Agents—J. Miller Thomson & Co., W.S.

Thursday, November 15.

FIRST DIVISION.

[Lord Hunter, Ordinary.

BAIKIE *v.* GLASGOW CORPORATION.

Reparation—Negligence—Property—Police—Defective Condition of Premises—Lighting of Common Stair—Contributory Negligence—Relevancy—Glasgow Police Act 1866 (29 *and* 30 *Vict. cap. cclxxiii*), *sec.* 361.

Municipal authorities were bound by statute to light common stairs. An inmate of a house to which access was obtained by a common stair, on returning home at a time when the stair ought to have been lighted, found it unlighted. She, however, in the dark proceeded to mount the stair, which had no handrail and had a turn in it towards the right. She strayed on to the narrow part of the steps on the inside of the turn, ran against the stair wall, and slipped and fell sustaining injuries. In an action against the municipal authorities she averred that the accident was due to their fault in omitting to light the stair, and that she had used the greatest precautions in ascending the stair. *Held* (*dis.* Lord Skerrington) that the averments of the pursuer disclosed that the proximate cause of her accident was her own contributory negligence in respect that upon her averments her accident could only be attributed to ignorance of her position on the stair, and if she had taken reasonable precautions she could easily have ascertained her position on the stair by touching the side walls, and action *dismissed*.

The Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxiii), section 361, enacts—"The proprietor or proprietors of every land or heritage having an access by a common stair shall provide and maintain suitable gas pipes and brackets, lamps and burners, in such common stair to the satisfaction of the Inspector of Lighting or the Magistrates and Council, and placed as the said inspector or the Magistrates and Council may direct . . . and the Magistrates and Council shall cause them to be supplied with gas and lighted during the same hours as the public street lamps, and for each burner the proprietor or proprietors shall pay to the Magistrates and Council such sum not exceeding ten shillings per annum as the Magistrates and Council may from time to time direct, and the said sum shall be recoverable by the proprietor from the occupiers in proportion to their respective rents, and be deemed to be a debt recoverable as and in the same way as rent."

Mrs Helen Stewart or Baikie, *pursuer*, brought an action against the Corporation of Glasgow, *defenders*, concluding for £300 damages for personal injuries.

The parties averred—"(Cond. 1) The pursuer is a widow and resides at 14 Maitland Street, Cowcaddens, Glasgow. The pursuer's house is situated on the second flat of the tenement of dwelling-houses at said address, and is reached by means of the common stair after mentioned. The defenders are the Corporation of the City of Glasgow, and have an office or place of business at George Square, Glasgow. In terms of section 361 of the Glasgow Police Act 1866 (29 and 30 Vict. cap. 273) the defenders are charged with the duty of supplying and lighting the gas in common stairs at the brackets provided by the proprietors of tenements in Glasgow. The defenders have the entire charge and control of lighting the gas in said common stairs, employ men and equip them with lighting rods for this purpose, and are bound to cause the lights in said stairs to be lighted during the same hours as the public street lamps. (*Ans.* 1) Admitted that the stair in question is a common stair and that the defenders are properly designated. The section of the Act mentioned is referred to for its terms, beyond which no admission is made. Admitted that the defenders employ men for the purpose of lighting the gas in common stairs. The averments regarding the pursuer are not known and not admitted. *Quoad ultra* the Act mentioned is referred to for the powers and duties of the defenders. (Cond. 2) The said tenement of dwelling houses, No. 14 Maitland Street, Cowcaddens, Glasgow, consists of three flats or storeys of dwelling houses above the ground floor. The said houses are reached by a common close entering from the street, and a winding stair leads from the said close to the third floor landing. The said stair is built of stone and consists of three flights with landings at each flat. The first flight, between the street level and the first flat landing, contains twenty steps and is of spiral construction, the turn being to the right as the stair ascends. The stair is unusually steep and there is no handrail or banister on either side. There is a gas bracket with an incandescent burner at the foot of the stair and on each landing. When these are lighted they provide a good and sufficient light for persons making use of the stair after dark. (*Ans.* 2) The description here given of the stair in question is admitted generally as correct. (Cond. 3) On Saturday 21st October 1916, about 6·30 p.m., the pursuer was mounting the said stair in order to reach her house, which she had left some considerable time previously. It was dark, and the street lamps were lit. The gas jets in the said common stair should then also have been lighted by the defen-