or any other domestic animal." This enumeration is studiously confined to four-footed animals, and does not include poultry, or indeed any birds. According to the usual canons of construction of penal statutes, I think we are bound to construe the word "animal," when used in the 1st section of the statute, as confined to animals *ejusdem generis* with those enumerated in the interpretation clause, and therefore as not including cocks or other domestic birds.

This is sufficient for the decision of the case. I am of opinion that the conviction should be quashed, on the ground that the appellants were convicted under a statute which does not prohibit cockfighting or cruelty to domestic birds, except to the limited extent provided by the 2nd section of the statute. A more difficult question would arise if it were held that the word "animal," as used in the 1st section, includes cocks; because then it would have to be considered whether, looking to the provisions of the 2nd section, the Legislature did or did not intend to suppress cockfighting wherever carried on as wanton cruelty in the sense of the 1st section. I do not think that that question arises; and I would only add that I do not think it necessarily follows, that because punishment is inflicted upon persons who keep such places as those mentioned in section 2 and those who frequent them, the baiting or fighting of domestic animals—not only cocks, but dogs, cats, &c.—if carried on elsewhere, may not be dealt with and punished as cruelty in the sense of the 1st section of the statute.

I am not prepared to hold that the Glasgow case to which we were referred (*Cook & Graham* v. *M'Phee*) was wrongly decided. The clause of the Glasgow Police Act which was then construed was borrowed from the 1st section of 13 and 14 Vict. c. 92; but it was not, as I understand, controlled or modified by an interpretation clause.

LORD KINCAIRNEY—But for your Lordships' opinions I should have thought that the judgment in the English case might have been supported as proceeding on an interpretation of the statute reasonable in itself, consistent with the principles of construction as I understand them, applicable to such clauses as are in question, and in furtherance of the general objects of the statute. I doubt, indeed, having in view the 2nd clause of the Act, whether it is possible to restrict the meaning of the word "animal," in the 1st section and the interpretation clause to quadrupeds. But as your Lordships' judgment fixes the law on the subject, I do not desire to detain your Lordships by explaining the reasons which make me hesitate to concur in it.

I desire to add that I concur in what Lord M'Laren has said about the sentence, which appears to me quite extravagant.

The Court suspended the conviction and sentences.

Counsel for the Complainers—Younger. Agent—James Ross Smith, S.S.C.

Counsel for the Respondent — Clark. Agents—Thomson, Dickson, & Shaw, W.S.

COURT OF SESSION.

Wednesday, January 18, 1893.

OUTER HOUSE.

[Lord Stormonth Darling.

PATERSON AND OTHERS (LIQUIDATORS OF THE SCOTTISH NATIONAL HERITABLE PROPERTY COMPANY), NOTERS.

Company—Winding-up—Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *sec.* 153—*Effect on Dispositions by Liquidators in Prior Voluntary Liquidation.*

The Companies Act 1862, sec. 153, provides — "Where any company is being wound up by the Court, or subject to the supervision of the Court, all dispositions of the property . . . of the company . . . made between the commencement of the winding-up and the order for winding-up, shall, unless the Court otherwise orders, be void."

A company having gone into voluntary liquidation, certain dispositions of its property were granted by the liquidators. The liquidation having thereafter been appointed to continue subject to the supervision of the Court, the liquidators applied to the Court for approval of the dispositions so granted.

Held that the dispositions did not fall within section 153, but approval *granted*, in respect that the dispositions ran in the name of the directors and secretary without any reference to the fact of the company being in liquidation, a specialty which, though not affecting the substance of the transactions, was yet a flaw in point of form, which might afterwards give rise to objection unless cured by the approval of the Court.

At an extraordinary general meeting of shareholders of the Scottish National Heritable Property Company, Limited, held on 25th June 1890, the following resolution was adopted, viz.—"That this meeting having considered the financial position of the company, resolves that the whole properties of the company be realised at as early a date as possible, under the charge of the directors, with a view to winding-up the company." The directors accordingly sold the said properties, whereupon it appeared that the losses of the company had exhausted its reserve fund and one-half of its paid-up capital. The directors thereupon, before payment of the price or conveyance of the properties, convened an extraordinary

general meeting of the company, which was held on 22nd April 1891, when the following extraordinary resolution was passed—"That this meeting having considered the statement of the company's affairs submitted by the directors, in terms of article 134 of the articles of association of the company, and being satisfied that the ascertained losses of the company have exhausted one-half of the paid-up capital (there being no reserve fund), resolves accordingly, and that the company be dissolved, except for winding-up its affairs, all in terms of article 135 of its articles of association, and further resolves that the company be wound up by the directors in terms of 136 of said articles." And the chairman thereupon declared the company dissolved except for the purpose of winding-up its affairs. Thereafter the prices of the properties were paid by the purchasers, and conveyances were granted, which were signed by two of the directors of the company and the secretary, and sealed with the company's seal, the mode provided by the company's articles for the execution of deeds by the company.

Thereafter on 25th March 1892 a petition was presented to the Court to have the liquidation placed under the supervision of the Court, and on 13th April 1892 a supervision order was pronounced.

Thereafter the directors, as liquidators, presented a note to the Lord Ordinary, praying, *inter alia*, for approval of the dispositions of property granted by them as above narrated between the commencement of the winding-up and the granting of the supervision order.

The Lord Ordinary on 18th November 1892 remitted to Mr Archibald Oliver, S.S.C., to inquire and report. Mr Oliver's report was as follows:—"In obedience to the remit contained in the interlocutor, of which a copy is prefixed hereto, I have inquired into the statements contained in the note, No. 10 of process, relating to the sales and dispositions of the heritable properties therein mentioned.

"The Scottish National Heritable Property Company, Limited, was incorporated under the Companies Acts on 19th January 1877, its leading object being to buy and sell heritable property in Scotland. In pursuance of this object the company acquired various properties in Edinburgh and elsewhere, but its operations were not attended with success. At an extraordinary general meeting of the shareholders held on 25th June 1890, a resolution was passed that the whole properties of the company should be realised at as early a date as possible, under the charge of the directors, with a view to winding-up the company. In accordance with this resolution the directors proceeded to realise the properties then vested in the company. The whole of the subjects were exposed to sale by public roup, in lots, on 14th January 1891, when certain of them were sold—some at the upset prices, others after competition. The lots then unsold were re-exposed to public roup on 2nd February 1891, when several further subjects were sold. Thereafter the remaining properties were sold by private bargain.

"The liquidators' agent has produced to me the accounts incurred for advertising the properties for sale, the articles of roup under which they were exposed to sale, the missives of sale of the lots which were sold by private bargain, and the minute-book of the company, all of which I have examined. I have also examined the newspapers in which the advertisements appeared, and am satisfied that the sales have been properly conducted, that they were *bona fide* in their character, and that they may be approved of, if your Lordship shall consider such approval to be necessary under the provisions of the Companies Acts.

"From the balance-sheet, No. 12 of process (which has been docqueted as correct by accountants appointed by the company), it appears that the paid-up capital of the company amounted to the sum of £14,625, and that there was no reserve fund. The company's dealings in heritable property, as shown by said balance-sheet, resulted in a loss of £10,242, 17s. 6d., being considerably more than one-half of the paid-up capital. This result necessitated the immediate winding-up of the company in terms of sections 134 and 135 of the articles of association, No. 6 of process, which are in the following terms—'134. If at any time the directors find that the losses of the company have exhausted the reserve fund, and also one-half of the paid-up capital, they shall forthwith call an extraordinary general meeting, and submit to it a full statement of the affairs of the company. 135. If it shall appear at such extraordinary meeting so called, and it be resolved by an extraordinary resolution that the ascertained losses of the company have exhausted the reserve fund, and also one-half of the paid-up capital, the chairman at such meeting shall declare the company dissolved, and the same shall be thereupon dissolved accordingly, except for the purpose of winding-up its affairs.' In accordance with these provisions, and before the sales above mentioned were completed by payment of the prices, and the execution and delivery of conveyances to the purchasers, the directors convened an extraordinary general meeting of the company, which was held on 22nd April 1891, and at which the following extraordinary resolution was passed—'That this meeting having considered the statement of the company's affairs submitted by the directors in terms of article 134 of the articles of association of the company, and being satisfied that the ascertained losses of the company have exhausted one-half of the paid-up capital (there being no reserve fund), resolves accordingly, and that the company be dissolved, except for winding-up its affairs, all in terms of article 135 of its articles of association, and further resolves that the company be wound up by the directors in terms of 136 of said articles.'

"Section 136 of the articles of association, to which reference is made in said

resolution, is in the following terms:—'136. If the company shall be dissolved, the directors shall (unless the shareholders present in person and by proxy at said extraordinary meeting resolve, by an extraordinary resolution, to appoint an independent person or persons as liquidators), with all convenient speed, wind-up and bring its accounts and affairs to a final close and settlement; and for the purpose of such winding-up and settlement only the powers of the directors shall be held to be subsisting.'

"Upon the passing of the resolution above quoted it appears to me that the directors became the liquidators of the company, although they were not so described in express terms in the resolution. The Companies Act 1862 (section 133, subsections 2 and 3) peremptorily requires the appointment of a liquidator or liquidators for the purpose of winding-up the affairs of a company going into voluntary liquidation, and, in point of fact, the directors in the present case have acted as such liquidators throughout the winding-up, no other liquidators having been appointed.

"The terms of this resolution are not such as are usually employed in a resolution for the voluntary winding-up of a company under the Companies Acts, but it is in accordance with the sections of the articles of association above quoted. It may I think be regarded as a resolution fulfilling the requirements of the first branch of section 129 of the Companies Act 1862, which provides that 'a company under this Act may be wound up voluntarily . . . . whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily.'

"Soon after the commencement of the winding-up the directors, *qua* liquidators of the company, as stated in the note, completed the sales of its heritable property, which had been effected, as already explained, by receiving payment of the prices, and executing and delivering to the purchasers conveyances thereof. They also, as is stated in the note, realised all other recoverable assets, and settled all known liabilities of the company. The said conveyances were all executed and delivered prior to the liquidation being placed under the supervision of the Court as after mentioned.

"On 25th March 1892 a petition was presented to the Court in name of the company and liquidators thereof praying that the voluntary winding-up might be continued, but subject to the supervision of the Court. Upon this petition the Lord Ordinary on the Bills, on 13th April 1892, pronounced a supervision order in usual form, and on 16th July 1892 their Lordships of the First Division of the Court remitted the winding-up to your Lordship to be further proceeded with as accords of law.

"The date of the commencement of the winding-up was 22d April 1891, when the resolution to wind up above quoted was granted—see Buckley on the Companies Acts, 6th ed., p. 319.

"The directors *qua* liquidators have presented the present application, *inter alia*, for approval of the conveyances in favour of the purchasers. I have been informed by the liquidators' agent that it is deemed necessary to obtain such approval in consequence of the provisions of section 153 of the Companies Act 1862, by which it is enacted 'that when any company is being wound up by the Court, or subject to the supervision of the Court, all dispositions of the property, effects, and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company, made between the commencement of the winding-up and the order for winding-up, shall, unless the Court otherwise orders, be void.' The conveyances for completing the sales of the company's properties having been granted between the commencement of the winding-up on 22nd April 1891 and the date of the supervision order, have, it is thought, become void, and will remain so unless and until the Court shall approve of them.

"The question for consideration is whether the approval asked for is necessary and ought to be granted. So far as I am aware, there is no judicial decision on the point either in England or Scotland, and I believe there is no practice on the subject in Scotland. The only authority of any kind which I have been able to find on the point is a sentence in Lord-Justice Lindley's work on Company Law, 5th ed., p. 666, in which it is stated—"The winding-up order has thus a retrospective effect, and the section in question even renders void all dispositions of property made, previously to the order, by voluntary liquidators unless the Court expressly sanctions them.' To this statement, however, is appended the following footnote—'But *quære* if this is the true construction,' which shows that the writer did not feel certain that his interpretation is correct.

"In the absence of direct judicial authority, and of any practice on the subject in Scotland so far as known to me, I have made inquiry through an eminent firm of solicitors in the city of London, extensively engaged in matters of company law, in regard to the practice in England. The firm referred to have also at my request made inquiries on the subject at others well versed in such matters. As the result of these inquiries I find that in England all dispositions of the property of a company from the commencement of the voluntary winding-up are, where a supervision order is subsequently made, regarded as void unless the Court otherwise orders. It is considered that there is no getting over the express words of section 153, and that the remedy is that in every proper case the Court would make an order approving of what had been done. If the Court does not, under the supervision order itself, approve of all dispositions of property that have taken place up to that point, it is

considered to be the first duty of the liquidator at once to apply for and obtain the sanction of the Court to everything that has been done. Liquidators are encouraged to go to the Court in such cases, it being considered that on all questions of possible doubt they ought to do so. It is stated that in no case would the Court refuse to give its approval to a transaction simply on the ground that the liquidator might have carried it out under his general powers without the necessity of going to the Court unless the transaction was such a simple one that making the application had the appearance of unnecessarily incurring costs. That, I am informed, would never be tolerated, but, short of that, the Judges, where a winding-up is under the supervision of the Court, approve of the liquidators going to them for directions and sanction instead of doing too much on their own responsibility.

"I do not think it has been the practice of the Court of Session to encourage liquidators to apply for approval of actings which fall within the powers conferred on them by statute, preferring to leave them to exercise the powers conferred upon them in unambiguous terms. In this respect I think the practice of the Court distinctly differs from the practice of the English Courts. It has, however, been the practice of the Court of Session to sanction acts about which there is real doubt in regard to the liquidator's powers—that is, where the act is considered beneficial for the winding-up.

"The view that conveyances granted by liquidators between the date of a company passing resolutions to wind up voluntarily, and the date of a supervision order, require to be approved of by the Court, appears to be the result of a literal construction of section 153 of the Companies Act 1862. Is this, however the true construction? By section 95 of the statute it is provided that the official liquidator on a compulsory winding-up shall have power with the sanction of the Court to sell the property of the company by public auction or private contract, and to transfer the whole thereof to any person or company, and by section 133 of the Act it is provided that a liquidator in a voluntary winding-up may without the sanction of the Court exercise all powers given by the Act to an official liquidator. It is plain, therefore, that in a voluntary winding-up a liquidator has full power at his own hand to sell the company's property and to confer a good title on the purchaser. If the literal construction of section 153 be sound, however, it would seem that the conveyances granted by him, and which are perfectly valid when granted, would subsequently and without any proceedings against the purchaser, or cause shown, be rendered void by obtaining a supervision order and that even although the order be obtained on the application of the liquidator who granted the conveyance. If this be the real effect of a supervision order under the statute, no one would be prepared to accept a conveyance from a liquidator in a voluntary winding-up, upon whom by the same statute is conferred an ample power of sale, and thus it would be impossible successfully to carry out one of the methods of winding-up provided by the Act. It is hardly conceivable that this could be the intention of the statute more especially in cases like the present where the interests of creditors are not involved. Such a construction seems to be repugnant to common sense. I am rather inclined to think that the true explanation of the difficulty is that the disposition, etc., intended to be struck at by section 153 are not deeds granted by a liquidator, and that these dispositions do not require approval. But the advisers of the liquidators in this case have informed me that there is a specialty relating to the conveyances mentioned in the note which creates a distinction and renders it necessary that they should be approved of by the Court. The law-agent exhibited to me one of the conveyances (which is produced herewith), and I have examined the others as recorded in the Register of Sasines. None of them bear any reference to the liquidation or to the fact that the directors were acting in the capacity of liquidators. They are all signed by two of the directors and the secretary, and are sealed with the seal of company as required by section 98 of the company's articles of association, and there is nothing on the face of them to show that they are not deeds granted by a going company. Each of the directors adds to his signature the word "director," and the secretary adds the word "secy." It is therefore contended that these conveyances belong to the class of deeds which section 153 of the Act requires to be approved of. The point thus raised is not unattended with difficulty, but after giving it careful consideration I have come to be of opinion that it is not sufficient to raise the distinction sought to be established and to render approval necessary. Section 133, sub-section 5, of the Companies Act 1862 provides as one of the consequences that shall ensue upon the voluntary winding-up of a company, that 'Upon the appointment of liquidators all the powers of the directors shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers.'

"The only power continued to the directors in this case was to wind-up the company's affairs—that is, as already explained, to act as liquidators. Consequently they had no power to sign the conveyances except under the authority just mentioned. It appears to me that although they added to each of their signatures the word "director," they were really acting as liquidators, and that the conveyances were duly signed by them as such. The fact that the secretary signed the deeds was not, I think, of consequence, and it was of course proper that the seal of the company should be affixed. Were it to be held that the deeds were not signed by the directors as liquidators, then it appears to me that they would be inept, and that no approval which could be given in the present application would render them valid.

"The view of the liquidators' advisers is,

that keeping in view the manner in which the conveyances were executed, this is a proper case for the intervention of the Court. If the conveyances be not approved of, the question may some day arise whether they have not been rendered null by the supervision order, and the alleged irregularity of the mode in which they have been executed may be made the ground of objection to the title, which it would be impossible to remove after the close of the liquidation and the completed dissolution of the company. To approve of the conveyances therefore can in the circumstances do no possible harm to the company in liquidation, and it may have the effect of obviating trouble and loss to the purchasers who have accepted the deeds in *bona fide* and in full reliance upon the validity which they possessed at the time.

"These views are entitled to great weight, but after careful consideration I have come to be of opinion that your Lordship should not approve of the conveyances unless you shall come to be of opinion that such approval is legally necessary to protect the deeds from the invalidity provided by section 153 of the Act. My reasons for arriving at this conclusion are two—(1) after the close of the liquidation (which will in all likelihood happen immediately) there is no one who will have an interest to insist in the objection, and so no danger to the title will arise, and (2) if the approval asked be not legally necessary, and if it be given for any reason except that the conveyances were irregularly executed, it is to be apprehended that it may give rise to unnecessary trouble and loss to persons who have purchased properties from liquidators in the voluntary winding up of other companies.

"I do not think that the legal profession in Scotland are under the impression that the effect of section 153 of the Act is to render null dispositions granted in the circumstances explained in this application. It is to be feared that if this be the true effect of the enactment there must be many titles to heritable properties in Scotland granted by liquidators in voluntary liquidations which have been rendered null by the subsequent granting of supervision orders, and have not been validated by the approval of the Court. Were the present application to be granted without determining the legal point, and simply on the ground that it is expedient to do so, the existence of the question would, no doubt, come to be understood, and might give rise to groundless objections to titles if approval be really unnecessary.

"In the whole circumstances I am of opinion that the approval asked is unnecessary and should not be granted. If, however, your Lordship shall be of a contrary opinion either on the general ground of the effect of section 153 of the Act or the supposed irregularity in the execution of the conveyances, I beg humbly to repeat that the sales of the properties have been regularly and properly conducted and that the prayer of the note, as regards the conveyances thereof may be granted."

The Lord Ordinary (STORMONTH DARLING) pronounced the following interlocutor:—"The Lord Ordinary having heard counsel . . . having resumed consideration of the note, along with the report by Mr Archibald Oliver, and the Auditor's report on the account, Approves of the dispositions mentioned in the prayer annexed to said note: Fixes the remuneration of the liquidators at £26, 5s. sterling: Approves of the said Auditor's report taxing the said account at £314, 13s. 1d. sterling: Authorises payment of the said sums of £26, 5s. and £314, 13s. 1d. out of the estate of the Scottish National Heritable Property Company Limited: Authorises the liquidators to distribute the surplus assets among the existing shareholders rateably, and decerns.

"*Note.*—I do not intend, by approving of the dispositions in this particular case, to imply that in a liquidation under supervision, conveyances of property by the liquidator granted before the date of the supervision order are void unless sanctioned by the Court.

"On the contrary, I agree with the able argument of the reporter, that it cannot have been the intention of the statute first to make such dispositions lawful, and then to put it in the power of a liquidator by obtaining a supervision order to nullify the deeds which he himself has granted. Such a construction of section 153 would, I think, be most unfortunate, as tending to paralyse voluntary liquidations, and to destroy confidence in deeds made and taken in good faith, and in reliance on the terms of other sections of the statute. But the present case is very peculiar, inasmuch as the dispositions run in the name of the directors and secretary without any reference to the fact of the company being in liquidation. I am satisfied that this is a peculiarity not at all affecting the substance of the transactions, but it is a flaw in form which might afterwards give rise to objection, unless cured by the approval of the Court. On this ground—and on this ground alone—I think the prayer of the petition ought to be granted."

Counsel for the Noters—Lorimer. Agent—R. Ainslie Brown, S.S.C.

Friday, January 20.

FIRST DIVISION.

FOGGO, PETITIONER.

Trustee—Removal—Sequestration of Trust-Estate and Appointment of Judicial Factor.

The sole acting trustee on a trust-estate became insolvent and suddenly left the country. His administration had previously been unsatisfactory, and he was found to be largely indebted to the trust-estate. About the time of his departure he executed a deed of assumption by which he assumed two new trustees, and at the same time