of the Finance Act a person authorised or required to pay the estate-duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when paid, have power, whether his property is vested in him or not, to raise the amount of such duty and any interest or expenses properly incurred by him in respect thereof, by the sale or mortgage of, or a terminable charge on, that property or any part thereof; and by the 6th sub-section, which more immediately applies to this case, it is provided that a person having a limited interest in any property, who pays the estate-duty on that property, shall be entitled to the like charge as if the estate-duty in respect of that property had been raised by means of a mortgage to him.

The petitioner is a person who has a limited interest in the property in question, and he has paid the estate-duty on that property. He is therefore entitled to the like charge as if the estate-duty had been raised by a mortgage to him,—the word "mortgage" is not of course a term of Scotch law, but I understand it to mean that the creditor in a mortgage has the security of the estate over which it is granted for payment of his debt. If that be so, then the petitioner is in the same position as if he was a creditor in a bond and disposition in security over the estate for the amount of estate-duty paid by him. I agree with the Lord Ordinary that "estate-duty" includes settlement estate-duty, but does not include the expenses incurred by the petitioner in connection with the settlement of the duties.

By the 2nd sub-section of the 9th section of the Act the Commissioners are required to grant a certificate of the estate-duty paid, and of the debts and incumbrances allowed by them in assessing the value of the property; and by sub-section 3 that certificate is (subject as therein mentioned) declared to be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed by the Commissioners.

I do not know how it may be in England, but it is quite foreign to all our ideas of conveyancing that a sum should form a charge on lands without its appearing on the records, so that a person searching the records would have notice of the existence of such charge. It may be that the declaration in the Act of Parliament that the amount of duty named in the certificate is a first charge on the property may be sufficient to make it so without any farther procedure. But it is reported to us that the petitioner can find no one to lend money on that security, and he very legitimately, I think, desires to have the amount contained in the certificate constituted a charge on the lands in conformity with the requirements of the law of Scotland.

For this purpose he founds on the 11th section of the Entail Amendment Act of 1868, which enacts that in all cases where there are or shall be entailer's or other debts or sums which might be made lawfully chargeable by adjudication or otherwise upon the fee of the entailed estate, the heir of entail in possession shall have power to grant, with the authority of the Court of Session, bonds and dispositions in security for the full amount of such debts. It may be that the Entail Statutes did not contemplate a debt of this nature, but I am of opinion with the Lord Ordinary that it falls within the description of debts specified by the statute, that the petitioner is the creditor in a debt which may be lawfully made chargeable upon the fee of the entailed estate, and therefore that the petition is competent and ought to be granted to the extent I have indicated, viz., the amount of the estate-duty paid, including therein settlement-duty, but not including expenses incurred in connection with the ascertainment of these duties.

The petitioner is not entitled to charge on the estate the expenses of this petition.

The LORD PRESIDENT, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced the following interlocutor:—

"Find that the petitioner is entitled to charge the sum of £765, being the amount of estate-duty and settlement estate-duty paid by him on his succession, upon the fee of the entailed lands and estate of Redcastle by way of bond and disposition in security in favour of himself or such other person or persons as may advance to him the said sum; and remit the said petition to the Lord Ordinary to proceed further, and decern."

Counsel for the Petitioner—C. K. Mackenzie. Agents—F. & J. Martin, W. S.

Wednesday, February 23.

FIRST DIVISION.

BABERTON DEVELOPMENT SYNDICATE, LIMITED, PETITIONERS.

Company — Winding-up by the Court — Appointment of Liquidator.

It is competent for the Court in pronouncing an order for the winding up of a company having its registered office in Scotland, to appoint a liquidator residing outwith its jurisdiction, but it is not the general practice to make such an appointment unless valid reasons can be shown for doing so.

Application for appointment of liquidator residing outwith jurisdiction *refused.*

A petition was presented by the Baberton Development Syndicate, Limited, 4 Picardy Place, Edinburgh, for an order for the winding up of the Finance Corporation of Western Australia, Limited, which was incorporated as a company in October 1894, and had its registered office at 4 Picardy Place, Edinburgh.

The petitioners averred that in September 1897 they had obtained judgment against the Company in the Mayor's Court, London, for £150, and that having sued on a writ of *fieri facias* on this judgment directed to the Serjeant at Mace of the said Mayor's Court, the writ had been returned unsatisfied and the judgment remained still unpaid.

The petitioners craved the Court to appoint as liquidator Mr Henry Charles Wilson, Chartered Accountant, London, or otherwise Mr Thomas Whitson, C.A., Edinburgh.

There was no opposition to the petition.

The petitioners argued that it would be more convenient that the liquidator should be a gentleman resident in London, as it would be necessary for carrying out the liquidation to pay frequent visits there, and maintained that it was competent to appoint a liquidator outwith the jurisdiction of the Court—*Brightwen & Company* v. *City of Glasgow Bank*, November 27, 1878, 6 R. 244; *Robertson*, October 20, 1875, 3 R. 17.

LORD PRESIDENT—I am not disposed to hold it incompetent to appoint a liquidator outside of our jurisdiction. But for manifest reasons it is preferable to have an officer within our jurisdiction, and residing at or near to the registered office, which is the headquarters of the company. I do not think that there are here adequate reasons for departing from what I suppose to be the general practice of the Court, and accordingly I am against the appointment of this liquidator.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court appointed Mr Thomas Whitson as liquidator.

Counsel for the Petitioners — Chree. Agents—A. P. Purves & Aitken, W.S.

Wednesday, February 23.

FIRST DIVISION.

[Lord Pearson, Ordinary.

WALLACE, PETITIONER.

Cautioner—Judicial Factor—Liability for Defalcations of Judicial Factor Prior to Date of Bond of Caution.

The cautioner for a judicial factor bound himself that the factor "shall do exact diligence in performing my duty as judicial factor foresaid, and shall render just and regular accounts of my intromissions and management . . . and make payment of whatever sum or sums of money shall be justly due by me."

Before the date of the execution of this bond of caution the judicial factor had appropriated to his own use money belonging to the trust estate. He appropriated no more after this date, but replaced part of the embezzled funds.

The judicial factor having absconded, the cautioner was called upon to make good the deficiency found to exist in the accounts. He maintained that he was not liable for any defalcations prior to the date of the bond of caution.

Held that on the construction of the bond of caution, read in relation with the duties of a judicial factor, one of which is to give an accounting at the termination of his office, the cautioner was liable for the amount of his defalcations, whether they took place before or after the date of the bond of caution.

Fraud — Misrepresentation and Concealment—Reduction of Bond of Caution.

A cautioner who was called upon to make good the defalcations of a judicial factor maintained that he was not bound by his bond of caution on the ground that it had been wrongly obtained from him. He averred (1) that there had been fraudulent concealment by the factor himself of material facts, viz., of his defalcations; (2) that the agent acting for the beneficiaries had omitted to notify to the Accountant of Court the death of the previous cautioner, though he was aware that it had taken place some years previously and had not been duly reported by the factor, and that he concealed this fact from the cautioner; and (3) that the Accountant of Court had been guilty of neglect of duty in not taking protective measures when he heard of the judicial factor's failure to report the cautioner's death. It did not distinctly appear from the averments that the agent in obtaining the signature of the bond of caution was acting as agent for the beneficiaries, but rather for the factor, nor did it appear that the beneficiaries knew any facts from which it would necessarily be inferred that the factor was misappropriating the trust funds.

Held that the averments did not constitute a relevant defence against the enforcement of the defender's obligations under the bond.

French v. *Cameron*, 20 R. 966, and *Smith* v. *Bank of Scotland*, 7 S. 244, *considered* and *distinguished*.

The trust-estate of Mr George Wallace, who died in 1867, was put under judicial factory in 1868, Mr James Wink being appointed judicial factor. Mr Wink left his residence in Glasgow and was sequestrated, never having received his discharge as factor, but in October 1890 his cautioner obtained warrant from the Court for delivery of his bond of caution after the factor's accounts had been reported on by Mr H. Horsbrugh, C.A.

In succession to Mr Wink, Mr John Rose Kelso was appointed factor on 16th April 1889. He absconded in the end of July 1896. His first cautioner was Thomas Struthers Smith, merchant in Glasgow, who died on 3rd April 1892.

A petition was presented by Miss Melanie Wallace, one of the beneficiaries, craving