

clergyman of another creed. I am therefore of opinion that the Lord Ordinary's judgment should be affirmed.

**LORD RUTHERFURD CLARK**—My opinion is that the payment in question is not beyond the powers of the Parochial Board.

**LORD TRAYNER**—The question raised in this case cannot be decided by a reference to any of the provisions of the Poor Law Act 1845, or of the rules and regulations issued subsequently to that Act by the Board of Supervision. The Act of 1845 makes no provision directly for affording "religious assistance" to the inmates of a poorhouse by the appointment of a chaplain or otherwise. It simply directs the parochial board to make rules "for the admission of any known minister of the religious persuasion of any inmate of such poorhouse at all reasonable times, on the request of such inmate, for the purpose of affording religious assistance to such inmate." Naturally the Act makes no provision for the remuneration of services so rendered on the request of an inmate. The Board of Supervision, however, by rules which under the Act of 1845 it is authorised to make (and the validity of these rules is not now questioned), provided that the religious instruction of the inmates of a poorhouse should be committed to a chaplain; but again, by these rules, although the duties of the chaplain are somewhat carefully defined, no provision or direction is made or given as to his remuneration. As the law at present stands, therefore, every inmate of a poorhouse is entitled to ask and to have facilities afforded for obtaining "religious assistance" from a minister of that religious persuasion to which the inmate belongs; and there is no direct provision for the remuneration of these services, no matter of what particular persuasion the minister rendering them may be a member. I am not surprised that the law should stand thus, because what religious assistance may be necessary or proper, and what payment in return for it may be reasonable, are entirely questions of circumstances which no general provision could properly meet. It may be quite a reasonable question for the determination of a parochial board, whether in the special circumstances of the poorhouse under their charge they should appoint a chaplain or not, and if appointed, what in the circumstances would be a proper remuneration for his work. Equally it appears to me to be a fair question for the parochial board, and one quite within their competency to decide, what remuneration, if any, should be given to a minister who has attended to the religious wants of inmates of the poorhouse of a different religious persuasion from that of the appointed chaplain. That is what has been done here and is complained of by the suspender. I agree with the Lord Ordinary that the resolution of the respondents should not be interfered with. There is no law against the resolution they have adopted; there is,

it appears to me, as much law in favour of it as there is for any payment made in return for religious assistance rendered to the inmates of a poorhouse; and the resolution appears to me to be one that is supported by considerations of good sense and propriety.

**LORD YOUNG** was absent.

The Court adhered.

Counsel for Reclaimer—Jameson—Wilson. Agents—E. A. & F. Hunter & Co., W.S.

Counsel for Respondent—C. S. Dickson—Younger. Agents—W. & J. Burness, W.S.

Friday, June 30.

## SECOND DIVISION.

### THE NORTHERN ACCIDENT INSURANCE COMPANY, LIMITED, PETITIONERS.

*Company—Memorandum of Association—Extension of Object of Company—Special Resolution—Companies (Memorandum of Association) Act 1890 (53 and 54 Vict. cap. 62).*

A company registered under the Companies Acts, *authorised* to extend the objects of the memorandum and articles of association, for the purpose of securing economy of management, and of enabling the company to carry on subordinate branches of business usually associated with the original business of the company, and which were not foreign to these original objects or of a speculative nature.

The Companies (Memorandum of Association) Act 1890 (53 and 54 Vict. cap. 62) provides, section 1—"Subject to the provisions of this Act a company registered under the Companies Acts 1862-1886 may, by special resolution, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company so far as may be required for any of the purposes hereinafter specified, but in no case shall any such alteration take effect until confirmed on petition by the Court, which has jurisdiction to make an order for winding-up the company." Section 2—"Before confirming any such alteration the Court must be satisfied (a) that sufficient notice has been given to every holder of debentures or debenture stock of the company, and any person or class of persons whose interests will in the opinion of the Court be affected by the alteration." Section 5—"The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company (a) to carry on its business more economically or more efficiently; or (b) to attain its main purpose by new or

improved means; or (c) to enlarge or change the local area of its operations; or (d) to carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or (e) to restrict or abandon any of the objects specified in the memorandum of association or deed of settlement."

The Northern Accident Insurance Company, Limited, was incorporated under the Companies Acts 1862-1882 in the year 1882 as a company limited by shares, and its registered office was at 19 West Nile Street, Glasgow.

The objects for which the company was formed were—"1. To carry on the business of an accident insurance, employers' liability insurance, plate-glass insurance, and carriage insurance company. 2. To effect insurances against personal injury by accident. 3. To insure employers against their liability to make compensation for injuries sustained by persons in their service. 4. To insure against loss from breakage of plate and every description of glass. 5. To insure against loss from accidents to carriages, carts, waggons, or other vehicles. 6. To insure against all contingencies whatever that may result from or be dependent upon accident, and against loss consequent thereon. 7. To acquire by purchase or otherwise, and to administer and manage, as principals or agents, any business established or carried on within the objects of the company. 8. To effect re-insurances with any other persons, companies, or corporations, in respect of all or any of the matters foresaid. 9. To lend, invest, or borrow money. 10. To do all such other things as are incidental or conducive to the attainment of the above objects."

The capital of the company was £100,000, divided into 20,000 shares of £5 each.

By a special resolution of the company duly passed and confirmed at two extraordinary general meetings of the company held on 23rd February and 21st March 1893 it was resolved that the following objects, *inter alia*, should be added to the memorandum of association as objects for which the company was established, viz.—"1. To guarantee—(1) The fidelity and intromissions of persons in situations, offices, and places of trust; (2) the acts and the diligence, accuracy, and skill of servants, agents, contractors, trustees, or others; (3) the payment of rents, dividends, interest, and revenues of all kinds; (4) the sufficiency of investments, securities, and undertakings of all kinds; (5) the performance of contracts of all kinds. 3. To undertake the inspection, maintenance, and repair of houses, buildings, and other heritable subjects, engines, boilers, machinery, and plant, to guarantee the sufficiency, stability, and safety thereof, and to indemnify against loss or liability in connection therewith."

The company thereupon presented this petition to the Court for confirmation of the special resolution for extension of the objects of the memorandum and articles of association.

After intimation and service, the Court remitted to Mr William G. L. Winchester "to inquire and report as to the regularity of the proceedings and the reasons for the alteration proposed in the memorandum of association."

The petition was presented under the Companies Acts 1862-90, and especially under the Companies (Memorandum of Association) Act 1890, sections 1 and 2.

Mr Winchester reported that proper notice of the extraordinary meetings had been made to the shareholders, that the meetings had been properly conducted, that the resolutions had been unanimously passed, and that no shareholder had dissented. His report also stated that the company had not issued any debentures or debenture stock, and there did not appear to be any class of persons whose interests required to be protected. He then proceeded—"As to the reasons of the proposed alteration it has been explained to me that after the petitioning company was formed in 1882 it was found that the memorandum of association was too limited, inasmuch as it did not authorise the transacting of guarantee insurance, and other similar descriptions of business.

"To get over the difficulty a new company was formed in the year 1887 called the Northern Guarantee and Accident Company, Limited, the directors, shareholders, and working staff of which are virtually the same as those of the petitioning company.

"The original intention was either to merge the petitioning company in the Northern Guarantee and Accident Company, or to apply for the amalgamation of the two companies by private Act of Parliament. The passing of the Companies (Memorandum of Association) Act 1890 has, however, enabled an application to be made for the alteration of the memorandum of association of the petitioning company, with a view of embracing the objects of the Northern Guarantee and Accident Company, which it is proposed to wind up after its business has been transferred to the petitioning company.

"The shares of the Northern Guarantee and Accident Company have been issued to the number of 3000, and are held by shareholders in the petitioning company with the exception of two parcels—one of 250 shares held by George Davidson, Teams Glass Works, Gateshead, and another of 100 shares held by Mrs J. E. E. Macphee, 2 Kirklee Road, Kelvinside, Glasgow.

"Mr Davidson and Mrs Macphee are thus interested only in the Northern Guarantee and Accident Company.

"In these circumstances I am respectfully of opinion that the proposed alteration is not only reasonable, but in conformity with the provisions of the Act above referred to, as it will have the effect of securing economy of management—the separate books, meetings, and other business arrangements rendered necessary by the existence of two companies being avoided—and of enabling the petitioning company to carry on, along with the

original business, subordinate branches of business which are usually associated with accident business, and conducted by accident insurance companies, and which are in no way foreign to the objects of the original company or of a speculative nature."

Upon 30th June 1893 the Court pronounced this interlocutor;—

"Approve of said report, confirm the special resolution for the extension of the objects of the company duly passed and confirmed at two extraordinary general meetings of the company respectively held on the 23rd day of February 1893 and on the 21st day of March 1893, and decern."

Counsel for Petitioners—Dean Leslie.  
Agents—Simpson & Marwick, W.S.

Friday, July 14.

## SECOND DIVISION.

[Sheriff of Aberdeenshire.

CAMERON v. FRENCH.

*Cautioner—Discharge of Cautioner—Concealment by Creditor of Material Facts.*

A servant on two occasions failed to account to his employer for his intrusions, and was deficient in his cash account to the extent of about £70. His employer having agreed to retain his services on condition that he found security for his present indebtedness and future dealings, he informed certain friends falsely that he was about to obtain promotion in his employer's business, and that the security he asked for was required in connection with his advancement. He thereby obtained from three persons a letter of guarantee by which they agreed to become his cautioners "to the extent of £50 for his intrusions." The employer was not aware of the misrepresentations; he did not inform the cautioners of the conduct of his servant, or the circumstances in which he had required the guarantee, and they asked for no information from him. The servant was again guilty of deficiencies in his cash account, and his employer dismissed him and sued the cautioners for the amount in the letter of guarantee.

*Held (diss. Lord Young)* that he was not entitled to decree against the defenders, to whom he had failed to disclose the circumstances in which the guarantee was desired.

In June 1892 Robert French, hardware merchant, Glasgow, brought an action in the Aberdeen Sheriff Court against David Cameron, brewer, Alexander Baird, labourer, and Thomas Jamieson, railway surfaceman, all residing in Laurencekirk, Kincardineshire, for payment of £50.

The action was brought on the ground that the defenders had entered into a guarantee to secure the pursuer from defalcations by John T. Jamieson, son of the defender Jamieson, who at one time was the pursuer's commercial traveller. The letter of guarantee was in these terms—"Laurencekirk, 23rd March 1891.—We, the undersigned, have agreed to become cautioners for John T. Jamieson to the extent of £50 for his intrusions with Robert French."

In October 1890 John T. Jamieson, commercial traveller, Glasgow, entered the employment of the pursuer, and soon thereafter he was sent on a journey to Ireland to canvass for orders and collect accounts, his duty requiring him to remit the moneys so collected after deduction of his allowance for expenses. Having contracted irregular habits, Jamieson fell behind with his cash, the result of inquiries at the end of his first journey being that he was found short to the extent of £32, 12s. 6d. The pursuer agreed to give Jamieson another chance, but then took from him an undertaking to reduce his indebtedness by weekly payments of 10s. out of his wages. Jamieson continued his irregular habits, and at the end of his second journey in March 1891 he was again short in his cash £30, 15s. 6d. By the weekly payments above mentioned Jamieson had reduced his indebtedness to £57, 18s., for which he granted an I O U to the pursuer. Yielding to much solicitation and entreaty on the part of Jamieson, the pursuer once more consented to retain him in his service, but required him to find security for his intrusions, and obtained from him the letter of guarantee of 23rd March 1891. The pursuer and Jamieson had several communings as to the persons to be offered as cautioners, and the latter with the pursuer's approval and at his request proceeded from Glasgow to Laurencekirk to see what security he could obtain among his relatives and friends. Jamieson falsely and fraudulently represented to the defenders Cameron and Baird that he was about to obtain promotion in the pursuer's service, and that the security was required in connection with his advancement, while the pursuer himself failed to communicate to the said defenders Cameron and Baird, and did not instruct Jamieson to communicate, the previous conduct of the latter while in the pursuer's service, and in particular that he had fallen into irregular habits, and was untrustworthy, and had on two occasions incurred the deficiency above mentioned. It was also held by the Judges of the Inner House, on a consideration of the evidence, that the defender Jamieson was also ignorant of his son's irregularities and deficiencies. Thereafter the pursuer sent Jamieson to Ireland on a third journey, advancing him a sum of £5 for immediate expenses, for which he took from him an I O U. Jamieson incurred further arrears on his third journey, and was in consequence dismissed in July 1891, his total indebted-