Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Bulkeley and another v. *Schultz and another, from Her Britannic Majesty's Supreme Consular Court, Constantinople; delivered July 17th*, 1871.

Present:—

Sir James W. Colvile.
Judge of the High Court of Admiralty.
Sir Joseph Napier.
Lord Justice James.
Lord Justice Mellish.

IT appears to their Lordships that in this case the Sequestration ought not to have issued. In the first place, the suit was not against the Company, the suit was against two persons as representing the Company, and it is difficult to understand how the Sequestration could issue against a Company in a suit in which the Company really were not parties, or how a Sequestration could issue as a mode of attachment for contempt against a joint stock company that was not a corporation? But assuming that in truth the Company were before the Court originally, that they were represented before the Court (as the Appellants themselves seem to have imagined they were represented) by two of the committee for the purpose of properly determining what the Company ought to do; and assuming that the decree could be treated as a decree binding the Company, their Lordships are still of opinion that what the Company was ordered to do, and for the not doing of which their property has been sequestrated, was a thing which they could not do. They were told that they ought to have taken steps to register themselves as an English Company under the Joint Stock Companies Act. Their Lordships are clearly of opinion

that that Act never contemplated that a foreign partnership, actually complete and existing in a foreign country, could be brought within the purview of the English Act of Parliament, the English Legislature having no power over the Shareholders of such a Company. The only mode in which they could have done it would have been, not to register themselves as a Company, which was the only thing they could do honestly towards their Shareholders, or literally to comply with the order, but to have gone through the form of dissolving the Company and of forming a new Company altogether, which is a totally different thing. No doubt the original decree is not now open to question before their Lordships; but that decree is really only a decree against the two Defendants, and the order to register is an order on the two Defendants to register the Company. These two Defendants and the Company have done all that they can to comply with that order, and they cannot be subject to Sequestration because they have been ordered to do something which by law it is impossible for them to do.

Their Lordships will therefore humbly recommend Her Majesty that this Appeal be allowed with costs, that the order of the Supreme Consular Court at Constantinople ought to be reversed, and that an order be substituted for it dismissing the Appeal to the Supreme Consular Court, with costs, and affirming the order of the Court at Alexandria.