

York, U. S., is a large owner of shares in the company.

It further appears that the Scottish Canadian Asbestos Co. (Limited) obtained supplementary letters-patent from the Lieutenant Governor of the Province of Quebec, under Art. 4764 of the Revised Statutes of Quebec, and that the liquidator named in Scotland, acquiesces in the proceedings taken here under the Quebec Act.

The questions that arise under this appeal are:

1. Which of the liquidators have legally the control and possession of the assets and rights of the Scottish Canadian Asbestos Co. (Limited) in the Province of Quebec.

2. Whether the appellant Allen has the requisite quality or capacity to raise the question.

On the first question. A most reasonable rule, approved of by a number of authors of reputation, is that whether of companies or individuals when assets are principally in one jurisdiction and the domicile of the Company or owner of the estate to be wound up is in another, there should not be two insolvencies or winding-up proceedings, but that the domicile of the debtor should be the place where the winding-up proceedings should be carried out, and the courts of the country where the assets may be found should by comity recognize the title of the, to them, foreign liquidators and give effect in proceedings at his instance to realize the assets. It is generally conceded that this doctrine is qualified by an opposite rule when the question relates to lien or privilege affecting the property in the jurisdiction where found. All such liens, privileges or priority of right existing in the jurisdiction where the property may be placed have to be determined and enforced according to the law of that locality. The foreign liquidator cannot claim the property except subject to such priority. The local law with regard to priority of registration is also binding on the foreign liquidator.

The rule accords with the decisions of the courts in England and Scotland, not taking into account the jurisdiction which the statutory law there may have given the courts over foreign residents when found in

England. See 3 Burges, Foreign and Colonial Law, pages, from 904 to 914 inclusive, and reference there to Lord Loughborough's opinion in *Hunter v. Potts*, 4 Phillimore, p. 544. Westlake (ed. 1880), pp. 142 and 125; Lawrence's Wheaton, p. 144 *et seq.*; Savigny, pp. 258 and 259, pp. 567 and 372 *et seq.* A. pp. 335 and 253. Bell's Commentaries on the Laws of Scotland, Vol. 2, p. 681, *et seq.*; Fiore, Droit International Privé, p. 568, *et seq.*, Nos. 373 *et seq.* to 378.

The rule above stated does not apply where there is a local law in conflict with its operation.

By Sect. 3 of Cap. 129 of the Revised Statutes of Canada, the law for the winding up of companies is made to apply to companies doing business in Canada wheresoever incorporated. There is no doubt the Scottish Canadian Asbestos Company (Limited) is included in this provision. It may, however, be a question whether this is a conflicting law, and whether if it be so it is *ultra vires* of the Dominion Legislature. As regards its being a conflicting law it may be urged with much reason that there cannot be two separate jurisdictions exercising the same functions simultaneously in the particular individual case. There is a possibility, however, of the one acting as auxiliary to the other, and until the objection was raised there could be no doubt that the local jurisdiction here could be availed of.

If even the liquidator in Scotland had the preferable right, he might consider it of the greatest advantage not to make his claim until the local liquidators had effectually gathered in the assets.

However this might be, and admitting for the sake of argument that the local law in question conflicted with the general, still, the question remains as to whether the local, that is the Dominion Law, is not *ultra vires* of the Dominion Legislature. This I find to be an extremely delicate question, but one for which we may fairly conclude we have a precedent by the Supreme Court in the case of *The Commercial Bank of Halifax v. Gillespie, Moffatt & Co.*,¹ for although the point was not there necessarily in

¹ 10 Can. S. C. R. 312.