

pressed by the word, is "indefinite," and certainly it is often used in the sense of "any." Suppose a declaration that "every house" or "any house" to be built on the ground hereby feued shall not exceed two storeys in height, but with this exception, that a house fronting Morning-side Road may be three storeys in height," or that "every house built on the ground, &c., shall be built of stone, but with this exception, that a house fronting Morning-side Road may be built of brick." These seem to me to be admissible illustrations of the use of the indefinite "a" in another sense than "one and only one." I have already put the case illustratively, coming closer to the present, of a prohibition such as I have assumed to be here implied being thus expressed—"It is provided and declared that there may not be a shop on the ground hereby feued, but with this exception, that there may be a shop fronting to the Morningside Road."

I have, I hope, sufficiently expressed and explained my opinion that the Dean of Guild's judgment is erroneous and ought to be reversed.

LORD MONCREIFF was absent.

The Court adhered.

Counsel for the Petitioner—Solicitor-General Dickson, Q.C.—Craigie. Agents—Traquair, Dickson, & MacLaren, W.S.

Counsel for the Respondents—W. Campbell, Q.C.—Horne. Agents—A. & A. S. Gordon, W.S., and H. Brougham Paterson, S.S.C.

Tuesday, March 20.

FIRST DIVISION.

J. & P. COATS, LIMITED,
PETITIONERS.

Company—Alteration of Articles of Association—Investment of Floating Capital—Companies (Memorandum of Association) Act 1890 (53 and 54 Vict. c. 62), sec. 1, sub-sec. (1) (a).

By sub-section 1 of section 1 of the Companies (Memorandum of Association) Act 1890, the Court is empowered to confirm a resolution by a company altering its articles of association "if it appears that the alteration is required in order to enable the company (a) to carry on its business more economically or more efficiently." A petition for the confirmation of a resolution conferring power on the company to invest its floating capital, "in such stocks, funds, securities, or other investments, . . . as the company or the directors may think proper," held to fall under the above section, and granted.

By the memorandum of association of J. & P. Coats, Limited, the company had power, *inter alia*, (clause 3, BB) "To distribute among the members in specie any property

of the company, whether by way of dividend or upon a return of capital, but so that no distribution amounting to a reduction of capital be made except with the sanction (if any) for the time being required by law."

By special resolution duly passed at an extraordinary general meeting of the company held on 6th, and duly confirmed at a subsequent extraordinary general meeting of the company held on 24th, both days of November 1899, all in accordance with section 51 of the Companies Act 1862, it was resolved as follows:—"That the objects of the company specified in clause 3 of the memorandum of association be altered by adding after paragraph BB of that clause the following paragraph:—(BBB) To invest the reserve funds of the company, and any other moneys of the company not immediately required for the other objects of the company, in such stocks, funds, securities, or other investments (including shares, stocks, debentures, debenture-stock, and other obligations and securities of companies or corporations constituted according to the laws whether of Scotland or of any other part of the British Empire, or of any foreign state) as the company or the directors may think proper, and to hold, sell, or otherwise deal with such investments, provided that no such investment be made in or on the security of any shares of the company."

By sub-section 1 of the first section of the Companies (Memorandum of Association) Act 1890 it is enacted as follows:—"Subject to the provisions of this Act, a company registered under the Companies Acts 1862 to 1886 may by special resolution alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, so far as may be required for any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the company, but in no case shall any such alteration take effect until confirmed on petition by the Court which has jurisdiction to make an order for winding-up the company." And by sub-section 5 of the same section it is enacted as follows:—"The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company (a) to carry on its business more economically or more efficiently." . . .

A petition for confirmation of this resolution was brought, in which the following averments were made:—"Having regard to the general business requirements of the company, and to the large amounts which are required for paying the dividends on the company's share capital and the interest on its debenture stock, it is necessary for the company to keep large sums of money in a form in which they will be readily available for use. The company has been advised that under the memorandum of association as it now stands it is doubtful

whether it has power to invest such moneys in ordinary marketable securities. It has therefore been the practice of the company to keep large amounts of money on deposit at its bankers. Having regard to the state of the money market during recent years, great difficulties have been experienced in obtaining an adequate rate of interest on moneys so deposited, although such moneys could frequently have been invested in safe marketable securities producing a satisfactory return. Like difficulties have also occurred in connection with the investment of the company's reserve funds."

The prayer of the petition was in the following terms:—"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 to be advertised once in each of the *Edinburgh Gazette* and the *Scotsman*, *Glasgow Herald*, the *Times*, and the *Irish Times* newspapers, and to appoint such further intimation and advertisement to be made as to your Lordships may appear proper, and to ordain all parties having objections to the petition being granted to lodge answers thereto, if so advised, within a period of eight days after the date of such intimation and advertisement; and on resuming consideration hereof with or without answers, and after such inquiry as to your Lordships may appear necessary, to confirm the alteration of the provisions of the company's memorandum of association with respect to the objects of the company made by the special resolution of the company set forth in the petition, or to do further or otherwise in the premises as to your Lordships shall seem proper."

No answers were lodged.

The petition was remitted to Sir Charles Logan, W.S., to report.

Sir Charles Logan lodged a report, in which, *inter alia*, he made the following remarks:—"From the explanations given it appears to me that the proposed additional powers of investment, although very wide in their nature, are fair and reasonable, and if utilised with due care would conduce to the interests of the company. I would point out, however, that the present powers of investment have very evidently been framed with the view of enabling the company to obtain control, or at least a voice in the management of other businesses of a like nature, thereby indirectly conducing to the stability and growth of the business of the company. The powers of investment which the company now seek to obtain might enable them to earn a higher dividend by employing the funds of the company in other directions. It has been explained to me that the new powers are not intended in any way to supersede the original powers, but rather to afford an outlet for funds which the company under the latter may be unable to employ profitably. It may be questioned, however, and it is for your Lordships to decide, whether the proposed alteration of the memorandum of association can reasonably be held to be an alteration which will enable the

company in terms of section 1, sub-section 5 (a) of the statute 'to carry on its business more economically or more efficiently.' The proposed alteration does not appear to fall within the description of any of the other alterations permitted by the statute as detailed in the same sub-section. The petitioners contend that the business of the company must include the investment of unemployed moneys, and that an alteration of its memorandum enabling it to secure an increase of revenue is an alteration which will result in the more efficient carrying on of its business."

It was argued for the petitioners that the proposed alteration fell within the scope of section 1, sub-section 5 (a), of the Companies (Memorandum of Association) Act 1890.

LORD PRESIDENT—The first point dealt with in the report is whether the proposed alteration of the provisions of the memorandum of association falls under any of the heads specified in the Companies (Memorandum of Association) Act 1890. The only one under which it is said to fall is that in sub-section 5 of section 1, which authorises the Court to confirm any alteration if required to enable the company "to carry on its business more economically or more efficiently." That is a very wide expression, and it appears to me that the alteration proposed might conduce to the more economical and more efficient conduct of the company's business. I understand that what is desired is power to invest a portion of the company's funds—apparently what is generally termed floating capital—in easily marketable securities. In the conduct of a great business such as this it may often be advantageous to have immediate control of large sums of money, and it would be more economical, instead of keeping that money in bank, to invest it in securities which are practically as convertible as money. Opportunities might arise for the purchase of large quantities of raw material on advantageous terms, and for that easily marketable securities would provide the requisite funds. I therefore think the proposed alteration falls within the terms of the sub-section.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR was absent.

The Court granted the prayer of the petition.

Counsel for the Petitioner—Lorimer.
Agents—Graham, Johnston, & Fleming,
W.S.