The company had on 14th November presented a petition for sanction to a proposed scheme of arrangement with its creditors, which scheme involved a reduction of the existing capital of the company.

The *note* stated—"3. . . . A special resolution of the company for reducing its share capital as provided in the scheme has been duly passed and confirmed at meetings of the company held on 13th and 29th November 1916. . . . A petition to your Lordships for confirmation of such reduction of capital and for an order dispensing altogether with the addition of the words 'and reduced' to the name of the company will be presented immediately. 4. The present share capital of the company is £158,000, and the reduction above mentioned consists only in the cancellation of 8000 B shares of £1 each fully paid, which are at present held by the trustees of the noteholders, and which under the said scheme are agreed to be given up. On the other hand, under the scheme the share capital of the company is to be increased by £100,000 in preference shares of £1 each, and a special resolution of the company making the said increase was duly passed and confirmed on 13th and 29th November. . . . The net result therefore is that the capital of the company instead of being reduced is really increased from £158,000 to £250,000. . . . 5. The use of the words 'and reduced' would be injurious to the business of the company, and in view of the facts above set forth, which show that the capital of the company is increased by a net amount of £92,000, the use of the said words does not appear to the company to be required in the interests either of its creditors or of the public."

In the Single Bills counsel, in moving that the prayer of the note be granted, admitted that it was unusual to have a note with reference to a process not yet in Court, but contended that the rules of procedure were sufficiently elastic to allow of it, and referred to Buckley on the Companies Acts (9th ed.), pp. 142-3, and *John T. Clark & Company, Limited*, 1911 S.C. 243, 48 S.L.R. 154.

The Court granted the prayer of the note.

Counsel for the Petitioners—Macmillan, K.C.—Lillie. Agents—Guild & Shepherd, W.S.

Friday, March 9, 1917.

SECOND DIVISION.

[Sheriff Court at Ayr.

MAYBOLE PARISH COUNCIL *v.* KIRKOSWALD PARISH COUNCIL.

Poor—Settlement—Constructive Residence of Husband Living Apart from Wife and Family on Account of Occupation.

A farm labourer, who worked in one parish, had his wife and child residing with his parents in another parish, there being no suitable dwelling accommodation for them where he worked. He paid no rent to his parents. He visited his wife twice a week regularly, and he brought his wages to her. *Held* that the labourer was constructively resident in the parish in which his wife and child lived.

The Parish Council of the Parish of Maybole, *pursuers*, presented a petition in the Sheriff Court at Ayr wherein they craved the Court to grant a decree ordaining the Parish Council of the Parish of Kirkoswald, *defenders*, to pay the pursuers the sum of £28, 13s., and also to free and relieve the pursuers of all future alimentary or other advances which the pursuers might make on behalf of the paupers, Ann M'Whirter or M'Geachie and her three children, so long as any of them might require parochial relief and their parochial settlement continued to be in the parish of Kirkoswald.

The *facts* of the case are taken from the opinion of Lord Salvesen:—"The facts in this case have been accurately set forth by the Sheriff-Substitute. The whole case turns on whether James M'Geachie, whose wife and children are the paupers, was resident for the purpose of acquiring a settlement in the parish of Maybole from Christmas 1911 till Whitsunday 1912. M'Geachie was married on 15th September 1911, and from Martinmas he and his wife resided with his parents at Smithstone in the parish of Maybole. A room was reserved for the newly-married pair, and there they kept such effects as they had. M'Geachie did labouring work of a casual kind until Christmas 1911, when he got a job at the farm of Cassington, two or three miles from Smithstone, and remained there till the Whitsunday following. There was no cothouse to which he could have transferred his wife; and he himself slept in a room in the farmhouse at Cassington along with several farm hands. His work required him especially during the winter to sleep at Cassington, but he came to Smithstone regularly on Saturday evenings, and generally stayed over night. He also visited his wife on Tuesday evenings, and sometimes stayed the night. After the birth of his child on 25th February 1912 his visits to Smithstone were more frequent. He brought his wages to his wife every week, and they were spent by her for her maintenance and that of the child when it arrived."

The pursuers pleaded—"1. The said James M'Geachie having been born in the parish of Kirkoswald, and having at the date when he became chargeable no residential settlement, that parish is the settlement of and liable for the maintenance of his pauper widow and children. 2. The settlement of the said Ann M'Whirter or M'Geachie and her children, William M'Geachie, Barbara M'Geachie, and Elizabeth M'Geachie, being in the parish of Kirkoswald, the pursuers are entitled to decree as craved."

The defenders pleaded—"1. The said James M'Geachie having at the date when he became chargeable had his settlement in Maybole parish, the defenders are not liable for the maintenance of his pauper widow and children. 2. The settlement of the said Ann M'Whirter or M'Geachie and her said children being in the parish of Maybole,

the defenders are entitled to absolvitor, with expenses."

The Sheriff-Substitute (ROBERTSON), after a proof, on 15th February 1916 granted the decree craved.

The defenders appealed to the Second Divison of the Court of Session, and argued —The farm labourer lived in a bothy where he worked, but kept all his belongings with his wife, who lived with his parents. His settlement was in the parish of his parents, and had he been unmarried this would have been absolutely clear. It was all a matter of intention. Counsel cited the following authorities—*Parish Council of Kilmarnock* v. *Parish Council of Leith*, (1898) 1 F. 103, *per* Lord President Robertson at p. 108, 36 S.L.R. 107; *Greig* v. *Duncan*, (1895) 2 S.L.T. 537; *Cruikshank* v. *Greig*, (1877) 4 R. 267, 14 S.L.R. 204; *Greig* v. *Miles*, (1867) 5 Macph. 1132, 4 S.L.R. 199; *Greig* v. *Simpson*, (1888) 16 R. 18, 26 S.L.R. 19; *Parish Council of West Calder* v. *Parish Council of Bo'ness*, (1905) 8 F. 57, 43 S.L.R. 68.

The respondents argued—There was now no presumption that a man's wife and family gave him a residential settlement—*West Calder* (*cit.*), *per* Lord President Dunedin, who at p. 63 expressed the opinion that the wife's residence only constituted an element of proof. *Allan* v. *Burton and Higgins*, (1868) 6 Macph. 358, 5 S.L.R. 240, was referred to.

At advising—

LORD SALVESEN—[*After the narrative above quoted*]—It was practically conceded that if M'Geachie had paid a rent for the room which his wife occupied, and if he had regularly stayed with her at week-ends, the case would be ruled by the decision in *Kilmarnock* v. *Leith*, 1 F. 103. I cannot think that it makes any difference that he had arranged with his own parents that his wife should live with them without paying rent until such time as the young couple had collected sufficient effects to furnish a house for themselves. I think, to apply the language of Lord President Robertson in the *Kilmarnock* case, he established and maintained a residence for his wife and child at Smithstone. He had no ties to Cassington except his work. He lived with his wife as much as the ties of his work would allow; in other words his home was at Smithstone, and he was merely at Cassington because he could not obtain regular employment nearer home. The *West Calder* case, 8 F. 57, is easily distinguishable. The man there had deserted his wife and family with the intention of not returning to them; and it would be hard to hold that under such circumstances he was constructively resident in a parish with which he had severed his connection, as he hoped, permanently. To use Lord M'Laren's words, he was neither there in fact nor in intention from the time that he left the parish where his deserted wife and family resided. The decision in that case accordingly presents no obstacle. It does not overrule or cast doubt upon the decision in the *Kilmarnock* case. It is nothing to the purpose to say that M'Geachie's wife remained in the house of his parents only so long as her husband could not find a house which they could occupy together. It was undoubtedly her residence, although intended to be of a temporary kind, and continued to be her husband's home although his work required him to be bodily absent during most of the days of the week. The doctrine of constructive residence has now been well established in our law, and in my opinion this is a clear case for applying it. It is a convenient rule, because in the case of labouring people, living on the borders of various parishes, the most permanent residence is that which the husband provides for his wife and family. His work may take him sometimes to one parish sometimes to another; but if his wife and family, whom he is supporting and with whom he lives as often as his work permits, are resident all the time in one parish, he is constructively resident there. I am therefore of opinion that we must recall the judgment of the Sheriff-Substitute and assoilzie the defenders from the conclusions of the action.

The LORD JUSTICE-CLERK and LORD GUTHRIE concurred.

LORD DUNDAS was not present.

The Court recalled the interlocutor of the Sheriff-Substitute and assoilzied the defenders.

Counsel for the Pursuers and Respondents —The Lord-Advocate (Clyde, K.C.)—MacRobert. Agents—Fyfe, Ireland & Co., W.S.

Counsel for the Defenders and Appellants —Christie, K.C.—Forbes. Agents—Simpson & Marwick, W.S.

Tuesday, March 20.

FIRST DIVISION.

CENTRAL MOTOR ENGINEERING COMPANY AND OTHERS *v.* GIBBS AND ANOTHER.

Process—Petition—Bankruptcy—Sequestration—Nobile Officium—Petition for Declarator that Sequestration ab initio Null and Void—Competency.

A firm and its partners having been sequestrated presented a petition founding on informalities in the citation to the sequestration proceedings and in the affidavit of the petitioning creditor, in which they craved declarator that the whole sequestration proceedings were null and void *ab initio*. *Held* that the petition was incompetent, as in effect it proceeded by application to the *nobile officium* to crave a remedy which might be sought by common law action of reduction.

The Central Motor Engineering Company, Glasgow and Edinburgh, and Gordon Houston Boswall Preston and Alistair Houston Boswall Preston, the only partners thereof, as such partners and as individuals, *peti-*