

Railway Company from their own servants. I think the pursuers are not entitled to a diligence for the recovery of such documents.

LORD YOUNG, LORD TRAYNER, and LORD MONCREIFF concurred.

The defenders having undertaken at the bar to give the documents asked for in the only other article of the specification without a diligence, no formal interlocutor was pronounced.

Counsel for the Pursuers—Crabb Watt—W. Brown. Agent—William Geddes, Solicitor.

Counsel for the Defenders—Balfour, Q. C.—Ferguson. Agents—Gordon, Falconer, & Fairweather, W.S.

Thursday, July 9.

FIRST DIVISION.

DUKE OF ARGYLL AND OTHERS,
PETITIONERS.

Process—Petition—Intimation—Salmon Fisheries (Scotland) Act 1842 (25 and 26 Vict. c. 97), secs. 18 and 24—Reconstitution of Lapsed District Board.

In a petition presented for a remit to the Sheriff to reconstitute a district board, which had been constituted in terms of the Salmon Fisheries (Scotland) Act 1862, but which had lapsed upon the expiry of the three years' term of office of the original members without a new board having been elected, the Court ordered intimation in the common form, and also to the Secretary for Scotland, and advertisement in certain newspapers.

The Duke of Argyll and others, being the upper and lower proprietors of salmon fishings within the district of the rivers Baa and Glencoilleadar, Mull, qualified in terms of the 18th section of the salmon fisheries (Scotland) Act 1862 (25 and 26 Vict. c. 97), presented a petition for a remit to the Sheriff of Argyllshire to reconstitute the District Board in the said district.

The petition proceeded upon the narrative that, while the Salmon Fisheries (Scotland) Amendment Act 1864 (27 and 28 Vict. c. 118), sec. 3, and the Salmon Fisheries (Scotland) Act 1868 (31 and 32 Vict. c. 123), sec. 3, made provision for the case where no District Board has been constituted under the Salmon Fisheries (Scotland) Act 1862 before the passing of these Acts, there was no statutory provision for the case, which had here arisen, of a Board which had been constituted lapsing through failure to call a meeting of proprietors within the triennial period prescribed by sec. 24 of the Act of 1862.

The prayer of the petition contained no clause craving an order for intimation and advertisement.

The petitioners referred to the cases of *Campbells*, March 17, 1883, 10 R. 319; and *Brodie*, January 23, 1884, 21 S.L.R. 309.

The Court pronounced an interlocutor ordering the petition "to be intimated on the walls and in the minute-book in common form, and also to Her Majesty's Secretary for Scotland, and to be advertised once in each of the *Scotsman*, *Glasgow Herald*, and *Oban Times* newspapers," and appointing his Lordship and all parties interested, if so advised, to lodge answers within eight days.

Counsel for the Petitioners—Burnet. Agent—James F. Mackay, W.S.

Saturday, July 11.

FIRST DIVISION.

SCOTTISH EMPLOYERS LIABILITY
AND ACCIDENT ASSURANCE COM-
PANY, LIMITED, PETITIONERS.

Company—Resolution to Alter Memorandum of Association—Confirmation by Court—Companies (Memorandum of Association) Act 1890 (53 and 54 Vict. cap. 62)—Change of Name—Intimation.

A company carrying on the business of employers liability and accident insurance presented a petition for confirmation of a resolution to alter its memorandum of association so as to enable it to undertake sickness and guarantee insurance business. The advertisement of the petition ordered by the Court contained no indication of the nature of the petition, nor had intimation been made to the policyholders. *Held* (1) that the name of the company must be altered so as to give expression to the new branches of business proposed to be undertaken; and (2) that intimation of the alteration proposed in the petition must be made by advertisement.

Process—Petition—Intimation.

Observations (per Lord President) as to the desirability of greater attention being paid in preparing petitions to the question to whom intimation must be made.

The Scottish Employers Liability and Accident Assurance Company, Limited, presented a petition under the Companies (Memorandum of Association) Act 1890 (53 and 54 Vict. cap. 62) for confirmation of a resolution to make certain alterations in its memorandum and articles of association.

The objects for which the company was formed may be shortly stated to have been, under article 3 of the original memorandum of association, employers liability and accident insurance.

By special resolution passed and con-

firmed at two extraordinary general meetings of the company, it was resolved to cancel the said article 3 and to substitute for it an article by which the objects of the company were extended so as to include the business of sickness and guarantee insurance.

The prayer of the petition craved, *inter alia*, intimation in common form, and "such further intimation as to your Lordships shall seem proper."

On 14th May 1896 the Court appointed the petition to be intimated in common form, and to be advertised in the *Scotsman*, and *Aberdeen Free Press* newspapers.

No answers having been lodged, the Court on 26th May 1896 remitted to Mr C. B. Logan, W.S., to inquire and report as to the regularity of the proceedings.

Mr Logan reported that the proposed extension of business appeared to him to be covered by the provisions of the Companies (Memorandum of Association) Act 1890, but called the attention of the Court to two points—(1) Whether the petition should not be granted only upon the condition of the company altering its name—*Scottish Accident Insurance Company, Limited*, March 12, 1896, 33 S.L.R. 414; (2) Whether in terms of the statute and in view of the fact that no special intimation had been given to the policy-holders of the company, and that the advertisement ordered by the Court contained no indication of the nature of the petition, sufficient intimation of the proposed alteration had been given to the policy-holders.

Argued for the petitioners—(1) Change of name was unnecessary. Sickness insurance was merely an extension of the original accident insurance business, and guarantee insurance of the employers liability insurance business. Change of name had not been insisted on in the case of *The Northern Accident Insurance Company*, June 30, 1893, 30 S.L.R. 834; (2) The policies of the company ran from year to year, and therefore intimation to the policy-holders was unnecessary.

At advising—

LORD PRESIDENT—The view of the Court is that expression should be given in the title to the new branches of the business, and that distinctly. The terms in which that should be done are a matter of adjustment with the Board of Trade. The Court is also of opinion that further advertisement should be made.

I may take this opportunity of saying that in preparing petitions far less attention than is appropriate is paid to the question to whom intimation should be made. It is impossible for the judge who has charge of the Single Bills to detect or realise the necessity for further advertisement, yet sometimes the inept form "or such intimation as your Lordships may think proper" is adopted. The only protection is that we have a remit to an accomplished man of business who detects the deficiency in the advertisement, with the consequence of involving parties in greater expense than would have been

necessary if the appropriate intimation had been made at first.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced the following interlocutor:—

"Having resumed consideration of the petition, together with the report by Mr C. B. Logan, and heard counsel for the petitioners, Appoint intimation of article 3 of the original memorandum of association and of the new article of the memorandum proposed to be substituted therefor, to be made by advertisement once in each of the *Scotsman* and *Aberdeen Daily Free Press* newspapers; and appoint all parties having interest to lodge answers, if so advised, by the first box-day in vacation."

Counsel for the Petitioners—Sol.-Gen. Dickson—Glegg. Agents—Macpherson & Mackay, S.S.C.

Saturday, July 11.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.]

PARISH COUNCIL OF RUTHERGLEN
v. PARISH COUNCIL OF BARONY
PARISH, GLASGOW.

Poor—Recourse—Parish Liable—Admission of Liability—Acquisition of Settlement by Residence.

A parish which had afforded relief to the illegitimate children of a married woman who had been deserted by her husband claimed repayment of its advances from the husband's parish of birth. The claim was resisted on the ground that a settlement by residence had been acquired by the mother in the relieving parish, and a joint investigation was made by the two parishes, in the course of which a signed statement was taken from the mother of the children, witnessed by the inspectors of poor for both parishes, in which she specified her successive places of residence during five years subsequent to her husband's desertion. These were all within the relieving parish. This statement was corroborated by the birth and death certificates of the pauper's children during the period in question. Thereafter the relieving parish withdrew its claim.

Eight years afterwards the question of the paupers' settlement having again been raised, held (1) that no conclusive admission of liability could be inferred from the withdrawal of the claim, but (2) that the statement of the mother so corroborated was in itself sufficient evidence of the acquisition of a settlement by residence in the relieving parish.