

The Court found that the Sheriff-Substitute's decision on the first charge was wrong.

Counsel for the Appellant—Lord Advocate (Munro, K.C.)—Morton, A.-D. Agent—Sir William S. Haldane, W.S., Crown Agent.

Counsel for the Respondent—Sandeman, K.C.—W. T. Watson. Agents—Lockhart Thomson, & Stevenson, W.S.

COURT OF SESSION.

Friday, February 25.

SECOND DIVISION.

(SINGLE BILLS.)

THE DON FISHING COMPANY, LIMITED, AND REDUCED, PETITIONERS.

Company—Capital—Reduction of Capital—Confirmation by Court—“And Reduced”—Advertisement—Companies Consolidation Act 1908 (8 Edw. VII, cap. 69), secs. 46, 48, and 51 (3).

In a petition for confirmation of a special resolution to reduce the capital of a limited company by extinguishing an uncalled liability of 10s. per share where the company's liabilities to the public amounted only to the sum of £1643, 17s. 11d. and its assets were valued at £22,980, to dispense with the words “and reduced” as part of the company's name and for advertisement, the Court dispensed altogether with the words “and reduced” as part of the name of the company, and directed advertisement, once in the *Edinburgh Gazette*, and once in each of the *Scotsman* and *Aberdeen Journal* newspapers.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts:—Section 46—“(1) Subject to confirmation by the Court, a company limited by its shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up. . . .” Section 48—“On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction the company shall add to its name, until such date as the Court may fix, the words ‘and reduced’ as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company: Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the

payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient, dispense altogether with the additions of the words ‘and reduced.’” Section 51—“(3) Notice of the registration shall be published in such manner as the Court may direct.”

The Don Fishing Company, Limited, and Reduced, presented a petition for confirmation of an alteration in the memorandum of association pursuant to a special resolution to reduce the capital of the company, and craved the Court—“(1) to pronounce an order confirming the reduction of capital resolved on by the said special resolution of 2nd and 17th November 1915 as set forth in this petition; (2) to approve of the minute set out in this petition; (3) to dispense altogether with the further use of the words ‘and reduced’ as part of the company's name, or otherwise after such short period as your Lordships may think fit; and (4) to direct the registration of said confirmation order and minute by the Registrar of Joint Stock Companies, and on the said order and minute being registered by the said registrar to order notice of such registration to be given by such advertisement as to your Lordships shall seem proper, or to do further or otherwise in the premises as to your Lordships shall seem proper.”

The petition set forth—“5. Until recently the company was possessed of six steam trawlers, but two of these have been sold, and the remaining four have been commandeered by the Government and are at present employed on war service. The present liabilities of the company, as shown by the balance-sheet as at 31st October 1915, amount to £22,980, 9s. 5d., but of these liabilities the sum of £21,336, 11s. 6d. represents subscribed capital, reserve fund, and amount at credit of profit and loss, so that the company's liabilities to the public amount only to the sum of £1643, 17s. 11d. On the other hand, the assets of the company as appearing in said balance-sheet are valued at £22,980. The company has no intention of extending its present operations, and the directors consider it desirable in the interests of the company that the share capital should be reduced to £10,000 by extinguishing the uncalled liability of 10s. per share. . . . 11. The minute proposed to be registered . . . is as follows:—‘The capital of the Don Fishing Company, Limited, and Reduced, is £10,000 divided into 20,000 shares of 10s. each. At the date of the registration of this minute the whole of said shares have been issued, and are deemed to be fully paid up.’”

On 13th January 1916 the Court remitted to Mr William Smith, W.S., to inquire into and report upon the facts and circumstances set forth in the petition as to the reasons for the proposed reduction of capital and as to the regularity of the proceedings.

The reporter reported, *inter alia*, as follows—“The only difficulty in this case arises with regard to the form of order to be pronounced. The petitioners crave your Lordships ‘to dispense altogether with the further use of the words “and reduced” as

part of the company's name, or otherwise after such short period as your Lordships may think fit'; to direct registration by the Registrar of the final order; and 'to order notice of such registration to be given by such advertisement as to your Lordships shall seem proper.' Section 51 (3) of the statute provides that 'notice of the registration shall be published in such manner as the Court may direct.' The Second Division now usually orders advertisement in the *Edinburgh Gazette* alone, while the First Division on the other hand directs advertisement in the newspapers as well. In this case it would be in the *Scotsman* and the *Aberdeen Journal*.

"The question of dispensing with the words 'and reduced' is more difficult. It depends on the terms of section 48 of the statute—'On and from the confirmation by a company of a resolution for reducing share capital . . . the company shall add to its name until such date as the Court may fix the words "and reduced" as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company—provided that where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."' (This section consolidates the provisions of the Companies Act 1867, section 10, and the Companies Act 1877, section 4.) The present is a case of diminution of liability, and therefore does not seem to fall under the operation of the proviso.

"In a petition, *Glasgow Cotton Spinning Company, Limited, and Reduced*, for confirmation of reduction, 16th November 1905 (unfortunately not reported), which apart from procedure seems indistinguishable from the present, these matters were specially brought before the Court, and, no *interim* dispensation having been granted, the order pronounced was—'Edinburgh, 22nd December 1905.—The Lords . . . dispense with the addition of the words "and reduced" to the company's name from and after 15th January 1906: Appoint notice hereof to be made by advertisement once in the *Edinburgh Gazette* and in the *Scotsman* and *Glasgow Herald* newspapers, and decern.—J. H. A. MACDONALD, I.P.D.' That ruling, however, was departed from in the case of *Walker Steam Trawl Fishing Company*, 1908, S.C. 123, 45 S.L.R. 111, where the present practice of dispensing entirely with the use of the words 'and reduced,' and ordering advertisement once in the *Edinburgh Gazette* was adopted. (This case seems only to have been reported because the Court was there refusing to confirm an alternative scheme.) The reporter has since found many unreported cases of the class under consideration dealt with in both Divisions of the Court in accordance with the case of *Walker Steam Trawl Fishing Company* and not with that of *Glasgow Cotton Spinning Company*.

"The usual order pronounced by the

English Courts in such cases is correctly given in Palmer's 'Company Precedents' (11th ed.), part I, p. 1297, as follows—'. . . And it is ordered that notice of the registration by the Registrar of Companies of this order and of the said minute be published as follows, that is to say, once each in the *London Gazette* and the (*other newspapers*) within ten days after such registration, and it is ordered that the words "and reduced" form part of the title of the said company for one month from the date of this order.' The company has also to use the words pending the proceedings—a period of usually more than six months, though this is sometimes dispensed with on cause shown, supported by affidavit."

The Court pronounced this interlocutor—

" . . . Confirm the reduction of capital resolved on by the special resolution passed at the extraordinary general meeting of the company held on the 2nd day of November 1915, and confirmed at the extraordinary general meeting held on the 17th day of November 1915, as set forth in the petition: Approve of the minute set forth in the petition: Dispense altogether with the words 'and reduced' as part of the name of the company: Direct registration of said confirmation order and minute by the Registrar of Joint Stock Companies, and on the said order and minute being registered by the said Registrar direct notice of such registration to be given by advertisement, once in the *Edinburgh Gazette*, and once in each of the *Scotsman* and the *Aberdeen Journal* newspapers, and decern."

Counsel for Petitioners—D. R. Scott.
Agents—Alex. Morison & Company, W.S.

Thursday, January 20.

FIRST DIVISION.

[Lord Ormidale, Ordinary.]

GEBRUDER VAN UDEN v. BURRELL.

Diligence—Arrestment—War—Arrestments on Dependence—Arrestments Used before Outbreak of War.

Arrestments, on the dependence of an action at the instance of an enemy pursuer against a British defender, laid on before the outbreak of war, were recalled after the outbreak thereof.

Partnership—War—Alien Enemy—Trading with the Enemy Proclamation, 5th August 1914—Sole Partners—Firm of Dutch Pursuers Individually Interested in Business Carried on in Germany.

In an action against a British subject at the instance of a Dutch firm carrying on business in Holland, it was admitted that the sole partners of the firm were also individually interested in, though not the sole partners of, a firm which carried on business in Germany. Held that the pursuers were