

in order to avoid liability for future calls, and by the device of substituting in his place a person who was utterly impecunious, the respondent must be held *prima facie* to have exercised a right which belonged to him as the owner of the shares in terms of the statutory constitution of the company as expressed in the articles of association then in force, and that in so acting the respondent is not proved to have violated his duty as a director either by using, or by failing to use, from a selfish motive some power which had been entrusted to him as a director for the purpose of being used by him with a single eye to the welfare of the company and its shareholders. The conclusion at which I have arrived in regard to this matter does not seem to me to raise any question of general importance or to suggest any necessity for legislative interference. If it is thought that directors of companies ought not to act as the respondent did, shareholders have the remedy in their own hands by defining more carefully in their articles of association the standard of conduct which they expect from their directors. If the question had been an entirely novel one there would have been much to say for the view that a prohibition such as the petitioner seeks to enforce against the respondent might well be implied in the appointment of every director. It seems to me, however, that looking to the decisions on this branch of the law and to the general understanding as to the rights and duties of directors, it would serve no good purpose to introduce by implication a condition which, if really useful and beneficial, would have been established long ago either by judicial decision or by an alteration on the ordinary form of the articles of association adopted by registered companies.

I accordingly agree with the majority of your Lordships.

The Court refused the prayer of the petition.

Counsel for the Petitioner—Chree, K.C.—Wark. Agents—J. & J. Galletly, S.S.C.

Counsel for the Respondent—J. Crabb Watt, K.C.—Lippe. Agents—W. B. Rankin & Nimmo, W.S.

Friday, July 14.

FIRST DIVISION.

ROBERT ADDIE & SONS' COLLIERIES, LIMITED AND REDUCED, PETITIONERS.

Company—Process—Reduction of Capital—Petition for Confirmation—Prayer—Objecting Creditors—The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 49.

In a petition for confirmation of a reduction of capital of a company it is necessary that the prayer distinguish between the different steps of process set out in section 49 of the Companies

(Consolidation) Act 1908, which deals with objections by creditors and settlement of list of objecting creditors. *Form of prayer.*

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), section 49, enacts—*“Objections by creditors, and settlement of list of objecting creditors.—(1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction. (2) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction. (3) Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount, that is to say—(1) If the company admits the full amount of his debt or claim, or though not admitting it is willing to provide for it, then the full amount of the debt or claim; (2) if the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.”*

Robert Addie & Sons' Collieries, Limited and Reduced, *petitioners*, presented a petition for confirmation of a reduction of capital resolved upon by special resolution duly passed at an extraordinary general meeting of the company held on 27th March 1916 and confirmed at an extraordinary general meeting of the company held on 18th April 1916.

The petition narrated the relevant clauses of the memorandum and articles of association, and set forth the special resolution above referred to, and contained the following prayer:—“May it therefore please your Lordships to appoint intimation of this petition to be made on the walls and in the minute-book in common form, and to be advertised once in the *Edinburgh Gazette* and once in the *Glasgow Herald* newspaper, and to allow all concerned to lodge answers within eight days after such intimation and advertisement, and on resuming consideration of this petition, to fix a date as the date at which every person entitled to any debt or claim against the company within the

meaning of section 49 of the Companies (Consolidation) Act 1908 shall be entitled to object to the proposed reduction of the company's capital; and to fix the date on or before which the creditors of the company not entered on the list of creditors to be made up in terms of the said section are to claim to be entitled to object, or are to be excluded from objecting to the proposed reduction, and to appoint advertisement of the petition, and of the dates so fixed, to be made once in each of the *Edinburgh Gazette* and *Glasgow Herald* newspaper; to settle the said list as the list of creditors entitled to object to the proposed reduction of capital, to find that they have either consented to the reduction, or that their debts have either been settled, discharged, or provided for, and to confirm the reduction of capital as resolved on by the special resolution passed at an extraordinary general meeting of the company held on 27th March 1916, and confirmed at an extraordinary general meeting of the company held on 18th April 1916, to fix the date until which the company shall add to its name the words 'and reduced,' to approve of the minute set forth in the petition, and to appoint the said minute, and the final deliverance of your Lordships to follow hereon, to be registered by the Registrar of Joint Stock Companies, and to appoint intimation of such registration to be made in the *Edinburgh Gazette*, and to decern; and to do further or otherwise in the premises as to your Lordships shall seem proper."

Objection was taken by the Court to the terms of the prayer in respect that it did not distinguish the various steps of process indicated in the Companies (Consolidation) Act 1908, sec. 49. The petitioners thereupon proposed to amend the prayer to read as follows:—"May it therefore please your Lordships to appoint intimation of this petition to be made on the walls and in the minute-book in common form, and to be advertised once in the *Edinburgh Gazette* and once in the *Glasgow Herald* newspaper, and to allow all concerned to lodge answers within eight days after such intimation and advertisement, and on resuming consideration of this petition, to fix the date with reference to which the list of creditors of the company within the meaning of section 49 of the Companies (Consolidation) Act 1908 shall be made up, to appoint the petitioners to lodge in process a list of such creditors entitled to object to the proposed reduction of the company's capital; and to fix the date on or before which the creditors of the company not entered on the list of creditors to be made up in terms of the said section are to claim to be so entered, or are to be excluded from the right of objecting to the proposed reduction, and to appoint advertisement of the petition, and of the dates so fixed, to be made once in each of the *Edinburgh Gazette* and *Glasgow Herald* newspaper; to settle the said list as the list of creditors entitled to object to the proposed reduction of capital, to dispense with the consents of creditors entered on the list whose debts or claims are not discharged or determined and who do not

consent to the reduction, and that, in terms of section 49 (3) of the said Act, to find that the consent of every creditor entitled to object to the reduction has been obtained, or that their debts or claims have been discharged or have determined or have been secured, and to confirm the reduction of capital as resolved on by the special resolution passed at the extraordinary general meeting of the company held on 27th March 1916, and confirmed at the extraordinary general meeting of the company held on 18th April 1916, to fix the date until which the company shall add to its name the words 'and reduced,' to approve of the minute set forth in the petition, and to appoint the said minute, and the final deliverance of your Lordships to follow hereon, to be registered by the Registrar of Joint Stock Companies, and to appoint intimation of such registration to be made in the *Edinburgh Gazette*, and to decern; and to do further or otherwise in the premises as to your Lordships shall seem proper."

The Court allowed the proposed amendment, fixed the 30th day of June as the date with reference to which the list of creditors of the company within the meaning of section 49 of the Companies (Consolidation) Act 1908 should be made up at the sight of Sir George M. Paul, C.S., and remitted to him to inquire into and report on the regularity of the procedure and the facts set forth in the petition; appointed the petitioners to lodge in process on or before the 21st July 1916 a list of such creditors entitled to object; also fixed the 2nd day of August 1916 as the date on or before which the creditors of the company not entered on the list of creditors to be made up in terms of the said section were to claim to be so entered, or were to be excluded from the right of objecting to the proposed reduction. The Court also appointed advertisement of the petition and of the dates above fixed.

Counsel for the Petitioners—R. C. Henderson. Agents—Tods, Murray, & Jamieson, W.S.

HOUSE OF LORDS.

Tuesday, July 25.

(Before Lord Parker, Lord Sumner, and Lord Wrenbury.)

ROWTOR STEAMSHIP COMPANY,
LIMITED v. LOVE & STEWART,
LIMITED.

(In the Court of Session, December 7, 1915,
53 S.L.R. 280, 1916 S.C. 223.)

Ship—Charter-Party—Lay-Days—Demurrage—Construction of Printed Charter-Party with Written Interlimitations as Affecting Lay-Days and the Exceptions to the Running thereof.

The lay-day and demurrage clause of the charter-party of a ship chartered for the carriage of pit props ran as fol-