

riage has not been declared null judicially, we have not been referred to any civil case in which this has been done.

Where a question of *status* is involved it is desirable that it should be determined with formality and once for all. If such a defence is allowed by way of exception and without declarator in a process of separation and aliment it will be difficult to refuse to sustain it in an action of divorce.

But as regards the present case I am not sorry that your Lordships do not share these doubts, because I think that the judgment which you propose to pronounce is the best for the pursuer of this action. If the defender were compelled to bring a declarator of nullity he would probably obtain decree simply on proving the previous marriage, relying on the presumption that the first husband was alive when the second marriage was contracted; and if the pursuer were ever in a position to establish that the first husband was really dead at the date of her second marriage, she would be put to the expense and trouble of reducing the decree of nullity. I prefer not to say what I think of the defender, who, after living twenty years with a woman as his wife, and knowing, as I believe he did, as much as she did about her first husband's probable existence at the date of the second marriage, instructs such a defence as this to be pressed. He is within his rights. But he has been well warned that he must not regard the present judgment as dissolving his marriage with the pursuer, or as having any other effect than in the meantime refusing her claim for aliment.

LORD YOUNG was absent.

The Court adhered.

Counsel for Pursuer — C. D. Murray.  
Agent—R. G. Bowie, W.S.

Counsel for Defender — W. Wallace.  
Agent—James M'William, S.S.C.

Friday, June 24.

## FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

STEWART & M'DONALD AND  
ARTHUR & COMPANY, LIMITED  
v. BROWN (SMITH & RITCHIE'S  
FACTOR).

*Bankruptcy — Sequestration — Dissolved Company — Notour Bankruptcy — Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), sec. 13.*

For the sequestration of the estate of a dissolved company at the instance of creditors, notour bankruptcy is an essential condition.

A firm was dissolved by the death of the partners, and the creditors of the firm presented a petition for sequestration of

the estates of the firm and of the partners. The petition set forth that the firm carried on business in Scotland, that the partners died subject to the jurisdiction of the courts of Scotland, and that a judicial factor was appointed on the estate of the firm, but there were no averments, and no evidence was produced in process, of the notour bankruptcy of the firm. The Court *dismissed* the petition.

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79) provides in section 13, sub-section 1, that sequestration may be awarded "In the case of a living debtor subject to the jurisdiction of the Supreme Courts of Scotland—(B) On the petition of a creditor or creditors, in the case of a company being notour bankrupt, as hereinbefore provided, if it have within such time (*i.e.*, within a year before the date of the presentation of the petition) carried on business in Scotland, and any partner have so resided or had a dwelling-house, or if the company have had a place of business in Scotland." In sub-section 2 it is provided that sequestration may be awarded in the case of a deceased debtor who at the date of his death was subject to the jurisdiction of the Supreme Courts of Scotland—" (B) On the petition of a creditor or creditors qualified as hereinafter mentioned." And in section 15 it is enacted that "petitions for sequestration of the estates of a deceased debtor at the instance of a creditor may be presented at any time after the debtor's death, but no sequestration shall be awarded until the expiration of six months from the debtor's death, unless he was at the time of his death notour bankrupt, or unless his successors shall concur in the petition or renounce the succession."

On May 12th 1898 a petition was presented by Stewart & M'Donald and Arthur & Company, Limited, creditors of the dissolved firm of Smith & Ritchie, auctioneers, Edinburgh, for sequestration of the estates of that firm and of the deceased James Herdman Smith, and of the also deceased Robert Ritchie, the sole partners of the dissolved firm,

The petition set forth that both of the deceased partners of the dissolved firm were at the time of their deaths, which occurred respectively in April and June 1897, subject to the jurisdiction of the Supreme Courts of Scotland, and that in December 1897 a judicial factor had been appointed on the estate of the firm. It contained no averment that the firm had been rendered notour bankrupt or that it was insolvent, and no evidence was produced in process to that effect.

On 15th April the Lord Ordinary on the Bills (KYLACHY) pronounced the following interlocutor:—"Finds that no averments have been made in the petition, and no evidence has been produced in process, of the notour bankruptcy of the dissolved firm of Smith & Ritchie: Therefore dismisses the petition, and decerns."

The petitioners reclaimed, and argued—Section 4 of the Bankruptcy Act declared that the word "debtor" should apply to

companies as well as to individuals. A dissolved company was in the same position as a deceased debtor in the sense of the Act; it could not be described as a living debtor; therefore this application fell under the second sub-section of section 13. Notour bankruptcy was not a requisite under that sub-section, in which the words "dissolved company" were to be read for "deceased debtor." All the requisites necessary in the case of a deceased debtor were present in this case, and six months having elapsed since the dissolution of the company, as prescribed by section 15 of the Act, sequestration should now be awarded.

Argued for the respondent—All the requisites of the Act must be complied with, and in the case of companies notour bankruptcy was one of these requisites. The Court had no discretion in the matter of awarding sequestration—*Stuart & Stuart v. Macleod*, December 8, 1891, 19 R. 223. The Act kept in view the distinction between individuals and companies, and made no distinction between subsisting and dissolved companies. A company or firm though dissolved continued to exist for the purposes of winding-up. This petition fell under section 13, sub-section 1, B, and should be dismissed as incompetent in the absence of the essential requisite of notour bankruptcy.

At advising—

LORD ADAM—I think it is clear from the terms of the interlocutor dismissing the petition that the Lord Ordinary thinks it falls under (B) of the 1st sub-section of the 13th section of the Bankruptcy Act.

That section deals with the cases in which sequestration may be awarded, and is divided into two sub-sections—the first dealing with the case of a living debtor, and the second with the case of a deceased debtor. Each of these sub-sections is again subdivided into sub-sections (A) and (B). Sub-sections (A) provide for the case where the petition is presented at the instance of the debtor himself, or in the case of a deceased debtor, by a mandatory to whom he has granted a mandate to that effect; and sub-sections (B) where the petition is presented at the instance of a creditor.

The interpretation clause declares that the word "debtor" shall apply to companies as well as to individuals.

Sub-section (B) of the first sub-section, which applies to the case of a living debtor, provides that when, as in this case, the petition is presented at the instance of a creditor, if certain conditions therein specified are fulfilled, sequestration may be awarded in the case of a company being notour bankrupt. The Lord Ordinary has dismissed the petition because no averments have been made in the petition, and no evidence has been produced in process, of the notour bankruptcy of the dissolved firm of Smith & Ritchie, and no doubt his Lordship is right if the case falls within the sub-section in question.

But it was argued to us that the case did not fall within that sub-section, but within sub-section (b) of sub-section 2, which deals

with the case of a deceased debtor, and does not require notour bankruptcy as a condition of awarding sequestration. It was said that a dissolved company fell within the definition of a debtor in the sense of the Act, but I think that would be putting so constrained a construction on the words of the Act that I cannot adopt it.

I am disposed to think that a company dissolved by the death of a partner may still be treated in a question with creditors, which this is, as an existing company, and therefore as falling within sub-section (B) of sub-section 1 of the 13th section, and on that ground I think the interlocutor should be affirmed; but if I am wrong in that, then I think that the result would be that the case of the sequestration of a dissolved company is a *casus improvisus* under the Act, and that the petition would fall to be dismissed as incompetent.

LORD M'LAREN—This petition for sequestration under the Bankruptcy Act 1856 was presented to the Lord Ordinary on the Bills by certain creditors of the dissolved firm of Smith & Ritchie. The company consisted of two partners, James Herdman Smith and Robert Ritchie, both deceased. The Lord Ordinary has dismissed the petition on the ground that no averments are made, and no evidence is produced, of the notour bankruptcy of the dissolved company. The ground of judgment plainly implies that in his Lordship's opinion the case is governed by the 1st sub-section of the 13th section of the Bankruptcy Act.

In the argument addressed to us it was suggested that the petition might be held to fall within the scope of the 2nd sub-section of section 13, in which case notour bankruptcy would not be a pre-requisite. Now, the case contemplated by the 2nd sub-section is defined by the introductory words of that enactment in terms which to my mind are absolutely distinct and unambiguous. The case defined is "the case of a deceased debtor who at the time of his death was subject to the jurisdiction of the Supreme Courts of Scotland." We were invited to interpret the words "deceased debtor" as being equivalent to "dissolved company," and the word "death" as being equivalent to "dissolution of partnership." I am not sure that I understand the theory or principle of construction under which the suggested readings are admissible; but I think it must be a theory in which fancy takes the place of logic, and in which the question proposed is, how the statute is to be made to fit the case, and not whether the conditions of the case fit the statute.

In order to prepare the judicial mind for the reception of this new system of interpretation of the statute law, it was proposed to begin by applying it, though in a milder form, to the construction of the 1st sub-section of the same clause, which treats of the sequestration of living debtors and companies. It was argued that the case of the sequestration of a partnership or company could only be brought within the

terms of the 1st sub-section by construing the words "living debtor" in the 1st sub-section so as to include a company.

Now, even if it could be made to appear from the context of the 1st sub-section that "living debtor" includes "company," it does not follow that in the 2nd sub-section, where there is no context to support the argument and no reference whatever to companies, we should construe "deceased debtor" as equivalent to "dissolved company." But in my opinion the argument from the 1st sub-section fails altogether, because on a fair construction of that sub-section I do not think that the words "living debtor" are applied to the case of a company.

It is, perhaps, unfortunate that the framers of the Act did not divide clause 13 into three articulate sub-sections, the first having relation to the case of an individual debtor, the second to companies, and the third to deceased debtors. As a matter of fact the cases of individual debtors and company debtors are included in one sub-section, and I am not prepared to affirm that in point of clearness the language of sub-section 1 is all that we should desire. But it is necessary for the purposes of the case to consider how individual and company debtors are dealt with in the clause.

The enactment begins with the words "In the case of a living debtor, subject to the jurisdiction of the Supreme Courts of Scotland," and proceeds to state with sufficient clearness the conditions upon which sequestration may be awarded of the estates of those debtors who survive their misfortunes, classifying them under two categories, A and B. The clause proceeds—"or otherwise, in the case of a company being notour bankrupt, as hereinbefore provided, if it have within such time carried on business in Scotland, and any partner have so resided or had a dwelling-house, or if the company have had a place of business in Scotland." This seems to me to be a perfectly independent provision regulating the conditions of possible sequestration of company estate—a provision which is capable of standing by itself, and which requires no aid from the antecedent provisions applicable to the case of a living debtor (which I take to mean an individual debtor), except in so far as, for brevity's sake, certain phrases of the antecedent provisions are incorporated in it by appropriate words of reference. The case of companies is introduced by the disjunctive expression "or otherwise," and the collocation is, in the case of a living debtor, sequestration may be awarded on his own petition or on the petition of creditors—in the case of a company being notour bankrupt, only if it have carried on business in Scotland, and so forth.

So far from confounding or merging the cases of a "living" or individual debtor and a company debtor, I think that the section of the statute under consideration very clearly distinguishes the cases. It is worthy of notice that this is not, if I may say so, the case of a distinction without a

difference, because the conditions on which an award of sequestration may issue against a company are necessarily different from those which relate to the sequestration of individuals, and those differences are distinctly set out in the enactment in appropriate terms. The two cases seem to me to be disjoined in form and substance, and when we award sequestration of the estates of an insolvent company we are not at all required to consider whether the company is a living debtor or a deceased debtor, but only whether the company is notour bankrupt and whether it is subject to the jurisdiction of the Scottish Courts on one or other of the grounds expressed in that part of the section which I have read and which applies solely to insolvent companies.

I do not think that it would have occurred to anyone that the statute had classed insolvent companies as a sub-species of the genus "living debtor" had the arrangement of the letterpress by the Queen's printers not favoured such a reading. But in the construction of a statute it is a rule that no notice is taken of punctuation or breaks in the continuity of the print, and the present case proves, or at least exemplifies the safety of holding to this rule.

I have only to say, further, that in my opinion the case of the sequestration of a "company being notour bankrupt" includes the case of a dissolved company. If it did not include this case, a creditor would certainly prefer to have the liability of a living debtor to that of a dissolved company, because, strictly speaking, there can be no sequestration of a company estate until the company is dissolved by notour bankruptcy. The result of my opinion is that this petition ought to be treated as an application made under section 13, sub-section 1; that as such it is defective for the reason stated by the Lord Ordinary; and that the petition has been rightly dismissed.

LORD KINNEAR—I agree. The petition prays for the sequestration of the estates of the dissolved firm of Smith & Ritchie, and of the estates of the two deceased partners of that firm as such partners and as individuals; and the petition sets forth that a judicial factor has been appointed upon the estates of the firm of Smith & Ritchie, but it does not aver that the firm is or was notour bankrupt or that the estate is insolvent. The petition is therefore presented on the assumption that, notwithstanding the deaths of the two partners, there is still a separate estate belonging to the firm of Smith & Ritchie which may be sequestrated, which means that there is a separate estate which may be effectually attached by the diligence of creditors for the payment of the debts of Smith & Ritchie, and that notwithstanding the deaths of the partners there is still a separate artificial person to be recognised in law as the firm of Smith & Ritchie capable of maintaining the independent relation of debtor and creditor; that the estate of this firm is perfectly solvent, and that it is being duly administered for behoof of all parties interested by an officer of this Court; and on

that footing it is maintained that it ought to be sequestered under the Bankruptcy Act at the instance of a creditor of the firm, and distributed among the creditors as a bankrupt estate.

It certainly lies upon the creditor who proposes a proceeding of that kind to show that it is justified by the statute. Now, the only ground on which its competency is supported is that it is provided by the 2nd sub-section of the 13th section of the statute that "in the case of a deceased debtor who at the time of his death was subject to the jurisdiction of the Supreme Courts of Scotland," sequestration may be awarded on certain conditions, and it is said, and I think quite correctly, that it is not one of these conditions that the deceased person shall have been notour bankrupt. That is the only provision of the statute on which the petition can be maintained, and in the application of that provision for the purposes of this case, I think it is to be observed, in the first place, that the petitioner's counsel did not rely on the deaths of the two partners as justifying the demand, but on the dissolution of the copartnership, irrespective of the particular means by which its dissolution had been brought about, and that was obviously the only correct and logical position which he could assume. It was quite necessary for him to take up that position, because the deaths of the partners will not help him, since although their separate estates might probably be sequestered under the clause in question as the estates of deceased debtors, that would not operate as a sequestration of the firm's estate for the exclusive benefit of the firm's creditors which is the object of this petition if there be any separate estate which can still be sequestered for that purpose. It is, of course, elementary that the claims of the firm's creditors may be made good against the separate partners if they have been well constituted against the firm. Still the rights of the firm's creditors and of the creditors of the partners respectively in the firm's estate on the one hand and the partners' estates on the other are perfectly different, and the difference is especially material in the view of proceedings for sequestration, because the rule is settled that in bankruptcy the company's creditors have right to the funds and estate of the insolvent company to the entire exclusion of the separate creditors of the partners, and may claim against estate of a partner only for the balance remaining due after deducting what may be recovered from the estate of the company. And accordingly Mr Ure made it perfectly clear in his argument that what he relied upon was not the deaths of the partners but the dissolution of the company, and he put his proposition quite distinctly as being this, that in the sense of the statute, a deceased debtor who at the date of his death was subject to the jurisdiction of the courts of Scotland means a dissolved company or a dissolved copartnership, which at the date of its dissolution was subject to the jurisdiction of the courts of Scotland.

Now, I think it might be enough to say that that seems to me, as it does to Lord M'Laren, a most violent perversion of plain language. The statute is providing for an exceptional case, and I cannot see any reason to doubt that the plain sense of the words in which that case is provided for is the true sense, and that it refers to the natural death of a real person and not to the dissolution of a company.

Mr Ure went on to argue in support of his proposition that dissolution is to a company exactly what death is to an individual. Now, I should not think that the words of the statute ought to be strained by any such analogy to cover a case which is not within their plain meaning even if the analogy were a just one. But it seems to me to be quite clear that it is not a just analogy. A copartnership may be dissolved in a great variety of ways—by the mere lapse of time, by the death of a partner, or by the incapacity or the sequestration of a partner. But none of these events will of itself extinguish the artificial person known to the law as the firm or the company, or transfer its estate or its rights and liabilities to the partners as individuals or to anybody else. It still continues to exist so far as necessary for the purpose of winding-up, and therefore for the purpose of sequestration, if its creditors are entitled to resort to that particular method of winding-up its estates. Therefore for all the purposes which require to be considered in a process of sequestration it may still be an existing company or an existing firm notwithstanding that it is dissolved. And it so continues just as much when the process of winding-up is in the hands of a judicial factor as if it were in the hands of the former partners or of the surviving partner. It seems to me, therefore, that the mere fact of the dissolution is quite immaterial to the question so long as there still exists a separate estate of the separate person called the firm, answerable as such for the obligations of the firm, and attachable by the diligence of the firm's creditors. It is no doubt possible for a firm to be dissolved in such circumstances that it is to all intents and purposes extinguished; but in that case sequestration of the firm's estate as such would be a perfectly futile and unmeaning proceeding, because there would *ex hypothesi* be no separate estate to be sequestered.

But then that is not the hypothesis on which we are asked to proceed. On the contrary, it is just because there is, according to the petitioners, a separate firm with a separate estate which ought to be distributed among the firm's creditors exclusively that they have adopted these proceedings.

For these reasons I am of opinion that the petitioners have entirely failed to show that this case falls under sub-section 2 of the 13th section of the statute, and therefore that the petition ought to be dismissed, and that I think would be sufficient for the disposal of the case.

But then I agree that it is advisable, although I think that it is not necessary, to consider the argument which was pre-

sented to us founded upon the first sub-section, because it is said that if a dissolved company is not a deceased debtor it is just as little a living debtor, and therefore that it does not fall under the first sub-section any more than under the second. Now, if that were sound, it would, in my opinion, make no difference whatever in the result, because the consequence would be that a dissolved firm could not be sequestrated at all under the statute, and therefore the petition would still have to be dismissed as incompetent. But I do not think it is sound. I agree that the words "a deceased debtor" are not very apt to describe a dissolved company, and I think there is a great deal of force in the argument, although after the observations of Lord M'Laren I should say no more than that there is force in the argument, that the introductory words of the first sub-section—"in the case of a living debtor"—subject to the jurisdiction of the courts of Scotland, override all the subsequent subordinate clauses of that sub-section. I do not think it necessary to determine whether on a sound construction of the section that is the true reading or not, because if it be, then the section provides within itself a glossary for construing the words "living debtor," which on that hypothesis are made to include a company, which may be sequestrated, and if it be not, then, as Lord M'Laren has pointed out, there is an entirely distinct and separate provision for the sequestration of a company, which includes firms and copartneries of all kinds. But without considering further what seems to be a mere question of grammatical construction, I am clearly of opinion that the provision for the sequestration of a company is in itself perfectly clear and intelligible, and that its application to this petition is perfectly clear and intelligible also. A company may be sequestrated on certain conditions. These are (first) that it is notour bankrupt—that is, notour bankrupt at the date when the petition is presented. I do not think it makes any difference whether the notour bankruptcy has been constituted while the company was still carrying on business or after that date. If it has been constituted by diligence while the company was a going concern its legal effect is in no way altered by the mere dissolution of the company. If the company is dissolved by agreement or otherwise, then so long as its property is still extant and may be attached for payment of its debts the company may still be made notour bankrupt. Therefore this first condition may be satisfied although the company is dissolved. Then the second condition is, that the company "within such time"—that is, within twelve months before the date of the presentation of the petition—shall have "carried on business in Scotland, and a partner shall have resided or had a dwelling-house or the company shall have had a place of business in Scotland."

Now, these are all the conditions that are set forth in the statute, and they are all applicable to the case of a company which

has ceased to carry on business, and which may therefore have been dissolved either by agreement or by the death of one or more of the partners, provided always there still remains a separate estate attachable for the debts of the firm as distinct from the estates belonging to the individual partners. I do not doubt that the company intended by the statute is an existing company. But then it is quite clear that it need not still exist for the purpose of carrying on business, because it may have ceased to carry on business for any period short of twelve months; and therefore it is enough if it exist for the purpose of winding-up.

If there may be circumstances in which no such estate can be attached, so that the company could not be made notour bankrupt, then I agree that it would be impossible to bring such a company within the operation of this clause, but, as I have already said, that consequence must be immaterial, because the assumption is that there is no estate to be reached by diligence, and therefore no estate to be reached by sequestration. It seems to me, therefore, that the 1st sub-section of the 13th section provides for the sequestration of a company in all cases in which it can be sequestrated at all; and if that be so, I am very clearly of opinion that it is an essential condition to the sequestration of the estates of a company, whether it be dissolved or still carrying on business, that it should be notour bankrupt, whether it be made notour bankrupt after its dissolution or before its dissolution being of no consequence, provided the notour bankruptcy still subsists at the time when the petition is presented.

I do not think it necessary or proper for the consideration of this case to consider what are the circumstances in which a dissolved company may be brought within the operation of this section, and in what circumstances it might not be possible to apply the section for a sequestration, because the circumstances of dissolution may vary indefinitely. Every case must be determined according to its own circumstances, but it is enough for the disposal of the present case that the assumption upon which we are asked to proceed, and the only possible assumption on which a petition for sequestration could be presented, is that there is a separate estate belonging to this firm capable of being attached by diligence for the firm's debts, and therefore capable of being sequestrated at the instance of the firm's creditors. That means that the company although not carrying on business still constitutes a distinct *persona*, which holds the property of the estates and is subject to the debts of the concern. I do not think it possible for the petitioners to present a petition for sequestration on that hypothesis, and at the same time to allege that the company does not exist as a separate firm so as to be capable of sequestration, and therefore that it does not fall within the only enactment which enables a company to be sequestrated.

On these grounds I entirely concur with your Lordships in thinking that the petition

ought to be dismissed, and that the Lord Ordinary's interlocutor, which contains an implication that if it had been not our bankrupt there might have been a good petition for the sequestration of the firm under the first sub-section, should be affirmed. Whether the facts would justify such a sequestration is a totally different matter. We know nothing about that, but dealing with the averments as disclosed on the face of the petition, I think that the view taken by the Lord Ordinary is perfectly sound.

LORD PRESIDENT—I adopt the view of Lord M'Laren that this petition does not fall within the 2nd sub-section of the 13th section of the Act, the one which is introduced by the words "in the case of a deceased debtor."

The Court adhered.

Counsel for the Petitioners—Ure, Q.C. —Cook. Agents—Cairns, M'Intosh, & Morton, W.S.

Counsel for the Respondent—A. S. D. Thomson. Agent—Henry Wakelin, Solicitor.

Saturday, June 25.

FIRST DIVISION.

THE SCOTTISH FLUID BEEF COMPANY, LIMITED v. AULD.

*Company—Winding-up—Continuation of Liquidation—Suspension of Statutory Provisions—Nobile Officium—Companies Act 1862 (25 and 26 Vict. c. 89), secs. 142, 143, and 165.*

After the final meeting of shareholders in the liquidation of a company, and the registration of the liquidator's return of that meeting under sections 142 and 143 of the Companies Act 1862, a petition was presented by the liquidator praying the Court to find that the affairs of the company were not fully wound up, and to suspend the operation of section 143 of the Act. At the same time an application was made under section 165 for the recovery of £45,000 from a director of the company, which sum was alleged to have been misapplied by him. The Court remitted the latter petition to the Outer House, and dismissed the former as incompetent, holding that the question whether the proceedings under section 165 would have the effect of continuing the liquidation fell to be considered, when it arose, by the Lord Ordinary to whom the matter had been remitted, and that the Court could not decide that question by anticipation.

The 142nd section of the Companies Act 1862 (25 and 26 Vict. c. 89) enacts that—"As soon as the affairs of the company are fully wound up the liquidators shall make up an account showing the manner in which such

winding-up has been conducted and the property of the company disposed of, and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators." . . . By section 143 of the Act it is provided—"The liquidators shall make a return to the registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved." . . . Section 165 provides that—"Where in the course of the winding-up of any company under this Act, it appears that any past or present director, manager, official, or other liquidator, or any officer of such company, has misapplied or retained in his own hands, or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, . . . examine into the conduct of such director, manager, or other officer, and compel him to repay any moneys so misapplied or retained." . . .

The Scottish Fluid Beef Company sold its business in 1896, and thereafter went into voluntary liquidation. The final meeting of shareholders of the company, in terms of the 142nd section of the Companies Act 1862, was held on 9th April 1898, and notice thereof was lodged with the Registrar of Joint Stock Companies on 12th April 1898.

On 1st June 1898 a petition was presented by the liquidator under the 165th section for recovery of a sum of £45,000 alleged to have been misapplied by William Wallace Auld, a director of the company. Answers were lodged for Mr Auld in this and another petition presented by the liquidator at the same time, in which the Court was asked "to find that the affairs of the Scottish Fluid Beef Company, Limited, are not fully wound up, and accordingly to suspend the operation of the 143rd section of the Companies Act 1862 in relation to the said company."

The Court of consent remitted the former petition to Lord Stormonth Darling.

In the latter the respondent argued—The dissolution of a company under section 143 of the Companies Act did not deprive the Court of jurisdiction over such a company under the Act—*Crookhaven Mining Co.*, November 3, 1866, L.R., 3 Eq. 69. The petition was incompetent, and should be dismissed. If the petitioner was entitled to the declarator for which he asked, any number of people might apply for the same thing and table fresh claims, but the Court had no jurisdiction to wind up a company which had been dissolved under section 143, unless the dissolution was fraudulent—*Pinto Silver Mining Co.*, March 12, 1877, L.R., 8 Ch. Div. 273.

Argued for the petitioner—If, as was admitted, the petition which had been remitted to Lord Stormonth Darling was competent, this petition should be dis-