

been—namely, that each spouse was surrendering a valuable right for the purpose of providing for the disposition of the estate in the way set forth in the deed.

The LORD PRESIDENT concurred.

The Court answered the question in the negative.

Counsel for the First, Third, and Fourth Parties—Cullen. Agent—Marcus J. Brown, S.S.C.

Counsel for Second Parties—A. S. D. Thomson. Agent—Marcus J. Brown, S.S.C.

Counsel for the Fifth Party—Dundas—Wilton. Agent—Alexander Mitchell, Solicitor.

Counsel for the Sixth, Seventh, and Eighth Parties—Rankine—Constable. Agent for Sixth and Eighth Parties—Marcus J. Brown, S.S.C. Agents for Seventh Parties—Jamieson & Donaldson, S.S.C.

Wednesday, June 19.

FIRST DIVISION.

MARSHALL AND OTHERS, PETITIONERS.

Company—Winding-up—Foreign Company having Branch Office, Assets, and Liabilities in Scotland—Jurisdiction to Wind up—Companies Act 1862 (25 and 26 Vict. cap. 89), sec. 199.

Petition under section 199 of the Companies Act 1862 for the winding-up by the Court of a company incorporated and having its principal place of business in the United States of America, but having a branch office, assets, and liabilities in this country, granted.

The Fidelity Loan and Trust Company was a finance company incorporated under the laws of the State of Iowa, U.S.A., and had its principal place of business at Sioux City, Iowa.

It also carried on business in England and Scotland, its principal place of business in the United Kingdom being 63 Castle Street, Edinburgh, but it was not registered in the United Kingdom and had no separate office of its own.

Its business in this country consisted chiefly of borrowing money on debentures which were secured by mortgages over land in America deposited with and held by the Hon. F. J. Moncreiff, C.A., Robert Strathern, W.S., and J. P. Wright, W.S., as trustees under a deed of trust entered into between them and the said company. The chief assets of the company in this country consisted of the mortgages lodged to secure payment of the debentures. In addition, the company held various bonds, stocks, and other assets, but these were to a large extent pledged in security of advances made to the company in America.

On 2nd January 1895 the company became unable to meet its liabilities, and was obliged to suspend payment.

On 10th January a receiver was appointed by the Court at Iowa, and subsequently a scheme was drafted for the reconstruction of the company.

A petition was presented to the Court of Session by the Rev. Theodore Marshall, Edinburgh, and other creditors of the company under the 199th section of the Companies Act 1862, which provides for the winding-up by the Court of unregistered companies, for an order to have the said company so wound up and the trustees above named appointed official liquidators.

The objects of the petition were to protect the rights of the debenture holders in the mortgages and other securities held by the said trustees, and to make the scheme of reconstruction, if agreed to by the majority of the creditors, binding upon all under the provisions of the Joint Stock Companies Arrangement Act 1870.

It was stated by the petitioners that the receiver in America did not object to the petition being granted, and that the recent cases in England of *in re Matheson Brothers, Limited*, 1884, L.R., 27 C.D. 225, and *in re Commercial Bank of Southern Australia*, 1886, L.R., 33 C.D. 174, were authorities for this being done.

The Court pronounced the following interlocutor:—

“The Lords . . . order that the Fidelity Loan and Trust Company be wound up by this Court under the provisions of the Companies Acts 1862 to 1890: Appoint the Hon. F. J. Moncreiff, C.A., Edinburgh, and Robert Strathern and J. P. Wright, both Writers to the Signet, Edinburgh, to be official liquidators of the said company in terms of the said Companies Acts, they finding caution in common form before extract, the same being limited in amount, with all the powers conferred by the said Acts; and declare that all acts required or authorised to be done by them may be done by any one or more of them: Further, direct all subsequent proceedings in the winding-up to be taken before Lord Stormonth Darling, Ordinary, and remit to his Lordship with power to fix the amount of caution to be found by the liquidators, declaring that no proceedings are to be taken under this order without the leave of the said Lord Ordinary: Find the petitioners entitled to the expenses of this application, and direct the same to be expenses in the winding-up.”

Counsel for the Petitioners—Asher, Q.C. —Burnet. Agents—Guild & Shepherd, W.S.