

The Court recalled the interlocutor of the Lord Ordinary and allowed the parties a proof of their respective averments on record.

Counsel for the Claimants, The National Society for the Prevention of Cruelty to Children — Constable, K.C. — Hon. W. Watson. Agents—Bruce, Kerr, & Burns, W.S.

Counsel for the Claimants, The Scottish National Society for the Prevention of Cruelty to Children — Chisholm, K.C. — Mitchell. Agent—R. C. Gray, S.S.C.

Agent for Pursuers and Real Raisers—A. C. D. Vert, S.S.C.

Wednesday, December 18.

SECOND DIVISION.

(SINGLE BILLS.)

ROBERT A. MUNRO & COMPANY,
LIMITED, PETITIONERS.

Company — Petition — Reorganisation of Share Capital — Advertisement — Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 45.

In a petition for the confirmation of a special resolution authorising the reorganisation of the share capital of a limited company, presented under section 45 of the Companies (Consolidation) Act 1908, the petitioners having moved for intimation of the petition without advertisement, the Court *ordered* intimation as craved.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts—Section 45—“(1) A company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes. . . . (2) Where an order is made under this section an office copy thereof shall be filed with the Registrar of Companies within seven days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed.”

Robert A. Munro, Limited, Glasgow, *petitioners*, presented a petition under section 45 of the Companies (Consolidation) Act 1908 for confirmation of a special resolution authorising the reorganisation of their share capital. In moving for intimation of the petition on the walls and in the minute book, counsel for the petitioners submitted that advertisement of a petition for reorganisation of the share capital of a company was unnecessary, in respect that it was a purely domestic matter, and cited *in re Ashanti Development, Limited*, 1911, W. N. 144, 27 T.L.R. 498, as to the English practice.

The Court pronounced this interlocutor—
“Appoint the petition to be intimated as craved, and answers, if any, to be lodged within eight days thereafter.”

Counsel for the Petitioners—Hon. W. Watson. Agents—Webster, Will, & Co., W.S.

HIGH COURT OF JUSTICIARY.

Saturday, December 21.

(Before the Lord Justice-Clerk, Lord Dundas, and Lord Guthrie.)

SUMMERLEE IRON COMPANY,
LIMITED *v.* THOMSON.

JOHN WATSON, LIMITED *v.*
THOMSON.

Justiciary Cases — Statutory Offences — Truck Act 1831 (1 and 2 Will. IV, c. 37)—Miner—Contract that Employer may Retain Wages for “Rent” after Employment has Ceased.

The Truck Act 1831, section 2, makes illegal all contracts between an employer and employee containing provisions regarding “the place where or manner in which . . . the wages due or to become due to such employee shall be laid out or expended.” Section 3 provides that the employee’s entire wages shall be paid in current coin of the realm.

A company contracted with its employees that it should be entitled, in the event of the workmen leaving its employment, to retain whatever moneys were in its hands until the workmen removed from the houses belonging to it, and that for rent of and obligations connected with their occupation of the houses subsequent to leaving the company’s service. Under this contract the company stopped and deducted from the workmen’s wages certain sums for rent and other obligations connected with their occupation of the houses after their employment had ceased.

Held (1) that this contract was contrary to section 2 of the Truck Act, and that such retention of wages did not fall within the exceptions allowed by section 23, in respect that the money was to be retained as damages for illegal occupation and not for rent; (2) that the retention and appropriation of a part of the wages by the employers, after the employment had ceased, was contrary to section 3, in respect that a portion of the wages being retained for a specific purpose, payment was being made otherwise than in coin of the realm.

The Truck Act 1831 (1 and 2 Will. IV, cap. 37) enacts—Section 2—“If in any contract hereafter to be made between any artificer . . . and his employer, any provision shall

be made, directly or indirectly, respecting the place where, or the manner in which, or the person or persons with whom, the whole or any part of the wages due or to become due to any such artificer shall be laid out or expended, such contract shall be, and is hereby declared, illegal, null, and void." Section 3—"The entire amount of the wages earned by or payable to any artificer . . . in respect of any labour by him done . . . shall be actually paid to such artificer in the current coin of this realm, and not otherwise; and every payment made to any such artificer by his employer, of or in respect of any such wages, by the delivering to him of goods, or otherwise than in the current coin aforesaid, except as hereinafter mentioned, shall be, and is hereby declared, illegal, null, and void." Section 23—"Nothing herein contained shall extend, or be construed to extend, to prevent any employer of any artificer, or agent of any such employer, from . . . demising to any artificer . . . the whole or any part of any tenement at any rent to be thereon reserved, nor . . . from making or contracting to make any stoppage or deduction from the wages of any such artificer for or in respect of any such rent . . . provided always that such stoppage or deduction . . . shall not be in any case made from the wages of such artificer unless the agreement or contract for such stoppage or deduction shall be in writing and signed by such artificer."

Summerlee Iron Company Limited's Case.

On 27th April 1912 the Summerlee Iron Company, Limited, Glasgow, were charged, under the Summary Jurisdiction (Scotland) Act 1908 (8 Edw. VII, c. 65), in the Sheriff Court at Hamilton, at the instance of William Thomson, Procurator-Fiscal, in the following terms:—"You are charged at the instance of the complainer that on or about 16th February 1912, at the colliery office at your No. 3 Pit, Orbiston Colliery, otherwise known as Bellshill Colliery, situated at Bellshill, in the parish of Bothwell, you did contract with each of John Balmer senior, miner, residing at 10 New Orbiston Rows; Thomas Dorans senior, oncostman, residing at 19 New Orbiston Rows; and Charles Greer, miner, residing at 5 New Orbiston Rows, all at Crossgates, Bellshill aforesaid, and working the said John Balmer senior and Thomas Dorans senior at your said pit, and the said Charles Greer at your Old Orbiston Pit, Bellshill, during the fortnight ending 24th February 1912, that you should be entitled, in the event of their severally leaving your employment, to retain whatever moneys were then in your hands until they severally removed from the houses respectively occupied by them and belonging to you, and that for rent of, and obligations connected with and arising out of their occupation of, said houses for the period subsequent to their leaving your employment, and on 1st and 2nd March 1912 at your said colliery office you did contract with each of the said John Balmer senior, Thomas Dorans senior, and Charles

Greer that you should stop and deduct, and did stop and deduct, from the wages due on said 1st March 1912 to each of them for their work in your employment at your said pits as aforesaid during the fortnight ended on said 24th February 1912 the sum of £1 for rent and other obligations connected with and arising out of their occupation severally of said houses for the period subsequent to 29th February 1912, when they severally ceased to be employed by you, and did fail to pay in the current coin of the realm to each of them the entire amount of the wages earned by and then payable to them severally in respect of the labour done by them respectively at said pits during the fortnight ended on said 24th February 1912, all contrary to the Truck Act 1831, sections 2 and 3, whereby you are liable to the penalties applicable to a first offence set forth in section 9 of said Act."

On 21st June 1912 the Sheriff-Substitute (SHENNAN) convicted the accused. An appeal by way of Stated Case was taken.

The Case set forth, *inter alia*—"The complaint was called in Court on 2nd May 1912, when the appellants appeared by their agent Mr George R. Herbertson, writer, Glasgow, the Court being satisfied he had authority to represent them. No objection was taken to the relevancy of the complaint, and a plea of not guilty being tendered the diet was adjourned to 5th June 1912. At the adjourned diet on 5th June 1912 the appellants appeared by their manager David Marr Mowat, and proof having been taken and parties heard the diet was adjourned to 21st June 1912."

"The following facts were proved:—During the month of February 1912 John Balmer senior and Thomas Dorans were employed by the appellants as miner and oncostman respectively in their No. 3 Pit, Orbiston Colliery, and Charles Greer was employed by them as a miner at their Old Orbiston Pit.

"Each of them lived in a house which was the property of the company, and they were bound to leave the houses when they left the company's employment. In each case the rent was 7s. 8d. per fortnight, the amount being deducted from the wages at the fortnightly pay. At each pay the men signed a receipt in the following terms—'Received payment of the above balance, being payment in full of all wages due to me up to this date; and I hereby authorise you to deduct from my future wages the amount of my house rent, and in the event of my leaving your employment, I authorise you to retain whatever moneys are in your hand until I remove from your house; also the sums paid by you for medicine and medical attendance to me; likewise the price of any coals, materials, tools, or implements to be furnished by you to me, the charge for sharpening or repairing tools, and any cash advanced to me.'

"On 16th February 1912 Balmer, Dorans, and Greer signed receipts in the above terms for the pay ending 10th February 1912. In each case 7s. 8d. was deducted for