the decree should not be enforced for six weeks from this date, when it will be open to the applicant to renew his application under the Act. But meantime I desire to express the opinion of the Court that the defender ought to endeavour to pay the pursuer, before the six weeks have elapsed, the outlays incurred in the case so that we may, if possible, only have to consider, on the lapse of time I have stated, the question of the propriety of allowing the decree to be enforced for the remainder of the bill of expenses.

The Court (the LORD PRESIDENT, LORD MACKENZIE, and LORD SKERRINGTON) pronounced this interlocutor :—

"The Lords having considered the application and heard counsel for the parties, suspend execution on the decrees therein mentioned for six weeks from this date."

Counsel for the Pursuer—J. A. Christie. Agent—E. Rolland M'Nab, S.S.C.

Counsel for the Defender—D. Jamieson. Agents—Wallace & Begg, W.S.

Thursday, December 3.

FIRST DIVISION.

MACFARLANE, STRANG, & COMPANY, LIMITED, PETITIONERS.

Company—Memorandum of Association—Alteration — Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 9 (1).

The Companies (Consolidation) Act 1908, sec. 9 (1), enacts—"Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it (*a*) to carry on its business more economically or more efficiently; or (*b*) to attain its main purpose by new or improved means; or (*c*) to enlarge or change the local area of its operations; or (*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company. . . ."

A company, having power to amalgamate with companies with similar objects, by special resolution altered its memorandum of association so as to include certain additional powers. The Court, on a petition by the company, *confirmed, inter alia*, the following powers—(*a*) of amalgamation, either by sale or purchase, with any other company whose objects were within the objects of the company; (*b*) of promotion of any other company to purchase or take over the undertaking of the company or any part thereof; (*c*) of guarantee of the stock, shares, debentures, debenture stock, and securities of any company so promoted.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 9 (1), is quoted *supra in the rubric.*

Messrs Macfarlane, Strang, & Company, Limited, incorporated under the Companies Acts 1862 and 1867, *petitioners*, brought a petition in the Court of Session for confirmation of a number of alterations in its memorandum of association.

The petition, *inter alia*, set forth—"The objects for which the company was established, as set forth in the original memorandum of association, were as follow :—. . . 'Art. 4. . . . To make for the purposes of the company any arrangements with respect to the union of interests or operations, or the amalgamation either in whole or in part of the company with any other company or companies, person or persons, carrying on business within the objects of this company; and to accept and take, hold, or sell shares or stock in any company, society, concession, contract, or undertaking, the objects of which shall, either in whole or in part, be similar to those of this company, or such as may be likely to promote or advance the interests of this company. . . .' 5. At an extraordinary general meeting of the company duly convened, held on 28th April 1914, the following resolution was duly passed, and at a subsequent extraordinary general meeting, also duly convened, held on 26th May 1914, the same was duly confirmed so as to become a special resolution of the company, viz. — 'That the memorandum of association of the company be amended in manner following, viz.—That articles 4 and 5 thereof be deleted, and that there be substituted therefor the following paragraphs at the end of article 3 thereof :—'(12) Amalgamating with any other company whose objects are or include objects similar to those of the company; and that either by sale of the undertaking of the company, subject to its liabilities, or by purchase of the undertaking of such other company; and that with or without winding-up either company, or by sale or purchase of all the shares, stock, or securities of the company or any such other company as aforesaid, or by partnership, or an arrangement of the nature of partnership, or in any other manner. . . . (18) Selling, transferring, or disposing of the businesses or undertakings of the company or any of them, with the assets and liabilities thereof, to any other company, or to any person or persons, on such terms as may be arranged, and, in particular, for stock, shares, debentures, debenture stock, or securities of any other company. (19) Promoting or establishing, or concurring in promoting or establishing, any other company to purchase or take over the undertaking of the company or any part thereof, or for undertaking any business or operation which may appear likely to assist or benefit the company or enhance the value of its property and business, and obtaining any Act or Acts of Parliament or any legislative or legal sanction that may be deemed necessary or expedient for that purpose. (20) Guaranteeing the stock, shares, debentures, debenture stock, and securities of any company which shall be promoted or estab-

lished by the company alone or in conjunction with others, or which shall otherwise purchase or take over the undertaking of the company or part thereof, or entering into any other obligations or liabilities on behalf of such company on such terms and for such period as the company shall see fit.'"

On 8th July 1914 the Court remitted to Sir George M. Paul, C.S., to report on the petition.

Sir George M. Paul reported that the procedure had been regular and that the proposed alteration might be confirmed, subject to the following restrictions:—(*a*) the variation of sub-head (12) so as to restrict the power of amalgamation to the purchase of the undertaking of another company; (*b*) the deletion of sub-head (18); (*c*) the variation of sub-head (19) by deletion of the words importing the power to promote or concur in promoting any other company to purchase or take over the undertaking of the company; (*d*) the variation of sub-head (20) by the deletion of the words importing the power of sale of the company's undertaking.

The petition came before the First Division on December 3, 1914.

Argued for the petitioners—The proposed alterations were all reasonable with the possible exception of sub-head (18), which it was agreed might be abandoned. The power of amalgamation was already contained in the memorandum of the company, art. 4, and the proposed alterations merely expressed the same power in a more modern form. In this the case was distinguishable from *John Walker & Sons, Limited, Petitioners*, 1914 S.C. 280, Lord Skerrington at 289, 51 S.L.R. 246, where no such power was contained in the memorandum. The alterations were within the objects of the company—*King Line Limited, Petitioners*, January 25, 1902, 4 F. 504, 39 S.L.R. 337; *Wall* v. *London and Northern Assets Corporation*, [1898] 2 Ch. 469, Lord Lindley, M.R., at 478, Chitty, L.J., at 482.

The Court (the LORD PRESIDENT, LORD MACKENZIE, and LORD SKERRINGTON) pronounced this interlocutor:—

> "The Lords . . . refuse confirmation of sub-head 18 of the alteration of clause III of the memorandum of association with respect to the objects of the company set forth in the special resolution of the company passed on 28th April and confirmed on 26th May 1914, and *quoad ultra* confirm said alteration, subject to the following modifications, viz.—Alter sub-head 12 so that it shall read as follows: 'Amalgamating with any other company whose objects are within the objects of the company, and that either by sale of the undertaking of the company subject to its liabilities, or by purchase of the undertaking of such other company, and that with or without winding up either company, or by sale or purchase of all the shares, stock, or securities of the company or any such other company as aforesaid, or by partnership or any arrangement of the nature of partnership, or in any other manner': Appoint registration of this order to be made by the Registrar of Joint-Stock Companies in Scotland, and on the same being registered along with the memorandum of association as now altered and confirmed, appoint advertisement of such registration to be made once in the *Edinburgh Gazette* and once in each of the *Scotsman* and *Glasgow Herald* newspapers; and decern."

Counsel for the Petitioners — Solicitor-General (Morison, K.C.)—Wark. Agents—J. & J. Galletly, S.S.C.

Friday, December 4.

FIRST DIVISION.

[Sheriff Court at Dunfermline.

DYER *v.* WILSONS AND CLYDE COAL COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Schedule I, Art.* 15—*Incapacity for Work—Inability to Get Work—Exclusion of Evidence by Arbiter Relying on his Own Knowledge.*

A workman having been injured by accident, his employers, admitting liability, for some months paid him compensation, and then discontinued payment on the ground that he was then fit for light work. The capacity of the workman was by consent submitted to a medical referee, who certified that he was fit for light work. The workman thereafter applied for an award of compensation on the basis of total incapacity, and offered to prove that he had tried, and was in fact unable, to get light work. The arbiter dismissed the application as irrelevant, on the ground that the efforts of the workman to get work, as disclosed on condescendence, were in his own knowledge not sufficient test of the market for light work, and that there was in fact a market for such work. *Held* that the arbiter was not entitled to rely on his own knowledge to the exclusion of facts which the workman offered to prove, and accordingly that the workman had stated a relevant case for inquiry.

Duris v. *Wilsons and Clyde Coal Company, Limited*, 1912 S.C. (H.L.) 74, 49 S.L.R. 708, *followed.*

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—Schedule I, Art. 15—" . . . In the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the sheriff-clerk, on application being made to the court by both parties, may . . . refer the matter to a medical referee. The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Secretary of State, give a certificate