

LORD M'LAREN and LORD JOHNSTON were absent.

In each case the Court sustained the respondent's objection to the competency of the appeal, dismissed the appeal and decreed, and remitted the cause to the Sheriff to proceed.

Counsel for the Pursuers and Appellants—Horne, K.C.—Carmont. Agents—W. & J. Burness, W.S.

In I. and II. Counsel for the Defender and Respondent—Constable, K.C.—Moncrieff. Agents—Simpson & Marwick, W.S.

In III. Counsel for the Defender and Respondent—Anderson, K.C.—Christie. Agents—St Clair Swanson & Manson, W.S.

Wednesday, January 18.

SECOND DIVISION.

[Lord Skerrington, Ordinary.
WILKINSON v. CITY OF GLASGOW
FRIENDLY SOCIETY & OTHERS.

Friendly Society—Conversion into Limited Company—Friendly Societies Act 1896 (59 and 60 Vict. c. 25), secs. 71 (1), 74, and 106—Resolution Passed by Delegates—Ultra vires.

The Friendly Societies Act 1896 enacts, sec. 71 (1)—“A registered society may, by special resolution, determine to convert itself into a company under the Companies Acts 1862 to 1890, or to amalgamate with or transfer its engagements to any such company.” Sec. 74—“For the purposes of this Act a special resolution shall mean a resolution which is (a) passed by a majority of not less than three-fourths of such members of a registered society, entitled under the rules to vote, as may be present in person or by proxy (where the rules allow proxies) at any general meeting of which notice specifying the intention to propose that resolution has been duly given according to the rules; and (b) confirmed by a majority of such members entitled under the rules to vote as may be present in person, or by proxy (where the rules allow proxies) at a subsequent general meeting of which notice has been duly given, held not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed.” Sec. 106—“The expression ‘meeting’ shall include (where the rules of a society or branch so allow) a meeting of delegates appointed by members.”

The rules of a friendly society which purposed conversion into a company made no special provision for procedure in such conversion, but provided, Rule IV (1)—“To enable members to arrange for the management of the society, they shall be represented by delegates,

and annual general meetings and special meetings of the society for that purpose shall consist of meetings of delegates elected as hereafter provided.”

Held that a special resolution for conversion of the society into a limited company must be submitted under secs. 71 (1) and 74 of the Friendly Societies Act 1896 to a meeting of members, not delegates, and must be passed by the majorities therein set forth.

Friendly Society—Conversion into Limited Company—Friendly Societies Act 1896 (59 and 60 Vict. c. 25), sec. 71 (1)—Alteration of Objects—Ultra vires.

A friendly society resolved by special resolution to convert itself into a limited company under sec. 71 (1) of the Friendly Societies Act 1896. Under the rules of the society the surplus of assets over liabilities might be allotted by way of bonus amongst members whose membership exceeded five years' standing and who were over 16 years of age. The bonus had to be given in the form of addition to the benefits, and no bonus was to be allotted except to whole life or endowment assurances. Under the memorandum of association of the proposed company the surplus assets might be divided as dividends among the whole shareholders. It was further provided that every member should be entitled to receive either one or two fully paid-up shares, according as he was or was not qualified to receive a bonus in terms of the rules of the society as above set forth at the date of registration of the company. These shares were to be called “A” shares. The remaining shares (“B” shares) were to be offered to those members of the society who were 16 years of age at the date of registration and had paid premiums amounting to at least 5s. to the society, or partly to the society and partly to the company. The memorandum further provided for the immediate division among the officials and employees of the society (including the delegates) of substantially one-third of the whole subscribed capital of the proposed new company.

Held that the scheme was invalid in respect that (1) part of the capital might be distributed among persons who under the existing rules of the society had no right to participate therein, and (2) that a large part of the society's assets would fall to be applied to entirely alien purposes.

Opinion per curiam that it was competent for a friendly society to convert itself into a limited company only on condition that the objects remained identical and unchanged.

William T. Wilkinson, residing at 119 Plantation Street, Accrington, complainer, presented a note of suspension and interdict against the City of Glasgow Friendly Society, which was registered under the Friendly Societies Acts and had its regis-

tered office in Glasgow, and against Robert Pirie, M.D., Glasgow, and others, the trustees thereof, *respondents*. The complainer craved the Court to interdict the respondents "from carrying into effect a pretended resolution of said Society . . . purporting to convert the said Society into a company limited by shares and by guarantee under the Companies (Consolidation) Act 1908, by the name of The Glasgow City and General Insurance Company, Limited, or under any other name . . ."

The complainer pleaded—"(1) The proceedings complained of being illegal, *ultra vires*, and injurious to the complainer, interdict should be granted as craved with expenses. (2) The defences are irrelevant and should be repelled, and interdict granted in terms of the prayer of the note.

The respondents pleaded—"(2) The proceedings taken by the Society being legal and valid, the note should be refused."

At a meeting of the delegates of the said Society, held in Glasgow on 6th April 1910, a special resolution that the Society be converted, in pursuance of section 71 of the Friendly Societies Act 1896, into a company limited by shares and by guarantee under the Companies (Consolidation) Act 1908, by the name of the Glasgow City and General Insurance Company, Limited, and that the memorandum and articles of association then before the meeting, and which for the purposes of identification were endorsed with the signature of the chairman, be adopted as the memorandum and articles of association of the company, was passed. A meeting of the delegates confirmed the resolution upon 23d April 1910.

The Rules of the City of Glasgow Friendly Society contained, *inter alia*, the following provision—"The objects of the Society are to provide by the voluntary subscriptions of the members funds for insuring money to be paid on the death of a member, or on his attainment of a specified age, or for the funeral expenses of the child of a member, or for the endowment of members or nominees of members at any age, or for the relief and maintenance in sickness of members at present insured under previous tables. The gross sum insured on each life shall not exceed £200." Provision for representation by delegates was made in Rule IV (1), quoted in the rubric.

The Rules provided for *voluntary dissolution* thus—"No voluntary dissolution can be effected except by the consent of five-sixths in value of the members (including honorary members) so testifying by their signatures to an instrument of dissolution in the form provided by the Treasury regulations in their behalf, and also by the written consent of every person for the time being receiving or entitled to receive any relief or benefit from the funds of the Society, unless the claim of such person has been fully satisfied, or adequate provision made for satisfying such claim. The value of members to be ascertained by giving one vote to every member, and an additional vote for every five years that he

has been a member, but to no one member more than five votes on the whole."

It was also provided that the *surplus of assets* over liabilities might be allotted by way of bonus amongst members whose membership exceeded five years' standing, and who were over sixteen years of age, but that the bonus must be given in the form of additions to the benefits, and no bonus was to be allotted except to whole-life assurances or endowment assurances.

Further references to the Rules will be found in the opinions of the Lord Ordinary and the Court (*infra*).

The *memorandum of association* of the proposed new company contained, *inter alia*, the following provisions—"III. The objects for which the company is established are—To continue, carry on, and develop such parts of the business heretofore carried on, or which might have been carried on, by the City of Glasgow Friendly Society, registered under the Friendly Societies Acts on or about 27th September 1882, and now converted into this company, as are hereinafter mentioned, viz., To insure money not exceeding £300 to be paid on the death of a member, or to a member at a specified date, or to insure money for the funeral expenses of the husband, wife, child, parent, grandparent, grandchild, brother, or sister, of a member, and also to take over and manage all the funds and assets of the said Society; to perform and carry out all its obligations, and to do all such other things as are incidental or conducive to the attainment of the above objects. . . . VI. The share capital of the company shall consist of £30,000, divided into 600,000 shares of one shilling each, and all the profits of the company shall belong to the shareholders, without prejudice to the company declaring a bonus in terms of the articles of association. Every person who was a member of the said Society at the date of the registration of this company, and who was not qualified at said date to receive a bonus in terms of the rules of the Society, shall be entitled on application to the directors to receive one fully-paid share, and each of said members who was at said date qualified to receive a bonus shall be entitled to two fully-paid shares. These shares shall be called A shares. A person entitled to an A share may transfer his right by nominating a member of the company to receive the share, but neither he nor his nominee shall have right to transfer the share or vote or receive a dividend in respect of it unless the premiums paid by the holder to the Society amounted to at least five shillings, or until the premiums paid by him partly to the Society and partly to the company shall amount to that sum. The remaining shares shall be called B shares, and shall not be offered to the public for subscription. They shall be issued for subscription by those persons above sixteen years of age who were members of the said Society at the date of the registration of this company, and who have paid premiums amounting to at

least five shillings either to the said Society or partly to the Society and partly to the company. The B shares shall be divisible equally amongst the applicants or their nominees, and in the event of there being a number of shares which cannot be divided equally, these shares shall be balloted for as may be arranged by the board of directors. Nominees must be persons qualified as above mentioned to apply for B shares. At the first allotment of these shares no person shall be allotted more than six thousand, and the company shall be bound to register all transfers of shares to persons who were members of the said Society at the date of registration of this company, or to the Staff Association, Limited, incorporated under the Companies (Consolidation) Act 1908. VII. In carrying on the company's business the following fundamental conditions shall be observed, and may be enforced by any one having interest—(1) The policies and all other contracts, agreements, engagements, and undertakings of the said Society shall be implemented by this company. (2) Subject to the provisions of this memorandum, of the articles of association, and of any contract, all officials and employees of the said Society shall hold corresponding positions in this company with the same emoluments. (3) The remuneration of agents and collectors who were in office at the date of the registration of this company, as well as their nominees and their successors in all time coming, shall be at the rate of . . . [certain percentages] . . . (24) The persons who were members of the said Society and members of its staff at the date of the registration of this company shall be entitled to appoint one director of this company, who shall hold office during the pleasure of the said staff. . . . The following are the names and addresses of the members of the said staff:— . . . [Here follow signatures.] . . . (25) The delegates and the members of the board of management of the said Society shall be entitled to compensation for loss of office as the same shall be ascertained on actuarial principles. . . . (26) The provisions in article 14 of the annexed articles of association are held as repeated *brevitatis causa*."

Article 14 of the *articles of association* provides—"14. The agents and collectors shall deliver to the persons who were members of the City of Glasgow Friendly Society at the date of the registration of this company a copy of the company's prospectus with forms of application for shares, give the said members assistance in filling up forms, forward to the head office all applications which they may receive, deliver share certificates, obtain receipts, write up a register of shareholders under their charge in books provided for the purpose, collect the shareholders' contributions to the share capital weekly or otherwise as may be arranged, and in general do everything they may be required to do to carry out the conversion and obtain the necessary capital. For their labour and trouble in connection with these matters, and for obtaining the consent of

the members of the said Society to the conversion, if necessary, a special remuneration equal to twenty-one per cent. of the nominal capital of the company shall be distributed out of the capital produced by the issue of the B shares amongst the agents and collectors in proportion to their average weekly collections, the average to be ascertained by taking a period of six months immediately preceding a date to be fixed by the directors for this purpose. For their labours in connection with the conversion a special remuneration equal to three per cent. of the nominal capital of the company shall be distributed out of the capital produced by the issue of the B shares in such proportion as the directors shall determine amongst all the members of the staff, including the agents and superintendent of agents, but excluding the manager, secretary, and collectors; and for their labours in connection with the conversion a special remuneration equal to three per cent. of the nominal capital of the company shall be paid out of the capital produced by the issue of the B shares to the manager and secretary in proportion to their salaries."

The complainer, *inter alia*, averred—"The said resolution was not part of the management of the Society for which said delegates were appointed, in respect that it provides for the transfer of the business, assets, and liabilities of the Society to the said proposed company, and was accordingly *ultra vires* of the said delegates. . . . It is believed and averred that the assets of the Society are worth £300,000 and its invested funds amount to £269,720. The transfer price is quite inadequate. . . . The Staff Association Limited will become vested in proportion to its holding in the aforesaid assets and invested funds of the said Society, which at present belong entirely to the members thereof. Equal facilities and privileges are not conferred by the said articles and memorandum of association on the members of the said Society. The result of the provisions aforesaid is that the Society ceases to be as heretofore a mutual benefit association as provided by the rules. . . . By article 14 of the said articles of association a sum equal to 27 per cent. of the capital of the proposed company is to be distributed amongst the agents, collectors, members of the staff, and manager and secretary, for their labours in connection with the conversion, and in the case of the agents and collectors for obtaining the consent of the members of the Society to the said conversion, which the complainer maintains is illegal and *ultra vires* of any official. The members should be convened and give their consent to the conversion when the details of the scheme have been fully put before them. £8100 of the inadequate share capital of the proposed company is thus to be distributed amongst these officials, leaving only £21,900 as the true price of the said Society's assets. The Society is thus not carrying out its mutual benefit scheme, and is giving away its assets to persons who are not members.

The provisions of article 14 are accordingly *ultra vires*."

On 15th June 1910 the Lord Ordinary (SKERRINGTON) pronounced this interlocutor—"... The Lord Ordinary... sustains the first and second pleas-in-law stated for the complainer, suspends the proceedings complained of, and interdicts, prohibits, and discharges the respondents the City of Glasgow Friendly Society, and Robert Pirie [and others] as trustees of the said the City of Glasgow Friendly Society, and any person authorised by them, from carrying into effect a pretended resolution of said Society passed on 6th April 1910 and confirmed on 23rd April 1910, purporting to convert the said Society into a company limited by shares and by guarantee under the Companies (Consolidation) Act 1908, by the name of The Glasgow City and General Insurance Company, Limited, or under any other name. . . ."

Opinion.—"The complainer is a policyholder in and a member of the City of Glasgow Friendly Society. He asks to have the Society and its trustees interdicted from carrying into effect a pretended resolution of said Society passed on 6th April, and which it was proposed to confirm at a meeting called for 23rd April 1910, purporting to convert the said Society into a limited company under the Companies (Consolidation) Act 1908, by the name of the Glasgow City and General Insurance Company, Limited. On the day before the confirmatory meeting the Lord Ordinary on the Bills refused interim interdict *hoc statu* in respect of an undertaking given by the respondent's counsel, that they would not carry into effect any resolutions that might be passed at the meeting called for 23rd April. When the case came before me in the procedure roll the complainer's counsel moved for interim interdict upon the ground that this undertaking had been broken. It now appears that this motion was based upon a complete misapprehension as to the actual facts, and that there was no breach of the judicial undertaking.

"The first ground upon which the complainer maintains that the proposed conversion is illegal is that the special resolution authorising it was passed and confirmed at meetings of delegates of the Society and not at meetings of members. Section 71 of the Friendly Societies Act 1896 (59 and 60 Vict. cap. 25) authorises a registered society by special resolution to convert itself into a company under the Companies Acts. Section 74 defines how a special resolution may be passed and confirmed at 'general meetings.' Section 106 (the definition clause) enacts that 'the expression "meeting" shall include (where the rules of a society or branch so allow) a meeting of delegates appointed by members.' Rule 4 (1) of the Society in question provides that 'to enable members to arrange for the management of the Society they shall be represented by delegates, and annual general meetings and special meetings of the Society for that purpose shall consist of meetings of delegates elected as hereinafter provided.' *Prima facie* the

special resolution for the conversion of the Society was regular in respect that it was passed and confirmed at meetings of delegates to whom the management is entrusted by its rules. The complainer's counsel argued that the word 'management' as used in the rules meant ordinary management, and that the conversion of the Society into a limited company was an act of extraordinary administration. I can find nothing in the rules to support the view that acts of extraordinary administration must be dealt with at meetings of members as distinguished from meetings of delegates. . . .

"The next question is whether the step which the respondents propose to take is a 'conversion' within the meaning of section 71 of the Act of 1896, or whether it is not designed to accomplish at the same time other and wider purposes which are outside the purview of the Act. It has been decided by the Court of Appeal in England that the procedure contemplated by the statute is a mere matter of machinery by which a friendly society may become a different legal entity having objects identical with its objects as formerly prescribed by its rules and the Friendly Societies Act; though, of course, when once converted, it can exercise such powers of altering or enlarging its objects as defined by its memorandum as are conferred by the Companies Act on all limited companies. Accordingly a friendly society was restrained from converting itself into a limited company with a memorandum including among its objects the transacting of general insurance business—*Blyth v. Birtley*, 1910, 1 Ch. 228. In the present case the third or 'object-clause' of the memorandum of association of the proposed new company is substantially the same as rule 1 (3) of the friendly society, except that the new company does not propose to insure its members against sickness, and that the maximum sum which it may insure upon each life is raised from £200 (the present limit) to £300. The first six clauses of the memorandum are framed in accordance with section 4 of the Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), which applies to companies limited by guarantee and having a share capital, and with relative form (section 118 and schedule III, form C). The sixth clause states the share capital of the company at £30,000, divided into 600,000 shares of one shilling each. It further provides that every member of the Society shall be entitled to receive either one or two fully paid shares according as he is not or is qualified to receive a bonus in terms of the rules of the society at the date of the registration of the company. These shares are to be called A shares. The remaining shares (to be called B shares) are to be offered for subscription to certain of the members. These shares may be transferred to other members or to 'The Staff Association, Limited, incorporated under the Companies (Consolidation) Act 1908.' It is not explained what function this second proposed company is intended to perform in the carrying

out of the conversion scheme, but one may conjecture that its object is in some way to benefit the employees or 'staff.'

"Clause 7 of the memorandum is of a novel and peculiar character. It provides that 'in carrying on the company's business the following fundamental conditions shall be observed, and may be enforced by anyone having interest.' Then follow 26 sub-sections, which are intended to define and fix for all time coming the remuneration, rights, and privileges of the agents and collectors and other officials of the company. By the rules of the Society (vi, 5 a) agents and collectors held their appointments 'with the privileges and subject to all the terms and conditions specified in the rules of the Society for the time being,' and they were entitled to 'such remuneration as the board of management may from time to time direct.' On the registration of the company all the officials and employees of the Society will hold corresponding positions in the company, their remuneration rights and privileges being henceforth secured by the memorandum of association, which by section 7 of the Act of 1908 cannot be altered except as expressly provided in the statute. By sub-section (3) of clause 7 of the memorandum 'the remuneration of agents and collectors who were in office at the date of the registration of this company, as well as their nominees and their successors in all time coming, shall be at the rate' of certain percentages of the collections together with certain fees. Sub-section (24) details the names and addresses of the members of the staff. Sub-section (25) provides 'the delegates and the members of the board of management of the said Society shall be entitled to compensation out of the capital produced by the issue of the B shares, for loss of office as the same shall be ascertained on actuarial principles.' Sub-section (26) holds as repeated *brevitatis causa* article 14 of the annexed articles of association. This article provides that for their labour and trouble in connection with the conversion '... [His Lordship then quoted the article, which is given above.] ...' It follows that the company, if and when registered, will be bound to distribute a sum equal to 27 per cent. of its nominal capital, or £8100, among its officials and employees, and that this money is to be paid out of capital.

"I do not need to consider whether these 'fundamental conditions' would or would not be binding upon the company after its registration, as it is not open to the respondents to impeach the legality and validity of their scheme. It is, however, plain enough that the promoters of the scheme are endeavouring to use the machinery of the Act of 1896 for entirely alien purposes, viz., in order to impose upon the company obligations in favour of its staff which were not incumbent on the Friendly Society, and in order to divert part of the company's capital from the 'objects' enumerated in the memorandum to the purposes set forth in the so-called 'fundamental conditions.' If these purposes are

such as a limited company can lawfully accomplish by procedure either judicial or extrajudicial under the Act of 1908, the respondents can attain this end by converting the Friendly Society into a limited company and by then initiating and carrying through the requisite procedure. It is, however, out of the question for the promoters to saddle the company before it comes into existence with liabilities which it may have neither the wish nor the power to adopt as binding on itself. Though the company is to be limited by guarantee and not by shares its powers with reference to its share capital will be the same as if it was a company limited by shares—Act of 1908, sec. 56.

"I accordingly sustain the complainer's first and second pleas-in-law, and grant interdict against the respondents carrying into effect the resolutions of 6th and 23rd April 1910."

The respondents reclaimed, and argued—(1) The proceedings taken by the Society were valid. The Society was going to do nothing but modify its rules and at the same time convert itself into a company. The company was not really a new entity; there was a continuity of being between the Society and it. The members of the Society continued to be associated together, but as a company. It was admitted that the respondents were wrong if they altered their objects. But all changes that were made were changes that the Society (remaining a Friendly Society) could have made. Accordingly if the Society, first, had altered its rules and then applied for conversion, all the grounds upon which the Lord Ordinary's judgment proceeded would be gone. The Court would not interfere with the internal management of a company acting within its own powers—*Foss v. Harbottle*, 1843, 2 Hare 461; *Burland v. Earle*, [1902] A.C. 83 (Lord Davey at 93). The changes here were matters of management, and could not be considered *ultra vires* unless it could be shown that they were not incidental to the purpose of the company or that they were straight in the face of the articles of association. Gratuities to employees were *ultra vires* of an ordinary limited company. The delegates were not promoters and were not being paid for getting up the company. They were being paid for doing a bit of financial work for the company, for they had the power of transferring large bodies of members, and their goodwill was worth securing. A company was entitled to do anything which the directors honestly and reasonably thought would be beneficial, i.e., good business, and which was not contrary to the constitution—*Taxton v. Royal Insurance Company*, 1864, 2 H. & M. 135; *Simpson v. Westminster Palace Hotel Company*, 1860, 8 H.L. 712 (Lord Chancellor Campbell at 717); *Southall v. British Mutual Life Assurance Society*, 1871, L.R., 6 Ch. App. 614; *Hutton v. West Cork Railway Company*, 1883, 23 Ch. D. 654 (Lord Bowen, at 672-3); *Hampson v. Price's Patent Candle Company*, 1876, 24 W.R. 754; *Henderson v. Bank of Australasia*, 1888, 40

Ch. D. 170 (North, J.), at 181; *Cyclists' Touring Club v. Hopkins*, [1910] 1 Ch. 179. It was laid down in *Blythe v. Birtley*, [1910] 1 Ch. 228, that there was no interval in the change between a friendly society and a company. At the same time a friendly society could not be converted into a company without the introduction of many things that were not in the society previously. (2) By section 71 of the Friendly Societies Act 1896 (*cit. sup.*) every registered society could by special resolution determine to convert itself into a company. Section 74 (*cit. sup.*) laid down that a special resolution must be passed by a three-fourths majority of the members entitled under the rules to vote. Under the rules of this Society the only members entitled to vote were the delegates who had duly passed the resolution. Except in the case of dissolution and amalgamation (which closely resembled dissolution), nobody else except the delegates had any right to interfere. This Society was managed and controlled by the delegates, representatives of the shareholders, and not by the shareholders themselves.

Argued for complainer—It had been decided in England that the procedure under section 71 of the Friendly Societies Act 1896 (*cit. sup.*) was mere matter of machinery, and that conversion was competent provided the objects remained unchanged—*Blythe v. Birtley (cit. sup.)*. The scheme in the present case was palpably *ultra vires*. It involved the distribution of 27 per cent. of the nominal capital among the officials. None of the cases cited had any application. They were merely illustrations of the exercise of discretionary powers by directors of limited companies. It was not disputed that in cases of going companies the directors were entitled to give gratuities to employees in order to make them and their successors work harder. Moreover, the payments in all the cases quoted were payments out of revenue and not out of capital. In the present instance they were payments out of capital—*In re George Newman & Company*, [1895] 1 Ch. 674 (Lindley, L.J., at 686). The payments to the officials were a material element in inducing the vote that had brought about conversion, and therefore *ultra vires*—see Vaughan Williams (L.J.) in *Kaye v. Croydon Tramways Company (cit. sup.)*, at [1898] 1 Ch. 375. (2) The procedure was irregular in respect that the special resolution was carried by the votes of delegates. It was unnecessary for the Legislature to specify in section 71 (*cit. sup.*) the majority by which a special resolution must be passed, in respect that before a society could be converted it must be dissolved and the provision in the rules with regard to dissolution applied, which was based on section 78 (c) of the Act. If the rule with regard to dissolution did not apply to conversion, then there was no provision in the rules with regard to conversion. They were accordingly thrown back on the Act, which provided that a special resolution must be passed by a three-

fourths majority of members—section 74. The resolution now in question had not been so passed.

At advising—

LORD SALVESEN—In this case the Lord Ordinary has interdicted the respondents from carrying into effect a resolution passed at a meeting of delegates of a friendly society purporting to convert the Society into a company limited by shares and by guarantee. We heard a full argument which touched upon various matters of general importance, but it only served to confirm me in the impression, which I early formed, that the interlocutor of the Lord Ordinary was right.

The City of Glasgow Friendly Society was established as far back as 1862, and we were informed that it has more than 100,000 members, and that its invested assets, according to the last actuarial valuation, exceeded the liabilities by a sum of about £30,000. It has thus had a fair measure of prosperity under its present constitution, but those responsible for its management profess that it would be an advantage to the Society to have it converted into a company under the Companies Acts, and accordingly took steps to have this done. In pursuance of this object a memorandum and articles of association of the proposed company were drawn up, and at a meeting of delegates, held on 6th April 1910, a special resolution was passed by a large majority to the effect (I read from the record) that "the Society be converted, in pursuance of section 71 of the Friendly Societies Act 1896, into a company limited by shares and by guarantee under the Companies (Consolidation) Act 1908, by the name of The Glasgow City and General Insurance Company, Limited, and that the memorandum and articles of association then before the meeting, which for the purpose of identification were endorsed by the signature of the chairman, be adopted as the memorandum and articles of association of the company."

The first objection taken by the complainer is one as to the regularity of the procedure. The special resolution in question has never been submitted to the members as a body, but the Lord Ordinary holds that, according to the constitution of the Society itself, this was unnecessary. He reaches this conclusion on a consideration of certain sections of the Friendly Societies Act of 1896, as applied to the rules of the Society as at present existing.

The rules make no express reference to the procedure which is to be adopted with a view to the conversion of the Society into a limited company. They do, however, contain a provision with regard to its voluntary dissolution, which in my opinion has an important bearing on this matter. By rule 13 it is provided—"No voluntary dissolution can be effected except by the consent of five-sixths in value of the members (including honorary members) so testifying by their signatures to an instrument of dissolution in the form provided by the Treasury Regulations in that behalf,

and also by the written consent of every person for the time being receiving or entitled to receive any relief or benefit from the funds of the Society, unless the claim of such person has been fully satisfied, or adequate provision made for satisfying such claim. The value of members to be ascertained by giving one vote to every member, and an additional vote for every five years that he has been a member, but to no one member more than five votes on the whole." It is noteworthy that the code of rules containing this provision was registered in 1905, or about nine years after the passing of the Friendly Societies Act, and it would appear that the whole rules were at that time re-cast.

By section 70 of the last-mentioned Act provision is made for two or more registered societies, by special resolution of both or all such societies, becoming amalgamated together as one society, and also for a registered society by special resolution transferring its engagements to any other registered society which may undertake to fulfil such engagements. It declares that the special resolution for amalgamation or transfer of engagements shall not be valid without an assent thereto of five-sixths in value of the members, and the written consent of every person receiving or entitled to any benefit from the funds, unless his claim has first been fully satisfied, or adequate provision made for satisfying it. These provisions are similar to those embodied in the respondent's Society's own rules with regard to voluntary dissolution. Section 71, however, which permits a registered society, by special resolution, to convert itself into a company under the Companies Acts, or to amalgamate with or transfer its engagements to any such company, contains no provision as to the majority by which the special resolution, in order to be valid, must be carried; but this appears to be supplied by section 74, which enacts "For the purposes of this Act a special resolution shall mean a resolution which is (a) passed by a majority of not less than three-fourths of such members of a registered society entitled under the rules to vote, as may be present in person or by proxy (where the rules allow proxies) at any general meeting of which notice specifying the intention to propose that resolution has been duly given according to the rules; and (b) confirmed by a majority of such members entitled under the rules to vote, as may be present in person or by proxy (where the rules allow proxies) at a subsequent general meeting of which notice has been duly given, held not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed." If there were nothing further in the Act, it would appear to be plain that the persons to whom a special resolution must be submitted, with a view to the conversion of the society into a limited company, must be members of the society in the same sense as that word is used in section 70, although the necessary majority is less and there is no

provision for obtaining the written consent of persons entitled to benefit under the funds.

The Lord Ordinary refers to section 106, which enacts that the expression "meeting" "shall include (where the rules of a society or branch so allow) a meeting of delegates appointed by members"; and to Rule IV (1) of the Society in question, which provides that "to enable members to arrange for the management of the Society, they shall be represented by delegates, and annual general meetings and special meetings of the Society for that purpose shall consist of meetings of delegates elected as hereafter provided"; and holds that the special resolution for the conversion of the Society was regular, in respect that it was passed and confirmed at meetings of delegates to whom the management is entrusted by its rules.

I am unable to concur with the Lord Ordinary in this matter. As I have already pointed out, the rules contain no provisions with regard to the conversion of the Society into a limited company. I cannot, therefore, see how the definition clause, to which the Lord Ordinary refers, can be held to override the express enactment contained in section 74. By parity of reasoning it would also override the provisions of section 70, although it is quite plain that the majority required to pass the special resolutions therein referred to is a majority not merely of the members but a majority in value of the members. I could have understood the reasoning of the Lord Ordinary if there had been a provision that the expression "members" includes delegates appointed by members; but there is no provision of this kind. I take it, therefore, to be plain that in a matter of this sort, which is not one of ordinary administration, but really involves the dissolution of the Friendly Society at the moment of its conversion into a company, the special resolutions which are necessary to carry this into effect must be submitted to and passed by a majority of not less than three-fourths of the members. Under the rules of the Society there is no difficulty in ascertaining who are the members; and a simple three-fourths majority of these, irrespective of the length of time during which they have been connected with the Society, is sufficient to legalise a conversion which is not otherwise objectionable. If it is suggested that there may be a difficulty in ascertaining who the members are, the Society would be met with the same difficulty when they came to apply Rule IV (13) in connection with a voluntary dissolution; but, as I have already said, there appears to me to be no difficulty in this matter at all, as for the purpose of electing delegates a roll of members must be made up in every district which is entitled to send a delegate, and this roll must be available to the Society when it requires at any time, either in accordance with its rules or the provisions of the Act of 1896, to submit a matter of extraordinary administration to the decision of its members.

In view of my opinion on this branch of

the case, it is, strictly speaking, unnecessary to consider the other, on which the Lord Ordinary is in favour of the complainer; but as it has been so fully argued, and is of general importance, it is desirable that we should express our views upon it. Now it was decided in the English case of *Blythe*, 1910, 1 Ch. 228, that the procedure under section 7 of the 1896 Act is a mere matter of machinery, by which it is competent for a friendly society to convert itself into a limited company, but only on condition that the objects remain identical and unchanged. In other words, it is not competent for a friendly society under the guise of a conversion to enlarge or alter its objects, although after conversion has taken place it has the same powers as any other limited company possesses of doing so with the sanction of the Court. In one sense it is true that the proposed conversion in this case involves no substantial change of its objects, strictly so called, because the company would still continue to insure its members in the same way as the Friendly Society does at present, except that it would no longer ensure them against sickness, and that the maximum insurance upon any one life is raised from £200 to £300. I am not sure whether even this change would not have entitled the complainer to obtain the interdict which he seeks. But the objection goes far deeper. In the first place, whereas under the existing rules the surplus of assets over liabilities may be allotted by way of bonus amongst members whose membership exceeds five years' standing and who are over sixteen years of age, the bonus must be given in the form of additions to the benefits; and no bonus is to be allotted except to whole-life assurances or endowment assurances. Under the memorandum of association of the proposed company the surplus may be divided as dividends amongst the whole shareholders, although all the B shares may be allotted to individual members who have only paid 5s. to the Society, and that in blocks of not more than 6000 shares of 1s. each. The result will necessarily be that in the case of a member of five years' standing or upwards who does not choose to apply for B shares, the greater part of the benefit to which he would be entitled by way of bonus will be distributed amongst persons who under the existing rules have no right to participate at all. The substantial rights which such a member has under the present rules would thus be taken away from him except to an illusory extent, corresponding to the porportion of the surplus to which the holding of one or two A shares as the case might be would entitle him.

The Lord Ordinary has dealt at some length with another proposal, contained in clause 7 of the memorandum, which is even more objectionable, for it provides for the immediate division amongst the officials and employees of the Friendly Society (including the delegates) of substantially one-third of the whole subscribed capital of the proposed new company. Of this sum about two-thirds is to be distri-

buted amongst the agents and collectors for their labour and trouble "in connection with the conversion and obtaining the necessary capital, and for obtaining the consent of the members of the Society to the conversion if necessary," although there is a special provision in the memorandum that they are to be retained in their employment with the same emoluments and on better terms than before.

Something is to be said for the provision that delegates and members of the board of management of the Society who would lose their fees on the conversion being carried through, should be entitled to compensation for such loss; but why the employees who remain on terms that are at least as good as, if not better than, those upon which they hold office at present, should likewise receive a large sum at the expense of the existing members of the Society I have been quite unable to fathom. I agree with the Lord Ordinary that the proposal involves the application of a large part of the Society's assets to entirely alien purposes, for although the money will be raised by fresh capital, the security for this capital and for the benefits by way of dividends or bonus which would accrue to it, consists entirely in the existing surplus assets of the Society. I think it would be difficult to justify such a proposal upon any ground, but it is enough to say that it violates the principle laid down in the case of *Blyth*, to which I have already referred. On this part of the case I entirely agree with the reasoning of the Lord Ordinary.

On the whole matter I am of opinion that the interlocutor under review must be adhered to, with additional expenses to the complainer.

LORD JUSTICE-CLERK — That is the opinion of the Court. [The Court consisted of LORD JUSTICE-CLERK, LORD ARDWALL, LORD DUNDAS, and LORD SALVESEN.]

The Court adhered, and of new granted interdict as craved.

Counsel for Complainer (Respondent)—
—Graham Stewart, K.C.—W. J. Robertson.
Agents—Watt & Williamson, S.S.C.

Counsel for Respondents (Reclaimers)—
C. N. Johnston, K.C.—Sandeman, K.C.—
M. J. King. Agents—Simpson & Marwick,
W.S.

Thursday, January 19.

SECOND DIVISION.

[Sheriff Court at Edinburgh.]

MACANDREW v. GILHOOLEY.

Reparation—Workmen's Compensation Act 1906 (6 Edw. VII, c. 58)—Discharge by Workman—Gratuitous Discharge—Personal Bar.

A workman having received injuries on 3rd December 1909, his employer admitted liability therefor, and paid him compensation under the Work-