Tuesday, March 3.

FIRST DIVISION.

THE COLONIAL REAL PROPERTY COMPANY, LIMITED, PETITIONERS.

Company—Process—Reduction of Capital—Companies Act 1877 (40 *and* 41 *Vict. cap.* 26), *sec.* 4 (2)—*Addition of Words "And Reduced" to Name of Company.*

In an application, under the provisions of the Companies Act 1867 and 1877, for an order by the Court to confirm reduction of capital, and to dispense with the words "and reduced," the petitioners, on moving for advertisement and service, craved the Court to dispense with the words "and reduced" as part of the name of the company between the date of presenting the petition and the disposal thereof. The Court, following *The Albany Shipping Company, Limited*, December 11, 1895, *ante* p. 203, *granted* the dispensation craved.

Counsel for the Petitioner—W. Campbell. Agents—Macandrew, Wright, & Murray, W.S.

Wednesday, March 4.

SECOND DIVISION.

[Edinburgh Dean of Guild Court.

MILLAR *v.* TRUSTEES FOR ENDOWMENT COMMITTEE OF CHURCH OF SCOTLAND.

Property—Building Restrictions—"Villa."

A vassal was bound by a restriction in his feu-charter to erect no buildings other than "villas or offices" on his feu. He applied to the Dean of Guild Court for warrant to erect six contiguous self-contained houses of two storeys with separate gardens before and behind. The superior objected.

Held (*affirming* the judgment of the Dean of Guild Court) that the proposed buildings were not "villas."

By feu-charter dated 29th January 1870, David Deuchar disponed to the Corporation of the Royal Edinburgh Asylum for the Insane part of the lands of Morningside, under certain conditions, *inter alia*—(2) "That the said corporation shall not be entitled to erect on any part of the stripe of ground hereby disponed houses or buildings other than villas or offices, except with the consent of me and my heirs and successors, and said stripe of ground shall not be used for any purpose injurious to the amenity of the adjoining ground."

In 1890 Mr Deuchar disponed the superiority of the ground to the Trustees of the Endowment Committee of the Church of Scotland. By disposition dated 9th and recorded 11th November 1895 the Asylum Corporation disponed the ground itself to James Millar, builder, Edinburgh.

Thereafter Mr Millar applied to the Dean of Guild Court, Edinburgh, for warrant "to erect six self-contained dwelling-houses" on the ground. The plans showed a row of contiguous houses of two storeys with gardens in front about 15 feet square, separated by iron railings, and with separate gardens behind.

The superiors opposed the application on the ground that the buildings proposed were disconform to the conditions of the feu-charter, which restricted the petitioner to the erection of "villas."

On 2nd January 1896 the Dean of Guild sustained this plea, and refused warrant.

Note.— . . . "But the Dean of Guild is of opinion that the same result would follow if the term is considered with reference to its present use and application. Of late years the public have become familiar with that form of erection which consists of two contiguous self-contained houses, each surrounded on three sides by vacant ground. Each of such houses has come to be known as a 'semi-detached villa,' and the Dean of Guild is of opinion that this term has now acquired a definite place in architectural nomenclature, But at the same time the Dean of Guild is clearly of opinion that for the present this is the last modification of the term 'villa' which is known to the building trade.

"In order to be able to pronounce an authoritative opinion on this point, the Dean of Guild thought it right to call a special meeting of his Court, which was attended by all the members except two, who are merchants. The members present included, besides the Dean of Guild, who is a civil engineer, an architect, house-agents, licensed valuators, and masters of the trades of builders, joiners, and cabinet-makers. The members of the Court were unanimously of opinion that the term villa still denotes exclusively a self-contained house of individual and separate character, standing within its own grounds; further, that if any modification of the term were intended, it would require to be expressed, as by the use of the term 'semi-detached villa'; and that at the present day the semi-detached villa represented the furthest extent to which the qualification of the original meaning of the term 'villa' had been recognised by the building trade.

"The Dean of Guild and his Court are unanimously of opinion that the houses proposed by the petitioner would form a row or short street of self-contained houses."

The petitioner reclaimed, and argued—A restriction of this class on property was to be construed as favourably to the disponee as possible. A villa was a house having ground about it. The proposed buildings fulfilled this condition, having garden ground before and behind. It did not matter that the houses were attached to one another. If the test, as contended for on the other side, was that a villa must have ground all round it, then a mere passage of a foot or two between the

houses would make them all villas. Such a contention was absurd. The cases showed that when it was contended that a villa should stand alone, the feu-contracts provided that it should be self-contained or detached—*Buchanan* v. *Marr*, June 7, 1883, 10 R. 936; *Miller* v. *Carmichael*, July 19, 1888, 15 R. 991; *Meldrum* v. *Kelvinside, Estate Trustees*, June 21, 1893, 20 R. 853.

Argued for the respondents—The cases quoted by the other side were against their contention. In those cases the word "detached" was put into the charter to prevent the erection of "semi-detached" villas. On the view of the other side there would be no distinction between "villas" and "dwelling-houses." But the words in the charter made the reading of these two as synonymous impossible. The opinion of the experts was on the side of the respondents, and the decision of the Dean of Guild Court should be affirmed. The case of *Naismith* v. *Cairnduff*, June 21, 1876, 3 R. 863, was analogous to this.

At advising—

LORD JUSTICE-CLERK — The important question in this case is whether what the appellant proposes to do is in accordance with the condition in the title which requires that no houses or buildings shall be erected on the feu "other than villas or offices," that being one term for a building of residence with suitable offices. The term villa is an expression the meaning of which may change or be modified at different times. It is a term to be interpreted by practical men engaged in the building trade and other trades connected therewith. Here we have the decided opinion of the Dean of Guild, who is a civil engineer, and other members of his court—builders and other men of business skilled and experienced in these matters, and having no interest in this case—that the houses in question being built up against one another and joined together, are not "villas" as the term is presently understood. I think we must accept the opinion of these gentlemen on this subject, and affirm the judgment of the Dean of Guild Court.

LORD TRAYNER—The petitioner is by his title restricted from erecting on his land anything but "villas or offices," which I take to mean villas for residence with suitable accommodation offices.

The question here is whether the buildings proposed to be erected are of this character. From the discussion before us it appears that the term "villa" has a somewhat technical meaning, and we are thus under the necessity of resorting to the opinion of experts to ascertain what the technical language of the petitioner's title imports. The Dean of Guild and his council, whom he has consulted, are all experts in this matter, and are just the class of men whose opinion or evidence on such a matter would be taken. As they are unanimous in thinking that the proposed buildings are not villas, I think the only course open to us is to affirm the judgment appealed against and dismiss the appeal.

LORD YOUNG concurred.

LORD RUTHERFURD CLARK was absent.

The Court affirmed the judgment of the Dean of Guild and dismissed the appeal.

Counsel for the Petitioner—Ure—Sym. Agents—A. & A. S. Gordon, W.S.

Counsel for the Respondents, the Trustees for the Endowment Committee of the Church of Scotland—Cheyne—Clyde. Agents—Menzies, Black, & Menzies, W.S.

Counsel for the Respondents, the Royal Edinburgh Asylum for the Insane—Monteith Smith. Agents—Scott-Moncrieff & Trail, W.S.

Friday, March 6.

SECOND DIVISION.

[Sheriff of Lanarkshire.

M'ARA *v.* MORRISON.

Reparation—Negligence — Leaving Vehicle Unattended on Street—Child.

While the carter in charge of a horse and lorry was absent in a public-house, a child of less than six years of age, who was playing in the street, crept underneath the lorry, which had been left standing at the door of the public-house. On his return the carter drove off without observing the child below the lorry, the wheel of which passed over him and caused serious injuries.

In an action at the instance of the child's father against the carter's employers, *held* (*diss.* Lord Trayner) that the accident was caused by the fault of the carter in failing to look below the lorry before driving off, and that his employers were liable.

Opinion by Lord Young that the carter was also in fault in leaving his lorry unattended in the street, his doing so being a contravention of sec. 149, sub-sec. 16, of the Glasgow Police Act 1866 (29 and 30 Vict. c. 273).

William Morrison, baker, Glasgow, as tutor and administrator-in-law of his pupil son Hector Morrison, raised an action in the Sheriff Court of Lanarkshire at Glasgow against Alexander M'Ara, lime and cement merchant, Glasgow, for payment to him of £500 as damages for injuries sustained by the pursuers through the fault of Hugh Connell, a carter in the employment of the defenders.

Proof was led before the Sheriff-Substitute (GUTHRIE) the results of which are fully stated in his interlocutor.

By the Glasgow Police Act 1866, sec. 149, sub-sec. 16, it is enacted that any person having care of a waggon or cart who suffers the same to stand longer than is necessary for loading or unloading goods shall be liable to a penalty of forty shillings, or in default of payment to imprisonment for fourteen days.