

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-

tion under a previous statute without ordering intimation. Since then the law had been extended in favour of the petitioners by the Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69). It was unnecessary in such a case to show that the capital proposed to be reduced was lost or unrepresented by available assets—in *re Louisiana and Southern States Real Estate and Mortgage Company*, [1909] 2 Ch. 552. The reason was that the Court had jurisdiction to reduce the capital, and creditors not being concerned, the questions for its consideration were—(1) Were the interests of the public who might take shares in the company threatened by the proposed reduction? (2) Was the reduction fair and equitable to the shareholders?—*Poole and Others v. National Bank of China, Limited*, [1907] A.C. 229, Lord Macnaghten at 238. Here the public were not interested, and the reduction was approved by the shareholders, so that there was no object in advertisement.

The Court (the LORD PRESIDENT, LORD JOHNSTON, and LORD SKERRINGTON) appointed intimation and advertisement in the usual form.

Counsel for the Petitioners—Gentles. Agent—John S. Morton, W.S.

Tuesday, November 17.

SECOND DIVISION.

[Lord Hunter, Ordinary.

CRAIG LINE STEAMSHIP COMPANY,
LIMITED *v.* NORTH BRITISH STORAGE
AND TRANSIT COMPANY
AND OTHERS, *et e contra*.

Process—Foreign—Sist—Conjoined Actions—Alien Enemy Pursuer in Counter Action—Trading with the Enemy Proclamation No. 2, 9th September 1914, No. 1376.

In conjoined actions at the instances of A against B and of B against A, C, an alien, was sisted as pursuer in the second action along with B. The Lord Ordinary having after a proof decerned against B in the first action and assoilzied A in the counter action, B and C reclaimed. War having subsequently broken out between the country of C and this country, A moved the Court to sustain the Lord Ordinary's interlocutor in the first action, and *quoad ultra* to sist procedure. The Court *sisted* both actions.

The Craig Line Steamship Company, Limited, registered owners of the steamship "Craigforth" of Leith, *pursuers*, brought an action against the North British Storage and Transit Company, Leith, and the individual partners thereof, *defenders*, for payment of £247, 13s. 11d., being freight for which the pursuers maintained the defenders were liable as indorsees of bills of lading and receivers of a consignment of barley shipped on the

"Craigforth" from Galatz to Leith, where it arrived on 10th December 1911. The North British Storage and Transit Company and the individual partners thereof, for themselves and as representing Faust Michaelis, merchant, Dresden, for any interest he might have, *pursuers*, brought a counter action against the Craig Line Steamship Company, Limited, *defenders*, for payment to them of (1) the sum of £338, 5s., (2) the sum of £289, 11s. 9d., and (3) the sum of £336, 14s. 9d., for shortage, and loss and damage to the barley, which they averred they had sustained through the fault of the defenders, but under deduction of the freight sued for in the first action. On 19th March 1912 the Lord Ordinary (HUNTER) conjoined the two actions, and on 4th June 1912 sisted Faust Michaelis as a pursuer, and Felix Roesler, merchant, Portobello, as his mandatory, in the action at the instance of the North British Storage and Transit Company and others. On 8th April 1913 the Lord Ordinary, after a proof in the action at the instance of the Craig Line Steamship Company, Limited, decerned against the defenders in terms of the conclusions of the summons, and in the counter action assoilzied the defenders from the conclusions of the summons.

The North British Storage and Transit Company and others reclaimed.

The reclaiming note was called in the Second Division on 17th November 1914, when counsel for the respondents in respect that a state of war had since 4th August 1914 existed between the United Kingdom and Germany, and that the reclamer Faust Michaelis had in consequence become an alien enemy, moved the Court to sustain the Lord Ordinary's interlocutor so far as it dealt with the claim against the North British Storage and Transit Company, and *quoad ultra* to sist procedure. Counsel for the reclaimers did not object to a sist of both actions, but objected to decree, the defence in that action being the same as his case in the other.

Counsel cited the following authorities—Trading with the Enemy Proclamation No. 2, 9th September 1914, No. 1376; "*The Hoop*," 1799, 1 Chas. Rob. 196; *Arnauld & Gordon v. Boick*, 1704, M. 10,159; *Burgess v. Guild*, Jan. 12, 1813, F.C.; *Robinson & Company v. Continental Insurance Company of Mannheim*, 1914, 31 T.L.R. 20; *Orenstein & Koppel v. The Egyptian Phosphates Company, Limited*, 52 S.L.R. 54.

The Court (LORD JUSTICE-CLERK, LORD SALVESEN, and LORD GUTHRIE) pronounced this interlocutor—

"Having heard counsel for the parties on the points of procedure raised under the Proclamation relating to trading with the enemy dated 9th September 1914, in respect of the sisted pursuer Faust Michaelis in the action at the instance of The North British Storage and Transit Company and others against the Craig Line Steamship Company, Limited, being an 'enemy' as defined by