£12,000, consisting of 6000 preference shares of £1 each, 4500 ordinary shares of £1 each, and 1500 founders' shares of £1 each, be and is hereby reorganised by the consolidation of all the said three classes of shares into one class of 12,000 ordinary shares of £1 each." The remaining six preference shareholders had granted proxies favourable to the resolution, but these proxies arrived too late to be taken into account. At the subsequent meeting the whole of the preference shareholders were present or represented, and unanimously agreed to the confirmation of the resolution.

On 13th April 1922 the Lord Ordinary officiating on the Bills remitted to Robert Miller, Esq., S.S.C., to inquire into the regularity of the procedure and the facts and circumstances. In his report the reporter raised the question for the decision of the Court whether (the total number of the preference shareholders being twelve) a resolution passed by six preference shareholders holding more than three-fourths of the capital of that class was sufficient compliance with the provisions of section 45 of the Act.

No answers having been lodged counsel was heard on the petition and report. The following authorities were referred to—*California Redwood Compony, Limited*, 13 R. 335; *in re Schweppes, Limited*, [1914] 1 Ch. 322, *per* Swinfen Eady, L.J., at p. 331; Stiebel's Company Law (2nd ed.), vol. i, p. 830, and the cases there referred to.

LORD PRESIDENT—The reporter has raised a question as to whether the preliminaries prescribed by section 45 of the Companies (Consolidation) Act 1908 have been complied with. The case is one of the reorganisation of a company's share capital which is divided into classes carrying various degrees of preference and priority; and the section prescribes that before the reorganisation can be carried out there must be, in the case of any class of shares so interfered with, "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." The question arises with regard to the first of the two prescribed meetings. It was attended by exactly one-half of the total shareholders of the particular class affected and they represented three-fourths of the share capital of their class. They passed the resolution unanimously. But unless the expression "shareholders of that class" as used in relation to the first of the two meetings is to be read as having adjected to it some such words as "present at the meeting," it is obvious that the resolution was not passed by a majority at all. I think perhaps if the draftsman of the statute had put in before the words "shareholders of that class" the word "the," then the possibility of raising the contention which Mr Stevenson has made to us would have been precluded. In its absence it is perhaps just possible to maintain the view which he presented, although I think it is really untenable. The effect of the reorganisation is to alter the proprietary rights of a particular class of shareholders. If the statute had intended that the numerical majority at the meeting should be a majority only of those shareholders of the class who were present at the meeting either in person or by proxy—if proxies were admissible under the articles of association of the company—it is altogether incredible that the statute should not have said so in definite terms. It does so in other cases where that is the statutory intention. Accordingly it appears to me that the effect of the proviso in section 45 is not ambiguous. In the present case the first meeting did not comply with the terms of the proviso and the only course we can take is to give the petitioners an opportunity of convening the necessary meetings afresh and coming back to us before the petition can be disposed of.

LORDS MACKENZIE, SKERRINGTON, and CULLEN concurred.

The Court continued the petition.

Counsel for Petitioners—J. Stevenson. Agents—J. W. & J. Mackenzie, W.S.

Friday, May 26.

SECOND DIVISION.

THORNHILL DISTRICT COMMITTEE *v.* JAMES M'GREGOR & SON AND R. & C. H. DICKIE.

Sheriff—Jurisdiction—Appeal from Sheriff-Substitute to Sheriff—Competency—Road—Expenses of Extraordinary Traffic—Recovery by Road Authority—Roads and Bridges (*Scotland*) *Act* 1878 (41 *and* 42 *Vict. cap.* 51), *sec.* 57, *as Amended by the Local Government* (*Scotland*) *Act* 1908 (8 *Edw. VII, cap.* 62), *secs.* 24 *and* 31.

In an action brought under section 57 of the Roads and Bridges (Scotland) Act 1878, to recover the expense, exceeding £50, of reparing damage done to a road by extraordinary traffic, *held* that an appeal to the Sheriff against a final judgment of the Sheriff-Substitute was competent.

The Roads and Bridges (Scotland) Act 1878, (41 and 42 Vict. cap. 51), section 57, enacts—"Where by the certificate of their surveyor or district surveyor it appears to the authority which is liable to repair any highway that having regard to the average expense of repairing highways in the neighbourhood extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by excessive weight passing along the same or by extraordinary traffic thereon, such authority may recover in a summary manner before the sheriff (whose decision shall be final), from any person by whose order the excessive weight has been passed or the extraordinary traffic has been conducted, the amount of

such extraordinary expenses as may be proved to the satisfaction of the sheriff to have been incurred by such authority by reason of the damage arising from such excessive weight or traffic as aforesaid. . . ."

The Local Government (Scotland) Act 1908 (8 Edw. VII, cap. 62) enacts—Section 24—"Section fifty-seven of the Roads and Bridges (Scotland) Act 1878 (which relates to the recovery of expenses of extraordinary traffic) shall be amended as follows:—(*a*) Expenses under that section may be recovered, if not exceeding fifty pounds, before the sheriff, whose decision shall be final, and, if exceeding that sum, either before the sheriff, subject to an appeal to the Court of Session, or in the Court of Session, and such expenses may notwithstanding anything in the said Act be recovered from a county council: . . . . (*c*) There shall be substituted . . . for the words 'satisfaction of the sheriff' the words 'satisfaction of the Court.'" Section 31—"The Acts specified in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule, and so much of any Act as is inconsistent with this Act is also hereby repealed.

"SCHEDULE.

"*Enactments Repealed.*

Session and Chapter.	Short Title.	Extent of Repeal.
41 and 42 Vict. cap. 51.	Roads and Bridges (Scotland) Act 1878.	Section fifty-seven, the words 'in a summary manner before the sheriff (whose decision shall be final).'

. . . ."

The Thornhill District Committee of the County Council of the County of Dumfries, *pursuers*, brought an action in the Sheriff Court at Ayr against James M'Gregor & Son, wood merchants, Ayr, and also against R. & C. H. Dickie, grain merchants, Drumlanrig Street, Thornhill, with whom James M'Gregor & Son had entered into a contract for the haulage of wood purchased by James M'Gregor & Son, *defenders*, in which the pursuers sought decree against the defenders jointly and severally or severally for payment of the sum of £468, 15s. 8d., being the amount of the extraordinary expenses within the meaning of section 57 of the Roads and Bridges (Scotland) Act 1878 (41 and 42 Vict. cap. 51) incurred by them in repairing a portion of a road vested in their management in consequence of the extraordinary traffic conducted or excessive weight imposed thereon by the defenders.

Defences were lodged by both defenders.

On 31st January 1922 the Sheriff-Substitute (BROUN) after a proof pronounced the following interlocutor:—". . . Finds in fact . . . (11) that the pursuers have failed to prove to the satisfaction of the Court the amount of the extraordinary expenses incurred by them in repairing the said portion of the said district road by reason of the said damage: Finds in law that the pursuers are not entitled to decree against the defenders for the sum sued for: Therefore assoilzies the defenders from the conclusions of the initial writ, and decerns. . . ."

The pursuers appealed to the Sheriff (LYON MACKENZIE), who on 23rd March 1922 dismissed the appeal as incompetent.

Note.—"An objection was taken on behalf of the defenders and respondents R. & C. H. Dickie to the competency of the appeal. They maintain that on a sound construction of the Roads and Bridges (Scotland) Act 1878, sec. 57, as amended by the Local Government (Scotland) Act 1908, sec. 24, there is no appeal from the Sheriff-Substitute to me, and that the only appeal competent is to the Court of Session. In support of that contention they referred to the following Sheriff Court decisions:—*Berwickshire Road Trustees* v. *Martin*, 1895, 1 Scot. Law Rev. 387; *Commissioners of Clydebank* v. *Kennedy & Son*, 1896, 12 Scot. Law Rev. 342; and also to *Strichen Parish Council* v. *Goodwillie*, (1908) S.C. 835, 45 S.L.R. 684; and *Allen & Sons Billposting, Limited* v. *Edinburgh Corporation*, (1909) S.C. 70, 46 S.L.R. 65.

"On the other hand the pursuers and appellants maintained that the present appeal was rendered competent by the terms of section 24 of the Local Government (Scotland) Act 1908, and they referred to the *Highland District Committee of Perth County* v. *Rattray*, (1913) S.C. 794, 50 S.L.R. 531.

"It is not at all clear whether section 24 (*a*) of the 1908 Act is to be read as modifying the actual terms of section 57 of the 1878 Act, or merely to be read as an addition thereto. I think the latter is the proper construction.

"Under the Roads and Bridges Act 'sheriff' is defined as including sheriff-substitute, and section 57 thereof, unmodified by subsequent legislation, conferred exclusive jurisdiction upon the judge who tried any claim under the Act, and excluded review in the case of the sheriff-substitute by the sheriff.

"I am of opinion that the proper interpretation of section 24 of the Local Government Act is that it in no way modifies the exclusive jurisdiction of the judge of first instance in the Sheriff Court to determine the cause except in these particulars—(1) Where the expenses recovered did not exceed £50 the decision of the sheriff, which by the principal Act means either the sheriff or sheriff-substitute, continues to be final as formerly enacted. (2) Where the expenses recovered exceed £50 before the sheriff, his decision is subject to an appeal, but only to the Court of Session. (3) Expenses exceeding £50 may be recovered by proceedings begun *ab initio* in the Court of Session as an ordinary action, with right to appeal from the Lord Ordinary's judgment to the Inner House.

"Nowhere in section 24 has the exclusive jurisdiction of the sheriff who tries the cause in the Sheriff Court been modified, and accordingly I am of opinion that an appeal from the sheriff-substitute to the sheriff cannot be inferred by implication, especially when the procedure in an appeal to the Court of Session from such judgment is clearly defined in the amending statute.

"It does not appear to me that the view which I have expressed is in any way inconsistent with the judgment in the *Highland District Committee of Perth County* v. *Rattray*. In that case the question raised was the competency of the action, and accordingly the procedure there followed seems to have been perfectly regular, and not inconsistent with the code of legislation laid down in the Roads and Bridges (Scotland) Act 1878, as amended by the Local Government (Scotland) Act 1908, as the contention of the defenders was that the proceedings in fact were not being taken under statutory authority. This view is strengthened by the decision in *Allen & Sons Billposting, Limited* v. *Edinburgh Corporation, supra*.

"I have accordingly dismissed the appeal with expenses."

The pursuers appealed, and argued—The appeal was competent. The Local Government (Scotland) Act 1908 (8 Edw. VII, cap. 62) did not add to but altered the terms of the Roads and Bridges (Scotland) Act 1878 (41 and 42 Vict. cap. 51). Section 31 of the Act of 1908 repealed the words "in a summary manner before the sheriff (whose decision shall be final)," occurring in section 57 of the Act of 1878, and section 24 of the Act of 1908, which amended section 57 of the Act of 1878, omitted the expression "in a summary manner." Further, sub-section (c) of section 24 of the Act of 1908 substituted for the words "satisfaction of the sheriff" the words "satisfaction of the court."

Moreover, the only applicable procedure was that laid down in the Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51)—section 39 of the Act of 1907. By section 27 of the Act of 1907 an appeal to the sheriff was competent against the judgment of the sheriff-substitute and Rules 92 and 93 of the First Schedule of the Act of 1907 regulated appeals from the sheriff to the Court of Session.

Counsel for the defenders and respondents stated that they did not support the judgment of the Sheriff.

The Court, which consisted of the LORD JUSTICE-CLERK, LORD SALVESEN, and LORD ORMIDALE (LORD HUNTER being absent), without giving opinions, pronounced the following interlocutor:—

"The Lords having considered the appeal and heard counsel for the parties, it being stated in the course of the discussion that the defenders and respondents do not now support the judgment of the Sheriff appealed against, Sustain the appeal, recal the interlocutor of the Sheriff dated 23rd March 1922, and remit the cause back to him to proceed therein as accords. . . ."

Counsel for the Appellants (Pursuers)—Christie, K.C.—Macgregor Mitchell. Agents—Mackay & Young, S.S.C.

Counsel for the Respondents (Defenders) James M'Gregor & Son—Gilchrist. Agents M. J. Brown, Son, & Company, S.S.C.

Counsel for the Respondents (Defenders) R. & C. H. Dickie—Moncrieff, K.C.—Patrick. Agents—Macpherson & Mackay, W.S.

HIGH COURT OF JUSTICIARY.

Saturday, May 20.

(Before the Lord Justice-Clerk, Lord Salvesen, and Lord Ormidale.)

WADDELL *v.* KINNAIRD.

Justiciary Cases — Procedure — Proof — Admissibility of Evidence — Charge of Theft against Station Employee — Evidence of Statements Made by Accused after Arrest and after being Warned, in Answer to Questions by Stationmaster.

A lampman employed at a railway station was apprehended by a railway police constable on a charge of stealing oil. He was warned by him that anything he said might be used as evidence against him, and thereafter he was taken to the stationmaster, who questioned him in the presence of the constable who had apprehended him and a burgh policeman as to the alleged offence. At his subsequent trial evidence was given as to what had been said by the accused in answer to the stationmaster's inquiries—an objection to the evidence on the ground that the interrogation was of the nature of an official inquisition being repelled by the magistrate. *Held* on appeal (*diss.* Lord Ormidale) that the evidence was admissible.

Thomas Waddell, *appellant*, was charged in the Police Court at Galashiels at the instance of James Moubray Kinnaird, Burgh Prosecutor, *respondent*, upon a summary complaint in the following terms:—"You are charged at the instance of the complainer that on 16th November 1921, from the oil house situated at or near the north signal cabin, Galashiels Station, on the North British Railway in the burgh of Galashiels, you did steal one gallon or thereby of paraffin oil."

The appellant pleaded not guilty.

On 24th November 1921, after evidence had been led, the accused was found guilty as libelled and fined £5, with the alternative of thirty days' imprisonment. On the application of the accused a Case was stated for appeal.

The Case stated—"In the course of the evidence Robert Wilson, railway police constable, testified to having apprehended the accused and taken him to the stationmaster's office, and to having warned him that anything he might say might be used against him. Wilson's evidence was that the warning was given immediately on his charging the accused, and that thereafter they were joined by police constable Kerr, a member of the Galashiels Burgh Police Force, who accompanied them to the stationmaster's office. Wilson also stated that it was one of his instructions not to remove any man from his post on the railway without first acquainting the stationmaster. Wilson gave evidence that in the stationmaster's office he explained to the stationmaster the circumstances under which the accused had been arrested. That the accused