

scrutinised, and it must be seen that the defender by being put in by the other side is not put to any disadvantage.

LORD KINNEAR—I entirely agree with your Lordship's remarks as to the practice, in this class of case, of putting the defender into the box as the pursuer's witness. I also agree that the pursuer here has failed to prove her case.

LORD SKERRINGTON concurred.

The Court recalled the interlocutors appealed against and assolizied the defender.

Counsel for the Pursuer (Respondent)—Lyon Mackenzie. Agents—Baillie & Gifford, W.S.

Counsel for the Defender (Appellant)—Fenton. Agents—Simpson, & Marwick, W.S.

Tuesday, October 20.

SECOND DIVISION.

LONDON AND EDINBURGH SHIPPING COMPANY, LIMITED.

Company—Memorandum of Association—Objects of Company to be Considered as Separate Objects and not as a Main with Ancillary Objects—Confirmation.

On 24th September 1908 the London and Edinburgh Shipping Company, Limited, presented a petition praying the Court to confirm proposed alterations of its constitution.

The company had been registered as an unlimited company under the Companies Act 1862, and its constitution had been defined by a deed of copartnership dated in 1809, and a supplementary contract dated in 1863. On 7th July 1908 the company was registered under the Companies Acts as a company limited by shares, and the company resolved to substitute a memorandum and articles of association for the deeds of 1809 and 1863.

On 7th October 1908 the petition was remitted to Charles E. Loudon, Esq., W.S., to inquire and report.

The memorandum of association gave as the objects of the company—“1. To purchase, charter, hire, build, or order or procure to be built, or otherwise acquire steam and other ships or vessels, lighters, barges, and boats, with all equipments, engines, tackle, stores, and furniture, and to employ the same in the conveyance of passengers, mails, troops, munitions of war, live stock, meat, corn, oil, petrol or other spirit, and other produce, and of treasure, and manufactured and unmanufactured goods and merchandise of all kinds, between the ports of Leith and London, or any such other ports as may seem expedient, or for surveying, signalling, dredging, laying telegraph or other cables, or otherwise, and to acquire any postal subsidies. 2. To carry on the business of shipowners and shippers,

carriers by land and water, warehousemen, wharfingers, barge-owners, lightermen, forwarding agents, bonded carmen and common carmen, and refrigerating store-keepers. 3. To insure with any other company or person against losses, damages, risks, and liabilities of all kinds which may affect this company, and also to accept the whole or any part of such risks and liabilities of the company as underwriters. 4. To carry on the business of purveyors, refreshment caterers, and contractors in all its respective branches on board of the company's ships or vessels. 5. To carry on business as tourist agents and contractors, and to facilitate travelling, and to provide for tourists and travellers, or promote the provision of conveniences of all kinds in the way of through tickets, sleeping-cars or berths, reserved places, hotel and lodging accommodation, baggage transport, and otherwise. 6. To maintain, repair, and alter any buildings, plant, machinery, or works necessary or convenient for the purposes of the company, and to maintain, repair, improve, convert, alter, fit and refit, provide with engines, tackle, equipment, stores, and furniture the ships, vessels, lighters, barges, and boats belonging to or under charter to the company, and to sell, exchange, let on hire, or dispose of any of the said ships, vessels, lighters, barges, or boats, or any of their engines, tackle, equipment, stores, or furniture. 7. To acquire by purchase, lease, feu, excambion, or otherwise, or to erect, build, or construct, or cause to be erected, built, or constructed, any wharves, docks, piers, offices, warehouses, factories, tramways, elevators, cranes, lifts, machinery, engines, or plant, and patent rights in connection with the same, or to acquire any right to use or easements over the same, and to acquire by purchase any lands, tenements, and hereditaments of whatever tenure, or any real or personal property or easements in or over the same. 8. To borrow and raise any sum or sums of money by way of loan, discount, cash credit, overdraft, or guarantee, or upon bills of exchange, promissory notes, bonds, bonds and dispositions in security, mortgages, cash credit bonds, debentures, debenture stock, deposit-receipts, or in any other manner, and to grant security for all or any sums so borrowed, or for which the company may be or may become liable, or for performance by the company of any obligation or liability that may be incurred or undertaken by the company, or any manager, ship's husband, or other duly authorised person, and by way of such security to dispense, mortgage, pledge, or charge the whole or any part of the property, assets, or revenue of the company, including uncalled or unpaid capital, or to dispense, transfer, or convey the same absolutely or in trust, or to give to lenders or creditors powers of sale and other usual and necessary powers. 9. To lend and advance money or give credit to such persons and on such terms as may seem expedient, and in particular to customers and others having dealings with the company,

and to give guarantees or become security for any such persons. 10. To improve, manage, develop, exchange, let on lease, or otherwise mortgage, sell, dispose of, turn to account, or otherwise deal with all or any part of the property and rights of the company. 11. To purchase or otherwise acquire the whole or any part of the goodwill, business, property, and assets, and undertake the liabilities of any person or company carrying on any business which this company may legally carry on, the acquisition or undertaking of which may appear advantageous to the business of the company. 12. To enter into partnership, joint-adventure, or any joint purse arrangement, or any arrangement for sharing profits or co-operation, or for limiting competition, or for mutual assistance with any company, firm, or person carrying on or proposing to carry on any business within the objects of the company, and to promote, acquire, and hold shares, stock, or securities of any such company. 13. To invest any sum which may be set aside as a reserve fund and any moneys of the company not immediately required in such securities or investments, and in such manner as may from time to time be determined. 14. To apply for or concur with others in applying for or to appear and oppose the application made by any person or corporation for any Act of Parliament, Order of the Board of Trade, Provisional Order, concession, or grant either at home or elsewhere which the company may consider it expedient to apply for or oppose. 15. To grant and issue in payment of any purchase made by the company, or in satisfaction of any debt or obligation owing by the company, the bonds, debentures, or other acknowledgments of or shares or stock in the company; and as regards bonds and debentures, with or without a mortgage or charge upon the property or assets of the company or any part thereof. 16. To enter into any arrangement with any government or authority—supreme, municipal, local, or otherwise—that may seem conducive to the company's objects or any of them, and to obtain from any such government or authority any rights, privileges, and concessions which the company may think it desirable to obtain, and to carry out, exercise, and comply with any such arrangements, rights, privileges, and concessions. 17. To draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading, warrants, debentures, drafts, and other negotiable or transferable instruments. 18. To sell, transfer, or dispose of the undertaking, property, and business of the company or any part thereof for such consideration as the company may think fit, and in particular for cash, or for shares, stock, debentures, or securities of any other company or partly in each of such modes. 19. To distribute any of the property of the company among the members in kind, and in particular any shares, debentures, or securities of other companies belonging to this company or of which this company may have the power

of disposing. 20. To promote any company or companies in the United Kingdom or elsewhere for the purposes of acquiring all or any of the property, rights, and liabilities of this company, or for any other purpose which may seem directly or indirectly calculated to benefit the company, and to place or guarantee the placing of, underwrite, subscribe for, or otherwise acquire all or any part of the shares or securities of any such company as aforesaid, and remunerate any person or company for services rendered in or about the formation or promotion of such company or companies. 21. To establish and support or aid in the establishment and support of associations, institutions, funds, trusts, and conveniences calculated to benefit employees or ex-employees of the company or its predecessors in business, or the dependents or connections of such persons, and to grant pensions and allowances and to make payments towards insurance, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general, or useful object. 22. To do all such other things as are incidental or conducive to the attainment of any of the above objects, and so that the various businesses or objects specified shall be regarded as independent objects and in nowise restricted (except where otherwise expressed in the above paragraphs) by reference to the name of the company, or to the businesses or objects contained in any other paragraph."

Mr Loudon, with regard to article 22, stated in his report—"I am of opinion that the latter part of the above article beginning at the words 'and so that' should not be approved, because the words used are such as to render it impossible to place any definite limit to the objects of the company."

The petitioners maintained that article 22 should be allowed, its object being to displace the rule of construction in England, whereby the Court first found out the main purpose of the company, and then treated all the others as merely ancillary—Palmer's Company Precedents, Part I, p. 372; *German Date Coffee Co.*, 20 Ch. Div. 169, at 188; *Stephens v. Mysore Reefs (Kangundy) Mining Co., Limited*, [1902] 1 Ch. 745, at p. 749; *Pedlar v. Road Block Gold Mines of India, Limited*, [1905] 2 Ch. 427, at p. 433. They agreed to alter article 9, which otherwise would have enabled them if taken as an independent object to carry on a money-lender's business, by deleting the words "to such persons and on such terms as may seem expedient, and in particular."

The Court, without changing article 22, confirmed the alteration of the form of the company's constitution.

Counsel for the Petitioners—Hon. W. Watson. Agents—Horne & Lyell, W.S.