Tuesday, February 28.

FIRST DIVISION.

THE LORD ADVOCATE *v.* THE HURON AND ERIE LOAN AND SAVINGS COMPANY AND OTHERS.

Company—Company Established Outside the United Kingdom—"Place of Business"—Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 274.

The Companies (Consolidation) Act 1908, section 274, enacts—"(1) Every company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom, shall, within one month from the establishment of the place of business, file with the Registrar of Companies" certain documents. . . . (6) "For the purposes of this section . . . the expression 'place of business' includes a share transfer or share registration office."

Certain investment companies were incorporated in Canada, and had their head offices there. They received money for investment from persons resident in the United Kingdom and issued debentures in exchange therefor, and they employed agents in the United Kingdom for this purpose. These agents advertised that the companies were willing to receive money on debenture on certain terms, that applications were to be lodged with them (the agents), and the money paid into certain banks. But everything in the way of making the contract itself—by issuing the debenture, inscribing the debenture in the proper register, and so on—was done at their own head offices in Canada. They did not own any offices or real estate in the United Kingdom, nor possess any offices under lease or otherwise. Their agents were paid by commission on the debentures they placed.

Held that the complainers had not established places of business within the United Kingdom within the meaning of section 274 of the Act, and accordingly were not bound to conform to the regulations thereof.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), section 274 (1) and (6), are *quoted in the rubric.*

The Right Honourable Alexander Ure, Lord Advocate, on behalf of the Committee of His Majesty's Privy Council appointed for the consideration of matters relating to trade, commonly called the Board of Trade (*First Party*); The Huron and Erie Loan and Savings Company, having its head office in London, Ontario (*Second Party*); The Landed Banking and Loan Company, having its head office at Hamilton, Ontario (*Third Party*); the Dominion Savings and Investment Society, having its head office at London, Ontario (*Fourth Party*); and the Ontario Loan and Debenture Company, having its head office at London, Ontario (*Fifth Party*), presented a Special Case for the opinion and judgment of the Court.

The Case stated—"The second party hereto is a company incorporated outside the United Kingdom, viz., in Canada, and has its head office in London, Ontario. It is an amalgamation of two Canadian companies, namely, the original Huron and Erie Loan and Savings Company, incorporated 1864, and the Canadian Savings and Loan Company, also of London, Ontario, which were amalgamated in January 1906 under the name of the Huron and Erie Loan and Savings Company. The amalgamated Company is constituted by the Act 6 Edward VII, cap. 130, of the statutes of the Province of Ontario, and is registered under the Acts of the Dominion of Canada. The business which it is authorised to transact is regulated by the Loan Corporations Act of the Province of Ontario, being cap. 205 of the revised statutes of Ontario 1897. The objects of the company are in its bye-laws declared to be 'to encourage the accumulation of capital and provide a safe investment for the same to its shareholders, depositors, and debenture-holders, to assist in the acquisition and improvement of real estate by supplying capital on easy terms of repayment upon the security thereof; to make advances upon and to purchase such securities as are authorised by law, and generally to carry out the purposes of the Acts under which the company is incorporated.' By No. 10 of the bye-laws the directors are authorised 'to borrow money for the use and on the assets of the company; to receive money on deposit, and to pay such interest therefor and under such regulations as they may from time to time deem advisable; and to issue and dispose of the debentures of the company. All debentures and coupons attached thereto may be executed in the manner indicated by the Huron and Erie Loan and Savings Company's Act 1896 (59 Victoria chap. 49). The debentures shall bear such interest, and be subject to such conditions and terms as the Board shall prescribe, and as shall be therein expressed. A book to be called the debenture book shall be kept, which shall contain the blank forms of such debentures, numbered consecutively, with corresponding margin, which shall be filled up before such debentures are issued. A book to be called the debenture registry book shall also be kept, in which, upon the production of proper written authority in that behalf, as required by section 7 of the said last-mentioned Act, shall be entered every transfer of the special class of debentures referred to in section 6 of the same Act. Such written authority shall be retained by the company and duly filed. . . ."

[The Huron and Erie Loan and Savings Company's Act 1896, 59 Victoria, chap. 49 (Dominion) above referred to, a copy of which was printed in the appendix to the case, provided for the issue and transfer of debentures, and regarding the registration of transfers enacted—"The said company shall cause every transfer of such last

mentioned debentures to be entered in a proper debenture registry book to be kept for that purpose, and such entry shall not be made except upon the written authority of the person last entered in such book as the owner of such debentures or of his executor or administrators or of his or their lawful attorney, which authority shall be retained by the said company and duly filed."]

"The authorised capital of the second party is £1,027,397, the subscribed capital £719,178, and paid-up capital £390,410. There is a reserve fund of nearly £370,000, and the total assets of the company amount to over £2,563,000. The debentures issued, as at 31st December 1909, were as follows—sterling debentures £695,478, and Canadian debentures £647,109. In addition to these the company had received on deposit a sum of £418,569. Its total liability to the public is over £1,776,000.

"The second party receives money for investment from persons resident in the United Kingdom, and issues debentures in exchange therefor. A large proportion of its sterling debentures are held by investors in the United Kingdom. The second party's recognised agents for this purpose are Messrs Wishart & Sanderson, W.S., 23 Rutland Street, Edinburgh, and Messrs Finlayson, Auld, & Mackechnie, writers, 144 St Vincent Street, Glasgow. The second party advertises regularly in the *Scotsman* and *Glasgow Herald* newspapers with a view to attracting investors to take up its debentures. The *Scotsman* advertisement is in the following terms:—

'FOUR PER CENT DEBENTURES.
'HURON AND ERIE LOAN AND SAVINGS
'COMPANY, LONDON, CANADA.
'Incorporated . . 1864.
'SUBSCRIBED CAPITAL, £719,178; PAID UP, ... £390,410
'RESERVE FUND, ... 369,863
'TOTAL ASSETS, ... 2,562,357
'This COMPANY is receiving MONEY on DEBENTURE for Five Years or over at 4 per cent., or for Three or Four Years at 3¾ per cent. Money should be paid into any Branch of the Bank of Scotland, and Applications lodged with the undersigned.
'WISHART & SANDERSON, W.S.,
'23 Rutland Street, Edinburgh.'

The *Glasgow Herald* advertisement is in similar terms, the reference being to Messrs Finlayson, Auld, & Mackechnie, instead of to Messrs Wishart & Sanderson. The following entry appears regularly in the Edinburgh Post-Office Directory among the alphabetical list of addresses—'Huron and Erie Loan and Savings Company, Wishart & Sanderson, W.S., 23 Rutland Street.' Messrs Wishart & Sanderson, and Messrs Finlayson, Auld, & Mackechnie issue circulars signed by them giving information in regard to the position of the company. The debentures issued by the second party to its investors in this country are executed in Ontario and are sent to its agents in this country to be handed to its investors here.

"Mr William Blair and Mr James Watt, Writers to the Signet, Edinburgh, hold a power of attorney from the second party in favour of themselves and the late John Blair, Writer to the Signet, empowering them to discharge certain duties on behalf of the second party. The powers and duties of the said attorneys are fully set forth in the power of attorney in their favour granted by the second party, which [was] printed in the appendix, and held to form part of this Special Case. [The most important thereof were—'(*First*) To accept intimation on our behalf of the title of the executor or executors of any person or persons deceased, or who may die, to any debenture or debentures granted, or which may be granted by us, and thereupon to execute and deliver all necessary acknowledgments of such intimations, which shall be as valid and binding and have the same effect in completing the title of the executor or executors as if made and executed by ourselves: (*Second*) To accept intimation on our behalf of any assignment, transfer, or other conveyance of any debenture or debentures granted or which may be granted by us, and thereupon to execute and deliver all necessary acknowledgments of such intimation, which shall be as valid and binding and have the same effect in completing the title of the assignee as if made and executed by ourselves: . . . (*Seventh*) Generally to do everything anent the premises which we could ourselves do if personally present, or which to the office of attorney is known to belong, all which we bind ourselves to ratify, homologate, and hold firm: . . .'] Mr Blair and Mr Watt are partners of the firm of Davidson & Syme, W.S., Edinburgh, and carry on business as Writers to the Signet at 28 Charlotte Square, Edinburgh. They regularly exercise on behalf of the second party certain of the various powers conferred upon them by the said power of attorney, including the acceptance of intimations of transfers of debentures by transfer deed, confirmation, and probate.

"Under another power of attorney granted by the second party [which contained similar clauses to those above quoted] Messrs Wishart & Sanderson likewise accept intimations of transfers of debentures by transfer deed, confirmation, and probate. The course adopted in such cases is that the attorney puts a marking indorsed on the debenture and passes on the information to the company's office in London, Ontario. The debenture registry book of the company and transfer register are kept by the second party at its office in London, Ontario.

"The second party does not own any office or real estate in the United Kingdom, nor does it possess any office under lease or otherwise, or pay any rent or other allowance for the use of any office. The remuneration of its representatives in this country is derived solely from commission on the amount of debenture moneys received and transmitted by them, and on the amount of debentures renewed from time to time, and from fees for accept-

ing intimation of transfers. The second party has no salaried representative in this country.

"The third party is a company which was incorporated in 1877 under the statutes of the Dominion of Canada, and has its head office in Hamilton, Ontario. The fourth party is a company which was similarly incorporated in 1872. Its head office is in London, Ontario. The fifth party is a company which was similarly incorporated in 1870, and its head office is also in London, Ontario. The third, fourth, and fifth parties, like the second party, receive money on debentures from persons resident in this country, and issue debentures in exchange therefor and employ agents in this country for these purposes. The third, fourth, and fifth parties have not, however, any attorneys in this country acting under powers of attorney such as have been granted by the second party, and the functions of their agents in this country do not extend beyond soliciting and obtaining applications for debentures and accepting and noting changes of ownership thereof, which they report to their respective companies. It is agreed that otherwise in all matters essential to the present case the third, fourth, and fifth parties are in the same position as the second party.

"A question has arisen between the parties as to the liability of the second, third, fourth, and fifth parties to conform to the regulations laid down by said section 274 of the Companies (Consolidation) Act 1908.

"The first party maintains that the second, third, fourth, and fifth parties have established places of business in this country within the meaning of said section and are bound to conform to said regulations.

"The second, third, fourth, and fifth parties maintain that they have not established places of business in this country within the meaning of the said section, and that they are not bound to comply with its requirements.

"The parties accordingly respectfully request the opinion and judgment of the Court upon the following *question of law* —Are the second, third, fourth, and fifth parties bound to conform to the regulations laid down by section 274 of the Companies (Consolidation) Act 1908?"

Argued for the first party—Where a foreign company came to this country and induced people to carry on business with it, then if there was a place where the company offered or was willing to carry on that business, that place was a place of business within the meaning of the Act. As to what was exercise of a trade within the meaning of the Income Tax Acts, they referred to *Grainger & Son* v. *Gough*, [1896] A.C. 325; *Erichsen* v. *Last*, 1881, 8 Q.B.D. 414, Cotton, L.J., at 420; *Werle & Company* v. *Colquhoun*, 1888, 20 Q.B.D. 753, Esher, M.R., 759; *Crookston Brothers* v. *Inland Revenue*, December 8, 1910, 48 S.L.R. 134. As to what satisfied the words "carries on business and has a place of business" in the sense of the Sheriff Courts Acts, reference was made to *Laidlaw* v. *Provident Plate Glass Insurance Company, Limited*, February 27, 1890, 17 R. 544, 27 S.L.R. 354; *Roberts* v. *The Provincial Homes Investment Company, Limited*, November 19, 1906, 44 S.L.R. 76; *Hay's Trustees* v. *London and North-Western Railway Company*, 1909 S.C. 707, 46 S.L.R. 513; as to what was a trading domicil to *Harris and Others* v. *Gillespie, Cathcart, & Fraser*, January 5, 1875, 2 R. 1003; as to what satisfied the requisite of carrying on business for the purposes of the English rules of service, to *Grant* v. *Anderson & Company*, [1892], 1 Q.B. 108; *Baillie* v. *Goodwin & Company*, 1886, 33 Ch. D. 604; *Corbett* v. *General Steam Navigation Company*, 1859, 4 H. & N. 482. They submitted that the office from which the agents of the company sent out the circulars was a place of business, and also that the offices of those who held powers of attorney were "places of business."

Argued for the second, third, fourth, and fifth parties—The argument of the other side seemed to come to this, that any company having any business in this country carried on business in this country, and that if it carried on business it must have a place of business. In one sense these companies carried on business in this country, but whether so as to satisfy the exercising of a trade in the sense of the Income Tax Acts was another matter. But however that might be, the carrying on of business was one thing and having a place of business another. Thus a company might carry on business by agents and have no place of business so as to confer jurisdiction for the purpose of winding up —*in re Lloyd Generale Italiano*, 1885, 29 Ch. D. 219. In contrast to that case and to the present, and as showing what had been held a place of business for the purpose of service, they referred to *La Bourgoyne*, [1899] P. I, at p. 12, where the foreign company held to be resident had taken a lease of premises. An agent's place of business was not the principal's place of business, and the granting of powers of attorney by the second party merely emphasised the fact of agency.

At advising—

LORD PRESIDENT—The question in this Special Case turns upon what is prescribed by section 274 of the recent Companies (Consolidation) Act of 1908. That section is headed "Requirements as to Companies outside the United Kingdom," and it provides that "every company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom shall, within one month from the establishment of the place of business," do certain things.

This provision lays down a requirement of an arbitrary nature—by which I mean that there is nothing to guide us except simply the words of the statute itself. It is, of course, entirely within the power of Parliament to provide—as Parliament has done—that foreign companies which take

advantage of the facilities which the United Kingdom gives them for carrying on business should conform to certain rules, but there is no doctrine of law to guide one in the matter. It is simply a provision made by Act of Parliament, and all we can do is to apply the particular words as we find them.

The only question that has got here to be determined, accordingly, is whether the various companies who are parties to this Special Case have or have not established a place of business within the United Kingdom. I have come clearly to the opinion that they have not.

We had cited to us, very properly, a considerable number of cases; but though I think the citation was proper, I confess that I do not rest my judgment upon any of those cases, because I do not think that cases dealing with other statutes can really be any guide in the construction of this statute.

On behalf of the Department we had cited to us a set of cases which arose under the Income Tax Acts, where the phrase which had to be construed was "carrying on business." Well, the simple answer to the income tax cases seems to me to be that "carrying on business" is one thing and "establishing a place of business" another. If what the Legislature meant was that these requirements were to be imposed upon all foreign companies who carried on business within the United Kingdom, it would have been perfectly easy to say so. Therefore I am driven to the conclusion that when the Legislature selected the phrase "establishes a place of business" it meant something other than "carrying on business." And if I were at liberty—I do not know that I am—to search for reasons, I think the reason would be very apparent. The expression "carrying on business" is so wide that it would really touch all persons having business in the United Kingdom—a result from which the Legislature may well have shrunk.

On the other hand, we had another set of cases quoted to us where undoubtedly the expression was nearer the present expression, because there the expression used was "having a place of business." But those were cases which dealt with jurisdiction, and, in so far as our own Courts are concerned, dealt with the jurisdiction of the Sheriff Court. Now, as I have already said, I think it was quite right that those cases should be quoted, but I think that it would be a little unsafe to rely upon them, for this reason—no doubt the wisdom of Parliament is supposed to have before it all the statute law and all the decided cases that are extant, but even supported by that comfortable doctrine I think it would be a little rash to take it that those who framed the Companies (Consolidation) Act of 1908 had in mind the phraseology of the Sheriff Courts (Scotland) Act of 1876.

I therefore, in my judgment, merely look at the expression as it is used. That expression seems to me clearly to point to this, that the company must have what I may call a local habitation of its own. I do not wish to say more, because I do not think that exact definition is at all a profitable pursuit; in fact, it always leads one into the trouble that one deserts the words which Parliament has used and substitutes others. But taking the requirement of a local habitation of its own as a sort of note, when I come to look at the facts here I do not find anything of that sort.

These companies do, I think, carry on business in the United Kingdom; that is to say, they tout for loans, and, in order to have their touting properly carried out, they have agents. Well, these agents put forth prospectuses in which they say that the companies are willing to receive money upon debenture. They indicate a bank to which that money can be paid, and they give the terms upon which the money will be received. But everything in the way of making the contract itself—by issuing the debenture, inscribing the debenture in the proper register, and so on—is all done by the foreign company at its own domicile in Canada. And, by the terms of this special case, which, of course, is an agreed-on statement of facts between the parties, I find that the second party (and it is equally true of the other parties) does not own any office in the United Kingdom, "nor does it possess any office under lease or otherwise, or pay any rent or other allowance for the use of any office. . . . The second party has no salaried representative in this country." The Case goes on to explain that their agents are paid by commission on debentures which they place.

Now in that state of the facts I look in vain for where is its "established place of business." In point of fact, I think the learned Solicitor-General was in difficulties to say where its place of business was. Was it the office of the agent who sent out the touting circular? Or was it the office of the person who had the power of attorney? Or was it the office of the Bank of Scotland, where alone the money was going to be received? Well, each and all of these, whatever it was, it is perfectly clear was not the office or place of business of the company.

Accordingly I am for answering the question in the negative.

LORD JOHNSTON—I agree with your Lordship. The company does certain business in this country, and a very essential part of its business, because unless it borrowed money in the way it does in this country and invested it abroad, it could not make the profits which it does. The mode in which it does this is by the issue of prospectuses and by obtaining money on debenture upon the faith of these prospectuses. Now it may very well be—and there are symptoms in sub-section 3 and sub-section 4 that this is the case—that the Legislature thought that people in this country required a certain protection from foreign companies doing business in this country in the way and to the effect which I have stated, and that by requiring them

to lodge certain particulars, giving to intending investors in this country information with regard to their business, their capital, their profits, and so on. But that does not assist us in interpreting the language which the legislature has used, and that is simply "establishes a place of business within the United Kingdom," and I entirely agree with your Lordship that these words cannot be stretched to meet the circumstances of the present case.

LORD SKERRINGTON concurred.

LORD KINNEAR and LORD MACKENZIE were sitting in the Extra Division.

The Court answered the question of law in the negative.

Counsel for the First Party—Sol.-Gen. Hunter, K.C.—Pitman. Agent—Henry Smith, W.S.

Counsel for the Second Party—D.-F. Dickson, K.C.—Macmillan. Agents—Davidson & Syme, W.S.

Counsel for the Third, Fourth, and Fifth Parties—D.-F. Dickson, K.C.—Macmillan. Agents—Macandrew, Wright, & Murray, W.S.

Friday, March 3.

FIRST DIVISION.

(SINGLE BILLS.)

PRICE *v.* CANADIAN PACIFIC RAILWAY COMPANY.

Sheriff — Small Debt Court — Summary Cause—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *secs.* 3 (*i*), 8, 28, *and* 48.

The Sheriff Courts (Scotland) Act 1907, enacts—Section 3 (i)—"Summary cause includes (1) Actions . . . for payment of money exceeding twenty pounds and not exceeding fifty pounds, exclusive of interest and expenses; (2) Actions of whatever kind (except . . . under the Small Debt Acts) notwithstanding that the value may exceed fifty pounds, in which the parties consent to the action being treated as a summary cause." Section 8 prescribes the conditions on which "a summary cause" may be appealed from the Sheriff-Substitute to the Sheriff and to the Court of Session. Section 48, enacts—"If the Sheriff is of opinion that the importance of the questions raised in any cause brought under the Small Debt Acts warrants that course, he may at any stage remit the cause to his ordinary court rolls either on cause shown or *ex proprio motu*, in which case the cause shall proceed in all respects (including appeal) as if it had been originally raised in the ordinary court."

Held that a cause raised in a Small Debt Court is not made a summary cause by being remitted by the Sheriff to his ordinary court roll.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), sections 3 (i), and 48 are *quoted in the rubric.* The Act also enacts—Section 8—"In a summary cause the Sheriff shall order such procedure as he thinks requisite, and (without a record of the evidence, unless on the motion of either party the Sheriff shall order that the evidence be recorded) shall dispose of the cause without delay by interlocutor containing findings in fact and in law. Where the evidence has been recorded the judgment of the Sheriff-Substitute upon fact and law may in ordinary form be brought under review of the Sheriff, but where the evidence has not been recorded the findings in law shall only be subject to review. In a summary cause, if the Sheriff, on appeal, is of opinion that important questions of law are involved, he shall state the same in his interlocutor, and he may then or within seven days from the date of his interlocutor grant leave to appeal to a Division of the Court of Session on such questions of law, but otherwise the judgment of the Sheriff shall be final." Section 28—"Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment of a Sheriff-Substitute or of a Sheriff, but that only if the value of the cause exceeds fifty pounds" (and fulfils certain other conditions).

John Price, boilermaker, Bridgeton, on 5th July 1909, raised an action in the Small Debt Court at Glasgow against the Canadian Pacific Railway, carrying on business at 67 St Vincent Street, Glasgow, for payment of a sum of £6, 5s. The pursuer averred that he had been engaged, along with others, by the defenders to do work for them in Canada, and that the sum sued for being his outward passage money had been improperly retained by the defenders from his wages.

On 16th July 1909 the Sheriff-Substitute (A. O. M. MACKENZIE) remitted the cause to the ordinary court roll, and thereafter defences were duly lodged. On 15th July 1910 the Sheriff-Substitute assoilzied the defenders from the conclusions of the action. The pursuer appealed to the Sheriff (MILLAR), who on 30th January 1911 adhered to the interlocutor of the Sheriff-Substitute and granted leave to appeal. In the note appended to his interlocutor he mentioned that the case raised an important question of law under the Truck Acts.

The pursuer appealed to the Court of Session, and presented a note to the Lord President, in which he set forth the procedure which had taken place, and on the ground that he was desirous of obtaining the benefit of the poor roll of the Court of Session asked the Court to grant a sist and to dispense with printing *in hoc statu.*

On the case appearing in Single Bills on 3rd March 1911 the defenders objected to the competency of the appeal, and argued—The purpose of section 48 of the Sheriff Courts (Scotland) Act 1907 (7 Edw.