in the strictest way with the terms of the reserved right, the most westerly six feet of his subjects that are devoted to the passage. It is enough if he leaves a six feet passage at the "west end" of his property. That is in every sense a correct description of the passage which the pursuer proposes to leave. It is to be six feet wide and at the west end of his property. It is noticed, however, that the six feet passage is "to be left out" upon the west side of the property, and it is said that to be left out implies or suggests that the six feet for the passage are to be left out, that is, outside of the pursuer's building. That in my opinion is not the meaning of the reservation. Such a reading is inconsistent with the idea of any building over the passage, for that, as I have said, implies some building west of the passage on which the structure over the passage can rest. It affords no answer to this view to say that there are buildings at present over the passage in question which do not rest on a wall belonging to the pursuer. Under what conditions the pursuer's author was allowed to rest the present building on the building belonging to the defender we do not know. But the pursuer may at any time take down the present building, and it does not appear that he would be entitled to rest any new building on the defender's property. He might not be inclined to ask, and if he asked might not get leave to support his new buildings as the present buildings are supported, but as he is entitled, in my opinion, as matter of right, to build over the passage, it follows, as I have said, that he must have right to the necessary support for it on his own ground. I regard the words "left out" as meaning that the six feet are to be excluded from the pursuer's feu as ground on which he may not build as he may build on all the rest. In short "left out" does not mean "left outside" of the buildings on the feu, but left out unbuilt upon when the rest is built upon. The particular line of the passage was never laid down on any plan or made matter of contract, in the same way as the passage in dispute in the case of *Hill* v. *M'Laren*, to which we were referred — and indeed this case could be distinguished, if necessary, from *Hill's* case in other respects.

But then it is said that the defender has had access to the servitude passage from almost any part of his own adjoining boundary and has acquired right of access in that way by prescriptive use. That view has been negatived by the Lord Ordinary on the ground that the proof adduced does not support it, and that part of the Lord Ordinary's judgment has not been assailed. It appears, I think, clearly enough that any use which the defender has had of the passage by access to it, from his own land instead of from Hadden Street, has been merely the consequence of the pursuer's neighbourly tolerance—and in no respect the exercise of a right. The pursuer, or his authors, could at any time (if I am right in the view which I have expressed as to the meaning of the pursuer's title) have prevented access by the defender from his own ground on to the servitude road, by building the wall, which is now proposed to be built, whether for the purpose of resting a superstructure thereon or merely for the purpose of fencing his property.

The LORD JUSTICE-CLERK was absent.

The Court adhered.

Counsel for Reclaimer—Dundas—Craigie. Agent—J. Gibson, S.S.C.

Counsel for Respondent—Guthrie—Salvesen. Agent—Alexander Morison, S.S.C.

Thursday, March 15

FIRST DIVISION.

HENDERSON AND OTHERS *v.* LOUTTIT & COMPANY AND OTHERS.

Company—Winding-up—Meeting to Confirm Resolution for Voluntary Winding-up—Quorum — Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *First Schedule, Table A, Article* 37.

Article 37 of Table A of the First Schedule of the Companies Act 1862 provides that "no business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present when the meeting proceeds to business."

Held (1) that "a quorum of members" means a quorum of members entitled to vote; and (2) that it is not enough to render the proceedings valid that the requisite quorum is present at the beginning of the meeting, but that there must be a quorum while the business is being transacted.

James Louttit & Company, Limited, was incorporated under the Companies Acts in 1873, with a capital of £6000 in 600 shares of £10 each. The memorandum of association was registered without articles of association, and consequently Table A of the Companies Act of 1862 formed the articles of association.

The present petition was presented by Mrs Henderson and others, shareholders of the company.

The petitioners stated that on 5th February 1894 an extraordinary general meeting of the shareholders had been held, when a resolution was unanimously adopted requiring the company to be wound up voluntarily, and that this resolution had been unanimously confirmed at a meeting called to confirm it on 20th February 1894.

The petitioners craved the Court to order the voluntarily winding-up to be continued subject to the supervision of the Court. Alternatively, they craved the Court to order the company to be wound up under the Companies Acts, and to appoint a

liquidator, but this branch of the petition need not be further referred to, as no serious reasons were advanced in support of it.

Answers were lodged for the company and certain of the shareholders. The respondents stated and it was admitted that out of the 55 persons who had taken shares in the company "only twelve members entitled to vote" presented themselves at the meeting called to confirm the resolution in favour of a voluntary winding-up. They further stated—"Mr Georgeson, solicitor, Wick, who had acquired certain shares in the company on the day previous to the meeting, also presented himself, but under article 47 of Table A he was disqualified from voting, not having held his shares for three months prior to the meeting. There being thus no quorum present, no business was or could be transacted. In the view of ten of the twelve qualified members who assembled, Mr Georgeson could not be reckoned for the purpose of making up a quorum, and these ten members accordingly left the place of meeting. There remained, in addition to Mr Georgeson, only two members, the petitioners Mr Alexander Laing, S.S.C., and Mr James Sutherland. These gentlemen proceeded, notwithstanding the provision of the said 37th and 38th articles of the said Table A, to pass the pretended resolutions set forth in the petition. There having been no quorum present when the said two shareholders proceeded to business, the said pretended resolutions were wholly incompetent and inept. The resolution of 5th February in favour of liquidation remains unconfirmed, and the company is consequently not now in liquidation." It was admitted that the majority of the shareholders who had come to the meeting left before the business of confirming the resolution in favour of a voluntary winding-up was entered upon.

Article 37 of Table A of the Companies Act of 1862 provides—"No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows—that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to 50, and one for every ten additional members after 50, with this limitation that no quorum shall in any case exceed 20."

Argued for the petitioners — Although Georgeson was not qualified to vote he was a member of the company, and was therefore to be counted in considering whether a quorum was present or not. There was, therefore, a quorum present when the meeting proceeded to business, and that being so, the provision of article 37 was satisfied, as there was a quorum present when the business of the meeting was entered upon. It did not matter that some of those present afterwards left before the business was carried through.

Argued for the respondents—A quorum of members of course meant a quorum of members entitled to take part in the business of the meeting by voting—*Cambrian Peat Company, ex parte Mott* v. *Turner*, 1875, 31 L.J. 773; Buckley on the Companies Acts, Schedule I., Table A, Article 37. Further, the quorum must be present while the business was being proceeded with. Neither of these conditions having been satisfied in regard to the resolution for a voluntary winding-up, that resolution had never been validly confirmed.

At advising—

LORD PRESIDENT—I think this petition fails in both its branches. The application to have the voluntary winding-up continued subject to the supervision of the Court, of course postulates the existence of a voluntary winding-up, and that depends on the validity of the proceedings at the confirmation meeting. Now, on the face of these proceedings it appears to me that there was not a quorum present. It is impossible to hold that when the word "quorum" is used it has any other sense than a quorum of effective members—members qualified to take part in and to decide upon questions brought before the meeting. Accordingly, it appears to me that in regard to the meeting in question the proceedings disclose two fatal faults—First, Mr Georgeson was not a member qualified to vote, and could not therefore, in my view, count as a member in ascertaining the quorum; second, when the meeting proceeded to the business for which it had been called, there were present only two members qualified to vote, and I think it would never do to construe section 37 of Table A as the petitioners propose. It would be a highly inconvenient, not to say unnatural meaning, to attribute to it to hold that all that is necessary to the validity of the proceedings is that at the earliest stage of the meeting a quorum should be present, but that after the real business of the meeting is stated and under consideration the quorum might go away. I think, therefore, there is no liquidation in existence which can be continued under the supervision of the Court. . . .

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court refused the petition.

Counsel for the Petitioners—Wilson—Greenlees. Agents—Philip, Laing, & Company, S.S.C.

Counsel for the Respondents—C. S. Dickson—M'Lennan. Agent—Thomas Liddle, S.S.C.