Court is precluded from exercising an equitable jurisdiction altogether independent of an application to the *nobile officium*, and that jurisdiction has been exercised favourably towards a pursuer who was in a somewhat similar position to the petitioner. So far as the merits of the present case are concerned, like your Lordship in the chair I desire to express no opinion one way or other. The matter may come up in some subsequent procedure.

LORD ORMIDALE—I agree. I look upon the matter that has been submitted for the consideration of the Court as merely the construction of the trust-disposition and settlement. That is not a matter for the equitable power that rests in the Inner House of the Court of Session. It is simply a question of law, and is just as competent in the Outer House as any other question of law, and therefore I entirely agree with your Lordships that we cannot exercise the *nobile officium* as we are asked to do with the view apparently of giving to this trust-disposition an interpretation more favourable to the petitioner than is warranted in law. So far as is disclosed in the petition the trustees and the beneficiary appear to be at variance. The trustees have not indicated their attitude. The petition discloses no circumstances of distress and nothing making the administration of the trustees difficult—considerations in which it may be possible for the Court in virtue of the *nobile officium* to exercise a jurisdiction which in strict law might not be warranted.

The Court refused the prayer of the petition.

Counsel for the Petitioner — Jamieson. Agents—J. & J. Ross, W.S.

Tuesday, May 16.

FIRST DIVISION.

[Lord Ashmore, Ordinary.

M'CLYMONT'S TRUSTEES, PETITIONERS.

Trust—Trusts (Scotland) Act 1921 (11 *and* 12 *Geo. V, cap.* 58), *sec.* 24—*Petition for Authority to Complete Title—"Entitled to the Possession for his Own Absolute Use."*

The Trusts (Scotland) Act 1921, sec. 24, enacts that "Any person who shall be entitled to the possession for his own absolute use of any heritable property or moveable or personal property the title to which has been taken in the name of any trustee who has died or become incapable of acting without having executed a conveyance of such property . . . may apply by petition to the Court for authority to complete a title to such property in his own name. . . ."

Held that the above enactment did not apply to a body of trustees who, though beneficiaries in fee under the testator's settlement, were not entitled to the possession of the property for their own absolute use.

This petition was presented by William M'Creath and others, trustees under "The M'Clymont Trust," *petitioners*. The circumstances in which it was brought are sufficiently set forth in the opinion of the Lord Ordinary (ASHMORE) *infra*.

Opinion.—"This is a petition by the trustees of 'The M'Clymont Trust' for authority to complete title in terms of section 24 of the Trusts (Scotland) Act 1921 to the trust estate of the late Mrs Ross.

"The circumstances under which the petition is presented are as follows:—The late Mrs Ross, by holograph letters dated in 1879 and 1881, appointed trustees to hold £3000 provided by her, with instructions (*a*) to make payment of the free annual proceeds to five liferenters and the survivors and survivor, and (*b*) to convey the principal sum to the trustees under the trust settlement of her uncle, the late Archibald MacClymont, to be applied for the purposes of the trust created by his settlement.

"The trustees nominated by Mrs Ross having died without assuming new trustees, on application to the Court new trustees were appointed.

"All the trustees have now died without assuming new trustees, and all the liferenters under Mrs Ross's trust are also dead.

"The sum of £3000 provided by Mrs Ross as aforesaid has been partly invested by her trustees in the purchase of heritable properties and in loans on heritable security, and the titles to these properties and securities have been completed in name of Mrs Ross's trustees.

"In the events that have happened the petitioners, as the trustees acting under 'the M'Clymont Trust,' are entitled to a conveyance of Mrs Ross's said trust estate to be applied by them for the purposes of the M'Clymont Trust.

"In these circumstances counsel for the petitioners maintained that section 24 of the Act of 1921 is applicable.

"In my opinion authority to complete title in the summary method of the statutory provision founded on without reconstituting the lapsed trust is inappropriate in the circumstances.

"The person who can take advantage of section 24 must either himself be entitled to the possession for his own absolute use of property which was vested in the trustees, or must have derived right from someone so entitled.

"Now the petitioners are not in either of these positions. In the first place their right to the property is not absolute or unlimited. They are entitled to possession of it only as trustees for the purposes of the trust created by the will of the late Archibald MacClymont.

"In that respect the case is in contrast with the case of *Trotter*, 1895, 3 S.L.T. 57.

"Secondly, the alternative provision of section 24 is inapplicable, and indeed counsel for the petitioners did not found on it. I may explain, however, that in my opinion it represents an extension of the scope of the analogous section, viz., section 14, of the Trusts Act 1867, so as to include the assignee of a beneficiary under a lapsed trust—an

extension, no doubt, consequent on the decision in *MacKnight* (1875, 2 R. 667) to the effect that a petition under section 14 at the instance of an assignee of the proper beneficiary under the trust was incompetent. In the present case, however, the petitioners do not, and as I think cannot, found on a derivative right of the kind referred to in section 24.

"For the reason which I have given I must refuse the remedy sought by the petitioners."

The petitioners reclaimed, and cited the cases of *MacKnight*, 2 R. 667, and *Trotter*, 1895, 3 S.L.T. 57.

At advising—

LORD PRESIDENT—The short method of completing title by a beneficiary under a lapsed trust which was provided by the now repealed provisions of the Trusts Act of 1867 is re-enacted in an altered form in the recent Act of 1921. The right to resort to it is by the new statute conferred upon, *inter alios*, any person "entitled to the possession for his own absolute use of" any property which stands in the name of the lapsed trust awaiting conveyance in his favour. The petitioners say that they are in a position to which this description applies; and so they are, unless the fact that they are themselves a body of trustees takes them out of it. They are the ultimate beneficiaries under the trust settlement of the testatrix, and they are undoubtedly entitled to the possession of the property which it will be their duty to apply to the purposes of the charitable endowment which they represent. The difficulty is to get over the words "for his own absolute use" which the draftsman of the statute has adjected to the expression "entitled to the possession." The M'Clymont trustees though beneficiaries in fee under the testator's settlement are not entitled to the possession of this property for their own absolute use, but for purposes defined by the settlor of the M'Clymont charity. It may be that these words are inserted only to mark the case provided for as being one in which the administrative purposes of the lapsed trust have been exhausted and nothing remains to be done but to denude in favour of the beneficiary ultimately entitled. I cannot myself see any reason in policy or in the sense of the thing why the benefits of the statute should be denied to such beneficiaries as the present petitioners. But whatever may have been the intention underlying the words "for his own absolute use," I agree with the Lord Ordinary in thinking that they make it impossible to include the petitioners within the description of persons entitled to use the statutory method of completing title.

LORDS SKERRINGTON and CULLEN concurred.

LORD MACKENZIE did not hear the case.

The Court refused the reclaiming note.

Counsel for Petitioners—Brown, K.C.—Aitchison. Agents — Bonar, Hunter, & Johnstone, W.S.

Saturday, May 20.

FIRST DIVISION.

ARDEN COAL COMPANY, LIMITED, PETITIONERS.

Company—Reorganisation of Share Capital — Resolution to Consolidate Different Classes of Shares — Whether Resolution Passed by Requisite Majority of Shareholders of Particular Class—"A Majority in Number of Shareholders of that Class Holding Three-fourths of the Share Capital of that Class"—Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 68), *sec.* 45.

The Companies (Consolidation) Act 1908, sec. 45, provides that no preference attached to any class of shares shall be interfered with "except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class, and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed."

Held that a resolution passed by one-half of the preference shareholders who represented three-fourths of the share capital of their class did not comply with the provisions of the Act.

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: Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class."

On 3rd April 1922 the Arden Coal Company, Limited, Glasgow, presented a petition under section 45 of the Companies (Consolidation) Act 1908 for confirmation of a special resolution reorganising the share capital of the company and modifying the company's memorandum of association.

At the date of the presentation of the petition there were issued preference shares (held by twelve members), ordinary shares, and founders' shares. At the first meeting at which the resolution for reorganisation was passed only six out of the twelve preference shareholders were present or represented. These six, however, held more than three-fourths of the share capital of that class, and unanimously agreed to the resolution, which was as follows:—"That the share capital of the company, amounting to