A different question would have arisen if the defenders' counsel had asked us to allow the case to proceed in ordinary course in order that his clients might prosecute their counter claim, which largely exceeds the principal claim. I reserve my opinion as to that question. Further, I express no opinion as to the right of a person resident in this country to sue an enemy if he can establish jurisdiction against him.

The proper course, in my opinion, is to sist the action.

The Court refused the prayer of the note and sisted process *hoc statu*, reserving the question of expenses in connection with the note.

Counsel for Pursuers and Appellants—Clyde, K.C.—Hamilton. Agents—Webster, Will, & Company, W.S.

Counsel for Defenders and Respondents—D. P. Fleming. Agents—Cadell & Morton, W.S.

Friday, November 13.

FIRST DIVISION.

[Court of Exchequer.

MOORE & COMPANY *v.* INLAND REVENUE.

Revenue — Income Tax — Profits — Deductions — Expenses of Promoting Private Railway — Money Wholly Expended for Purpose of Trade — Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 100, *Schedule D, First Case, First and Third Rules, First and Second Cases, First Rule.*

In consequence of the railway facilities given by a railway company being unsatisfactory a firm of coalmasters joined with others in promoting two bills for the construction of a private railway. The scheme was finally abandoned by agreement, whereby the railway company undertook to grant increased facilities. *Held* (*diss.* Lord Johnston) that the money spent by the firm in promoting the two bills was capital and not revenue expenditure, and accordingly that it could not be deducted from their income in arriving at their assessable profits.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, enacts—"The duties hereby granted, contained in the schedule marked D, shall be assessed and charged under the following rules:—

"*Schedule D.*

"*First Case.*—Duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade not contained in any other schedule of this Act.

"*First Rule.*—The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the balance of the profits or gains of such trade, manufacture, adventure, or concern, upon a fair and just average of three years, ending on such day of the year immediately preceding the year of assessment on which the accounts of the said trade, manufacture, adventure, or concern, shall have been usually made up, or on the fifth day of April preceding the year of assessment, and shall be assessed, charged, and paid without other deduction than is hereinafter allowed. . . .

"*Third Rule.*—In estimating the balance of profits and gains chargeable under Schedule D, or for the purpose of assessing the duty thereon, no sum shall be set against or deducted from, or allowed to be set against or deducted from, such profits or gains on account of any sum expended for repairs of premises occupied for the purpose of such trade, manufacture, adventure, or concern, nor for any sum expended for the supply or repairs or alterations of any implements, utensils, or articles employed for the purpose of such trade, manufacture, adventure, or concern beyond the sum usually expended for such purposes according to an average of three years preceding the year in which such assessment shall be made; nor on account of loss not connected with or arising out of such trade, manufacture, adventure, or concern; nor on account of any capital withdrawn therefrom; nor for any sum employed or intended to be employed as capital in such trade, manufacture, adventure, or concern; nor for any capital employed in improvement of premises occupied for the purposes of such trade, manufacture, adventure, or concern. . . .

"*Rules Applying to First and Second Cases.*

"*First.*—In estimating the balance of the profits or gains to be charged according to either of the first or second cases no sum shall be set against or deducted from, or allowed to be set against or deducted from, such profits or gains, for any disbursements or expenses whatever not being money wholly and exclusively laid out or expended for the purposes of such trade, manufacture, adventure, or concern, . . . nor for any disbursements or expenses of maintenance of the parties, their families, or establishments; nor for the rent or value of any dwelling-house or domestic offices, or any part of such dwelling-house or domestic offices, except such part thereof as may be used for the purposes of such trade or concern, not exceeding the proportion of the said rent or value hereinafter mentioned; nor for any sum expended in any other domestic or private purposes distinct from the purposes of such trade, manufacture, adventure, or concern. . . ."

Messrs A. G. Moore & Company, coalmasters, 142 St Vincent Street, Glasgow, *appellants*, appealed at a meeting of the Commissioners for the Special Purposes of the Income Tax Acts against an assessment made upon them by the Inland Revenue, *respondent*, "on the sum of £23,838, less an allowance of £1877 for wear and tear of machinery and plant, and a further allowance of £64, 10s. for life insurance—net, £21,896, 10s.—for the year ended 5th April 1914, made upon them under section 60, Schedule A, No. III, rule 2; and section 100, Schedule D, of the Income Tax Act

1842 (5 and 6 Vict. ch. 35), as amended by the Income Tax Act 1853 (16 and 17 Vict. cap. 34) and the Revenue Act 1866 (29 and 30 Vict. ch. 36), sec. 8; and under the Finance Act 1913 (3 and 4 Geo. V, cap. 30), sec. 2, in respect of the profits of the concern, viz., that of coalmasters, carried on by them. The assessment appealed against was based on the average profits of the five years ended 31st December 1912, and in arriving at such assessment the Additional Commissioners for the Division of the Middle Ward of Lanark had disallowed a claim on the part of the appellants to deduct the sum of £360, being one-fifth part of the appellants' total contribution of £1801 towards the promotion, in conjunction with certain other persons, of two Bills known as the Lothian Railways Bills." The Special Commissioners being of opinion that the deduction claimed was not admissible in arriving at the appellants' liability to income tax, confirmed the assessment appealed against, and stated a Case for the opinion of the Court of Session.

The Case, *inter alia*, stated—"I. The following *facts* were admitted or proved:—(1) The object of the bills—which were thrown out in Committee—was to promote a railway from the Lothian coalfields to Leith Docks, so as to get rid of certain rates, charges, and conditions which had been imposed—some of them recently—by the North British Railway Company on mineral traffic from the Lothian coalfields.

"Prior to the presentment of the Bill the position of matters was—(*a*) That prior to 1901 the North British Railway Company charged a high rate for the carriage of coal from the Lothian coalfields to Leith Docks, and that they claimed to increase the said rate. In 1901 they did increase the said rate, but the coalmasters contested the legality of any increase, and obtained a judgment of the Railway and Canal Commission disallowing any increase. Subsequently the North British Railway Company have again threatened to increase these rates. (*b*) That notwithstanding that the supply of railway waggons by the said Railway Company was very inadequate, the Railway Company had withdrawn a facility which had for many years been afforded to traders, namely, the right to put traders' waggons on the line for the carriage of their traffic. In 1909 the appellants, along with other traders, took part in applications to the Railway and Canal Commission against this withdrawal of facilities, but their contention was not upheld. (*c*) That the said Railway Company had in 1909 imposed new charges on the traffic of the promoters, namely, a charge of demurrage in respect of detention of waggons, and a charge for siding rent for occupation of sidings, which had never been previously charged; the appellants, along with other traders, objected to said charges, but the Railway and Canal Commission upheld them; and (*d*) that the railway facilities generally were extremely bad, and on account of the increase in the traffic the manner in which the traffic was conducted by the Railway Company was getting worse. The appellants repeatedly negotiated with the North British Railway Company for some improvement, but without practical result.

"In connection with these matters the appellants expended sums of money which appeared in their profit and loss accounts for the years in which they were incurred under the heads of 'law expenses' and 'management.'

"Although the said Bills were thrown out by a Parliamentary Committee, this was only done after the North British Railway Company had given a Parliamentary obligation to the following effect:—(*e*) That they would construct a new railway in the Lothians to be used solely for mineral and goods traffic; and (*f*) that the traders could put as many waggons of their own as they chose upon the railway line provided they did not call upon the Railway Company to provide waggons for their traffic.

"As a consequence of the promotion of the said Bills the railway facilities were much improved, the supply of waggons became more satisfactory, and the Railway Company are at present constructing the new railway for the coalmasters' traffic in terms of the said obligation.

"(2) The sums contributed towards that project by the appellants in the period of five years ended 31st December 1912 were as follows:—

"In the year ended 31st December 1911 . . . . £130
In the year ended 31st December 1912 1671
viz., £1801 in all,

one-fifth part of which, on the five years' average, is the sum of £360 mentioned above.

"(3) The sums in question were contributed by the appellants as their share of the total expense, pursuant to clauses 4 and 53 of the Lothian Railways Bill 1912, and clauses 4 and 64 of the Lothians Railway Bill 1913, copies of which were put in evidence and referred to at the hearing of the appeal, and are annexed to and form part of this Case. The Bills are marked 'A' and 'B' respectively.

"(4) The afore-mentioned sum of £130 was debited under the head of 'law expenses' in the appellants' profit and loss account for the year ended 31st December 1911, and the sum of £1671 was similarly debited in their profit and loss account for the year ended 31st December 1912.

"II. Mr Irving Reid Stirling, S.S.C., Edinburgh, on behalf of the appellants, *contended*:—(1) That the sums in question were necessarily expended—(*a*) To resist the unsatisfactory attitude of the North British Railway Company in the matter of railway rates levied by the said company, since the proposed railway would enable coal to be conveyed from the Lothian coalfields to Leith at lower rates than those charged by the North British Railway Company; (*b*) to insure a proper and constant supply of waggons for the appellants' traffic; (*c*) to get rid of the charges for demurrage which had recently been imposed; (*d*) to insure an improvement in railway facilities; and

(*e*) to protect the appellants' interests, and to defend their position against the increased charges of and decreasing facilities given by the North British Railway Company.

"(2) That the sums in question having been expended by the appellants in the ordinary course of their business, and wholly and exclusively laid out or expended for the purposes of their business, to reduce the cost of transport, and to maintain the appellants' business as a profit-earning concern during a period when the cost of production of coal is from other causes steadily increasing, these sums ought to be deducted in arriving at their assessable profits. . . .

"III. The Surveyor of Taxes (Mr G. W. Hare) contended for the Crown that the expenditure in question constituted a capital outlay and was not revenue expenditure incurred for the purpose of earning profits or in defence of existing trading rights, but with a view to increasing the trading profits. He therefore submitted that the sum in question, viz., £360, was inadmissible as a deduction in arriving at the appellants' liability to income tax, and that the assessment appealed against had been made in accordance with the law and should be confirmed. . . .

"IV. The Special Commissioners, on consideration of the facts and arguments submitted to them, were of opinion that the payments in question were not admissible deductions in arriving at the appellants' liability to income tax. They accordingly confirmed the assessment appealed against as made on the sum of £23,838 less an allowance of £1877 for wear and tear of machinery and plant and a further allowance of £64, 10s. for life assurance—net £21,896, 10s."

In the debate, in addition to the arguments set forth in the Case, reference was made to the following authorities:—

For the appellants—*Vallambrosa Rubber Company, Limited* v. *Inland Revenue*, 1910 S.C. 519, 47 S.L.R. 488; *Lochgelly Iron & Coal Company, Limited* v. *Inland Revenue*, 1913 S.C. 810 (Lord President (Dunedin) at 814), 50 S.L.R. 597; *Guest, Keen, & Nettlefolds, Limited* v. *Fowler*, [1910] 1 K.B. 713 (Bray, J., at 722); Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, Schedule D, First Case, First and Third Rules—First and Second Cases, First Rule; Income Tax Act 1853 (16 and 17 Vict. cap. 34), sec. 2, Schedule D.

For the respondents—*Vallambrosa Rubber Company, Limited* v. *Inland Revenue* (*cit. sup.*), (Lord Johnston at 526, Lord President at 525); *Granite Supply Association, Limited* v. *Inland Revenue*, November 7, 1905, 8 F. 55 (Lord M'Laren, at 57), 43 S.L.R. 65; *Highland Railway Company* v. *Special Commissioners of Income Tax*, July 10, 1889, 16 R. 950 (Lord President at 953), 26 S.L.R. 657; *Inland Revenue* v. *Stewarts & Lloyds, Limited*, July 20, 1906, 8 F. 1129 (Lord President at 1134), 43 S.L.R. 811; Income Tax Act 1842, sec. 60, Schedule A, Number three, Rule two, sec. 100; Schedule D, First Case, First and Third Rules—First and Second Cases, First Rule, sec. 159; Revenue Act 1866 (29 and 30 Vict. cap. 36), sec. 8.

At advising—

LORD PRESIDENT—It appears that for some years there was a feud between a certain body of traders including the appellants and the North British Railway Company. The warfare sprang from familiar causes—too high rates, too few waggons, excessive demands for demurrage, denial of the traders' claim to have their own waggons on the railway line, and refusal of facilities generally. In short, the traders desired, and alleged that the Railway Company deprived them of, swift, easy, and convenient access to their customers. At length, dissatisfied with the remedy which the law affords of applying to the Railway Commissioners, and driven to exasperation by the alleged obduracy of the Railway Company, the traders, including the appellants, resolved on a bold step. They would construct a line of railway for themselves between the Lothians coalfield and Leith and so render themselves independant of the Railway Company altogether. Accordingly the traders promoted two bills to attain that object. Both bills were thrown out, but—so the appellants allege—the money expended upon them was not thrown away. It attained its end, the menace was sufficient and successful. The Railway Company as they say were brought to their senses, and the immediate result of this legislative misadventure was to secure for the traders including the appellants all the railway facilities which they desired, for the Railway Company it appears promised in consequence of this menace to construct a new line from the Lothians coalfield to Leith to be dedicated to mineral and goods traffic only, and to give the traders an unlimited right to place their own waggons on that line. Now this triumph was—so say the appellants—honestly bought and paid for by the money expended upon these abortive bills; the traders acquired by the expenditure of this money the railway facilities which they so long desired, and accordingly the money spent was in reality spent for the purpose of acquiring, as they say, cheaper, easier, and more rapid access to the buyers of coal.

Now it is the proportion of the contribution made by the appellants to the money devoted to the prosecution of these two bills, a sum of £360, with which we are concerned in this case, and the question we have to decide is whether that sum of £360 is properly capital expenditure or is in truth expenditure out of revenue. I have no doubt for my part that it is capital expenditure, because the money was used to buy for the traders including the appellants a better and cheaper access to their customers, and it was therefore in my opinion just as much capital expenditure as if it had been spent in constructing a fresh line of railway for the purpose of reaching their customers and disposing more conveniently and more cheaply to themselves of their coal. It is not every day that even an enterprising body of traders constructs a line of railway

or promotes a bill for that purpose, and accordingly it appears to me that this is a case to which the rough-and-ready test suggested by Lord President Dunedin in the case of *The Vallambrosa Rubber Company* v. *Inland Revenue*, 1910 S.C. 519, at p. 525, very fitly applies. "Capital expenditure" the Lord President said "is a thing that is going to be spent once and for all, and income expenditure is a thing that is going to recur every year." Now this £360 spent on buying for the appellants an access to their customers is certainly a sum which was spent once for all and is not a thing that is going to recur every year, and therefore it appears to me that, applying this rough-and-ready test—for Lord Dunedin did not claim any higher merit for it than that—the sum of £360 in question here seems to me to be singularly clearly an item of capital expenditure and not an expenditure out of revenue. Therefore I think the Commissioners have done well to refuse to allow it to be deducted in striking the appellants' profits assessable to income tax, and I accordingly move that their determination be affirmed and this appeal refused.

LORD JOHNSTON—The question in this case is whether certain expenditure of the appellants, a colliery company, in the year of assessment is to be treated as on revenue account or on capital account, and so to be allowed as a deduction from the receipts of the year in assessing income tax, or to be disallowed.

I do not recapitulate what these outlays were and what their object, but I feel that I must supplement what your Lordship has said by pointing out, in the first place, the primary fact that the North British Railway Company had and has a complete monopoly of the mineral traffic of the Lothians field, in which are situated the collieries of the appellants and their allies; and, in the second place, that it is not a full statement of the situation created by the expenditure of the sums deduction of which is challenged, to say that the appellants' bills were thrown out by a Parliamentary Committee. They were so as the result of an agreement. They were really, as stated in the Case, thrown out of consent, or practically withdrawn, in respect that the North British Railway Company agreed to give a Parliamentary obligation to the following effect:—"(*e*) That they would construct a new railway in the Lothians to be used solely for mineral and goods traffic, and (*f*) that the traders could put as many waggons of their own as they chose upon the railway line provided they did not call upon the railway company to provide waggons for their traffic"; and the case proceeds to state as an admitted fact that "As a consequence of the promotion of the said Bills the railway facilities were much improved, the supply of waggons became more satisfactory, and the Railway Company are at present constructing the new railway for the coalmasters' traffic in terms of the said obligation."

I am not called on to say what would have been the situation had the appellants and their allies proceeded with and obtained their Bills. It is obvious that it would have been quite different from that which arises in present circumstances. What is, I think, quite clear is that the appellants by their action, and by the expenditure in question, did attain a large part of their object in their contest with the North British, and, as I hope to show, this object was closely related to the purposes of their business.

I may commence by asking your Lordships to note that no one is bold enough to say that the outlays in question were capital as distinguished from income expenditure in any ordinary or popular sense, still less in the light of correct business methods of account keeping, especially in relation to partnership transactions. If they were capital outlays they were only such in a statutory, and so artificial, sense. But that being so, and regarding as I do the statute as drafted with a view to, and intended to be applied in, the ordinary course of business, I think it of prime importance to remember at the outset that the contention of the Inland Revenue is in conflict with that course, and so leads to a presumption which requires to be redargued by very clear statutory provisions to the contrary. These I am unable to find.

What, then, say the statutes? That of 1842, section 100, provides, *inter alia*, for the assessment of the annual profits of trades and professions under Schedule D, and enacts a series of rules.

In the First Rule of the First Case it is said, reading it short, that the duty to be charged in respect of any trade shall be computed on a sum not less than "the full amount of the balance of profits or gains" of such trade on an average of three years, ending on the day next preceding the year of assessment "on which the accounts of the said trade . . . shall have been usually made up, or on the 5th April preceding the year of assessment, and shall be assessed without any other deduction than is hereafter allowed." This indicates *prima facie* that the basis of assessment is intended to be the balance of profit shown by a balance struck according to ordinary sound business book-keeping. If there is any limitation it must be found in the words "without any other deduction than is hereafter allowed." Unfortunately there is no subsequent enunciation of deductions allowed. They are only to be ascertained by the method of inference from disallowances. We are referred next to the First Rule applying to both the First and Second Cases, viz., trading income and professional income respectively. In estimating the balance of profits to be charged no sum shall be deducted from such profits "for any disbursements or expenses whatever not being money wholly or exclusively laid out or expended for the the purposes of such trade" or profession. And then follows an enumeration of particulars which, though it may not control this generality, is worthy of notice. They cover the maintenance of the partners and their families, rent of premises so far as used for domestic purposes, and any sum

expended in any other domestic or private purposes distinct from the purposes of such trade or profession. I do not think that this provision advances the contention of the Revenue. It contrasts money expended for the purposes of the trade with money expended for domestic and private purposes distinct from the purposes of the trade. It leaves then money expended for the purposes of the trade as an allowable deduction. What were the purposes of this trade? the raising of coal from the firm's coalfield, the marketing of the same, and making a profit thereby. That cannot be done without incurring expense. Coal has to be won and it has to be transported before it can be marketed. Transport involves not merely freight but facilities. Everything which goes to the reduction of freight and the improvement of the facilities goes to the increase of profit and so to assessable income. And what is legitimately spent in effecting such reduction and such improvement appears to me to be spent for the purposes of the trade. Now what has happened here is that, with other allied coalmasters, the appellants had long resisted the treatment they had received in the Lothians field from the North British Railway Company, and had spent much money with varying success in their resistance. They were at last driven to force the hand of the North British by promoting a line of their own. The result was to compel terms which were satisfactory, and as a condition their Bill was withdrawn. It appears to me that the expense to which they were put was money spent for the purposes of their trade just as much as that spent during previous years in appeals to the Railway Commissioners and in other ways to the same end. And I cannot regard the fact that if they had proceeded with their Bill they would have obtained an Act which would have involved proper capital expenditure as in any way affecting the present question. So far, then, I think that no disallowance of the expenditure *bona fide* made in resistance to the tactics of the North British Railway Company, that company having, as I have said, the monopoly of the appellants' traffic, can be spelt out of this provision.

We are referred, lastly, to the Third Rule of the First Case, which provides that in estimating the balance of profits no sum shall be deducted for repairs of premises or of plant beyond an average sum based on a three years' experience; nor on account of loss not connected with or arising out of the trade; nor on account of any capital withdrawn therefrom; nor for any sum employed or intended to be employed as capital in such trade; nor for any capital employed in improvement of premises occupied for the purposes of such trade." I understand it to be the contention of the Inland Revenue that the sums in question were employed as capital in the trade. I have, I confess, wholly failed to grasp the grounds of this contention, and it seems to me to refute itself by its mere statement. It certainly is not a contention which can outweigh the presumption which I noted at the outset, that unless something express to the contrary is enacted the statute applies to business conducted in ordinary course and on ordinary business principles.

We are referred to certain authorities. But I think that these must be approached with the caution expressed by Lord Dunedin in the *Vallambrosa Rubber Company's* case, 1910 S.C., at p. 524, viz., that you must regard general expressions used and criteria suggested by individual Judges *secundum subjectam materiam*. He was there referring to Lord Esher's expression in *City of London Contract Corporation* v. *Styles*, 2 Tax Cases, at p. 244, that "the difference between the expenses necessary to earn the receipts of the year and the receipts of the year are the profits of the business for the purpose of the income-tax," and showed that it must not be taken too literally. I would say the same of Lord Dunedin's own expression in the *Vallambrosa* case—indeed his Lordship in effect says it for me—viz., "capital expenditure is a thing that is going to be spent once for all, and income expenditure a thing that is going to recur every year." That is no more a criterion that can be applied in this case and of this expenditure than it would be in the case of a company, for instance, owning a valuable patent and called on in a particular year to litigate for its protection, and of the expenditure thereby incurred. I think the case which I have suggested is quite a fair analogy to the present.

Accordingly I am for holding that the deduction in question should be allowed as in the sense of the Act money wholly laid out for the purpose of the business, and not as a sum employed as capital in the trade. I therefore think that the Commissioners' deliverance should be altered accordingly.

LORD SKERRINGTON—I am of opinion that the decision of the Commissioners was right in point of law. The expenditure in question was not "money wholly or exclusively laid out or expended for the purposes of" the appellants' trade. On the contrary, it was money which was laid out for the purpose of establishing a new and independent business, viz., that of a railway company. It seems to me to be irrelevant to say that the appellants' reason for wishing to obtain the incorporation of the projected railway company was not so much the hope of earning dividends as the desire to secure for their business as coalmasters the enjoyment of more favourable rates and facilities for the carriage of coal from the appellants' coalfields to Leith. It would be as reasonable to argue that if the Bill had become law and the appellants had subscribed for shares in the new railway company, such subscriptions could have been regarded as money expended wholly and exclusively for the purposes of the appellants' business as coalmasters.

One can figure a case where a firm of coalmasters in the position of the appellants might incur Parliamentary or other preliminary expenses with a view to constructing a railway which was to be the private property of the firm, and which

when constructed would be useful and would in fact be used wholly and exclusively for the purposes of their trade as coalmasters. Such expenditure would be of the same legal character as the actual cost of building the railway. It would be capital employed in the firm's trade as coalmasters, and therefore would not be a legitimate deduction from profits.

The appellants are accordingly upon the horns of a dilemma. Either the expenditure was not made wholly and exclusively for the purposes of their trade as coalmasters, or if so made it was money employed as capital in their trade.

The Court affirmed the determination of the Special Commissioners and refused the appeal.

Counsel for Appellants—D. P. Fleming. Agents—Drummond & Reid, W.S.

Counsel for Respondents—The Solicitor-General (Morison, K.C.)—R. Candlish Henderson. Agent—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Tuesday, November 17.

FIRST DIVISION.

(SINGLE BILLS.)

G. MACKAY & COMPANY, LIMITED AND REDUCED, PETITIONERS.

Company—Process—Petition—Intimation and Advertisement—Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *secs.* 46 *to* 52 *and sec.* 55—*Reduction of Capital in a Family Business Carried on as a Private Company.*

A private company, in presenting a petition under secs. 46 to 52 and sec. 55 of the Companies (Consolidation) Act 1908 for confirmation of a reduction of its capital, craved the Court to dispense with intimation and advertisement of the petition. The Court, notwithstanding that the company was a purely family concern, and that the proposed reduction had been unanimously approved by the shareholders, *declined* to dispense with intimation and advertisement of the petition.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), which provides in sections 46 to 52 and in section 55 for the reduction of the share capital of a company, enacts—Section 47—"Where a company has passed and confirmed a resolution for reducing share capital it may apply by petition to the Court for an order confirming the reduction." Section 50—"The Court, if satisfied with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit." Section 55—"In any case of reduction of share capital the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit, the causes which led to the reduction."

Messrs G. Mackay & Company, Limited and Reduced, *petitioners*, presented a petition under the Companies (Consolidation) Act 1908, secs. 46 to 52 and sec. 55, for confirmation of the reduction of the capital of the company. The circumstances rendering the petition necessary were the following:—The company was a private company within the meaning of section 121 of the Companies (Consolidation) Act 1908. It was a purely family concern. By the articles of association it was provided that the company might by special resolution reduce its capital, and "that the holders of any class of shares might, by an extraordinary resolution passed at a meeting of such holders, consent to any scheme for the reduction of the company's capital affecting such class of shares, and that such resolution should be binding on all the holders of the shares of that class." A resolution reducing the capital of the company was passed at an extraordinary general meeting of the company, and confirmed at a subsequent extraordinary general meeting.

The crave of the petition was in the following terms:—"May it therefore please your Lordships *primo* (*a*) to dispense with intimation and advertisement of this petition, or alternatively (*b*) to appoint intimation of this petition to be made on the walls and in the minute-book in common form, and to be advertised once in the *Edinburgh Gazette* and once in the *Scotsman* newspaper; to allow all concerned to lodge answers, if so advised, within eight days after such intimation and advertisement, and *hoc statu* and during the dependence of this petition to dispense with the words 'and reduced' as part of the name of the company; and *secundo*, to make an order confirming the reduction of capital resolved on by the special resolution passed on 26th October and confirmed on 13th November 1914, set forth in the petition, approving of the minute set forth in the petition directing the registration of said confirmation order and minute by the registrar of joint stock companies, and (on said order and minute being registered by said registrar) notice of such registration to be given by advertisement once in the *Edinburgh Gazette*, and dispensing altogether with the addition of the words 'and reduced' as part of the name of the company, and decerning; or to do otherwise in the premises as to your Lordships shall seem proper."

Argued for the petitioners—The company being a purely family concern, the proposed reduction being fair and equitable, and no question of public interest being involved, the Court might dispense with intimation and advertisement. In the case of the *British and Burmese Steam Navigation Company, Limited*, December 10, 1879, 7 R. 379, the Court had granted a similar peti-