

LORD YOUNG—I am of the same opinion. This is a pure question of practice. It being so, we thought it right before giving our decision to communicate with our brethren in the First Division of the Court, and they are of the same opinion as ourselves. It is therefore now finally settled that a petition of this sort must go in the first instance before the Junior Lord Ordinary.

LORD RUTHERFURD CLARK concurred.

Counsel for the Petitioner—Salvesen.
Agents—Sim & Garden, S.S.C.

Counsel for the Respondents—Goudy.
Agent—Robert Finlay, S.S.C.

Wednesday, November 12.

SECOND DIVISION.

DRYSDALE & GILMOUR, PETITIONERS.

Company—Liquidation—Voluntary Winding-up—Supervision Order on Note by Liquidator—Companies Act 1862 (25 and 26 Vict. cap. 89), sec. 129.

A petition was presented for the winding-up of an association registered under the Companies Acts. At a general meeting of the association a resolution, which was neither special nor extraordinary, was passed for voluntary winding-up, and a liquidator was appointed, who presented a note to the Court craving that the voluntary winding-up might be continued subject to the supervision of the Court, and that his appointment might be confirmed. The Court, on the ground that the voluntary winding-up was the more expedient course, *refused* the prayer of the petition and granted the prayer of the note.

Upon 27th October 1890 Messrs Drysdale & Gilmour, contractors, Leith Walk, Edinburgh, and the individual partners of the firm, presented a petition for the winding-up of the International Exhibition Association of Electrical Engineering Inventions and Industries 1890. The petitioners alleged that under a minute of agreement between them and George Edward Watson, secretary to and duly authorised by the Executive Council of the Association, they had done work in the erection of the Exhibition buildings at a cost of £26,000, of which a balance of £9000 was unpaid. They averred that the guarantee fund of £26,000 and the buildings were the only assets, while the debts as particularly specified amounted to £43,961, 15s. 6d. The Association had suspended payment except as to what were termed "current expenses." With the view of securing a preference to the British Linen Company Bank, who were creditors to the amount of an overdraft of £19,907, the Association had delivered over to the bank the guarantee letters, and the bank upon 24th

October 1890 issued a circular letter to the guarantors, stating, *inter alia*—"You will please take notice that your letter of guarantee is now in the hands of the bank, and that in the event of there being any call upon you under your guarantee the amount of such call will fall to be paid to the bank." The petition prayed that the Electrical Association should be wound up by the Court, and that certain parties should be appointed official liquidators.

Upon 29th October the petition was ordered to be intimated, advertised, and served in the usual manner on eight days' *induciae*.

The Exhibition closed upon 31st October.

Upon 5th November 1890, at a general meeting of the Association, it was resolved—"That the purposes for which the Association was established having now been fulfilled, it is now required by the Association, in general meeting assembled, that the same be wound up voluntarily, and the meeting hereby resolve that the Association be wound up voluntarily." This was a simple resolution, and neither special nor extraordinary.

Mr J. A. Robertson, C.A., was appointed liquidator, and it was also resolved that Mr Robertson, as liquidator, should apply to the Court of Session to have the liquidation placed under the supervision of the Court. A resolution was also passed unanimously that eight members of the Executive Council should be appointed to act as a committee of advice.

Upon 7th November 1889 the liquidator accordingly presented a note for a supervision order; for confirmation of his appointment and the committee of advice; and to have Drysdale & Gilmour found entitled to expenses of their petition.

The petitioners argued—Theirs was a creditor's petition, and therefore ought to be granted. The debtor had no right to interfere with the creditor's form of process—Buckley, p. 192. Upon the face of the petition it was evident that there was no prospect of any reversion to the guarantors, and large creditors were in favour of having the liquidation carried on under the orders of Court—*Wilson v. Hadley, &c.*, November 8, 1879, 7 R. 178; *Pen-y-Van Colliery Company*, March 3, 1877, L.R., 6 C.D. 477; *The General Rolling Stock Company*, February 11, 1865, 34 Bevan, 314. The period for winding-up the company under a voluntary liquidation had not yet arrived, as all the purposes of the Association had not been fulfilled. Section 129 (1) of the Companies Act 1862 did not apply, and the voluntary liquidation was incompetent. They could only proceed under section 143.

Argued for the liquidator—A large number, if not a majority, of the creditors agreed to have a voluntary liquidation of this Association, and the Court would not interfere with such an arrangement—*Aitken and Others, Petitioners*, December 1, 1888, 26 S.L.R. 129. The note was competent, because the purposes of the Association had been fulfilled.

At advising—

LORD YOUNG—We have considered this case, and we are all of opinion that the voluntary liquidation which is going on now is lawful, and that there are no sufficient reasons why we should interfere with it by putting the Association under another form of liquidation and another liquidator. The result is that we will refuse the petition for judicial liquidation at the instance of Drysdale & Gilmour, and substantially—the form of the order may be matter for consideration—accede to the prayer of the note—that is, to sanction the voluntary liquidation under the supervision of the Court, and confirm the appointment of the liquidator and of the gentlemen who have been nominated to advise with him. The result is simply this, that as the Association must be wound up, we think that winding-up under voluntary liquidation is lawful, competent, and upon the whole the most expedient.

LORD WELLWOOD and LORD STORMONTH DARLING concurred.

The Court pronounced the following interlocutor:—

“Direct and ordain that the voluntary winding up of the International Exhibition Association of Electrical Engineering and Inventions 1890, resolved on by the resolution passed at the general meeting of the said Association held on 5th November 1890, be continued, but subject to the supervision of the Court: Confirm the appointment of the said James Alexander Robertson as liquidator of the said Association in terms of and with all the powers conferred by the Companies Act 1862 and Acts amending and extending the same: Also confirm the appointment of Sir Thomas Clark, John Wilson, Robert Cranston junior, Robert Shillinglaw, John C. Dunlop, Peter L. Henderson and George Gilroy as a committee to advise with the liquidator in relation to all matters or questions arising in the liquidation: Find the petitioners Drysdale & Gilmour, Alexander Drysdale and George Gilmour, entitled to the expenses of the petition, and direct the same to be expenses in the liquidation: And remit to Lord Stormonth Darling, Ordinary, in terms of the 6th section of the Companies Act 1886, to proceed in the subsequent proceedings in the winding-up: *Quoad ultra* refuse the prayer of the petition, and decern.”

Counsel for the Petitioners—Asher, Q.C.
—C. S. Dickson. Agents—Reid & Guild,
W.S.

Counsel for the Association—Murray—A.
S. D. Thomson. Agents—Davidson &
Syme, W.S.

Friday, November 14.

FIRST DIVISION.

MACDONALD AND ANOTHER v.
CUTHBERTSON AND ANOTHER.

Succession—Testament—Holograph in Essentials—Adoption of Improbative Writing—Skeleton Form of Will Filled up Holograph of Testator.

A domiciled Scotsman living in Shanghai, where English law prevails, obtained there a skeleton will in the English form, with a clause of attestation annexed. He filled up the blanks in his own handwriting, putting (1) his own name and designation, (2) the names of his two brothers, and the words “equally and jointly, if one deceased to the survivor only,” and (3) the name of a friend, respectively, in the blanks left in the printed matter for the names of testator, legatees, and executor. He also filled in the date and subscribed the document, which, although partly written and partly printed, then formed a coherent whole expressive of definite testamentary purpose. The attestation form was unused as no witnesses attested the subscription, and the will was therefore invalid by English law.

Held (diss. Lord M'Laren) that it was invalid in Scots law, as it was not tested, and was neither holograph in essentials nor adopted as holograph by a probative writ.

Thomas Johnstone Macdonald, who was a Scotsman by birth and domicile, left Scotland about the year 1877 to fill an appointment at Shanghai, China. He subsequently entered into a business there, which he conducted down to 12th September 1887, when he died, leaving considerable property both in China and in Scotland, all of it moveable property, and consisting chiefly of securities.

After Mr Macdonald's death a search was made in his repositories with the object of finding whether he had left any instructions for the disposal of his estate, with the result that a document was found which formed the subject of this special case. It was the only document of a testamentary character found among the deceased's papers or in his private repositories. It consisted of a printed form of testament, having originally blanks left for the insertion of various details and particulars. These blanks were filled up by the deceased in his own handwriting, and he subscribed the document. In the representation here given of said document the portions filled in by the deceased are shown in italics; the whole of the rest of the original document was printed:—

“This is the last Will and Testament of me, *Thomas Johnstone Macdonald*, of *Shanghai*.

“I direct that all my just debts and funeral and testamentary expenses be paid and