

is not competent before us in the first instance.

LORD RUTHERFURD CLARK concurred.

LORD TRAYNER was absent.

The Court remitted the petition to the Junior Lord Ordinary, and found the respondent entitled to expenses.

Counsel for the Petitioner—Cook. Agents—Pringle, Dallas, & Company, W.S.

Counsel for the Respondent—Cullen. Agent—T. Temple Muir, S.S.C.

Saturday, November 12.

FIRST DIVISION.

SCOTTISH MANITOBA AND NORTH-WEST REAL ESTATE COMPANY, LIMITED, PETITIONERS.

Company—Reduction of Capital—Ambiguity in Resolution to Reduce Capital—Ordinary Shares of Different Value.

A company with a total capital of £100,000, of which £81,410 had been subscribed, desired to reduce the subscribed capital, and to leave the unsubscribed capital untouched. They accordingly passed a special resolution “that the capital of the company be reduced from £81,410, divided into shares of £10 each, . . . to £61,057, 10s., divided into shares of £7, 10s. each, which they asked the Court to confirm.”

The petition was *refused*, on the ground that the resolution was ambiguous in giving the capital as £81,410, while it failed to make it clear that that figure referred only to the subscribed capital, and to show what resolution, if any, had been come to with regard to the capital not subscribed.

Opinion expressed, that looking to the English authorities, the result of having ordinary shares of different values would not be an objection to the reduction of capital proposed.

In July 1892 the Scottish Manitoba and North-West Real Estate Company, Limited, presented a petition to the First Division of the Court of Session, under the Companies Act 1887, for the confirmation of a special resolution reducing the capital of the company.

The Court remitted the matter to Mr Charles Logan, W.S., who reported, *inter alia*, as follows—“The capital of the company is declared by the memorandum of association to be £100,000, divided into 10,000 shares of £10 each. 8141 shares have been issued, on 8081 of which there have been paid the sum of £6, 10s. per share, and on 50 of which there have been paid £5, 10s. per share—the remaining 10

shares (on which there have in all been paid the sum of £28, 15s. 4d.) having been forfeited. . . .

“At extraordinary general meetings held at Edinburgh on 1st and 22nd June 1892, the following special resolution was passed and confirmed, viz.—‘That the [subscribed] capital of the company be reduced from £81,410, divided into 8141 shares of £10 each, on which £6, 10s. per share has been called, to £61,057, 10s., divided into 8141 shares of £7, 10s. each, with £4 per share called, and that such reduction be effected by cancelling paid-up capital which has been lost, or is unrepresented by available assets, to the extent of £2, 10s. per share in respect of each of the 8141 shares which have been issued.’ . . .

“While I am prepared to report that the proceedings prior to and since the presentation of the petition have been regular, and that the reasons for the proposed reduction of capital appear to me satisfactory, I think it right to call your Lordships’ attention to the terms of the special resolution sought to be confirmed. The resolution does not deal with the total registered capital of the company (£100,000), but only with the portion thereof (£81,410) which has been subscribed for and issued, and it refers to the latter amount as if it were the whole capital of the company. It appears to me doubtful whether the resolution is in proper form. If it were confirmed by your Lordships, and the form of minute in the petition registered [viz., ‘The capital of the company is £61,057, 10s., divided into 8141 shares of £7, 10s. each, upon which the sum of £4 per share has been or shall be deemed to have been paid up’], the company would appear to be restricted to a total capital of £61,057, 10s., divided into 8141 shares of £7, 10s. each, and thereafter to have no power to issue the present unsubscribed capital of £18,590, divided into 1859 shares of £10 each, that portion of the present capital being entirely ignored in the resolution and minute. On the attention of the petitioners being called to this point, they contend that this unsubscribed capital would still form part of the company’s capital, and have proposed to me that the minute to be registered should be in the following terms—‘The capital of the company is £79,647, 10s., divided into (1) 8141 shares of £7, 10s. each, upon 8131 of which the sum of £4 per share has been or shall be deemed to have been paid up (the remaining ten shares having been forfeited are now unissued); and (2) 1859 shares of £10 each, unissued.’

“As the resolution, however, does not deal with the unsubscribed capital, it appears to me very doubtful whether such a minute as is now suggested could properly follow upon the confirmation of the resolution, and I am also doubtful whether it would be competent for the company to have two sets of ordinary shares of different value without special provision to that effect in the articles of association.”

Argued for the company—1. As to the reporter’s first difficulty, it was quite plain

from the terms of the resolution that it referred, and the shareholders knew it referred only, to subscribed capital. As the company were dealing only with subscribed capital, they were right to refer to that alone—in *re Pinkney & Sons Steamship Company*, 1892, L.R., 3 Ch. 125. If the shareholders had wished to cancel unissued capital, they would have specially mentioned it under section 5 of the Companies Act 1877. There was no necessity under the Companies Acts to refer to the total capital of the company in the resolution; if the registered minute did so, that was sufficient. The amended minute which it was proposed to register removed all ambiguity. It was not necessary that such a minute should merely echo the resolution. It followed not directly upon the resolution, but upon the order of the Court. 2. The reporter's second difficulty, as to whether there could be two sets of ordinary shares of different values, was fully met by the following cases—in *re Barrow Haematite Steel Company*, 1888, L.R., 39 Ch. Div. 582, see p. 594; in *re Quebrada Railway, Land, and Copper Company*, 1888, L.R., 40 Ch. Div. 363; in *re Gatling Gun, Limited*, 1890, L.R., 43 Ch. Div. 628.

At advising—

LORD PRESIDENT—I think the first difficulty raised by the reporter is a serious one, and the conclusion I have come to is that it is insuperable.

Mr Kennedy, upon the authorities cited and an examination of the nature of the proceedings, has sufficiently shown that the second point referred to by the reporter would not prevent us acceding to the prayer of this petition, and that we should be warranted in approving of the procedure followed. The first point, however, is of vital importance. The Court is asked to confirm a resolution for the reduction of capital, but from the resolution before us the company has resolved only with regard to £81,410, which they have treated as the capital of the company. The minute which it is proposed to register deals first with the £81,410, and secondly, with the £18,590, being the remainder of the total registered capital of the company.

It appears to me that there is nothing before us to show that the company came to any resolution as to the aggregate of these sums, but only as to the first of them. If we refer to the memorandum of association we find the resolution is different from it by referring to the capital as only £81,590. It may be said we are taking a strict view, but strictness in such matters is essential, especially looking to the fact that the memorandum of association cannot be touched except to the limited extent allowed by Acts of Parliament.

By granting this petition we should not be confirming a resolution, but resolving upon a matter as to which, so far as appears, the company have not conferred at all.

It is of course open to the company to confer anew and to come before us again,

but I am of opinion we must refuse this petition.

LORD ADAM concurred.

LORD KINNEAR—I agree. We are practically asked not to confirm but to amend the resolution. We have no power to do so. If there is any question as to the validity of the proceedings, it is much better, in the interests of the company, that they should resolve anew than proceed upon a doubtful and perhaps challengeable resolution.

LORD M'LAREN was absent.

The Court refused the petition.

Counsel for the Petitioners—Lorimer—N. J. Kennedy. Agents—Macrae, Flett, & Rennie, W.S.

REGISTRATION APPEAL COURT.

Monday, November 14.

(Before Lord Kinneer, Lord Trayner, and Lord Kincairney).

CRUISE v. ANNAN.

Election Law—Service Franchise—Representation of the People Act 1884 (48 Vict. cap. 3), sec. 3.

A person who acted in the capacity of a servant in a house belonging to a religious order claimed the service franchise in respect of his occupation of a bedroom. He was not subject to be dismissed by any person living in the house, but was in use to obey the clergymen, and held himself bound to obey as a servant the orders of the head clergyman residing in the house. *Held* that the claim was *bad*, in respect the house was inhabited by a person under whom the claimant served.

Michael Cruise, Lanark, lay-brother, claimed to be enrolled as a voter for the burgh of Lanark, as occupant in virtue of service of dwelling-house at St Mary's, Lanark, under the trustees for the establishment of a community of the mission of the Roman Catholic Church, Bannatyne Street, Lanark.

The claim was made under 48 and 49 Vict., 1884, cap. 3, sec. 3.

The claim was objected to by Mr John Annan, writer, Lanark, a registered voter of the burgh of Lanark, in respect that under section 3 of the Reform Act 1868, incorporated by sections 2, 3, 7, 4 (4) of Reform Act 1884, no man was entitled to be enrolled as a voter by reason of his being a joint-occupier of any dwelling-house, and also that the dwelling-house inhabited by the claimant was inhabited by a person under whom he served.

The Sheriff rejected the claim, and Cruise took a case.

The case set forth the following facts as proved—The house on which the claimant