Wednesday, March 9.

SECOND DIVISION.

QUOSBARTH, PETITIONER.

Process—Witness—Examination on Oath—Evidence in Foreign Suits Act (19 *and* 20 *Vict. cap.* 113)*—The Extradition Act* 1870 (33 *and* 34 *Vict. cap.* 52).

A petition under these Acts for examination upon oath of a witness resident within the jurisdiction of the Court of Session, in relation to a criminal trial pending before a court in a foreign state, *granted.*

The Act 19 and 20 Vict. cap. 113, section 1, provides that when any court of competent jurisdiction in a foreign country is desirous of obtaining the testimony of a witness resident within the jurisdiction of a court in this country, subsequently defined as including the Court of Session, in relation to any civil or commercial matter pending before the foreign court, it shall be lawful to make application to the Court "to order the examination upon oath, upon interrogatories or otherwise, before any person or persons named in such order, of such witness or witnesses accordingly." Section 2 provides that a certificate under the hand of the Ambassador, &c., of any foreign Power shall be evidence that the matter in regard to which evidence is sought is a civil or commercial matter pending before a competent court in the foreign country, and that the court desires the evidence of the person named in the application.

The Extradition Act 1870 (33 and 34 Vict. cap. 52), section 24, provides that the testimony of any witness may be obtained in relation to any criminal matter pending in any foreign court in like manner as it may be obtained in regard to any civil matter under the Act 19 and 20 Vict. cap. 113, "and all the provisions of that Act shall be construed as if the term civil matter included a criminal matter, and the term cause included a proceeding against a criminal."

Hermann Quosbarth, Consul at Dundee for the Empire of Germany, presented a petition to the Court of Session, stating that in criminal proceedings pending before the Investigating Judge of the Hanseatic "Landgericht" at Hamburg against an inhabitant of that city on a criminal charge, the Court was desirous of obtaining the evidence of a certain witness resident in Scotland, and that he had been instructed by the Consul-General to make this application. A certificate under the hand of Paul Count Von Hatzfeldt, Wildenburg, Ambassador of His Majesty the Emperor of Germany at the Court of St James, London, was produced, certifying that the "Landgericht" was a competent court to try the criminal charge, and that it was desirous of obtaining the evidence on oath of the witness named in the application.

The petitioner prayed that the Court would order the examination of the witness upon oath before the petitioner, to command his attendance at such time as the petitioner might fix, upon giving the witness forty-eight hours' notice, and to grant authority to messengers-at-arms in common form.

The Court granted the prayer of the petition.

Counsel for the Petitioner — Baxter. Agent—Arthur S. Muir, S.S.C.

Friday, March 11.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

THE SECOND EDINBURGH AND LEITH 493RD STARR-BOWKETT BUILDING SOCIETY AND ANOTHER *v.* AITKEN.

Building Society—Instrument of Dissolution—Consent of Members—The Building Societies Act 1874 (37 *and* 38 *Vict. cap.* 42), *sec.* 32.

The 32d section of the Building Societies Act 1874 provides that a society may be dissolved by dissolution with the consent of three-fourths of the members, holding not less than two-thirds of the shares, "testified by their signatures to the instrument of dissolution."

Held that members of a society under the Act who had employed mandatories to sign an instrument of dissolution on their behalf, had failed to testify their consent to a dissolution in terms of the Act, and that signatures adhibited by mandatories could not be reckoned in calculating, whether an instrument of dissolution was signed by three-fourths of the members of the society.

The Second Edinburgh and Leith 493rd Starr-Bowkett Building Society, incorporated under The Building Societies Act 1874 was duly registered on 7th February 1882. The object of the society was to make advances to members (chosen by ballot) on the security of heritable property, the funds for these advances being subscribed by the members, who were bound to pay sixpence a-week per share until they had subscribed £27, 6s. on each share of £100 held by them. The members who received advances were bound to repay them by instalments.

On 26th August 1890 an instrument of dissolution of the society was registered, which bore to be "signed by not less than three-fourths of the members holding not less than two-thirds of the number of shares in the said society." At the same date the number of shareholders on the register was 203, and 158 signatures were appended to the instrument. The deed appointed Peter Ronaldson, C.A., trustee for the special purpose of the dissolution.