

a petition, based on a special resolution of the company duly confirmed, craving an order for the winding up of the company by the Court.

The *petition* stated—“ . . . “There has for some time been considerable friction in the company as to the conduct of its business. This friction has seriously impaired the proper conduct of the business and has threatened, and still threatens, to ruin the prospects of continuing successfully to carry on the business of the company. In consequence of this friction, on 2nd October 1916 a requisition was addressed to the secretary of the company by Mr James D. Mackintosh, a shareholder in the company, requesting the secretary to convene an extraordinary general meeting of the company in terms of section 68 of the Companies (Consolidation) Act 1908. The requisition stated that the object of the meeting to be convened was to receive and, if so advised, to pass and confirm the following special resolution, viz.—‘That the company be wound up by the Court.’ . . .”

On 18th November the petitioners and Mr James D. Mackintosh presented a *note*, which stated—“ . . . That immediately after the resolution to have the company wound up by the Court had been passed and confirmed the friction caused by the two shareholders, as set forth in the petition, was brought to an end by the purchase from them by the said James Dunbar Mackintosh of their entire holding in the company for the sum of £2400 sterling. That transfers of these shares have now been delivered to the said James Dunbar Mackintosh, and the company and the said James Dunbar Mackintosh are desirous that the said transfers and other four transfers for one share each by shareholders lodged with the company for registration should be duly registered with the consent of the liquidator to be appointed by the Court. . . . The shares of the said company are fully paid up, and therefore the creditors of the company have no interest in the matter as to who is the holder of these shares, but it is important that the transfers in favour of the said James Dunbar Mackintosh and the other four transfers before mentioned should be registered. . . .”—and asked for an order that the six transfers be registered in the register of shareholders with the consent of the liquidator.

On 21st November, in the Single Bills, the petition having been duly intimated and advertised without any answers being lodged, counsel moved that the prayer of the petition and of the note be granted, and in connection with the latter cited *Benhar Coal Company, Limited*, 1879, 6 R. 706.

The Court pronounced this interlocutor—

“Appoint Mr Malcolm Henderson, C.A., Kilmarnock, to be official liquidator of the said company, in terms of and with the powers conferred by the said Acts, and specially with power to exercise all or any of the powers specified in sections 95, 96, and 97 of the Companies (Consolidation) Act 1908, without the sanction or the interven-

tion of the Court: Appoint the official liquidator to find caution for his actings, intromissions, and management before extract, and decern: Further, having considered the note lodged by the petitioning company and James Dunbar Mackintosh, solicitor, Kilmarnock, craving authority to register the transfer of shares mentioned therein, grant the prayer of the said note, and decern.”

Counsel for the Petitioners — Lippe.  
Agents—Macpherson & Mackay, S.S.C.

Thursday, November 30.

## SECOND DIVISION.

### SCOTTISH POWER COMPANY, LIMITED, PETITIONERS.

*Company—Process—Capital—Reduction of Capital—Application, Prior to Petition for Confirmation, for Authority to Dispense with Words “and Reduced” — Competency—Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 48.*

A company which had presented a petition for sanction to a scheme of arrangement with its creditors, presented a note asking authority meantime to dispense with the addition to its name of the words “and reduced.” The note stated that the scheme of arrangement involved the reduction of capital; that a special resolution for reducing the share capital had been passed and confirmed; that a petition for confirmation of the reduction and dispensation from the necessity of adding to the company’s name the words “and reduced” was immediately to be presented.

The Court *received* the note, and, in the circumstances, *granted* its prayer.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 48, enacts—“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 addition of the words ‘and reduced.’”

On 29th November the Scottish Power Company, Limited, *petitioners*, presented a note asking authority to dispense in the meantime with the addition of the words “and reduced” to the name of the company.

The company had on 14th November presented a petition for sanction to a proposed scheme of arrangement with its creditors, which scheme involved a reduction of the existing capital of the company.

The note stated—"3. . . . A special resolution of the company for reducing its share capital as provided in the scheme has been duly passed and confirmed at meetings of the company held on 13th and 29th November 1916. . . . A petition to your Lordships for confirmation of such reduction of capital and for an order dispensing altogether with the addition of the words 'and reduced' to the name of the company will be presented immediately. 4. The present share capital of the company is £158,000, and the reduction above mentioned consists only in the cancellation of 8000 B shares of £1 each fully paid, which are at present held by the trustees of the noteholders, and which under the said scheme are agreed to be given up. On the other hand, under the scheme the share capital of the company is to be increased by £100,000 in preference shares of £1 each, and a special resolution of the company making the said increase was duly passed and confirmed on 13th and 29th November. . . . The net result therefore is that the capital of the company instead of being reduced is really increased from £158,000 to £250,000. . . . 5. The use of the words 'and reduced' would be injurious to the business of the company, and in view of the facts above set forth, which show that the capital of the company is increased by a net amount of £92,000, the use of the said words does not appear to the company to be required in the interests either of its creditors or of the public."

In the Single Bills counsel, in moving that the prayer of the note be granted, admitted that it was unusual to have a note with reference to a process not yet in Court, but contended that the rules of procedure were sufficiently elastic to allow of it, and referred to Buckley on the Companies Acts (9th ed.), pp. 142-3, and *John T. Clark & Company, Limited*, 1911 S.C. 243, 48 S.L.R. 154.

The Court granted the prayer of the note.

Counsel for the Petitioners—Macmillan, K.C.—Lillie. Agents—Guild & Shepherd, W.S.

Friday, March 9, 1917.

## SECOND DIVISION.

[Sheriff Court at Ayr.]

### MAYBOLE PARISH COUNCIL v. KIRKOSWALD PARISH COUNCIL.

*Poor—Settlement—Constructive Residence of Husband Living Apart from Wife and Family on Account of Occupation.*

A farm labourer, who worked in one parish, had his wife and child residing with his parents in another parish, there being no suitable dwelling accommodation for them where he worked. He paid no rent to his parents. He visited his

wife twice a week regularly, and he brought his wages to her. *Held* that the labourer was constructively resident in the parish in which his wife and child lived.

The Parish Council of the Parish of Maybole, *pursuers*, presented a petition in the Sheriff Court at Ayr wherein they craved the Court to grant a decree ordaining the Parish Council of the Parish of Kirkoswald, *defenders*, to pay the pursuers the sum of £28, 13s., and also to free and relieve the pursuers of all future alimentary or other advances which the pursuers might make on behalf of the paupers, Ann M'Whirter or M'Geachie and her three children, so long as any of them might require parochial relief and their parochial settlement continued to be in the parish of Kirkoswald.

The facts of the case are taken from the opinion of Lord Salvesen:—"The facts in this case have been accurately set forth by the Sheriff-Substitute. The whole case turns on whether James M'Geachie, whose wife and children are the paupers, was resident for the purpose of acquiring a settlement in the parish of Maybole from Christmas 1911 till Whitsunday 1912. M'Geachie was married on 15th September 1911, and from Martinmas he and his wife resided with his parents at Smithstone in the parish of Maybole. A room was reserved for the newly-married pair, and there they kept such effects as they had. M'Geachie did labouring work of a casual kind until Christmas 1911, when he got a job at the farm of Cassington, two or three miles from Smithstone, and remained there till the Whitsunday following. There was no cothouse to which he could have transferred his wife; and he himself slept in a room in the farmhouse at Cassington along with several farm hands. His work required him especially during the winter to sleep at Cassington, but he came to Smithstone regularly on Saturday evenings, and generally stayed over night. He also visited his wife on Tuesday evenings, and sometimes stayed the night. After the birth of his child on 25th February 1912 his visits to Smithstone were more frequent. He brought his wages to his wife every week, and they were spent by her for her maintenance and that of the child when it arrived."

The pursuers pleaded—"1. The said James M'Geachie having been born in the parish of Kirkoswald, and having at the date when he became chargeable no residential settlement, that parish is the settlement of and liable for the maintenance of his pauper widow and children. 2. The settlement of the said Ann M'Whirter or M'Geachie and her children, William M'Geachie, Barbara M'Geachie, and Elizabeth M'Geachie, being in the parish of Kirkoswald, the pursuers are entitled to decree as craved."

The defenders pleaded—"1. The said James M'Geachie having at the date when he became chargeable had his settlement in Maybole parish, the defenders are not liable for the maintenance of his pauper widow and children. 2. The settlement of the said Ann M'Whirter or M'Geachie and her said children being in the parish of Maybole,