Tuesday, January 16.

SECOND DIVISION.

YOUNG'S PARAFFIN LIGHT AND MINERAL OIL COMPANY, LIMITED, PETITIONERS.

Company — Constitution of Company — Alteration of Memorandum of Association—Refusal by Court to Confirm Alteration—Companies (Memorandum of Association) Act 1890 (53 *and* 54 *Vict. cap.* 62), *sec.* 1.

A company incorporated in 1866 under the Companies Act 1862 resolved in 1893 to extend its objects, and passed a special resolution under section 1 of the Companies (Memorandum of Association) Act 1890, by which it took powers, *inter alia* (*e*) to acquire the business of any other company carrying on the same business as itself and pay for such business in cash or stock or partly in each; (*f*) to sell the business or property of the company or any part thereof for payment in cash or in stock or securities of any other company or partly in each, or for such other consideration as might be deemed proper, and to distribute the price among its members; (*g*) to amalgamate with any other company in the United Kingdom established for objects similar to its own.

The company having presented a petition to the Court to confirm the alterations proposed to be made on its articles of association, and a man of business to whom the Court remitted having reported on the matters involved, the Court refused to confirm articles (*e*) (*f*) and (*g*) on the ground that it was not contemplated by the Act that such general powers should be granted beforehand, although upon consideration of any proposed transaction such powers might be sanctioned.

By the Companies (Memorandum of Association) Act 1890 (53 and 54 Vict. cap. 62, section 1), it is provided—"(1) 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 of association for a deed of settlement either with or without any such alteration as aforesaid with respect to the object 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. (2) Before confirming any such alteration, the Court must be satisfied (*a*) that sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons, or class of persons, whose interests will, in the opinion of the Court, be affected by the alteration; and (*b*) that with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined or has been secured to the satisfaction of the Court: Provided that the Court may, in the case of any person or class of persons, for special reasons dispense with the notice required by this section. (3) An order confirming any such order may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper. (4) The Court shall, in exercising its discretion under this Act, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it think fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always that it shall not be lawful to expend any part of the capital of the company in any such purchase. (5) 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; or (*b*) to attain its main purpose by new or improved means; or (*c*) to enlarge or change the local area of its operations; or (*d*) to carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or (*e*) to restrict or abandon any of the objects specified in the memorandum of association or deed of settlement."

Young's Paraffin Light and Mineral Oil Company, Limited, was incorporated under the Companies Act 1862. The company was registered on January 4, 1866. The registered office is situated in Glasgow. The objects for which the company was established, as set forth in its memorandum of association, are as follows, viz.—"The extracting or distilling crude oil and other products from coal or shale or other substances; the re-distilling, purifying, or converting crude oil into refined oil, and other products therefrom; the purchasing, leasing, or otherwise acquiring coal, shale, oil, or other substances, for the foregoing purposes, and the disposal thereof by sale, lease, or otherwise; the purchase or acquisition and erection of works, furnaces, retorts, refineries, and others, necessary for the above purposes; the acquisition, by purchase, lease, or other-

wise, of lands containing coal, shale, or other minerals, and of lands or premises for the erection of works, offices, workmen's houses, and other requisite buildings; the acquisition, by purchase, lease, or otherwise, of coal, ironstone, or other minerals found in connection with, or workable along with, said shale; the mining or working of all or any of the above; the preparation, sale, and disposal of the above by sale, lease, sub-lease, or otherwise; the purchasing of all plant and machinery, and the formation and acquiring of roads, railways, tramways, and other matters or things requisite for the above purposes, or any of them; the selling or disposing of all or any part of the above subjects and premises as may be deemed expedient; and the doing of all such other things as are or may be incidental or conducive to the attainment of such objects."

The capital of the company was originally £600,000, divided into 6000 shares of £100 each. After various alterations the present capital was fixed in July 1887 at £700,000, divided into 175,000 shares of £4 each. Of these shares, 113,202 were issued. The paid-up capital was £452,808 (less the sum of £176, being the arrears of a call of £1 per share on 176 shares), divided into 113,202 shares of £4 each.

The directors were authorised by various special resolutions to issue debentures on the security of the works, lands, properties, and business of the company to the extent of £300,000, but it was arranged that no more than £260,000 thereof should be issued.

The existing mortgage debenture bonds amounted to £226,725.

In July 1892 the directors were authorised to create and issue convertible debenture stock to the amount of £159,144, redeemable on 31st of July 1897. The amount of this stock issued and outstanding was £62,473.

In virtue of the provisions of the statute quoted above, a special resolution was passed by the company at an extraordinary general meeting held on 18th September 1893, and confirmed at a subsequent extraordinary general meeting held on 4th October 1893, by which it was resolved that certain alterations should be made on the memorandum of association of the company with respect to its objects.

The alterations proposed included, *inter alia*, the following articles—"(*e*) To buy or acquire the business, property, or undertaking of any other company or partnership carrying on any business which the company may legally carry on, and to pay for such business, property, or undertaking in cash or in shares, stock, debentures, or debenture stock of the company, or partly in each of such modes. (*f*) To sell, dispose of, or transfer the business, property, and undertaking of the company, or any branch or part thereof, in consideration of payment in cash, or in shares or stock, or in debentures or debenture stock, or other securities of any other company, or partly in each of such modes of payment, or for such other consideration as may be deemed proper, and to distribute the price, howsoever paid, among the members in satisfaction of their interest in the assets of the company. (*g*) To amalgamate with any other company in the United Kingdom established for objects similar to any of those for which the company is established."

In these circumstances the company presented a petition to the Court to confirm the alterations proposed.

After intimation and service of the petition, the Court on 15th November 1893 remitted to Charles E. Loudon, W.S., to inquire and report as to the regularity of the proceedings, and reasons for the alterations proposed.

Mr Loudon reported, *inter alia*—"Article (*e*) is a power usually inserted in modern memoranda of association, and is one which might be of great advantage to the company, while the absence of it might seriously hamper the company in the successful conduct of its business.

"Article (*f*) is in these terms—[*The reporter quoted the Article*].

"Although a similar power is usually inserted in modern memoranda of association, and although it might be of great benefit, yet the alteration undoubtedly confers very wide powers upon the directors, and I am not satisfied that it is required by the company in terms of the Act. But even admitting that the alteration is entirely for the advantage of the company, yet I am of opinion that it does not fall within section 1, sub-section 5, and is therefore incompetent.

"Article (*g*) is also a general power usually inserted in modern memoranda of association, and the petitioners have explained to me that although at present amalgamation is usually carried out by way of sale or of purchase, and the liquidation of one of the two amalgamating companies, yet the power to amalgamate is found to be helpful in the preliminary negotiations incident to such a step.

"With regard to articles (*e*) and (*g*), I am doubtful whether alterations conferring powers of a general kind are such as were contemplated by the statute, and I venture respectfully to submit the question for your Lordships' consideration. Apart from this question the reasons for the alterations appear to me to be satisfactory.

"I am satisfied that the creditors of the company will not be prejudiced by the alterations.

"The proceedings throughout have been regular, and the reasons for the proposed alterations contained in all the articles, with the exception of (*f*), appear to me to be sufficient. I am therefore humbly of opinion that . . . articles (*e*) and (*g*) may be confirmed, should your Lordships hold that the alterations proposed by these articles fall within the statute. I am also of opinion that your Lordships should not confirm article (*f*)."

The Court, consisting of the Lord Justice-Clerk, Lord Young, and Lord Ruther-

furd Clark, heard counsel on the report, and expressed opinions that it was not contemplated by the Act that such general powers as were contained in articles (*e*), (*f*), and (*g*) should be granted to the company before any necessity for using them arose, but that they would be willing to consider any special transaction which the company might wish to carry out in terms of these articles when it arose definitely.

The Court refused to confirm the proposed alterations contained in articles (*e*), (*f*), and (*g*).

Counsel for Petitioner—Lorimer. Agents—Maconochie & Hare, W.S.

Saturday, January 13.

FIRST DIVISION.

BUNTEN AND ROBERTSON, PETITIONERS.

Trust — Trustee — Resignation — Implied Authority to Resign in Trust-Disposition.

A trust-disposition and settlement which did not expressly empower the trustees therein named to resign, contained a declaration that upon any of the trustees resigning, the remaining trustees should be bound to discharge the persons so resigning of their offices. By letter of instructions of later date than the trust-disposition and settlement the testator directed that a sum of £200 should be paid to each of his trustees who should accept and act as such. *Held* that power to resign was impliedly conferred upon the trustees by the settlement, and a petition by certain of the trustees for authority to resign *refused* as unnecessary.

Matthew Andrew Muir died on 23rd January 1880 leaving a trust-disposition and settlement dated 26th April 1876, whereby he conveyed his whole estates to the trustees therein named or who might be assumed into the trust. The deed did not expressly confer power upon the trustees to resign, but contained the following declaration:—"Declaring that upon any of the trustees, executors, and curators herein named, or to be nominated or assumed as aforesaid, resigning the said offices of trustee, executor, tutor, or curator, and accounting for his or their intromissions with my trust-estate, my remaining trustees or trustee, or if there be no remaining trustee, then the beneficiaries under the trust hereby created, are hereby empowered, and shall be bound to discharge the person or persons so resigning of his or their office or offices." . . .

By separate letter of instructions dated 9th August 1879 the testator directed that a sum of £200 should be paid to each of his trustees and executors "who shall accept and act as such under my trust-disposition and settlement."

In 1893 James Clark Bunten and Thomas Robertson, two of the trustees nominated under the above settlement, presented a petition to the Court, *inter alia*, for authority to resign.

Answers were lodged objecting to the other parts of the prayer of the petition being granted, but in so far as it craved authority to resign the petition was not opposed.

After certain procedure had taken place the petitioners moved the Court to grant them authority to resign.

At advising—

LORD PRESIDENT—I am satisfied that there is a power to resign here. The clause in question plainly implies that resignation is an act which may be done by any one of the trustees, for it declares that upon any trustee resigning, the remaining trustees shall be bound to discharge him of his office.

In these circumstances we are not called upon to exercise the jurisdiction given us by the Trusts Acts, and accordingly I think we should refuse the latter part of the prayer of the petition on that express ground.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

The Court refused the part of the prayer of the petition in which authority to resign was craved "as unnecessary, having regard to the terms of the trust-disposition and settlement."

Counsel for the Petitioners—Ure—Wilson. Agents—Davidson & Syme, W.S.

Counsel for the Respondents—C. S. Dickson—Aitken. Agents—Forrester & Davidson, W.S.

Counsel for W. J. Dundas, Curator *ad litem* to Beneficiaries under Mr Muir's Settlement, who were in Pupillarity—Blackburn. Agents—Dundas & Wilson, C.S.

Friday, January 19.

SECOND DIVISION.

[Lord Low, Ordinary.

ROSS *v.* M'FARLANE.

Master and Servant — Contract between Proprietor and Manager of Newspaper—Personal Contract—Delectus Personæ—Right of Proprietor to Sell Newspaper.

In 1888 A, the proprietor of a daily newspaper, appointed B to be manager of the paper by letter as follows—"I hereby accept your offer to serve me as general manager of the *Scottish Leader*." In 1890 the engagement was renewed by letter, signed by both parties, commencing "We have to-day arranged your reappointment as general manager of the *Scottish Leader*."

In 1892 A sold the paper to C, the