if Gavin survived him, and that Gavin's children were introduced into the destination only to provide for the case of Gavin's failure before taking; they were not substituted but named as institutes conditionally on their father's failure. I think the trustees of James Marshall should have conveyed the lands to Gavin without any mention being made or regard paid to his children. But as Gavin accepted the conveyance from his father's trustees in the terms in which it was expressed, the question has been raised whether that destination is not to be regarded as equivalent to a destination made by Gavin himself. I think it cannot be so regarded. We have no information as to what, if anything, took place in reference to the destination at the time when the conveyance was granted to Gavin by his father's trustees. But it may reasonably be inferred that the trustees in granting the conveyance thought it safest for them to repeat the exact terms of the trust-deed under which they were acting without considering what effect that might have on the ultimate succession, and that Gavin accepted the conveyance offered to him merely as vesting the property in himself. It is not readily to be presumed that he took that mode of settling the succession to himself in the event of his decease, and the fact that he recorded the conveyance and took infeftment only in favour of himself, without reference to any right conferred (or thought to be conferred) on his children militates against the view that he did.

I agree that the questions should be answered, the first in the affirmative and the second in the negative.

LORD MONCREIFF was absent.

The Court answered the first question in the affirmative and the second in the negative.

Counsel for First and Second Parties—Younger. Agents—Macpherson & Mackay, S.S.C.

Counsel for Third Party—Clyde. Agent—L. M'Intosh, S.S.C.

Saturday, June 16.

SECOND DIVISION.

GEORGE MORTON, LIMITED, PETITIONERS.

Company — Reduction of Capital — Capital Lost or Unrepresented by Available Assets — Apparent Surplus in Balance-Sheet — Companies Act 1877 (40 *and* 41 *Vict. c.* 26), *sec.* 3.

A company with a paid-up capital of £50,000 in £1 shares, half preference and half ordinary, lost a sum of £13,500 as the result of a bad debt, and the chairman came forward and surrendered 12,500 ordinary shares in order to meet the loss. The company thereupon resolved to reduce the ordinary capital by 12,500 shares, and presented a petition to the Court to confirm the reduction.

The reporter to whom the Court remitted the petition, reported that a sum of £13,500 had been lost, but that the last balance-sheet of the company, if effect was given to the proposed reduction, showed an apparent surplus of £1811, 1s. 1d. which could be immediately used for payment of dividend. He was therefore of opinion that the capital lost or unrepresented by available assets was £12,500, less £1811, 1s. 1d., or £10,688, 18s. 11d. He also reported that the interests of creditors were not affected.

The Court (*dub.* Lord Moncreiff) *confirmed* the proposed reduction of capital and dispensed with the addition of the words "and reduced" to the company's name.

George Morton, Limited, presented a petition to the Court to confirm a reduction of capital.

There being no opposition to the petition, the Court on 31st May 1900 remitted to Mr C. E. Loudon, W.S., to report as to the regularity of the proceedings, and the reasons for the proposed reduction of capital. From his report it appeared that the petitioners George Morton, Limited, were incorporated on 12th May 1898 under the Companies Acts 1862 to 1890. The company was formed to acquire and carry on the business of George Morton, wine and spirit merchant and bonded warehouse proprietor, Dundee. By the fifth article of the memorandum of association the capital of the company was fixed at £65,000 divided into 35,000 ordinary shares of £1 each and 30,000 preference shares of £1 each. The preference shares conferred the right to a fixed cumulative dividend at the rate of 5 per centum per annum, and were likewise preferential as to capital. Of the said shares, 25,000 ordinary shares and 25,000 preference shares had been issued and fully paid up. The remaining 10,000 ordinary shares and 5000 preference shares were unissued. The Court was asked to confirm a special resolution passed at an extraordinary general meeting of shareholders held on 22nd March 1900, and confirmed at an extraordinary general meeting of shareholders held on 21st April 1900, by which it was resolved "that the company accept a transfer or surrender of the 12,500 ordinary shares of £1 each (fully paid), Nos. 1 to 12,500 both inclusive, standing registered in the name of James Morton, and thereby reduce the capital from £65,000 to £52,500 divided into 30,000 preference shares of £1 each, and 22,500 ordinary shares of £1 each, and that the capital is and shall be reduced accordingly." The company had power to reduce its capital by article 49 of the articles of association. The effect of the reduction proposed was to reduce the paid-up capital from £50,000 to £37,500, and the total capital from £65,000 to £52,500. The reason for reduction of capital was that the company had sustained losses amounting to £12,500, and Mr James Morton, the chairman of the company, resolved to transfer

or surrender 12,500 ordinary shares standing in his name, thus bearing the loss himself instead of allowing the other shareholders to suffer. At the date of the failure of Messrs F. W. & O. Brickmann, whisky merchants, Constitution Street, Leith, that firm were owing to the petitioners the sum of £16,259, 8s. 9d. From this sum, however, fell to be deducted £650, the par value of ordinary and preference shares of the company held by one of the partners of the said firm, Mr F. W. Brickmann, over which the company held a lien in terms of the articles of association. There remained, accordingly a total indebtedness of £15,609, 8s. 9d., the amount of the company's claim in the sequestration of Messrs F. W. & O. Brickmann. It was expected that a dividend would be paid, which would make the total loss not more than £13,500. From an examination of the balance-sheet, as at 22nd February 1890, if effect was given to the proposed reduction, the assets of the company amounted to £87,569 4 11

And the liabilities, deducting £300 at the credit of reserve fund, to 85,758 3 10

Showing surplus assets amounting to . £1,811 1 1

By the Companies Act 1877 (40 and 41 Vict. c. 26), sec. 3, it is provided that "the word "capital," as used in the Companies Act 1867 shall include paid-up capital, and the power to reduce capital conferred by that Act shall include a power to cancel any lost capital or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company."

After stating the facts as above narrated, the reporter proceeded as follows—"It appears to me that at the date of presenting the petition the assets and liabilities should be approximately of equal amount. In this case there is an apparent surplus of assets of £1811, 1s. 1d., which could be immediately utilised for payment of a dividend. I am therefore of opinion that the capital lost or unrepresented by available assets is £12,500, less £1811, 1s. 1d., or £10,688, 18s. 11d.—in round figures, £10,700.

"With reference to this point, the petitioners have brought to my notice a case similar to the present, viz., *The Grianaig Shipping Company, Limited, Petitioners*, which was heard before the First Division of the Court of Session on 23rd December 1899 (S.L.R., vol. 37, p. 260). The petitioners in that case asked for an order confirming the reduction of capital lost or unrepresented by available assets. The reporter brought to the notice of the Court the fact that the proposed reduction of capital exceeded the amount of capital which had been lost, or was unrepresented by available assets, by a sum slightly exceeding £200. The Court, without giving opinions, granted the prayer of the petition.

"It is to be observed, however, that in that case the property of the company consisted of ships, which are not only of fluctuating value, but also tend to diminish in value; and further, that the surplus was inconsiderable in amount.

"I venture, therefore, to submit for your Lordships' consideration whether capital has been lost, or is unrepresented by available assets to the extent stated by the petitioners.

"The company has no borrowed money or debenture or other obligation to the public, other than the trade debts in the ordinary course of business. . . .

"In the present case the interests of the creditors are not affected, and no consent by them is required.

"The proceedings throughout have been regular, and the reasons for the reduction of capital to the extent of £10,700 appear to be good and sufficient, but I am not satisfied that capital is lost or unrepresented by available assets to the extent of £12,500, the amount of capital which the company proposes to cancel.

"Should your Lordships consider that the objection to the confirmation order above stated is not a valid one, I am humbly of opinion that your Lordships may make an order confirming the reduction of the capital of the company, approving the minute of reduction, and on the confirmation order and minute being registered by the registrar of joint stock companies, to direct such notice of the registration of said order and minute to be made as your Lordships shall think fit.

"As the reduction of capital does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, I am of opinion that your Lordships may authorise the petitioners to dispense altogether with the addition of the words 'and reduced' to the company's name."

Argued for petitioner—The Companies Amendment Act 1877 by defining capital as "lost capital or capital unrepresented by available assets or capital in excess of the wants of the company," specified different kinds of capital which companies could deal with independently when exercising their statutory power to reduce. It was not intended that all three varieties should be considered when reducing on the ground that certain capital had been lost in the course of trading. Any other construction would subject the policy of the company to review of the Court. In *In re Agricultural Hotel Company*, [1891], 1 Ch. 396, the Court had sanctioned the reduction of one class of shares, and in *The Grianaig Shipping Company, Limited, Petitioners*, December 23, 1899, 37 S.L.R. 260, the Court had confirmed a reduction of capital notwithstanding that the assets of the company on paper exceeded the liabilities.

At advising—

LORD TRAYNER—I think the prayer of this petition may be granted. It is an ascertained fact that the capital of the company to the extent of £13,500 has been lost, and the company desires to reduce its capital to the extent of £12,500. The statute authorises such reduction to be made where capital has been lost, or is unrepresented by available assets. That

is the case here. The £12,500 has been lost, and is not represented by any available assets. The fact, adverted to by the reporter, that it appears from the company's last balance-sheet that there are surplus assets of the company to the extent of £1811, does not appear to me to affect the petitioner's right to have the capital reduced. The reporter does not say how the surplus is arrived at, but he remarks that that £1811 could be immediately used for payment of a dividend. Now, if available for dividend, it cannot be capital. There is no question here of protecting the interests of creditors. The whole capital has been paid up.

LORD MONCREIFF — I have had some difficulty in agreeing to grant this application in so far as it asks for reduction of capital in apparent excess of the actual loss. I am not, however, prepared to differ from your lordships, as I understand that the interests of creditors are not affected.

The LORD JUSTICE-CLERK concurred with Lord Trayner.

LORD YOUNG although present at the hearing was absent at the advising.

The Court pronounced this interlocutor:—

"Confirm the reduction of capital as resolved by the special resolutions of 22nd March and 21st April 1900, approve of the minute set forth in the petition: Direct the registration of this order or interlocutor and of the said minute to be made by the registrar of Joint Stock Companies, and to be advertised once in the *Edinburgh Gazette* and *Dundee Advertiser:* Dispense with the addition of the words 'and reduced" to the company's name, and decern.

Counsel for Petitioner—Donald. Agent —William Douglas, S.S.C.

Saturday, June 16.

FIRST DIVISION.

[Sheriff-Substitute of Renfrewshire.

DUNLOP & COMPANY *v.* M'CREADY.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7— "*Workman*"—*Contract of Employment —Member of Squad Undertaking Piece Work.*

A firm of shipbuilders entered into an arrangement with the leader of a squad of platers for the preparation by the squad of certain frames. Under this arrangement the squad were to be paid a certain sum per frame with extras. They worked with their own hands, but had to employ certain unskilled labourers, called helpers, who were paid by the squad. All the requisite plant and material was provided by the shipbuilders, and the whole work was carried on in their premises. The members of the squad were bound to work continuously all the working hours recognised in the yard, and when the working hours were exceeded they were entitled to 6d. for each extra hour, and the helpers to half time extra. The leader of the squad received weekly the sum due to the whole squad, and this sum, after payment of the helpers, was divided among the members of the squad. The members of the squad were subject to the general rules and regulations of the yard. The shipbuilder's foreman supervised the work, but did not interfere with it unless it was badly done.

A member of the squad was accidentally killed while at work in the shipbuilding yard. *Held* that he was a "workman" within the meaning of the Workmen's Compensation Act 1897; and that the shipbuilders were liable in compensation to his representatives under that Act.

Opinion (*per* the Lord President) that the benefits of the Workmen's Compensation Act 1897 are not confined to persons under contracts of service or apprenticeship.

In a case stated for appeal under the Workmen's Compensation Act 1897, at the instance of D. J. Dunlop & Company, engineers and shipbuilders, Port-Glasgow, against Mary Laing M'Cready, widow of the late John M'Cready, the Sheriff-Substitute of Renfrew (BEGG) found the following facts to be admitted or proved—"This is an arbitration before the Sheriff-Substitute as arbitrator under the said Act. The respondent prays for decree against the appellants for compensation under the said Act in respect of the accidental death of the said John M'Cready, on whose earnings the respondent and his and her two pupil children were wholly dependent at the time of his death.

"It was admitted that on 6th October 1899 the said John M'Cready, while working as a plater in the defenders' premises, Port-Glasgow, was so severely crushed between a barrow and a punching machine that he died of his injuries next morning. It was also admitted that the defenders' said premises are a shipbuilding yard within the meaning of the Factory and Workshop Act 1878, and of section 7 of the said Workmen's Compensation Act 1897, and that the appellants were the undertakers within the meaning of the latter Act.

"M'Cready was at the time of the accident one of a squad of four platers styled Qua & Company—James Qua being the leading man of the squad. The arrangement to do the work upon which M'Cready was engaged when he met with the accident was made by the said James Qua with the appellants' foreman Mr James Walker. At the time the arrangement was made M'Cready was not a member of the squad; and it was not until after the work had commenced that he was brought into the yard. James Qua had previously asked (as he was bound to do) the appellants' foreman, Mr Walker, if M'Cready would be