the course indicated is in accordance with practice.

It is evident that so long as the Article IV (3) remains unqualified it would require a clear averment of custom and proof of the practice before a court of law could take judicial cognisance of it. I am bound, however, to say that I think what I have described above is the safe course to take, and that it is in accordance with the practice in country districts. If it had been followed in the present case there would have been no accident of the kind which happened.

LORD CULLEN—I am of opinion that the conclusion arrived at by the Sheriff is right.

When the defenders' motor car made up on the led horse the driver of the car saw that Stout, the man leading the horse, was not on the outer side of it next to the course of the car, but on the inner side, so that the risk arising from the possibility of the horse swerving when the car came up was all the more serious. The driver of the car might have acted in different ways to promote a safe passing of the horse. As it was, he accepted the situation and drove on past the horse without stopping or slowing his car.

Now as the risk of the horse swerving on the approach of the motor car was an obvious and serious risk, I think that ordinary prudence dictated at least that the driver of the car should give the horse as wide a berth as he could give it, consistently with safe driving of the car. The safety of the car called for this as well as the safety of the horse. But in this respect I think that the driver failed in his duty of carefulness. The road was a narrow one. It is difficult to arrive at precise measurements for fixing the course of the car. But on a consideration of the evidence I am satisfied that there was from 1½ to 2 feet of roadway on the right-hand side of the course of the car which the driver did not utilise, and which he might and ought to have utilised, as a matter of reasonable care in order to conduce to a safer passing of the horse.

I further think that the driver of the motor car was in fault in driving past the led horse as fast as he did. He perilled everything on a quick dash past. This meant that if the horse should suddenly swerve he had deprived himself of the chance of averting a collision which slow and cautious going, with his car thereby under better control, would have offered to him.

I desire to express no opinion on the "rule of the road" applicable to led horses, whatever it may be, as affected by Article IV (3) of the Motor Car Use and Construction (Scotland) Order 1904, because I do not think the topic is raised for judgment. The point in this connection sought to be taken by the defenders is not raised in their averments and pleas. Nor was it put in the course of the proof to Stout, the leader of the horse, whom the defenders would seek to convict of contributory negligence.

The Court refused the appeal and granted decree for payment of £40 in full of the sum sued for, and made the following findings:—"Find in fact in terms of the findings in fact and in law contained in the interlocutor of the Sheriff, dated 4th April 1916, with the variation that the eleventh finding therein be deleted and the following finding be inserted in place thereof, *videlicet* (11) that the defender's said driver was guilty of negligence in failing to draw his car across the road away from the horse, as was reasonably practicable, and in passing the animal at a speed of about 18 miles an hour in a down-gradient of about 1 in 20, and without slowing down, and that the accident was the result of his negligence: Affirm said interlocutor as varied." . . . . .

Counsel for Pursuer and Respondent—Christie, K.C.—Morton. Agents—Mackenzie & Kermack, W.S.

Counsel for Defenders and Appellants—M. P. Fraser—A. M. Mackay. Agents—Manson & Turner Macfarlane, W.S.

Tuesday, November 21.

SECOND DIVISION.

SURMA VALLEY SAW MILLS, LIMITED, PETITIONERS.

Company — Winding-up — Transfer of Shares—Winding-up by Court—Application for Authority to Register Transfer of Shares after Commencement of Winding-up.

A company, in which there had been friction as to the conduct of the business, having presented a petition for a judicial winding-up, a note was presented on behalf of the company and a shareholder setting forth that since the resolution for winding-up the friction had been brought to an end by the two shareholders who had caused it having sold their shares to the shareholder concurring in the note, and asking authority to register the transfers of the shares in the register of shareholders, with the consent of the liquidator. The Court when *appointing* the liquidator also *authorised* the registration of the transfers.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts—Section 139—"*Commencement of Winding-up by Court*—A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding-up." Section 205—"*Avoidance of Transfers, &c., after Commencement of Winding-up*—. . . (2) In the case of a winding-up by . . . the court, every disposition of the property (including things in action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding-up, shall, unless the court otherwise orders, be void."

The Surma Valley Saw Mills, Limited, *petitioners*, on 7th November 1916 presented

a petition, based on a special resolution of the company duly confirmed, craving an order for the winding up of the company by the Court.

The *petition* stated—"... "There has for some time been considerable friction in the company as to the conduct of its business. This friction has seriously impaired the proper conduct of the business and has threatened, and still threatens, to ruin the prospects of continuing successfully to carry on the business of the company. In consequence of this friction, on 2nd October 1916 a requisition was addressed to the secretary of the company by Mr James D. Mackintosh, a shareholder in the company, requesting the secretary to convene an extraordinary general meeting of the company in terms of section 66 of the Companies (Consolidation) Act 1908. The requisition stated that the object of the meeting to be convened was to receive and, if so advised, to pass and confirm the following special resolution, viz.— 'That the company be wound up by the Court.' ..."

On 18th November the petitioners and Mr James D. Mackintosh presented a *note*, which stated—"... That immediately after the resolution to have the company wound up by the Court had been passed and confirmed the friction caused by the two shareholders, as set forth in the petition, was brought to an end by the purchase from them by the said James Dunbar Mackintosh of their entire holding in the company for the sum of £2400 sterling. That transfers of these shares have now been delivered to the said James Dunbar Mackintosh, and the company and the said James Dunbar Mackintosh are desirous that the said transfers and other four transfers for one share each by shareholders lodged with the company for registration should be duly registered with the consent of the liquidator to be appointed by the Court. ... The shares of the said company are fully paid up, and therefore the creditors of the company have no interest in the matter as to who is the holder of these shares, but it is important that the transfers in favour of the said James Dunbar Mackintosh and the other four transfers before mentioned should be registered. ..."—and asked for an order that the six transfers be registered in the register of shareholders with the consent of the liquidator.

On 21st November, in the Single Bills, the petition having been duly intimated and advertised without any answers being lodged, counsel moved that the prayer of the petition and of the note be granted, and in connection with the latter cited *Benhar Coal Company, Limited*, 1879, 6 R. 706.

The Court pronounced this interlocutor—

"Appoint Mr Malcolm Henderson, C.A., Kilmarnock, to be official liquidator of the said company, in terms of and with the powers conferred by the said Acts, and specially with power to exercise all or any of the powers specified in sections 95, 96, and 97 of the Companies (Consolidation) Act 1908, without the sanction or the intervention of the Court: Appoint the official liquidator to find caution for his actings, intromissions, and management before extract, and decern: Further, having considered the note lodged by the petitioning company and James Dunbar Mackintosh, solicitor, Kilmarnock, craving authority to register the transfer of shares mentioned therein, grant the prayer of the said note, and decern."

Counsel for the Petitioners — Lippe. Agents—Macpherson & Mackay, S.S.C.

Thursday, November 30.

SECOND DIVISION.

SCOTTISH POWER COMPANY, LIMITED, PETITIONERS.

Company—Process—Capital—Reduction of Capital—Application, Prior to Petition for Confirmation, for Authority to Dispense with Words "and Reduced"—Competency—Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 48.

A company which had presented a petition for sanction to a scheme of arrangement with its creditors, presented a note asking authority meantime to dispense with the addition to its name of the words "and reduced." The note stated that the scheme of arrangement involved the reduction of capital; that a special resolution for reducing the share capital had been passed and confirmed; that a petition for confirmation of the reduction and dispensation from the necessity of adding to the company's name the words "and reduced" was immediately to be presented.

The Court *received* the note, and, in the circumstances, *granted* its prayer.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 48, enacts—"On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction the company shall add to its name, until such date as the court may fix, the words 'and reduced' as the last words in its name, and those words shall until that date be deemed to be part of the name of the company: Provided that where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if it thinks expedient, dispense altogether with the addition of the words 'and reduced.'"

On 29th November the Scottish Power Company, Limited, *petitioners*, presented a note asking authority to dispense in the meantime with the addition of the words "and reduced" to the name of the company.