claimed at one time the claim has been satisfied. The debt has been discharged, and all connection that he ever had with this liquidation is gone; it has come to an end. I therefore cannot say that I can see any ground for holding that there is jurisdiction against Mr Harrison, and if there be any against Mr Walker it can arise only from the circumstance of his being a shareholder of the company in liquidation.

Now, whether that would be sufficient in itself I do not stop to inquire, because I think that if we have no jurisdiction against Mr Harrison nothing can be more inexpedient or improper than to grant an order interdicting Mr Walker from proceeding with that company suit of Falkner, Bell, & Company in liquidation in California. I think the suggestion is altogether anomalous. These parties are pursuing a suit for partnership purposes to recover money due to the partnership of which they are partners, and to restrain one of these partners from going on with such a suit while the other remains free to carry it on is a sort of proceeding which I do not think could have been contemplated by the 87th section of the Companies Act of 1862. Therefore I am for refusing this application.

A great deal of the argument was founded upon the 122d section of the Act of 1862, but I do not think that as regards even Mr Walker any order that we might make for the purpose of enforcing our interdict restraining him from pursuing the action in California would be given effect to in an English Court under that section of the statute. It appears to me that what that section contemplates is that all orders pronounced by this Court in the course of a liquidation, whether it be an order for winding-up a company, or an order for continuing a liquidation under supervision, or any order made for enforcing payment of calls, or for payment of money otherwise in the liquidation, will receive effect in England by the intervention of the courts of law there just in the same way as if that order had been made by itself.

But suppose that we were to issue an order against Mr Walker as resident in London for the purpose of apprehending him, and bringing him before this Court as in contempt of Court, a question for consideration would remain, whether that would be an order within the meaning of the 122d section of the statute, and therefore as regards Mr Walker there may be very great difficulty indeed in seeing a way to enforce against him the order which we are now asked to pronounce, and therefore upon the whole of these grounds I think this application must be refused.

Lord Shand—If the action in which it was desired to stay proceedings had been one at the instance of Mr Walker as an individual, I confess I should have felt very great difficulty in coming to the conclusion that the Court should refuse the order now asked, because in the first place Mr Walker is undoubtedly a shareholder in this company which is now in liquidation, and in the next place he is resident in England, and it rather appears to me that the 122d section of this statute is intended to give this Court the power to deal with a person resident in England just in the same way as if he were resident in Scotland. We are daily in use to grant decrees for calls against persons who are not resident in Scotland, the jurisdiction of the Court being derived entirely from section 122 of this statute, and if the Court were in the present case under section 122 of the statute to grant decree for the payment of calls, I am not prepared to say that if a shareholder resident in England insists in carrying on legal proceedings there in his own name against a company in liquidation this Court is not to have power to stop these proceedings, and that it would not take every means in its power, by interdict or otherwise, to compel the person who so sues to refrain from doing so, and to sue and rank in this Court.

But this case is a very different one from that I have pointed at. The proposal here is that the Court should restrain Mr Walker and his partner Mr Harrison from proceeding with the action which they are carrying on for the benefit of the copartnery of which they are members in America. That action is not an action by Mr Walker as an individual. We have no reason to know that an interdict against Mr Walker as an individual would restrain that action. It might only be getting the parties into confusion in the next stage of these proceedings, and that I think we ought to avoid.

Mr Harrison confessedly does not reside in Scotland, and the Court has no jurisdiction whatever over him, and the mere circumstance that he has made a claim for payment of a debenture, which claim has received effect by payment in the liquidation, cannot be held to give jurisdiction against him, for I observe it is stated in the answers in regard to Mr Harrison that all claims under the debenture have been paid and discharged. And so there is plainly no jurisdiction against Mr Harrison.

I am of opinion that we should not as in a question with Falkner, Bell, & Company grant any decree restraining them from carrying on the proceedings complained of.

Lord Adam—I agree with your Lordship, and have only to add that it does not appear to me that section 122 gives the Court jurisdiction. It only enables the Court to enforce an order which it has jurisdiction to make.

Lord Mure was absent.

The Court refused the note.

Counsel for Liquidators—Gloag—Lorimer. Agents—Davidson & Syme, W.S.

Counsel for Respondents—Comrie Thomson—Dickson. Agents—Henry & Scott, S.S.C.

Friday, March 19.

FIRST DIVISION.

MORE (LIQUIDATOR OF THE SCOTTISH PACIFIC COAST MINING COMPANY) *v.* WALKER AND ANOTHER.

Public Company—Winding-up—Order to Stay Proceedings—Foreign—Jurisdiction—Reconvention—Companies Act 1862, *secs.* 87 *and* 122.

The liquidator of a Scottish company presented a note to the Court of Session to restrain a Californian firm from proceeding

with actions they had raised against the company in the Superior Court of San Francisco. The first of these actions was to recover commission on bills negotiated by the firm on account of the company, rent of office, &c., and a sum alleged to be due for services rendered by the plaintiffs. Following on this action certain shares belonging to the company in liquidation had been attached. The other action was for payment of the amount of a bill drawn by the firm upon and alleged to have been accepted by the company, dishonoured by the acceptors, and retired by the drawers. The liquidator maintained that the rights of parties should be determined in the liquidation. Neither of the partners of the firm were domiciled Scotsmen. One of the partners was resident in London, the other partner was resident and domiciled in California. The former, however, was managing director of the company in liquidation, and the partners of the firm were on the register as holders of shares, and were due arrears of calls. The firm had prior to the commencement of the liquidation raised an action in the Court of Session against the company for payment of a bill of exchange. This action was defended by the company, and was still in dependence. It had been conjoined with another action, also in dependence, in which the company sought to interdict the firm from doing diligence, and to suspend a threatened charge upon another bill of exchange. The firm had, after the commencement of the liquidation, obtained leave from the Court to proceed with these actions. *Held* that the dependence of these actions was sufficient to give the Court jurisdiction over the respondents in all matters connected with the liquidation, and note *granted.*

This was an application at the instance of Francis More, liquidator of the Scottish Pacific Coast Mining Company, for an order to stay proceedings.

On 2d February 1885 the shareholders of the company had resolved that the company should be voluntarily wound up, and on 11th March following a supervision order had been pronounced by the Court.

In the month of June 1885 James Davidson Walker and Henry Dalbiac Harrison, partners of the firm of Falkner, Bell, & Company, trading as merchants in San Francisco, California, and also trading in London under the firm of Bell, Harrison, & Company, raised in the Superior Court of San Francisco, California, an action against the company to recover three sums, amounting in all to $7469·18, consisting of (1) a sum of $2594·18 upon an alleged account for commissions on bills of exchange drawn and negotiated by Falkner, Bell, & Company on account of the company at its request between March 1881 and June 1884; (2) a sum of $1950 upon an alleged account for rent of office, stationery, and postage, furnished and delivered by the plaintiffs to the company at its request between said dates; and (3) a sum of $2925 upon an alleged account for services rendered by the plaintiffs for the company in and about its business, and in keeping its accounts at its request between said dates.

The plaintiffs in this action had attached the shares of the Bonanza Gold Mining Company, and of Hunter's Gold Mining Company, the stock of which belonged to the company in liquidation.

Further, on or about 12th November 1885 Falkner, Bell, & Company raised in the Superior Court of San Francisco an action against the company for payment of a bill of exchange, at sixty days' sight, for £2000, dated 20th May 1884, drawn by Falkner, Bell, & Company upon, and alleged to be accepted by, the company, dishonoured by the acceptors, and retired by the drawers. That action concluded for payment of this sum, viz., $10,236·36, with interest and costs of suit.

The liquidator in the present application stated that the company had a good defence to these actions, but that whatever claims the firm have against the company ought to be made and determined in the liquidation. The prayer of the note was that the Court should "pronounce an order restraining the said James Davidson Walker and Henry Dalbiac Harrison from taking any further proceedings in the foresaid two actions raised in the Superior Court of San Francisco aforesaid, in or about the months of June and November 1885 respectively, by the said James Davidson Walker and Henry Dalbiac Harrison, copartners as aforesaid, or in whatever other name or form the said actions may have been brought against the said Scottish Pacific Coast Mining Company (Limited); and also to restrain them from taking or continuing any further proceedings in or connected with the foresaid attachments of the shares held by the said company in the foresaid Bonanza Gold Mining Company and Hunter's Gold Mining Company, or any other proceedings for attaching or affecting the property, heritable or moveable, real or personal, of the company, whether in security or in satisfaction or execution of any judgment or decree in the said actions; as also to ordain the said James Davidson Walker and Henry Dalbiac Harrison, copartners foresaid, to abandon and withdraw the foresaid two actions and the said attachments of the said shares."

It was stated in the note that Mr Walker was resident in London, and Mr Harrison in San Francisco; that they were the only partners of the firm which traded in London as Bell, Harrison, & Company, and in San Francisco as Falkner, Bell, & Company; and that they were possessed of assets and property in London and elsewhere in the United Kingdom which were liable for the obligations of both firms.

These facts were also stated, which distinguish the case from that of the *Liquidators of the California Redwood Company*, which immediately precedes, *supra*, p. 553:—"The said James Davidson Walker was the managing director of the company now in liquidation; and the partners of the firm of Falkner, Bell, & Company are on the register of members as holders of shares therein, and are due arrears of calls thereen. Further, the said firm of Falkner, Bell, & Company on 18th November 1884 raised an action in the Court of Session against the company for payment of £3000, the amount of a bill drawn by them (Falkner, Bell, & Company) upon and alleged to be accepted by the company, dated 16th June 1884. The said action is defended by the company and liquidator, and is at present in

dependence in this Court. It has been conjoined with another action, also in dependence in this Court, raised on the same date, in which the company craves the Court to interdict the said firm and the said James Davidson Walker from doing diligence, and to suspend the threatened charge upon a bill for £1000 dated 6th June 1884, drawn by the said firm upon and alleged to be accepted by the company, which action is being defended by the company and liquidator. The defence to the claim upon the said two bills is, that the said firm of which the said James Davidson Walker, a director and promoter of the company, is a partner, obtained a sum of £7000 or thereby of promotion money or illegal commission in shares of the company from the vendor of certain property to the company."

After the commencement of the liquidation Falkner, Bell, & Company on 30th June 1885 had presented a note to the Court for leave to proceed with these actions, and this had been granted.

The liquidator founded on sections 87 and 122 of the Companies Act 1861, quoted in the preceding report. He averred that he would be able by means of the provisions of section 122 to get the order enforced by the Chancery Division of the High Court of Justice in England, which Court had jurisdiction over the firm.

The respondents lodged answers in which they stated "That the matters and facts to be inquired into in said actions took place in or near San Francisco, and almost all the witnesses who can speak thereto are resident there. It would cause great additional expense to have any inquiry in this country. The questions of law at issue in said actions, moreover, fall to be determined by the law of San Francisco, which is in several important respects different as to these questions from the law of Scotland. . . . The Court of Session has no power or authority over the plaintiffs in said action in San Francisco, and the Court in San Francisco, where said proceedings are pending, would not recognise or give effect to any order or warrant by the Courts in this country ordering the proceedings in San Francisco to be stayed. The prayer of the note should be refused in respect, *inter alia*, (1) it is incompetent; (2) the Court of Session has no jurisdiction over the plaintiffs in said proceedings in San Francisco, and said plaintiffs are not subject to the jurisdiction of any of the Courts of England; (3) the Court of Session is not a *forum conveniens* in regard to the questions at issue in the actions pending in San Francisco."

Argued for the liquidator—The Court had jurisdiction over both respondents (1) because they were carrying on an action in the Court of Session which placed them in the position of creditors in the liquidation; (2) the respondents were shareholders of the company; (3) Walker was resident in England; and (4) the firm had property in England—*cf.* argument in the preceding case of the *Liquidation of the California Redwood Company*, *supra*, p. 554.

Argued for the respondents—The fact that actions had been raised in the Court of Session by Falkner, Bell, & Company before the commencement of the liquidation should not prejudice the right of the respondents to make good their claims in California. There was no case in which proceedings in a foreign court had been restrained in the Court of Session in virtue of the statute—*Carron Company*, 5 Clark (H. of L.) 416, at p. 440. Even if the case was within the statute it was not just that the inquiry should proceed in this country.

At advising—

Lord President—In the liquidation of the Scottish Pacific Coast Mining Company (Limited) a question has arisen which is similar in some respects to that which we have just disposed of in the liquidation of the *California Redwood Company*, but though similar in some respects it is different in others. The similarity consists in this, that this is also an application to restrain the respondents from proceeding with a certain action in the Supreme Court of California against the company in liquidation. But the only other point in which the two cases resemble one another is that the respondents in both are the same individuals. They are also creditors or alleged creditors of the Scottish Pacific Coast Mining Company, and they are suing the company in California, and they have attached property belonging to the company there.

But the relation in which the respondents stand to the Scottish Pacific Coast Company is very different indeed from that in which they stand to the California Redwood Company. It appears that Mr Walker was managing director of the company in liquidation, and that the partners of Falkner, Bell, & Company—Walker & Harrison—are registered as shareholders of the Scottish Pacific Company, for Falkner, Bell, & Company, and the partners of that company, raised an action in this Court against the company in liquidation for payment of the sum of £3000, and this action was raised as I understand, prior to the commencement of the liquidation. It has been conjoined with another action also in dependence in this Court, in which the company ask the Court to interdict Walker from doing diligence upon a certain bill of exchange for £1000. Now, this action being in Court at the commencement of the liquidation, the respondents applied by note to the Court—I see the note is dated 30th June 1885—for leave to go on with this action. The prayer of the note is "to move the Court to allow Falkner, Bell, & Company to proceed with the said actions in such manner as they may deem fit,"—that is to say, the two actions I have just mentioned—and that leave was granted. Now, after that it is certainly very difficult for the respondents to say that they are not in this liquidation as parties; they have brought themselves within the liquidation, if they were not in it before, by presenting that note to the Court and obtaining the authority of the Court to proceed with the actions therein mentioned. But indeed the dependence of these actions in Court is of itself sufficient to bring them within the jurisdiction of this Court in all matters connected with the liquidation of this company, and therefore the conclusion that I come to is that the order in the present case should be granted. There is no doubt whatever that we have jurisdiction against both respondents in this case.

As for the way in which this order or any other order which may be pronounced against them is to be carried out, that is a different thing, but so long as they have important pecuniary interests

in this country and are here as litigants, the Court will not have more difficulty in finding ways and means of enforcing any orders they may pronounce against them, and therefore in this case I am for granting the prayer of the liquidator's note and restraining these proceedings.

LORD SHAND and LORD ADAM concurred.

The Court granted the prayer of the note.

Counsel for Liquidator — Gloag — Lorimer. Agents—Davidson & Syme, W.S.

Counsel for Respondents—Comrie Thomson—Dickson. Agents—Henry & Scott, S.S.C.

Friday, March 19.

SECOND DIVISION.

HASTIE *v.* STEEL.

Jurisdiction—Jurisdiction in respect of Property of Heritage within Scotland—Reparation—Slander

The defender in an action of damages for slander was domiciled abroad, and the jurisdiction was alleged to be founded by his ownership of heritage in Scotland. He pleaded "no jurisdiction." It appeared that at the date of the service of the summons the title to a house in Glasgow in which he had no beneficial interest stood in his name for convenience in carrying out a family arrangement, the need for which had terminated at the raising of the action, and of which title he was in process of divesting himself when the action was raised. The Court (*rev.* judgment of Lord Fraser) *sustained* the plea of no jurisdiction.

On 26th October 1885 an action was raised in the Court of Session by the Rev. William Hastie, B.D., an ordained minister of the Church of Scotland, residing in Edinburgh, against Octavius Steel, merchant, of 34 Old Broad Street, London, and 14 Old Court-House Street, Calcutta, and as heritable proprietor of subjects in Scotland subject to the jurisdiction of the Supreme Courts of Scotland." The summons was served edictally, and by sending a copy to the defender at an address in London where he was residing when the action was raised. The action concluded for payment of £5000 sterling as damages for slander.

The pursuer was sent to Calcutta in May 1878 as Principal of the Institution there of the General Assembly of the Church of Scotland, and also as Superintendent of the Church of Scotland's Mission. The defender was interested in the progress of the Church of Scotland in Calcutta, and had been engaged in endeavouring to promote its success. An action of damages for slander was brought against the pursuer in the High Court of Calcutta by a Miss Pigot, who was connected with the mission of the Church of Scotland there. In this action he was eventually found liable in damages, and he was on 6th November 1883 removed from his position by the Foreign Mission Committee.

The pursuer alleged that during the course of this action the defender had secretly, maliciously, and falsely misrepresented the conduct of the pursuer, and had circulated charges against him in connection with his conduct of this action; that the alleged libels complained of were contained in letters written both from Calcutta and from London, and addressed to clergymen and others in Scotland connected with the mission in Calcutta; that as the result of these libels he had been deposed from his position; and that he had sustained great loss and injury, patrimonial and otherwise, by the libels complained of.

He averred that the defender "is proprietor of heritable property in Scotland, and is thus subject to the jurisdiction of the Supreme Courts of Scotland. At and subsequent to the service of the summons in this case upon the defender, he was owner of subjects in Saint Vincent Street, Glasgow, conform to disposition in his favour, and in that of John Steel, shipowner in Glasgow, dated 13th, and registered 15th March 1871. Since the summons was served the defender has attempted to divest himself of the said property. The explanations in answer are denied."

The defender answered—"Denied that the defender is proprietor of heritable property in Scotland, or that he is subject to the jurisdiction of the Supreme Court of Scotland. *Quoad ultra* denied. Explained that the property in St Vincent Street did not belong to the defender, but to his mother's trust-estate; that the defender only acquired the same in trust for the trustees under his mother's settlement, and that he along with certain of his brothers renounced all interest in his mother's trust-estate by writings executed in the year 1871. The defender in the ordinary course of the administration of his mother's estate, was called on to divest himself of the trust title, and he did so."

The defender pleaded "no jurisdiction."

The Lord Ordinary allowed the parties a proof of their averments regarding the defender's plea of no jurisdiction.

It appeared from the proof that the house in Glasgow in respect of which jurisdiction was alleged to exist was bought on 18th February 1871 on the instructions of John Steel, the defender's brother, at a price of £2000. It was intended as a residence for Mrs Steel and John Steel. She died suddenly on 19th February 1871, the day after the purchase was arranged, and thus never occupied the house. From that time onward John Steel lived in it, was entered in the valuation roll as proprietor, and paid the taxes, &c., but paid no rent. Mrs Steel left a settlement dated in 1868 conveying her whole estate to trustees, directing them to convey the residue of it among her children equally. Mrs Steel's moveables consisted partly of furniture, &c., in Scotland, and partly of shares in an Indian tea company. The inventory amounted to £2400. She left no heritage.

The disposition to the house, dated 15th March 1871, acknowledged receipt of the price from "John Steel, merchant in Glasgow, and Octavius Steel [defender], merchant in Calcutta," and conveyed it "to them and the survivor, and the heirs of the longest liver."

On 14th March 1871 there was granted over the house, by John Steel, and the defender, "presently resident in Glasgow," a bond and disposition in security for £1500, which was borrowed