

Wednesday, December 19.

SECOND DIVISION.

WADDIE & COMPANY, LIMITED,  
PETITIONERS.

*Company—Issue of Shares—Subscription of Memorandum of Association—Consideration other than Cash—Filing of Memorandum—Companies Act 1867 (30 and 31 Vict. c. 131), sec. 25—Companies Act 1898 (61 and 62 Vict. c. 26), sec. 1.*

By the memorandum of association of a limited company it was declared that the company was formed for the purpose of carrying into effect an agreement for the purchase of a certain business from the vendors, who with their nominees subscribed the memorandum of association for the whole shares of the company. It was declared both in the agreement and in the articles of association that the whole shares should be deemed to be fully paid-up. The company was incorporated on 1st July 1890, and the agreement was executed and adopted by the company on 5th July 1890. In November 1900 the company presented a petition to the Court craving authority to file a memorandum in terms of section 1 of the Companies Act 1898, to the effect that the whole shares of the company had been issued as fully paid up to the respective holders thereof, who were (with one exception) the original subscribers for the shares.

The Court granted the prayer of the petition.

Waddie & Company, Limited, were incorporated under the Companies Acts 1862 to 1886 on 1st July 1890. By the memorandum of association it was declared that the objects for which the company was established were, *inter alia*, to adopt and carry into effect an agreement which had at the date of the said memorandum (1st July 1890) then been come to, and was then about to be executed) in the terms set forth in Schedule A annexed to the said memorandum, between Charles Maule Waddie and Mrs Lilius Waddie or Ward, therein called "the vendors," of the one part, and Waddie & Company, Limited, therein called "the company," of the other part. By the said memorandum it was also declared that the capital of the company was to be £30,000 divided into 3000 shares of £10 each, 1000 of said shares to be preference shares, and 2000 of said shares to be ordinary shares, and by the articles of association it was declared that the whole of the said shares should be deemed to be fully paid up in terms of the said agreement.

The agreement proceeded upon the narrative that Charles Maule Waddie and Mrs Lilius Waddie or Ward were proprietors of and carried on the business of manufacturing stationers and lithographers in Edinburgh, and that they as vendors had by the memorandum of association agreed to take the 3000 shares into which the nominal

capital of the company was divided, in the proportions following, viz.—Charles Maule Waddie and his nominees 1800, and Mrs Lilius Waddie or Ward and her nominees 1200, and provided, *inter alia*, that Charles Maule Waddie and Mrs Lilius Waddie or Ward should give, and the company should take, the heritable property and other assets belonging to said business with certain exceptions therein mentioned. The agreement further provided—"Second, As part of the consideration for the said arrangement the shares agreed to be taken by the vendors and their nominees respectively aforesaid shall be deemed to be fully paid up. The said shares shall be numbered as follows:—those taken by the said Charles Maule Waddie, 1 to 500, and 1001 to 2175, both inclusive; those taken by his nominee Mrs Cecilia Jane Gregor or Waddie, residing at Gleniffer House aforesaid, wife of the said Charles Maule Waddie, 501 to 600 inclusive; those taken by his nominee Charles John Waddie, residing at Gleniffer House aforesaid, 2176 to 2200 inclusive; those taken by the said Lilius Waddie or Ward 601 to 1000, and 2201 to 2544 both inclusive; those taken by her nominee William Wallace Ward, residing at 35 Howard Place, Edinburgh, 2545 to 2682 inclusive; those taken by her nominee John Waddie Ward, residing at 5 Claremont Terrace, Edinburgh, 2683 to 2820 inclusive; those taken by her nominee Emily Duncan Ward, residing at 6 Stirling Road aforesaid, 2821 to 2880 inclusive; those taken by her nominee Mrs Lilius Gordon Ward or Jackson, wife of Walter Jackson, residing at 95 Pilgrim Street, Newcastle-on-Tyne, 2881 to 2940 inclusive, and those taken by Mrs Helen Agnes Fisher Ward or Grant, wife of David Grant, residing at 11 Claremont Terrace, Edinburgh, 2941 to 3000 inclusive, the shares of all females being exclusive of the *ius mariti* and right of administration of their respective husbands." In this way the whole 3000 shares into which the capital of the company was divided were disposed of. The whole parties mentioned in the second section of the said agreement, being the vendors and their nominees, subscribed the memorandum of association of the company in respect of the shares which, as agreed, each of them should hold in the company. The draft of the said agreement was appended to the memorandum and articles of association of the company, and was registered along with them. After the company was incorporated the said agreement was duly executed and adopted by the company on 5th July 1890, and was presented for registration to the registrar. The registrar, however, declined to file it until it was certified by the Law Department, Inland Revenue, as duly stamped, and some time being occupied in getting the stamp duty adjudicated, the said agreement was not filed until 29th August 1890. Certificates for the shares were not then granted by the directors of the company.

By the articles of association the directors were empowered, with the sanction of the company previously given in general

meeting, to convert any fully paid shares into stock. At the first general meeting of the company, held on 25th September 1890, the directors were authorised to convert the shares of the company into stock, and they thereafter did so, and directed the secretary to issue stock certificates to the parties respectively entitled thereto.

On 14th November 1900 Waddie & Company, Limited, and the individual shareholders of the company (with the exception of the said Charles John Waddie, who was called as a respondent) presented this petition, in which they craved the Court "to direct a memorandum in writing in the form in the appendix hereto, or in such other form as shall be approved by your Lordships specifying the considerations for which the said shares were issued, to be filed with the Registrar of Joint-Stock Companies in Scotland, and to direct that on such memorandum being filed within such time as your Lordships shall appoint, it shall, in relation to the whole of the said 3000 shares in the said company of Waddie & Company, Limited, operate as if a sufficient contract in writing within the meaning of said section 25 of the Companies Act 1867 had been duly filed with the registrar aforesaid before the issue of such shares or any of them to the said Charles Maule Waddie and Mrs Lilius Waddie or Ward and their said nominees."

The memorandum which the petitioners craved authority to register declared as follows:—"The after mentioned 1000 preference shares and 2000 ordinary shares of £10 each in Waddie & Company, Limited, were (with the exception of the 100 preference shares, Nos. 501 to 600 inclusive, originally issued to Cecilia Jane Gregor or Waddie, wife of the after-mentioned Charles Maule Waddie, and now held by the said Charles Maule Waddie) issued as fully paid up to the several persons after named and designed in satisfaction of part of the consideration agreed to be given by the said company to the said Charles Maule Waddie and Mrs Lilius Waddie or Ward as joint-proprietors of the business of manufacturing stationers, printing engineers, book-binders, lithographers, and publishers carried on by them at St Stephen's Works, St Stephen Street, Edinburgh, in partnership under the style of Waddie & Company for the purchase of (1) the heritable property on the south side of St Stephen Street, Edinburgh, the property upon which the said business was carried on, and the goodwill of the said business; (2) the monies, bills, notes, and other negotiable instruments and securities for money, and the book and other debts and claims of the said partnership, and the full benefit of all contracts to which the said Charles Maule Waddie and Mrs Lilius Waddie or Ward were entitled in relation to the said business; and (3) the plant, machinery, patent rights, furniture, stock-in-trade, books, and effects of the said partnership in or about the said property, conform to minute of agreement between the said Charles Maule Waddie and Mrs Lilius Waddie or Ward as partners aforesaid, and the said Waddie &

Company, Limited, dated the 5th day of July 1890, which minute of agreement was adjudicated as duly stamped on 30th July 1890. Said 1000 preference shares and 2000 ordinary shares are now held by the following persons as follows"—(From the list of shareholders appended to the memorandum it appeared that they were the same as those who subscribed the memorandum of association, and that they held the same shares, except that the shares Nos. 501 to 600 inclusive subscribed for by Mrs Cecilia Waddie had been transferred to Mr Charles Maule Waddie). The petitioners averred that the company was perfectly solvent, and that it paid substantial dividends.

The Companies Act 1867, section 25, enacts as follows:—"Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the Registrar of Joint-Stock Companies at or before the issue of such shares."

The Companies Act 1898, section 1, enacts as follows:—" (1) Whenever before or after the commencement of this Act any shares in the capital of any company under the Companies Acts 1862 and 1890, credited as fully or partly paid up, shall have been or may be issued for a consideration other than cash, and at or before the issue of such shares no contract or no sufficient contract is filed with the Registrar of Joint-Stock Companies in compliance with section 25 of the Companies Act 1867, the company or any person interested in such shares or any of them may apply to the Court for relief, and the Court, if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief, may make an order for the filing with the registrar of a sufficient contract in writing, and directing that on such contract being filed within a sufficient period, it shall, in relation to such shares, operate as if it had been duly filed with the registrar aforesaid before the issue of such shares. . . . (4) Where the Court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience or is impracticable, it may in lieu thereof direct the filing of a memorandum in writing in a form approved by the Court specifying the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period, it shall, in relation to such shares, operate as if it were a sufficient contract in writing within the meaning of section 25 of the Companies Act 1867, and had been duly filed with the registrar aforesaid before the issue of such shares. The memorandum shall before the filing thereof be stamped with the same amount of *ad valorem* stamp-duty as would be chargeable upon the requisite contract, unless the contract has been produced to the registrar duly stamped, or unless the registrar is otherwise satisfied that the contract was duly stamped."

Argued for the petitioners — The shares for which the petitioners had subscribed the memorandum of association were “issued” to them within the meaning of section 25 of the Companies Act 1867 immediately upon the registration of the company — *Dalton Time Lock Company v. Dalton* (1892), 66 L.T. 704. Consequently no contract had been filed in terms of that section at or before the issue of the shares. It was therefore necessary, and in the circumstances equitable, that the petitioners should be authorised to file a memorandum as provided by the Companies Act 1898. There was no difficulty in identifying the shares in respect of which relief was sought, as the whole shares of the company had been subscribed for in the memorandum, and were still held, with the exception of those transferred by Mrs Waddie to her husband, by the original subscribers. The present case was distinguished from *Jarvis & Company, Limited* [1899], 1 Ch. 193; and was ruled by *Whitehead & Brothers, Limited* [1900], 1 Ch. 804.

The Court pronounced the following interlocutor:—

“Direct a memorandum in writing in the form in the appendix to the petition specifying the considerations for which the said shares were issued to be filed with the Registrar of Joint-Stock Companies in Scotland within twenty-one days hereof, and on such memorandum being filed, appoint that it shall, in relation to the whole 3000 shares in Waddie & Company, Limited, operate as if a sufficient contract in writing, within the meaning of section 25 of the Companies Act 1867, had been duly filed with said registrar before the issue of such shares, and decern.”

Counsel for the Petitioners—Lorimer—J. B. Young. Agent—A. C. D. Vert, S.S.C.

Thursday, December 20

## FIRST DIVISION.

[Dean of Guild, Glasgow.]

### WHYTE v. GLASS.

*Police—Regulation of Buildings—Building near Turnpike Road—New House on Old Site—Road—Turnpike Roads (Scotland) Act 1831 (1 and 2 Will. IV. c. 43), sec. 91—Glasgow Police Act 1866 (28 and 29 Vict. cap. cclxxiii.) sec. 366.*

Section 91 of the Turnpike Roads (Scotland) Act 1831 enacts “that no houses, walls, or other buildings shall be erected without the consent of the trustees previously obtained in writing, and no new enclosures or plantations shall be made within the distance of 25 feet from the centre of any turnpike road.”

*Held (distinguishing Macdonald v. Commissioners of Fort William, March 19, 1895, 22 R. 551) that this section prohibits the erection of new buildings within 25 feet from the centre of a turnpike road, even although the site upon which it is proposed to build has been recently occupied by buildings which were erected before the passing of the Turnpike Roads Act 1831.*

This was an appeal from the Dean of Guild Court at Glasgow.

The following narrative of the facts is taken from the opinion of the Lord President:—“The respondent, who is proprietor of certain subjects fronting Rutherglen Road, Glasgow, presented a petition to the Dean of Guild Court there in which he stated that he intended to take down the buildings at present on the ground, and to erect in their place two new tenements of shops and dwelling-houses three storeys in height, all as shown on the plans produced, and he craved the Dean of Guild to authorise the proposed buildings.

“The appellant, the Master of Works for the City of Glasgow, lodged objections, in which he stated that the respondent proposed to erect the buildings sixteen feet from the centre of Rutherglen Road, which is a turnpike road, whereas the buildings should (the appellant maintained) be erected twenty-five feet from the centre of that road, in terms of the Turnpike Roads Act 1831, section 91, and the Glasgow Police Act 1866, section 366.

“In answer to these objections the respondent, while admitting that he proposed to erect the buildings sixteen feet from the centre of the Rutherglen Road, which he admits to be a turnpike road, stated that the buildings at present on his ground are old buildings which were erected long prior to the passing of the Turnpike Roads Act 1831, and that the proposed new buildings would not be nearer to the centre of Rutherglen Road than the existing buildings, but would be on the same building line. He pleads that section 91 of the Turnpike Roads Act 1831, and section 366 of the Glasgow Police Act 1866, founded on by the appellant, apply only to sites which have never been built upon, and have no application in the present case.

“The Dean of Guild has in effect sustained this plea, repelled the objections, and granted warrant to the respondent to erect the buildings specified in the petition.”

Section 366 of the Glasgow Police Act (28 and 29 Vict. cap. cclxxiii.) enacts—“The Dean of Guild shall not grant a warrant to erect any building except a stone wall not exceeding six feet in height” . . . “within thirty feet of the centre of any portion of a turnpike road within the city,” . . . “unless the said building could have been erected within a less distance of the centre of such turnpike road without contravention of the Acts relating to the said road.”

Section 91 of the Turnpike Roads (Scotland) Act 1831 is quoted in the rubric. For this section see the Roads and Bridges (Scotland) Act 1878 (41 and 42 Vict. c. 51), Schedule C. and section 123.