of association (quoted *supra*) was present, and a resolution was passed that on the reduction of capital being confirmed by the Court, and the articles of association being altered as above provided, their rights and privileges should be modified to the effect of substituting their rights and privileges under the articles of association as altered for their original rights.

The present petition praying for the confirmation of the reduction of capital was intimated and served. Answers were lodged for one of the preference shareholders, but these were ultimately withdrawn.

On 20th May 1903 the Court remitted to Sir Charles B. Logan, W.S., to inquire and report as to the regularity of the procedure and the reasons for the proposed reduction of capital.

Sir Charles Logan submitted a report containing, *inter alia*, the following passage—"With regard to the proposed alterations on article 101 of the company's articles of association, dealing with the future distribution of dividends, these alterations would appear to safeguard the rights of the preference shareholders to a cumulative dividend of 5 per cent. on the reduced shares, which is secured to them by section 5 of the memorandum of association; but it is explained to me by the agents of the petitioners that it is intended to have the further effect of extinguishing the right of the preference shareholders to arrears of past dividends of 5 per cent. on the original value of their shares which they have not received. The petitioners state that they are advised that the extinction of these arrears by special resolution of the shareholders of the company, supported as it is by extraordinary resolution of the preference shareholders, is competent, on the grounds (1) that it is authorised by article 46 of the company's articles of association, and (2) that it is an integral part of a scheme for the reduction of capital, under which the preference shareholders receive material compensating advantages, and that the case of the *British and American Trust and Finance Corporation* v. *Couper*, 1894, Appeal Cases 399, determined that the courts might confirm any kind of reduction of capital. I consider it necessary to bring the matter under your Lordships' notice, because it appears to me that the following considerations might be stated against the petitioners' views, viz.—(1) The right to a cumulative preference dividend of 5 per cent. being secured to the holders of preference shares by section 5 of the memorandum of association, it is doubtful whether, looking to the case of *Ashbury* v. *Watson*, 1885, 30 Ch. Div. 376, that right can be extinguished by resolutions of the company and the preference shareholders, although it could be extinguished by individual discharges of the preference shareholders; and (2) the cancellation of the past cumulative dividend is of the nature of an extinction of a debt, and is not an integral part of the reduction of capital. The present reduction, which tends rather to the advantage of the ordinary than of the preference shareholders, could be carried out exactly as proposed by the petitioners, even although the cancellation of arrears of preference dividend were to be dropped."

Subject to these observations the reporter recommended that the prayer of the petition should be granted.

Counsel for the company submitted that the prayer of the petition should be granted. If each shareholder could cancel the arrears of dividend due to him, as the reporter admitted, then, under the provisions of article 46 (quoted *supra*), a general meeting of that class of shareholders could cancel all the dividends due to that class. The case to which the reporter referred (*Ashbury* v. *Watson*, 1885, 30 Ch. Div. 376) was distinguishable, because there the alteration proposed was a permanent alteration of the respective rights of the various classes of shareholders. *British and American Trust and Finance Corporation* v. *Couper* (1894), Ap. Ca. 399, was an authority for the present petition.

LORD PRESIDENT—This case is certainly a very special one, and unusually large powers are conferred by article 46 of the articles of association. That article, reasonably construed, seems to put it in the power of a two-thirds majority to make the modification of the memorandum which is here proposed. Cases may arise in which such a power is very necessary—where, for example, a recalcitrant shareholder is opposed to a course which a large majority of the shareholders think would be for the benefit of the company. It is impossible to read the papers without seeing that the course which the preferred shareholders in this case propose to take is a very reasonable one in the interests of the company, and I think that the prayer of the petitioners should be granted.

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

The Court granted the prayer of the petition.

Counsel for the Petitioners — Cullen. Agents — Morton, Smart, Macdonald, & Prosser, W.S.

Wednesday, July 15.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

GRIGOR MEDICAL BURSARY FUND TRUSTEES, PETITIONERS.

Charitable Trust—Nobile Officium—Educational Trust—Medical Bursary—Recent Bequest—Alteration—Extension of Benefits to Female Medical Students—Trusts (Scotland) Act 1867 (30 *and* 31 *Vict. c.* 97), *sec.* 16.

By a trust-disposition and codicil, dated respectively in 1880 and 1885, the

truster (who died in 1886) left money to found a bursary to be awarded to a young man, a native of a particular county, who proposed to study for the medical profession. A scheme for the bursary was granted by the Court in 1893. The trustees, on the narrative that difficulty was experienced in obtaining suitable candidates, petitioned, under the Trusts (Scotland) Act 1867, section 16, for the sanction of the Court to an alteration of the scheme, which would render young women proposing to study medicine eligible as well as young men. The Court *refused* the prayer of the petition.

Observations on the distinction between the powers of the Court in the alteration of educational schemes in cases presented under the Educational Endowments Act 1882, and in applications to the *nobile officium* of the Court.

By his trust-disposition and settlement and relative codicil, dated respectively 20th November 1880 and 30th December 1885, the late Dr John Grigor, who died in 1886, left £1000 to trustees for the purpose of founding a bursary, to be called the Grigor Medical Bursary. The object of the bursary was declared to be to enable a young man, a native of the county of Nairn, whose parents were unable to defray the cost of his medical education, to pursue his medical studies at the University of Edinburgh. The bursary was to be tenable for four years.

In 1893 the Court, on the application of Dr Grigor's trustees, sanctioned a new scheme for the bursary in the following terms:—"The trustees shall from time to time appoint to the said bursary a young man (*a*) who is a native of the county of Nairn, or (*b*) who, at the date of his application for the bursary, is resident in the county of Nairn, and has for five years previously resided in the said county, and (in either case) whose parents are unable to defray the cost of a medical education, to enable such young man to pursue his medical studies at the University of Edinburgh."

The present application was made under the Trusts (Scotland) Act 1867, sec. 16, for the approval and settlement of a scheme whereby the bursary should be open to young women as well as to young men. In support of this application the following statement was made:—"The petitioners, as trustees foresaid, experienced difficulty in getting suitable male candidates for the said bursary, and as the medical degree is now open to young women it is expedient that the bursary should also be open to them. The petitioners therefore propose that article 3 of the said scheme should be amended so as to make the bursary available to young women on the same terms and conditions as it is at present available to young men."

The petition was intimated and advertised. No answers were lodged.

On 12th June 1903 the Lord Ordinary (STORMONTH DARLING), in terms of section 16 of the Trusts (Scotland) Act 1867 (30 and 31 Vict. cap. 97), reported a scheme proposed by the petitioners to the First Division.

In support of the petition it was argued that since the death of Dr John Grigor medical degrees had been opened to women, and that the alteration proposed was necessary to carry out the objects of the truster —*Governors of Spence Bursary Trust*, October 16, 1897, 25 R. 11, 35 S.L.R. 18.

LORD PRESIDENT—The material facts in this case are that the late Dr John Grigor died on 15th October 1886, leaving a trust-disposition and settlement dated 20th November 1880, and a codicil dated 30th December 1885, so that he was considering his testamentary arrangements down to a period of less than a year prior to his death. He left a sum of money to his trustees for the purpose of founding the "Grigor Medical Bursary," and he declared that the recipient of the bursary was to be "a young man, a native of the county of Nairn, whose parents are unable to defray the cost of a medical education, to enable such young man to pursue his medical studies at the University of Edinburgh, to be tenable during the curriculum of study." The object of his bounty is unequivocally declared to be "a young man."

In 1893, owing to the difficulty experienced by the trustees in getting "natives" of the county of Nairn to come forward as applicants for the bursary, the benefits of the bequest were extended by this Court so as to include residents in as well as natives of the county. The proposal now is that the benefits should be further extended so as to include young women, either I suppose natives of or residents in the county of Nairn, to assist them in pursuing their medical studies in Edinburgh. That is a very great change, for if Dr Grigor had intended that the benefit of his bequest should be extended to young women he had the opportunity of saying so before his death, and we find that he did not do so. I cannot think that the difficulty of getting young men to come forward as candidates is a sufficient reason to justify us in authorising so great a change as is here proposed. The trustees only state that they experience difficulty in getting suitable male candidates; there is no allegation that male candidates cannot be obtained, or that no more young men from the county of Nairn contemplate entering the medical profession.

I suppose that if this petition is refused, and if in consequence of the dearth of male candidates the bursary remains vacant for a time, the result will be that the income of the trust fund will be accumulated and added to the capital, and that thereby the value of the bequest when an eligible candidate appears will be increased. It is not as if our refusal of the prayer of the petition would cause the scheme to become nugatory or inept. On the whole matter I do not think that any sufficient reasons have been laid before us to induce us to sanction the drastic change which is here proposed.

LORD ADAM concurred.

LORD M'LAREN—I concur with your Lordships. It is necessary carefully to distinguish between the statutory powers conferred upon the Court under the Endowments Commission and the powers of the Court under its ordinary jurisdiction. I only know of two cases for the exercise by the Court of its common law powers. One is where the founder of a charity or other endowment only expresses his purpose in general terms, and where it is thus necessary to have a scheme for its administration. The other is where the object of a charitable trust has failed; where this has happened the Court has on rare occasions sanctioned the application of the funds to objects nearly resembling those selected by the truster. In the latter case I doubt if a petition is the appropriate mode of invoking the jurisdiction of the Court. I rather think some declaratory process would be necessary.

The present case does not, however, fall under either of these categories. What is proposed is not merely an administrative variation. It is proposed to admit women to the benefit of an endowment expressly given to men, and given by a member of a profession not very friendly to the admission of women within its ranks. Nor can it be said that the admission of women is necessary for administration, because the only result of refusing the application would be to accumulate the funds and add to the capital until a candidate comes forward falling within the class benefited by the trust as it stands. That would not be in any way inconsistent with the testator's object. For these reasons I think the application should be refused.

LORD KINNEAR—I agree. I think we should be straining the powers of the Court in the administration of charitable bequests unreasonably if we were to comply with the petitioners' demand, because what we are asked to do is to extend the benefit of a recent bequest to persons who are not the object of the testator's bounty. I also agree with the view indicated by Lord M'Laren, that if this application were presented on the footing that this bequest had become practically unworkable owing to a change in the circumstances that would raise an entirely different question. I do not say that we should have solved it in the manner proposed in this petition, but the question would have been entirely different. But nothing of that kind is said. Even if we assume that candidates do not come forward on every occasion on which this bursary is vacant, it does not follow that the testator's bequest is not being worked in the most suitable and convenient way. It is the case with many bursaries that from time to time suitable candidates fail to present themselves; but the remedy is that the funds are administered in the meantime by the University in accordance with statutory regulations for the purpose intended by the founder of the bursary. The ground averred here is not even that candidates do not come forward; all that is said is that the trustees experience difficulty in getting male candidates for the bursary, and as the medical degree is now open to women it is expedient that the bursary should also be open to them. I cannot read that as an averment that the trustees find it impossible to carry out the testator's wishes as expressed in his settlement. It is simply the expression of their opinion on a general question that since medical degrees are now open to women medical bursaries ought to be open to them also, although they may have been intended by the founder for young men only. That may or may not be reasonable, but it is not a ground on which we interfere with a testator's directions. I therefore agree with your Lordships that the petition should be dismissed.

The Court refused the prayer of the petition.

Counsel for the Petitioners—M'Lennan. Agents—Cumming & Duff, S.S.C.

Wednesday, July 15.

SECOND DIVISION.

[Sheriff Court of Lanarkshire, at Glasgow.

M'CULLOCH *v.* CLYDE NAVIGATION TRUSTEES.

Reparation—Negligence—Duty to Public—Injury Sustained through Roof Falling on Outbreak of Fire—Accident Alleged to be Due to Faulty Construction Known to Defenders—Relevancy.—Specification.

A dock labourer was injured through the roof of a shed in which he was employed falling in consequence of an outbreak of fire. He raised an action of damages for personal injury against the owners of the shed, in which he averred that the shed extended for several hundred yards, that the fire broke out in the shed "at a considerable distance from where he was working;" that immediately thereafter the roof of the shed collapsed for several hundred yards; "that the cause of the said accident was that the said shed was improperly constructed and unsafe, in respect that the roof, which was constructed in one connected length for several hundred yards, had no support for a distance of several hundred yards beyond the lateral support of" a brick wall on one side with numerous openings in it, and iron pillars at intervals of 32 feet on the other side, without any cross walls or central pillars "such as were necessary to render the erection stable and secure," and that consequently it was unable to stand a fire in one part without the whole roof of the shed falling. He further averred "that the defenders were well aware of the defective construction of the shed, and had previously had their attention