

argument is whether if the provision was to any extent forfeited, the forfeiture was not limited to securing equitable compensation, and whether after that had been done the second parties would not be entitled in the future to the surplus income for their support.

On the other question I agree with Lord Trayner.

LORD JUSTICE-CLERK—I concur with Lord Trayner. My only difficulty has been with regard to the fifth question. That depends on the word “paid,” as used in the codicil, but looking to the way in which the same word is used in the principal deed, and in that part of the codicil which refers to the principal deed, I am unable to say that my doubt is strong enough to induce me to express a different opinion from that which Lord Trayner has given.

The LORD JUSTICE-CLERK added—“Lord Young (who was present at the hearing but absent at the advising) desires me to state that he concurs in the opinion of the majority of the Court.”

The Court answered the first question of law in the affirmative and the fifth in the negative.

Counsel for the First and Third Parties—Salvesen, K.C.—Cullen. Agents—Alex. Morison & Co., W.S.

Counsel for the Second Parties—M'Clure. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Fourth, Fifth, Sixth, and Seventh Parties—Guthrie, K.C.—W. Thomson. Agent—George Byres Ross, S.S.C.

Wednesday, July 15.

## FIRST DIVISION.

### OBAN AND AULTMORE GLENLIVET DISTILLERIES, PETITIONERS.

*Company—Ultra vires—Reduction of Capital—Alteration of Memorandum of Association—Cancellation of Arrears of Preference Dividend.*

The memorandum of association of a company provided that the preference shares should be entitled to a fixed cumulative preferential dividend of 5 per cent. The articles of association provided that all or any of the rights and privileges attached to any class of shares might be modified at a general meeting of shareholders of that class. At a time when the dividend on the preference shares was two years in arrear a scheme for the reduction of the capital of the company, involving the cancellation of these two years' arrears, was duly approved at a meeting of the preference shareholders. In a petition for confirmation of the scheme for reduction of capital, the reporter,

to whom the petition was remitted, suggested doubts as to the competency of the cancellation of the arrears of dividend on the preferred shares, in respect that it involved an alteration of the memorandum of association. The Court granted the prayer of the petition.

This was a petition by the Oban and Aultmore Glenlivet Distilleries, Limited, for confirmation of a scheme for the reduction of capital.

The company was incorporated in 1898. Article 5 of its memorandum of association provided, *inter alia*, as follows:—“The capital of the company is One hundred and sixty thousand pounds sterling, divided into eight thousand preferential shares of ten pounds each, which shall be entitled to receive out of profits a fixed cumulative preferential dividend of five per centum per annum (in the manner after stated), and eight thousand ordinary shares of ten pounds each. . . . The preference shares shall rank on the nett profits of the company (including any balance at the credit of profit and loss account brought forward from previous years, and any sum at the credit of reserve applicable for equalisation of dividend) for a dividend of five per centum per annum in preference to any dividend on the ordinary shares, and in the event of the nett profits in any year not being sufficient to pay such dividend in full for that period, the shortcoming shall be made good out of the nett profits of the subsequent year or years, such arrears of dividend being also paid in preference to any dividend on the ordinary shares.” . . .

By article 46 of the articles of association it was provided—“All or any of the rights and privileges attached to any class of shares may be modified by an extraordinary resolution passed at a general meeting of the holders of shares of that class, and all the provisions hereinafter contained as to general meetings shall *mutatis mutandis* apply to every such meeting, but so that members holding or representing by proxy two-thirds of the nominal amount of the issued shares of the class shall be present at such meeting.”

Article 101 provided in general terms for the payment of dividends.

Dividends on the preference shares were paid up to 30th April 1900, but the company's business proving unprofitable thereafter no further dividends were paid.

The directors of the company submitted a scheme for the reduction of the capital of the company, by which it was proposed, *inter alia*, to reduce the nominal value of the preference shares from £10 to £7, and to provide that after 5 per cent. had been paid on the ordinary and preference shares the remaining profits should be appropriated to the payment of a dividend *pari passu* on both classes of shares.

At an extraordinary general meeting of the company resolutions giving effect to these proposals were passed.

Prior to this meeting a meeting of the preference shareholders was held at which the quorum required by article 46 of the articles

of association (quoted *supra*) was present, and a resolution was passed that on the reduction of capital being confirmed by the Court, and the articles of association being altered as above provided, their rights and privileges should be modified to the effect of substituting their rights and privileges under the articles of association as altered for their original rights.

The present petition praying for the confirmation of the reduction of capital was intimated and served. Answers were lodged for one of the preference shareholders, but these were ultimately withdrawn.

On 20th May 1903 the Court remitted to Sir Charles B. Logan, W.S., to inquire and report as to the regularity of the procedure and the reasons for the proposed reduction of capital.

Sir Charles Logan submitted a report containing, *inter alia*, the following passage—"With regard to the proposed alterations on article 101 of the company's articles of association, dealing with the future distribution of dividends, these alterations would appear to safeguard the rights of the preference shareholders to a cumulative dividend of 5 per cent. on the reduced shares, which is secured to them by section 5 of the memorandum of association; but it is explained to me by the agents of the petitioners that it is intended to have the further effect of extinguishing the right of the preference shareholders to arrears of past dividends of 5 per cent. on the original value of their shares which they have not received. The petitioners state that they are advised that the extinction of these arrears by special resolution of the shareholders of the company, supported as it is by extraordinary resolution of the preference shareholders, is competent, on the grounds (1) that it is authorised by article 46 of the company's articles of association, and (2) that it is an integral part of a scheme for the reduction of capital, under which the preference shareholders receive material compensating advantages, and that the case of the *British and American Trust and Finance Corporation v. Couper*, 1894, Appeal Cases 399, determined that the courts might confirm any kind of reduction of capital. I consider it necessary to bring the matter under your Lordships' notice, because it appears to me that the following considerations might be stated against the petitioners' views, viz.—(1) The right to a cumulative preference dividend of 5 per cent. being secured to the holders of preference shares by section 5 of the memorandum of association, it is doubtful whether, looking to the case of *Ashbury v. Watson*, 1885, 30 Ch. Div. 376, that right can be extinguished by resolutions of the company and the preference shareholders, although it could be extinguished by individual discharges of the preference shareholders; and (2) the cancellation of the past cumulative dividend is of the nature of an extinction of a debt, and is not an integral part of the reduction of capital. The present reduction, which tends rather to the advantage of the ordinary than of

the preference shareholders, could be carried out exactly as proposed by the petitioners, even although the cancellation of arrears of preference dividend were to be dropped."

Subject to these observations the reporter recommended that the prayer of the petition should be granted.

Counsel for the company submitted that the prayer of the petition should be granted. If each shareholder could cancel the arrears of dividend due to him, as the reporter admitted, then, under the provisions of article 46 (quoted *supra*), a general meeting of that class of shareholders could cancel all the dividends due to that class. The case to which the reporter referred (*Ashbury v. Watson*, 1885, 30 Ch. Div. 376) was distinguishable, because there the alteration proposed was a permanent alteration of the respective rights of the various classes of shareholders. *British and American Trust and Finance Corporation v. Couper* (1894), Ap. Ca. 399, was an authority for the present petition.

LORD PRESIDENT—This case is certainly a very special one, and unusually large powers are conferred by article 46 of the articles of association. That article, reasonably construed, seems to put it in the power of a two-thirds majority to make the modification of the memorandum which is here proposed. Cases may arise in which such a power is very necessary—where, for example, a recalcitrant shareholder is opposed to a course which a large majority of the shareholders think would be for the benefit of the company. It is impossible to read the papers without seeing that the course which the preferred shareholders in this case propose to take is a very reasonable one in the interests of the company, and I think that the prayer of the petitioners should be granted.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court granted the prayer of the petition.

Counsel for the Petitioners—Cullen. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Wednesday, July 15.

#### FIRST DIVISION.

[Lord Stormonth Darling,  
Ordinary.]

#### GRIGOR MEDICAL BURSARY FUND TRUSTEES, PETITIONERS.

*Charitable Trust—Nobile Officium—Educational Trust—Medical Bursary—Recent Bequest—Alteration—Extension of Benefits to Female Medical Students—Trusts (Scotland) Act 1867 (30 and 31 Vict. c. 97), sec. 16.*

By a trust-disposition and codicil, dated respectively in 1880 and 1885, the