ested, and has been examined and utilised by many of them, and it is said that if the pursuers and their predecessors were ignorant of the sub-valuation it is because they did not take the trouble to search the Teind Records or examine the report of the Sub-Commissioners.

I think it is true that if the pursuers or their predecessors had made diligent search and inquiry they would probably have discovered the sub-valuation in question. But, assuming that to be the fact, I am unable to see how it can bar them from pleading in the approbative proceedings the fact of their ignorance of the sub-valuation—if it be a fact—and of that fact receiving due weight therein. The minister was in no way prejudiced thereby, although it may very well be that the pursuers will have to suffer from the consequences of their negligence in this respect by having to continue to make the over payments which they have already made, but that is a question with which we are not at present concerned.

The pursuers, on the other hand, endeavour to account for the sub-valuation having escaped the notice of their predecessors by the existence in the Teind Office of an ancient copy of the report of the Sub-Commissioners, which contains the sub-valuations of all the parishes except of Aberlady. This document they say was in use to be given out for examination in place of the original, and they suggest that it may have been so given out to the agents of their predecessors, and if so, that it would have misled them into thinking that there had been no valuation of the parish of Aberlady. In the view which I take of this case it is not necessary to consider this matter. I would only remark that there is no evidence that the pursuers or their predecessors or their agents ever did make any inquiry, or consequently that they were ever misled.

On the whole matter, therefore, I am of opinion that there is no presumption that the pursuers or their predecessors when making the over payments were in the knowledge of the sub-valuation; on the contrary, I think that the presumption is that they were ignorant of it, that consequently, being ignorant of it, they cannot have elected to abandon it, and therefore that in law the sub-valuation has not been derelinquished, and that the pursuers are entitled to decree of approbation.

The Lord President, Lord Mure, Lord Shand, and Lord Kinnear concurred.

The Court pronounced this interlocutor:—

"Repel the plea of dereliction stated for the Rev. John Hart, minister of the parish of Aberlady: Ratify, allow, and approve of the report of the Sub-Commissioners of the Presbytery of Haddington libelled on, so far as regards the pursuers' lands libelled: Find and declare accordingly in terms of the conclusions of the libel, but reserving to the minister such rights as he has acquired by prescription or otherwise to stipend in excess of the teind as valued in said report: Find the pursuers entitled to expenses, subject to modification, reserving consideration of the amount thereof till the account has been reported on by the Auditor: Remit to the Auditor to tax the account of expenses and to report, and decern."

Counsel for the Pursuers—Sir C. Pearson—Low. Agents—Thomson, Dickson, & Shaw, W.S.

Counsel for the Defender—Graham Murray. Agent—John D. Duff, W.S.

Tuesday, July 17.

FIRST DIVISION.

QUEENSLAND MERCANTILE AND AGENCY COMPANY, LIMITED, *v.* AUSTRALASIAN INVESTMENT COMPANY, LIMITED.

Foreign—Enforcement of Order of English Court—Companies Act, 1862 (25 *and* 26 *Vict. cap.* 89), *secs.* 122, 123—*Arrestments—Recall.*

A Scottish company, having used arrestments to found jurisdiction, raised an action against a company which had its registered office in Queensland, and a branch office in London, and upon the dependence of this action they used arrestments in the hands of the Scottish shareholders of the Queensland company. The sums arrested were the amounts due to the Queensland company under a call made by the company upon its shareholders. Thereafter the Queensland company went into liquidation in Queensland, and a winding-up order was pronounced, and a liquidator appointed by the Queensland Court. Subsequently the company also went into liquidation in England, a winding-up order was pronounced by the Chancery Division, and an official liquidator appointed. The liquidator in England applied to the Chancery Division for an order to restrain the Scottish company from proceeding with its action in the Court of Session, and the Scottish company moved for leave to continue their action. The Chancery Division pronounced an order as craved by the liquidator. Upon a further application by the liquidator the Chancery Division pronounced an order upon the Scottish shareholders of the Queensland company to pay the amount of the call due to the company, but without prejudice to the security, if any, acquired by the Scottish company by the proceedings taken by them in Scotland. That order was registered in terms of the Companies Act, 1862, and a charge was given to the Scottish shareholders, who stated that they were unable to obey the charge in consequence of the arrestments used in their hands. Thereupon the Queensland company and the liquidator presented two petitions to the Court of Session, craving the Court (1) to enforce the order of the Chancery Division restraining the Scottish company from proceeding further with its action in the Court of Session, and (2) to recall the arrestments used on the dependence of the action. The Court (1) pronounced an order restraining the Scottish company from proceeding with its action in the Court of Session, but subject to the orders of the Court, and (2) recalled the arrestments.

The Queensland Mercantile and Agency Company, Limited, was a company duly incorporated under the laws of Queensland, having its regis-

tered office at Brisbane. The company had also a branch office in London, but they never had one in Scotland, nor did they carry on business there. In order to found jurisdiction against this company in Scotland the Australasian Investment Company, Limited, incorporated under the Companies Acts, and having their registered office in Edinburgh, used arrestments *ad fundandam jurisdictionem* in the hands of John T. Paton, a shareholder in the Queensland Company. They then raised an action on 24th February 1887 in the Court of Session against the Queensland Company, concluding for payment of £40,000. The summons contained a warrant to arrest on the dependence of the action, and in virtue thereof arrestments were used in the hands of the said John T. Paton, and of a number of other persons resident in Scotland, all shareholders of the Queensland Mercantile and Agency Company, Limited. The sums arrested were the amounts due by these persons to the company in virtue of a call made by the company on its shareholders on 14th December 1886.

On 28th October 1887 an order was made by the Supreme Court of Queensland that the Queensland Mercantile and Agency Company, Limited, should be wound up by that Court under the provisions of the (Queensland) Companies Act, 1863, and by a further order on 18th November 1887 an official liquidator was appointed.

On 14th January 1888 an order was made by the Court of Chancery in England that the Queensland Company should be wound up by that Court under the provisions of the Companies Acts, and by a further order on 28th February 1888 Edwin Waterhouse was duly appointed official liquidator of the company in England.

On 9th March 1888 the Queensland Mercantile and Agency Company applied to the Court of Chancery in England for an order that the Australasian Investment Company should be restrained by injunction from further prosecuting their action in the Court of Session; and of the same date the Australasian Investment Company applied for leave to continue the action, notwithstanding the winding-up orders which had been pronounced. After hearing counsel for the companies Mr Justice North refused the motion of the Australasian Company, and on the motion of the Queensland Company made the following order:—"That the said Australasian Investment Company, Limited, their solicitors and agents, be restrained from further prosecuting the said action; but this order is to be without prejudice to the security, if any, upon the amounts payable by the Scotch shareholders in the Queensland Mercantile and Agency Company, Limited, in respect of the call made by the last-named company on the 14th day of December 1886, which the said Australasian Investment Company, Limited, has acquired by the proceedings taken by them in Scotland: And it is ordered that, without prejudice to any question between any of the parties claiming to be entitled to the proceeds of the said call, made on the 14th day of December 1886, the liquidator do, instead of carrying all such proceeds to one account, as directed by the said order dated the 23d day of February 1888, carry such part of the proceeds of the said call as shall be received from Scotch shareholders to an account to be entitled 'Amounts received from Scotch shareholders in respect of call made on the 14th day of December 1886, on which the Australasian Investment Company claim to have security by reason of the proceedings in the action of the *Australasian Investment Company, Limited*, v. *The Queensland Mercantile and Agency Company, Limited*, now pending in the First Division of Her Majesty's Court of Session in Scotland,' and the rest of such proceeds to an account to be entitled 'Proceeds of call dated the 14th day of December 1886 received from other than Scotch shareholders.'" That order was not appealed against, and became final.

On 25th April 1888 Edwin Waterhouse, who had been appointed the official liquidator of the Queensland Company in England, applied to the Court of Chancery for an order upon certain persons named, being the shareholders in Scotland, in whose hands arrestments had been used, to make payment of the amount of the call due by them to the company. Upon this application Mr Justice North pronounced an order upon these persons to pay the amount of the calls due into the Bank of England to the account of the liquidator of the company within four days. That order was registered on 7th May 1888 in terms of the Act 25 and 26 Vict. cap. 89, and the relative Act of Sederunt of 21st June 1883, and a charge was thereafter given to the Scottish shareholders, who stated that they were prevented from obeying the charge in consequence of the arrestments above mentioned used in their hands.

In these circumstances the Queensland Company and Edwin Waterhouse, the liquidator appointed by the Court of Chancery, presented on 20th June 1888 two petitions to the Court of Session, in which were set forth the facts above narrated. In the first they applied to the Court under the 122nd section of the Companies Act, 1862, to enforce the order of the Court of Chancery restraining the Australasian Company from proceeding further with their action in the Court of Session, and prayed the Court "to pronounce an order upon the said Australasian Investment Company, Limited, their solicitors and agents, restraining them from further prosecuting the said action at present in dependence in this Court at the instance of the said Australasian Investment Company, Limited, against the said Queensland Mercantile and Agency Company, Limited." In the second they prayed the Court to recall the arrestments which had been used on the dependence of that action.

Answers to these petitions were lodged by the Australasian Company, in which they averred, *inter alia*—"By the law of Queensland, and of England and of Scotland, the effect of the orders of 28th October 1887 and 18th November 1887 was to transfer the whole of the assets, powers, and privileges of the Queensland Company to the official liquidator appointed by the order of 18th November 1887, subject, however, to all existing securities and preferences, and so far as not already legally attached, and especially without preference to these respondents' arrestments, so that it was not after November 1887 competent for the Queensland Company to present the petition to the High Court of Justice, on which the orders of 14th January and 28th Feb-

ruary 1888 and subsequent dates were pronounced, or for the said High Court of Justice to pronounce said orders of 1888; and the said orders of 1888 are illegal, invalid, and inept. The High Court of Justice of England had no power or jurisdiction to pronounce the said orders. These respondents were never in any way subject to the jurisdiction of the said High Court. . . . . For a considerable time prior to the said application being made to the High Court of Justice of England the said Queensland Company had no place of business in England, and had ceased to carry on business in England, and had no assets or creditors in England."

The 122nd section of the Companies Act 1862, provides that "any order made by the Court in England for or in the course of the winding up of a company under this Act, shall be enforced in Scotland and Ireland in the courts that would respectively have had jurisdiction in respect of such company, if the registered office of the company had been situated in Scotland or Ireland, and in the same manner in all respects as if such order had been made by the courts that are hereby required to enforce the same." . . . The 123rd section enacts that "when any order, interlocutor, or decree made by one court is required to be enforced by another court as hereinbefore provided, an office copy of the order, interlocutor, or decree so made shall be produced to the proper officer of the court required to enforce the same, and the production of such office copy shall be sufficient evidence of such order, interlocutor, or decree having been made, and thereupon such last mentioned court shall take such steps in the matter as may be requisite for enforcing such order, interlocutor, or decree in the same manner as if it were the order, interlocutor or decree of the court enforcing the same."

Argued for the petitioners—I. *Petition for authority to enforce order.*—They were entitled to have the order of the English Court enforced under section 122 of the Companies Act, 1862 (25 and 26 Vict. cap. 89). The Scottish Court could not enter into the merits of the proceedings before the English Court—*Moyes* v. *Whinney*, December 6, 1864, 3 Macph. 183. Further, the respondents had admitted the jurisdiction of the Court in England by appearing and making a motion before it—*Jamieson and Another (Liquidators of the Pacific Coast Mining Company)* v. *Walker*, May 19, 1886, 13 R. 816. The order pronounced by the English Court was now final and could not be objected to. The English Court was in the habit of granting such orders to wind up colonial companies under the 199th section of the Companies Act 1862—*Queensland Mercantile and Agency Company, Limited*, Weekly Notes, 1888, p. 62; *in re Mathieson Brothers, Limited*, June 13, 1884, 27 Ch. D. 225; *in re Commercial Bank of India*, July 25, 1868, 6 Eq. Cas. 517; *in re Commercial Bank of South Australia*, June 8, 1886, 33 Ch. D. 174; *in re Lloyd Generale Italiano*, February 28, 1885, 29 Ch. D. 219; Buckley on the Companies Acts (5th ed.) 407. It was not the case that the Queensland Company had no office or assets in England at the time the winding-up order was pronounced. II. *Petition for recall of arrestments.* — Unless the arrestments were loosed the Scottish shareholders could not pay to the liquidator as ordered by the English Court. The security of the arresting creditors was amply maintained by the terms of the order of the English Court—*Smith, &c. (Liquidator of the Benhar Coal Company, Limited)* v. *Turnbull*, February 6, 1883, 10 R. 558, *per* Lord President, p. 561; *New Glenduffhill Coal Company, Limited*, v. *Muir & Company*, December 16, 1882, 10 R. 372.

Argued for the respondents—I. *Petition for authority to enforce order.*—The petition should be refused and the respondents allowed to insist in their action. Under the 123rd section of the Companies Act, 1862, an order was to be enforced in the same manner as if it were the order of the court enforcing the same. In Scotland the action would be allowed to proceed in order that the *nexus* created by the arrestments might be made an effectual security by decree—*Smith &c. (Liquidators of the Benhar Coal Company, Limited)* v. *Turnbull, supra cit.* The motion made by the respondents before the English Court was made merely by way of reply. They did not thereby admit the jurisdiction of the English Court. That distinguished the present case from the case of the *Pacific Coast Mining Company.* The liquidation in England was bad, the estate of the company having been already transferred to the liquidator appointed by the Court in Queensland—*Goetze & Sohn* v. *Aders, Pruger, & Company*, November 27, 1874, 2 R. 150, *per* Lord President, 153. There were no assets and no office in England at the time the winding-up order was pronounced, which distinguished the present from the cases cited by the petitioners, in which the English Court had pronounced orders for the winding-up of colonial companies. II. *Petition for recall of arrestments.*—The petition should be refused. The English order of 5th April was self-contradictory. Its intention was to reserve the security obtained by the arresting creditors, but its terms did not do that. The security could not shift to England. To recall the arrestments and so enforce the order would be to defeat the intention of that order by defeating the security of the arresting creditors.

At advising—

Lord President—The order which is sought to be enforced in the first petition before us is one issued by Mr Justice North in the liquidation of the Queensland Mercantile and Agency Company, Limited, in England, and it has been contended by the respondents that that order ought not to be enforced, because the liquidation in which it was pronounced was not a statutory or valid liquidation. The company was in liquidation in Queensland before the application for the winding-up order was made in London, and that, it is said, precluded the possibility of any such English winding-up order being pronounced. I am in some doubt whether we ought to entertain that question, because we have before us an order of a competent court of jurisdiction, whose orders presumably, and upon the face of them, are to be enforced in this country, and I doubt whether it is right that we should inquire into the validity of these orders unless there is something upon the face of them that shows that they are incompetent. But I think it is right to say that I have no doubt whatever of the competency of the English liquidation, assuming the facts to be as stated—that is to say, that the Queensland

Company had a branch business in London, that they had assets there and creditors there, and shareholders in the country also. It has been contended that the effect of the liquidation is the same as a sequestration in making the administration of the estate of the company one and indivisible, but that I think is a mistake. In a sequestration under our statute of 1856 the entire estate of the bankrupt is transferred to the trustee wherever situated, and his title is of a very effective and strong kind; it makes him for the benefit of the creditors the absolute and exclusive proprietor of that estate, fortified by every kind of title that a statute is capable of conferring upon him. And therefore in such a case as that it is quite impossible to say you can have a second sequestration either in the same country or in a different country from that in which the first has taken place; the sole estate is vested in one person, and it cannot therefore become *pro parte* vested in some other person by a subsequent proceeding. But a liquidation is followed by a very different state of matters. The estate of the company is not transferred from the company to the liquidator, it remains vested in the company just as it was before the winding-up order, and the liquidator is a mere administrator of the affairs of the company. He can do nothing in the way of using action or diligence except in the name of the company, and the company never becomes dissolved and never is completely divested of its estate until the liquidation has come to an end. It may therefore very well be that although there is a winding-up in the colony which would enable the liquidator there to ingather the whole assets of the company, if he can reach them, it may aid him very much in the performance of that duty that there should be another liquidation in England or elsewhere where also the company have been carrying on business. There seems to me to be nothing incompatible in the co-existence of the two. Therefore all that suggestion of this English liquidation being invalid and not possible to co-exist with the Queensland liquidation I think is out of the case.

Then we have to consider upon its proper merits this order pronounced by Mr Justice North, and what we are asked to do in the first petition is to enforce that order under the 122nd section of the Act of 1862. I confess it appears to me that that is an unnecessary proceeding. The order is made against a party who is the pursuer of an action in this country, the Australasian Investment Company, Limited, and that order being imperative he cannot go on with his action. It is he that is restrained, and not the Court, by an order of this kind. No doubt it may be very proper that the existence of such an order should be made known to the Court in which the action which is restrained is going on, and of course the Court in which that action is depending will give immediate effect to the order pronounced in the liquidation, even supposing the pursuer of the action were seeking to go on in defiance of the order. But I think that the 122nd section is hardly applicable to such a case as that. The 122nd section refers entirely to enforcing an order. Now, there are many orders pronounced in an English liquidation that require to be enforced in this country. An order for payment of calls is the most familiar of all, but there are a great many others besides that require to be enforced by diligence if necessary, and merely to repeat this order of Mr Justice North is not in my opinion enforcement in any proper sense of the term. However, if it be thought of any advantage to the parties that we should repeat the terms of Mr Justice North's order I am quite willing to do it, subject, however, to the future orders of the Court, because there may arise a change of circumstances which may alter the position and rights of the parties altogether. With that qualification I am for granting the prayer of the first petition.

In regard to the petition for the recall of the arrestments, I think that is a demand which the Queensland Company and its liquidator are entitled to make in the circumstances, because I am satisfied that the preference which the Australasian Company would have acquired if they had carried their point—which of course is not before us—is completely saved by the terms of Mr Justice North's order. He makes this restraining order against the Australasian Company, but under this condition, that it "is to be without prejudice to the security, if any, upon the amounts payable by the Scotch shareholders in the Queensland Mercantile Agency Company, Limited, in respect of the call made by the last-named company on the 14th day of December 1886, which the said Australasian Investment Company, Limited, has acquired by the proceedings taken by them in Scotland. And it is ordered that, without prejudice to any question between any of the parties claiming to be entitled to the proceeds of the said call made on the 14th day of December 1886, the liquidator do, instead of carrying all such proceeds to one account, as directed by the said order dated the 23rd day of February 1888, carry such part of the proceeds of the said call as shall be received from Scotch shareholders to an account to be entitled 'Amounts received from Scotch shareholders in respect of call made on the 14th day of December 1886,' on which the Australasian Investment Company claim to have security by reason of the proceedings in the action of *The Australasian Investment Company, Limited*, v. *The Queensland Mercantile and Agency Company, Limited*, now pending in the First Division of Her Majesty's Court of Session in Scotland." It is said that this does not save the preference which the Australasian Company would have acquired if they had been enabled to prosecute their action against the Queensland Company, and bring it to a conclusion by a decree, and this is founded upon what is a perfectly sound view of the nature of an arrestment upon the dependence. No doubt an arrestment upon the dependence creates a *nexus* merely upon the fund arrested, and it does not become an active security by means of which payment can be operated until a decree is pronounced in the action upon the dependence of which the arrestment is used. That is perfectly sound in point of law. But although that be so, it surely is not impossible by arrangement to save such preference without the necessity of the action being prosecuted to a conclusion. That was done in the case of the *Benhar Coal Company*, and the preference was completely sustained in that case, because the money being set aside to meet the preference, and the debt being subsequently ad-

mitted by the liquidator, there was nothing to prevent the preference being given effect to. It is quite true that in that case the company was allowed to go on and take decree in the action upon the dependence of which the arrestment was used, but we were of opinion that that was quite immaterial. I expressed myself in that action in this way—"It was arranged between the parties by minute that these arrestments should be recalled, on condition, however, 'that any right of preference which the said George V. Turnbull may have established by the use of said diligence shall not be prejudiced, and further, that notwithstanding the said recall the respondent shall have leave to proceed with and prosecute the actions raised by him against the Benhar Coal Company, Limited, on the dependence of which the said inhibitions and arrestments were used.' The consequence of this was that we pronounced an interlocutor upon the 17th February 1881, in which we recalled the diligence, but on the conditions contained in the minute which I have just referred to. Decrees are said to have been subsequently obtained by Mr Turnbull, and the date at which this was done, although not mentioned in the papers, is said to have been the 22nd February 1882. It does not appear to me, however, to be of much consequence when these decrees were obtained, or even if they were obtained at all, for their only use was to establish Mr Turnbull's claim against the company—a claim which I hold to have been fully admitted—and the question accordingly which we have now to determine comes to be, whether for these admittedly good debts any preference has been secured by these arrestments on the dependence?" Accordingly we proceeded to sustain that preference, and to decide in favour of the arresting creditor. What occurred in that case was that the arrestment was recalled. Now, after the arrestments were recalled it is very plain that a decree in the action could never have warranted a furthcoming. The decree in the action could never have given any effect whatever to the recall of the arrestments, and therefore the decree was a mere form—nothing else—the debt being admitted by the liquidator. And so I think it is demonstrated that the preference secured by the arrestment on the dependence may in a question of this kind be fully reserved—and effectually reserved—without the necessity of any further proceedings in the action on the dependence of which it was used, if the claim in this action is either admitted or proved to be good. I am therefore of opinion that the arrestments in this case should be recalled, and that the recall will not prejudice the preference of the Australasian Company if that preference is otherwise good.

I may mention that the case of the *Glenduffhill Coal Company* is a very good illustration of the way in which such preferences can be reserved. In that case there was a poinding, which of course proceeded on an execution of a decree, but the poinding creditor was stopped before he had secured his right to the preference. He had poinded, but he had not got the poinded goods for sale, and he was restrained from doing so, because it was thought that that might be very prejudicial to the general body of the creditors, a sale under a poinding being notoriously a very bad sale in respect of the compulsory nature of it, and there a preservation of the right of preference was made although the diligence was never carried into execution.

Lord Mure—I quite agree with your Lordship on both points.

Lord Shand—I am of the same opinion as your Lordship has expressed. If it had been proper in this Court when called upon to enforce or give effect to the orders of the Court in which this liquidation is going on, to inquire whether that Court had jurisdiction to grant a liquidation order, I should say—as I agree with your Lordship in all that—that it is clear that notwithstanding the subsistence of a liquidation in Queensland there was no reason to prevent the Court in England from taking the ancillary liquidation there—a liquidation which we see was applied for by the Queensland Company itself in order to assist the liquidation going on abroad. But I am very clearly of opinion that it is not for this Court in Scotland when they receive an order from the High Court of Justice in England to enter upon any inquiry of that kind. I think we must assume that the liquidation proceedings under the statute of 1862 and subsequent Acts were going on before a court of competent jurisdiction, and that the order for liquidation has been properly granted by that court. We know that in this Court it is necessary to a liquidation order that there shall be full advertisement, that there shall be full inquiry whether the company has been carrying on business in this country, and as to everything necessary in order to put the Court in a position to judge whether liquidation shall be granted or not; and we must assume that similar proceedings go on in England also, and indeed we have evidence to the effect that that is so. But it appeared to me that if we were to give effect to the argument here, that we were to inquire whether the liquidation had been properly originated, and whether the Court had jurisdiction to grant the order which we are asked to enforce, we would be involved in many cases in an inquiry which would really frustrate the purposes of the Act. There is nothing more common than for the Lord Ordinary on the Bills, either in session or in vacation, to be asked to enforce in this country orders for calls which have been issued in liquidations in England, and the suggestion that on each occasion when anything of that kind is done the person against whom the call is to be enforced may come forward and offer objections to the effect that this liquidation had not properly originated in England—that the Court had no jurisdiction, that the liquidation order had been improperly granted, or the like—would simply destroy the efficiency of the clauses of these Acts, which are intended for the enforcement of orders granted by one court of this kingdom in any other part. And so I am clearly of opinion that the objection taken to the present application, that the Court which granted the order had no jurisdiction, is one that cannot possibly be entertained.

Then there remain only the merits of this question. I assume that the Court had jurisdiction in the liquidation proceedings going on before it to grant the orders which are here in question. What are these orders in substance? They are, first, that the action at the instance of the Australasian Investment Company, Limited, against

the Queensland Mercantile and Agency Company, Limited, in this Court shall be stayed. Further, that the amount of the calls which have been arrested on the dependence of that action shall be paid into an account in name of the liquidator in England, a special account headed—"Amounts received from Scotch shareholders in respect of the call made on the 14th day of December 1886," on which the Australasian Investment Company claim to have a security by reason of the proceedings in the action to which I have referred, and that this payment shall be made without prejudice to the security, if any, upon those calls which the Australasian Investment Company, Limited, have obtained. And finally there is an order upon the shareholders themselves to pay the amount of these calls into the account in England referred to in the previous order. Well then, the result of these orders is this—The Court desires the action to be stayed, it directs the money arrested to be transmitted to England and paid into an account, and orders that the shareholders shall pay that money accordingly. Now, these orders having been granted, what is the position of the liquidator when he comes to this Court? It humbly appears to me that this Court is merely administrative in what it is doing. I do not think we have any judicial functions to perform. The statute, in section 122, provides that where you have such orders issued by a court in one part of the kingdom these shall be enforced in the same manner and in all respects as if such order had been made by the courts that are thereby required to enforce the same. The words of the statute are, "shall be enforced," practically, that is, shall have the same force and effect as if these orders had been pronounced in this Court itself. In cases where it may be necessary to take steps to enforce these orders as if they had been pronounced by this Court itself, section 123 provides that this Court shall take these steps. Therefore I say it is not for us to review an order which has been granted in England. Even if the order were contradictory, as is here alleged, or if it seemed to proceed upon some erroneous view of the law of Scotland, I am not prepared to say that we could interfere with that order and proceed to review it. It may be that in such circumstances the respondents would be fairly entitled to say to the Court—"There is an error in this order. It is wrong in some respects, and we desire to put it right." In these circumstances the Court might say—"We shall not give effect to the order until you have an opportunity of going back to the Court that issued the order and let them consider that question." But I think this Court is not entitled to refuse to enforce an order because of any views we may have as to whether it was a right or a wrong order. And I should have very great difficulty, so far as I am concerned, in putting the ground of judgment which would entitle this Court to refuse to give effect to the clear provisions of the statute, which say that the order of a court in England is to be equivalent to the order of a court in this country. But while I entertain that view, I agree with your Lordship in thinking that the respondents here are in no danger whatever upon the orders which have been pronounced. I think the terms of Mr Justice North's first order directing the moneys to be paid into an account in the Bank of England are framed so as entirely to secure any preference they have, and that if they have such preference they will be clearly entitled to make it effectual. On these grounds I am of opinion with your Lordship that we should grant both petitions.

Lord Adam—The only difficulty that I have seen in granting the prayer of this petition is this, that it was truly not a prayer asking us to enforce an order, but simply asking us to repeat an order. I do not myself see that the petitioners will be in a very much better position by having the order they ask made; but as they think they will, I really do not see much objection to granting it.

As regards the objection to the second petition, as I understand it on the merits, it was this, that whereas it was the clear intention of the Judge in the High Court in England who made the order restraining from further procedure, to preserve intact the security which might have been acquired by the respondents, the effect of stopping the action here and recalling the arrestments would be *de facto* to destroy that security which the Court in England meant to preserve. It was said that was inconsistent, and therefore that the letter of the order should not be granted. If I thought there was anything in that it might be worth further consideration, but I perfectly agree with your Lordship that, protected as the order is by the language used in it, the security will not be impaired in the least by the money being handed over and paid into the particular account directed by the order, and therefore I am for granting the prayer of that petition also.

In the petition for authority to enforce the order of the Chancery Division the Court pronounced the following interlocutor:—

> "Restrain the respondents the Australasian Investment Company, Limited, from further prosecuting the action at present in dependence in this Court at the instance of that company against the petitioners the Queensland Mercantile and Agency Company, Limited, and decern, but subject always to the orders of the Court."

In the petition for recall of arrestments the Court recalled the arrestments used by the respondents.

Counsel for the Petitioners—Muirhead—Blair. Agents—Blair & Finlay, W.S.

Counsel for the Respondents—Balfour, Q.C.—Graham Murray. Agents—Davidson & Syme, W.S.