

approval of the compromise. This was opposed by Messrs. Henderson and Small as representing the debenture holders as a class; evidence was taken, and counsel were heard; and on 25th June, 1903, an order was made by the referee approving the compromise and directing it to be carried into effect.

Messrs. Henderson and Small then applied to the referee for leave to the debenture holders as a class to appeal from the order of 25th June, 1903. This leave was refused, and they then appealed from the order refusing leave and from the order of 25th June.

J. T. Small, for the appellants.

W. M. Douglas, K.C., for the liquidator.

W. Davidson, for the other creditors.

W. H. Blake, K.C., for the executors of James Scott.

STREET, J.— . . . The immediate occasion of the appointment of Messrs. Henderson and Small was the dispute between the debenture holders and the other creditors as to their respective priorities in the administration of the assets of the company. . . . There is no special authority under the Winding-up Acts for such an appointment, but the ordinary procedure of the Courts is introduced into liquidation proceedings by sec. 93 of the Winding-up Act, and there is authority under Rule 662 for the appointment of solicitors to represent the different classes upon a reference. Although the immediate object of the appointment was the conduct of the pending appeal, it seems to have been thought proper to appoint the solicitors to represent the class throughout the liquidation proceedings. It is not to be supposed, however, that by such appointment it was intended that an imperium in imperio should be set up. The liquidator is by statute the representative of all classes of creditors, and his power as such was not in the slightest degree impaired or interfered with by the appointment of Messrs. Henderson and Small to represent one class, and of Messrs. Kerr, Davidson & Paterson to represent another. . . . In making the compromise the liquidator acted on behalf of all classes of creditors, the debenture holders included, and there being no contest as to the rights of creditors inter se, there was no occasion for any class representation.

The referee, having decided that the compromise was in the interest of the creditors as well as of the company, was, it seems to me, entirely right in refusing to authorize Messrs. Henderson & Small, on behalf of a class of creditors, to appeal against his decision at the expense of the estate, especially in view of the fact that any individual creditor had the right to appeal at his own expense and risk. . . .