

Friday, May 30.

SECOND DIVISION.

GARTCRAIG COAL AND FIRE COMPANY,  
PETITIONERS.

*Petition—Companies Act, 1867, § 11—Confirmation—Reduction of Capital.*

Under the Companies Act, 1867, § 11, certain procedure is appointed to regulate petitions for reduction of capital.—*Held* that in this petition the forms required by the Act had been complied with, and prayer of the petition granted.

This was a petition presented at the instance of the Gartcraig Coal and Fire Co. (Limited and Reduced), for an order confirming a reduction of capital under the Companies Act 1867, section 11.

The narrative sets forth that "the petitioners are incorporated under 'The Companies Acts, 1862 and 1867,' conform to Memorandum and Articles of Association, registered by the Registrar of Joint Stock Companies in Scotland the 28th day of October 1872. The business in which the petitioners are engaged consists in working coal and fire-clay fields in the lands of Gartcraig, Cardowan, Lethanhill, Gartsheugh, and others near Glasgow. The registered office of the petitioners is at 51 Regent Street, Glasgow, and their mineral operations have been confined, in terms of the said Memorandum and Articles, to the neighbourhood of Glasgow. A copy of the said Memorandum and Articles is herewith produced and referred to.

"By the said Memorandum of Association, article V, it is declared that the nominal capital of the company is £50,000, in 5000 shares of £10 each.

"The petitioners make the present application with the view of obtaining—(1) The order of your Lordships confirming a special resolution of the company for reducing its capital; (2) The approval by your Lordships of a minute showing the reduced amount of capital, the number of shares in which it is to be divided, and the amount of each share; (3) The registration of such order and minute; (4) The publication of such registration in such manner as your Lordships may direct; and (5) Authority to discontinue the addition of the words 'and reduced' to the name of the company, after such date as your Lordships may fix.

"By 'the Companies Act, 1867, it is enacted (sections 9, 10, 11 and 15) as follows:—

"IX. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the Registrar of Joint Stock Companies, as is hereinafter mentioned.

"X. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words 'and reduced,' as the last words in its name, and these words shall, until such date, be deemed to be part of the name of the company within the meaning of the principal Act.

"XI. A company which has passed a special

resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction, and, on the hearing of the petition the Court, if satisfied that with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged, or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms, and subject to such conditions as it deems fit.

"XV. The Registrar of Joint Stock Companies, upon the production to him of an order of the Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court) showing, with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect.

"Notice of such registration shall be published in such manner as the Court may direct.

"The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

"By article XXIX. of the Articles of the Association it is provided—'The company may also, from time to time, by special resolution of the members given in general meeting, reduce its capital, and also alter the amount and denomination of its shares.'

"The number of shares allotted was 4253. Of these allotted shares, 1000 are held as fully paid up, 2000 are held as paid up to the extent of £6 per share,—the said 3000 shares being part of the price paid by the company for the property and leases acquired by it for its business. Upon the remaining 1253 of these allotted shares there has been called up from time to time the sum of £6 per share, and all the calls have been paid except to the extent of £156, which will be recovered, and is treated as paid."

Thereafter follow certain details as to the amount of the capital, and the petition continues—"The original prospectus of the company, a printed copy of which is herewith produced, states that it was not expected that it would be necessary to call up more than £6 of each share of the company's stock, payable at the dates therein mentioned, viz., £1 on application, £2 on allotment, £2 on 1st November, and £1 on 2d January 1873.

"The petitioners have found that the capital of the company, fixed in the Memorandum of Association, is in excess of what is required for the efficient working of the company's business. With the object, accordingly, of getting the capital reduced and the shares duly divided, and in pursuance of a notice previously served upon the members to that effect, an extraordinary general meeting of the company was held within the registered office of the company upon the 1st February last, when it was unanimously resolved as follows:—

"1. That the capital of this

duced from £50,000 to £34,500, and divided into 5750 shares of £6 each.

"2. That in lieu of 1000 fully paid up shares of £10 each of the original capital issued to George Willis and Andrew Yeats, as part of the purchase price of the property and leases acquired by the Company, there shall be issued to the said George Willis and Andrew Yeats 1666 paid up shares of £6 each."

"The said resolutions were unanimously confirmed at a subsequent meeting of the Company, held at the same place, on the 3d day of March last. The first of these resolutions is the special resolution submitted to your Lordships for confirmation. The minutes of the said meetings are herewith produced and referred to. Both the said resolutions have been duly printed and registered as special resolutions, and they are annexed to the articles of association produced.

"Of the said 1000 fully paid up shares, 500 are held by Mr George Willis, Clifton House, Bailieston, and 500 by Mr Andrew Yeats, coalmaster, Shettleston. The said Messrs Willis and Yeats have agreed and consented to accept, in lieu of these fully paid up shares, presently held by them, paid up shares of the value of £6, Mr Willis receiving of these 833, and Mr Yeats also 833. A minute of consent to that effect is herewith produced and referred to."

Then follows a calculation showing what the proposed reduction amounts to, and then the 13th section of the Act 1867 is quoted as follows—

"XIII. Where a company proposes to reduce its capital, every creditor of the company who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

"The Court shall settle a list of such creditors, and for that purpose shall ascertain, as far as possible, without requiring an application from any creditor, the names of such creditors, and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction.

[Appended is a list of the creditors of the Company, with the amount of their claims.]

"The petitioners' affairs are in a prosperous state, and their assets, after the proposed reduction of capital, will be ample to meet all claims upon them. The Company having only been in operation since October last, there has not yet been any balance made; but there is herewith produced a vidimus of the state of the Company's affairs as at the present date.

"The proposed reduction of capital being in itself expedient, and not being in any way injurious to the rights of creditors, is now respectfully submitted to your Lordships' confirmation.

"The minute proposed for registration, along with your Lordships' order confirming the reduction, is the following, viz. :—

"Minute.

"The capital of the Company £34,500.  
divided into 5750 shares of £6 each."

The prayer of the petition runs thus:—"May it therefore please your Lordships to appoint this petition to be intimated on the walls and in the Minute-Book in common form, and in the *Glasgow Herald*, *North British Daily Mail*, and *Scotsman* newspapers, and to be served on the creditors named in the foregoing list, with certification to all concerned that the foregoing list of creditors will be held as complete and correct, and will be settled by your Lordships as the list of all the creditors entitled to object to this petition, unless the creditors therein named shall lodge claims to be entered therein for any other or larger debts due to them at said 18th March 1873, or at any other date to be fixed by your Lordships, or unless other persons not therein named shall claim to be entered therein as being creditors at said date—in both cases by claims to be lodged with the clerk to this process on the second box-day in the ensuing vacation,—with certification, also, to all concerned, that your Lordships will be moved to grant the prayer of this petition on the first sederunt-day of the coming Summer Session, or so soon thereafter as may be, when any creditor entered on the foregoing list, any person who shall have duly claimed as aforesaid to be entered thereon as a creditor, or any other person having sufficient title and interest, may appear and be heard personally or by counsel; and thereafter, on resuming consideration hereof, and after hearing parties, and settling the list of creditors as aforesaid, or after such other or further procedure as your Lordships may appoint—(1) to make an order confirming the foresaid special resolution for reducing the capital of the petitioners, and the reduction of capital thereby resolved upon, and that upon such terms and conditions, if any, as your Lordships may deem fit; (2) to approve of the foresaid minute of the said reduction of capital, its division into shares, and the amount of each share; (3) to appoint the registration of your Lordships' said order, and of the said minute, with the Registrar of Joint Stock Companies in Scotland, upon production to him of the said order, and the delivery to him of a copy thereof, and of the said minute; (4) to direct that notice of such registration shall be published in such newspapers as your Lordships may fix; and (5) to authorise the petitioners to discontinue the addition to the name of the Company of the words 'and reduced' after the lapse of fourteen days from the date of your Lordships' order confirming the reduction, or after the lapse of such other period as your Lordships may fix, and to pronounce such other or further orders or interlocutors as may be necessary for duly confirming the reduction, and for registering and publishing the same; or to do further or otherwise in the premises as to your Lordships may seem proper."

On the first moving of the petition, the Court ordered intimation in common form and also in the newspapers mentioned; fixed 18th March 1873 as the date to which the list of creditors was to be made up; and appointed service on the creditors named in the petition, under the certificate therein contained. No claims or objections having been lodged, the Court ultimately pronounced the following interlocutor:—

"Allow the amendment now proposed to be made on the list of creditors contained in the petition, and hold the amended list settled as the list of creditors required by the statute: Find, with respect to every creditor of the

petitioners who under the provisions of the 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: Confirm the resolution set forth in the petition, that the capital of this Company be reduced from £50,000 to £34,500, and divided into 5750 shares of £6 each, and approve of the said reduction of capital accordingly: Approve of the minute of the said reduction also set forth in the said petition: Appoint the petitioners to register this interlocutor or order and the said minute with the Registrar of Joint Stock Companies in Scotland, upon production to him of this interlocutor, or of a copy thereof certified by the Clerk of Court, and the delivery to him of a copy thereof and the said minute: Appoint the petitioners to publish notice of such registration in the *Glasgow Herald*, *North British Daily Mail*, and *Scotsman* Newspapers, within seven days from the date of said registration: Authorise the petitioners to discontinue the addition to their name of the words 'and reduced,' after the lapse of fourteen days from this date, and decern."

Counsel for Petitioner—R. V. Campbell. Agent—David Cook, S.S.C.

[R., Clerk.

NOTE.—This is the first petition under this section of the Act which has been presented to the Court of Session. In England several applications of this kind have been made, and certain rules laid down by the Courts to regulate the procedure.

The following cases may be cited—*Sharp v. Stewart & Co.*, 5 L. R., Eq., 155; *Telegraph Co.*, 10 L. R., Eq., 384; *Credit Foncier Co.*, 11 L. R., Eq., 356; *Estate Co.*, 5 L. R., Ch. App., 407.

Tuesday, June 3.

## FIRST DIVISION.

[Lord Ormidale, Ordinary.

### GIRDWOOD v. PATERSONS.

Title—Boundary—Possession—Singular Successor—Proof.

In a case where the owner of a sunk flat had granted permission to his tenants, who also occupied the shop above, to encroach on the window space which lighted the sunk flat, subject to the condition that the window should be restored on demand to its former state—held that this agreement was binding on singular successors to the shop on the ground that they could only possess what their title gave them, and that possession must be determined by proof.

This action was raised by Mr R. Girdwood against George Paterson and spouse, and the object of it was to have the defender ordained to restore the window of the sunk storey in Bank Street, Edinburgh, belonging to the pursuer, to the state in which it was before the year 1858. At this time the pursuer was proprietor of the shop No. 2 Bank Street, and of the ground flat entering from Morocco Close, which was lighted by a window looking into Bank Street, and was immediately below the shop No. 1 Bank Street, which is now

the property of the defenders, but was at that time the property of Mr Peter Mackinlay, and was occupied by the firm of D. & P. Mackinlay, drapers, who were also tenants of the pursuer's sunk flat under their own shop. In 1858 the level of Bank Street was lowered, and it was found expedient to lower the sill of Messrs Mackinlay's shop window, but this could only be done by encroaching on the height of the sunk storey window immediately below it. The pursuer gave leave for this encroachment to be made to the extent of about 15 inches, but only on condition that the window should be restored to its original condition whenever he should require this to be done. Mr Mackinlay sold his premises in 1867 to John Stevenson, and the defenders bought them from him, and they resisted Mr Girdwood's demand to have his window restored to its former condition. It was pleaded for them, *inter alia*, that—"3. It is incompetent for the pursuer to prove, excepting by writ, that any part of the shop, No. 1 Bank Street, as now possessed by the defenders or their tenants, is the property of the pursuer. (4) The pursuer cannot prove, excepting by writ or by the defender's oath, the agreement which he avers to have been made to restore the window to its alleged original level. (7) The pursuer having permitted the defenders' authors to possess and occupy said shop in such manner as to lead the public and the defenders to believe that their right of property was co-extensive with their possession, and the defenders having in said belief (which was not contradicted by the titles), purchased and paid for the said shop, the pursuer is barred from insisting in the present action against them."

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh*, 17th December 1872.—The Lord Ordinary having heard the counsel for the parties, and considered the closed record, proof, and process, Finds (1) That in the year 1858 the pursuer was proprietor of the shop No. 2 Bank Street, Edinburgh, and of the ground flat or sunk storey of the tenement entering from Galloway's or Morocco Close, with certain exceptions, and that Peter Mackinlay, a partner of the firm of D. & P. Mackinlay, drapers and outfitters, was proprietor of the shop No. 1 Bank Street, consisting of a front and back shop; (2) That the said firm of D. & P. Mackinlay were tenants in 1858 of the whole foresaid subjects, their lease of the pursuer's subjects being for ten years, from Whitsunday 1858; (3) That the pursuer consented, in or about the year 1858, to the alteration by the said firm of D. & P. Mackinlay, upon the window of the room in his ground flat or sunk storey, which is situated below the shop No. 1 Bank Street, Edinburgh, which now belongs to the defenders, upon the condition that the said window should be restored by the said D. & P. Mackinlay to its original size and position in the front wall of the tenement whenever he should require this to be done; (4) That the said alteration was effected immediately, or soon thereafter, upon the said condition, for the purpose of enlarging the window of the shop No. 1 Bank Street; and (5) That in executing the said alteration, 15 inches were taken from the top of the pursuer's said window, and that the window of the shop No. 1 Bank Street was proportionally enlarged: Finds that Peter Mackinlay, one of the partners of the said firm, and proprietor of the shop No. 1 Bank Street, never acquired any right as heritable pro-