

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-

missed as unnecessary. The statute did not provide for the case of a company *bona fide* wound up, whose affairs were afterwards discovered not to have been fully wound up.

LORD PRESIDENT—The Act of Parliament does not confer on the Court jurisdiction to declare when a company shall be held to be dissolved; on the contrary, the Act itself states the condition under which dissolution occurs. The thing works automatically. Needless to say, it will be for the Court to determine, should the question arise, whether in a given case the statutory conditions have existed which produce dissolution, and also whether the expiry of the three months terminates the liquidation to the effect of precluding the Court from issuing further orders. The *Crookhaven* case was not an application to the Court to declare *ab ante* that the liquidation should not terminate; the Court was there asked to do something regarding which it was predicated that it would have the effect of keeping the liquidation open. In the present application we are not asked to do anything except to declare. Mr Campbell has made an application, which is now before Lord Stormonth Darling, asking the Court for an operative decree of payment, and about that application I will only say that it seems a highly plausible contention that the application will keep the liquidation open. But we cannot pronounce in advance about that application, as to which we have had no opportunity of judging, that it will have the effect that is claimed for it. It seems to me that we should be going entirely out of our way to pronounce an abstract finding of that kind which might turn out to be misleading and dangerous.

I am therefore for refusing the application, without the addition of the words "as unnecessary" which Mr Campbell asked for, but as incompetent.

LORD KINNEAR—If any question should arise for judicial decision as to the legal consequences of the proceeding which has been remitted to Lord Stormonth Darling, that question may be decided by the Lord Ordinary or by the Court when it arises. But we cannot decide such a question by anticipation, nor until we know the form in which it will be raised, and the substantial interests which it may involve. In the meantime this appears to me not to be an application to the Court to decide any question which has arisen. It is rather an appeal to the *nobile officium* of the Court to interfere and suspend the operation of certain provisions of the statute, on the assumption that they may have a certain effect which one party says they must have, and which the other party does not admit. I am clearly of opinion that we have no power or discretion to interfere in this way, and that any question that competently arises for judicial decision must be decided when it does arise, and not before.

LORD ADAM and LORD M'LAREN concurred.

The Court refused the petition as incompetent.

Counsel for the Petitioner—Campbell, Q.C.—Graham Stewart. Agents—Cairns, M'Intosh, & Morton, W.S.

Counsel for the Respondent—Clyde—Kemp. Agents—Duncan Smith & MacLaren, S.S.C.

Friday, July 1.

SECOND DIVISION.

[Sheriff-Substitute of Forfarshire.]

KNIGHT STEAMSHIPS COMPANY,
LIMITED *v.* FLEMING, DOUGLAS,
& COMPANY.

Shipping Law—Delivery of Cargo—When Delivery Completed so as to Relieve Ship from Liability for Subsequent Damage to Cargo—Provisions of Bill of Lading—Custom of Port.

By the bill of lading of a consignment of jute, part of a large cargo consigned to various consignees, it was provided that the bales were to be delivered from the ship's tackles (where the ship's responsibility shall cease) at the port of Dundee, and also that if the goods were not removed from the steamer immediately she was ready to unload, the master or agent was "to be at liberty to land and warehouse the same" at the risk and expense of the owners of the goods. The consignment in question was discharged at a berth assigned by the harbour-master, and when taken from the ship's tackles was in good order and condition. Owing to the sheds and quays becoming blocked, the harbour porters, who were in the service of the Harbour Trustees but were paid by the consignees of the cargo, took some of the jute in question to a roadway and piece of waste ground where it suffered damage from damp and mud. The consignees' clerk was in attendance during the discharge. The jute was not removed from this place by the consignee for a considerable time. There was no averment of custom of the port or trade on record, but evidence was led to the effect that in the case of such cargoes the various consignments were landed indiscriminately, and that before any particular parcel was removed by the consignee it had to be checked by the ship's clerk. The shipowners did not give any order to the harbour porters as to the disposal of the jute after it had been taken from the ship's tackles. In an action by the shipowners for a balance of freight the consignee pleaded that part