tion under a previous statute without ordering intimation. Since then the law had been extended in favour of the petitioners by the Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69). It was unnecessary in such a case to show that the capital proposed to be reduced was lost or unrepresented by available assets—*in re Louisiana and Southern States Real Estate and Mortgage Company*, [1909] 2 Ch. 552. The reason was that the Court had jurisdiction to reduce the capital, and creditors not being concerned, the questions for its consideration were—(1) Were the interests of the public who might take shares in the company threatened by the proposed reduction? (2) Was the reduction fair and equitable to the shareholders?—*Poole and Others* v. *National Bank of China, Limited*, [1907] A.C. 229, Lord Macnaghten at 238. Here the public were not interested, and the reduction was approved by the shareholders, so that there was no object in advertisement.

The Court (the LORD PRESIDENT, LORD JOHNSTON, and LORD SKERRINGTON) appointed intimation and advertisement in the usual form.

Counsel for the Petitioners — Gentles. Agent—John S. Morton, W.S.

Tuesday, November 17.

SECOND DIVISION.

[Lord Hunter, Ordinary.

CRAIG LINE STEAMSHIP COMPANY, LIMITED *v.* NORTH BRITISH STORAGE AND TRANSIT COMPANY AND OTHERS, *et e contra.*

Process—Foreign—Sist—Conjoined Actions—Alien Enemy Pursuer in Counter Action—Trading with the Enemy Proclamation No. 2, *9th September* 1914, *No.* 1376.

In conjoined actions at the instances of A against B and of B against A, C, an alien, was sisted as pursuer in the second action along with B. The Lord Ordinary having after a proof decerned against B in the first action and assoilzied A in the counter action, B and C reclaimed. War having subsequently broken out between the country of C and this country, A moved the Court to sustain the Lord Ordinary's interlocutor in the first action, and *quoad ultra* to sist procedure. The Court *sisted* both actions.

The Craig Line Steamship Company, Limited, registered owners of the steamship "Craigforth" of Leith, *pursuers*, brought an action against the North British Storage and Transit Company, Leith, and the individual partners thereof, *defenders*, for payment of £247, 13s. 11d., being freight for which the pursuers maintained the defenders were liable as indorsees of bills of lading and receivers of a consignment of barley shipped on the "Craigforth" from Galatz to Leith, where it arrived on 10th December 1911. The North British Storage and Transit Company and the individual partners thereof, for themselves and as representing Faust Michaelis, merchant, Dresden, for any interest he might have, *pursuers*, brought a counter action against the Craig Line Steamship Company, Limited, *defenders*, for payment to them of (1) the sum of £338, 5s., (2) the sum of £289, 11s. 9d., and (3) the sum of £336, 14s. 9d., for shortage, and loss and damage to the barley, which they averred they had sustained through the fault of the defenders, but under deduction of the freight sued for in the first action. On 19th March 1912 the Lord Ordinary (HUNTER) conjoined the two actions, and on 4th June 1912 sisted Faust Michaelis as a pursuer, and Felix Roesler, merchant, Portobello, as his mandatory, in the action at the instance of the North British Storage and Transit Company and others. On 8th April 1913 the Lord Ordinary, after a proof in the action at the instance of the Craig Line Steamship Company, Limited, decerned against the defenders in terms of the conclusions of the summons, and in the counter action assoilzied the defenders from the conclusions of the summons.

The North British Storage and Transit Company and others reclaimed.

The reclaiming note was called in the Second Division on 17th November 1914, when counsel for the respondents in respect that a state of war had since 4th August 1914 existed between the United Kingdom and Germany, and that the reclaimer Faust Michaelis had in consequence become an alien enemy, moved the Court to sustain the Lord Ordinary's interlocutor so far as it dealt with the claim against the North British Storage and Transit Company, and *quoad ultra* to sist procedure. Counsel for the reclaimers did not object to a sist of both actions, but objected to decree, the defence in that action being the same as his case in the other.

Counsel cited the following authorities—Trading with the Enemy Proclamation No. 2, 9th September 1914, No. 1376; "*The Hoop*," 1799, 1 Chas. Rob. 196; *Arnauld & Gordon* v. *Boick*, 1704, M. 10,159; *Burgess* v. *Guild*, Jan. 12, 1813, F.C.; *Robinson & Company* v. *Continental Insurance Company of Mannheim*, 1914, 31 T.L.R. 20; *Orenstein & Koppel* v. *The Egyptian Phosphates Company, Limited*, 52 S.L.R. 54.

The Court (LORD JUSTICE-CLERK, LORD SALVESEN, and LORD GUTHRIE) pronounced this interlocutor—

"Having heard counsel for the parties on the points of procedure raised under the Proclamation relating to trading with the enemy dated 9th September 1914, in respect of the sisted pursuer Faust Michaelis in the action at the instance of The North British Storage and Transit Company and others against the Craig Line Steamship Company, Limited, being an 'enemy' as defined by

said Proclamation, sist process *in hoc statu*, reserving all questions of expenses."

Counsel for the Reclaimers—Aitken, K.C. —Macquisten. Agents—Wallace & Pennell, S.S.C.

Counsel for the Respondents—Horne, K.C. —Normand. Agents—Boyd, Jameson, & Young, W.S.

Tuesday, November 17.

FIRST DIVISION.

[Lord Hunter, Ordinary.

FORREST *v.* SCOTTISH COUNTY INVESTMENT COMPANY, LIMITED.

Contract—Executry Contract—Deviations —Remedy—Architect's Powers.

A building contractor sued a company for the unpaid balance of the price of certain work which he had executed for the company. The company refused payment on the ground that the contractor could not sue on the contract, being in breach in not having used rybats of the dimensions specified. The defenders raised this objection only now, and they were in possession of the completed buildings, and did not suggest that the rybats used should be taken out and others substituted. The material used was good and the workmanship good, and the variation of the rybats was with the approval of the architect.

Held (*diss.* Lord Skerrington) that the contractor was entitled to recover —*per* the Lord President, on the ground that the company's remedy was damages, for which there was no record; *per* Lord Johnston, that it was within the authority of the architect to approve of the variation, the contract being as he found ambiguous on this constructional detail; *diss.* Lord Skerrington, on the ground that while the contractor was entitled to recover for work done in conformity with the contract, the company was not bound to pay for rybats which were not as specified in the contract.

Observations on the law of building contracts.

Ramsay & Son v. *Brand*, July 20, 1898, 25 R. 1212, 35 S.L.R. 927; and *Steel* v. *Young*, 1907 S.C. 360, 44 S.L.R. 291, *commented on.*

Elphinstone Forrest, builder and contractor, 12 Dixon Street, Glasgow, *pursuer*, brought an action against the Scottish County Investment Company, Limited, 155 St Vincent Street, Glasgow, *defenders*, for payment of a sum of £633, 16s. sterling, which he alleged was the unpaid balance of a sum due to him under a contract with the defenders.

The defenders pleaded—"(3) (*a*) The pursuer having failed to execute the work undertaken by him in accordance with the contract founded on, is not entitled to sue for the price under the contract. (6) *Separatim*—In any case the cost of completing the work in compliance with the contract falls to be deducted from the contract price, and being in excess of the sum claimed as due under the contract, the defenders should be assoilzied."

The *contract* was entered into in the following circumstances:—"(Cond. 1) In or about June 1910 the defenders, through their architect Alexander Adam, issued to the pursuer, *inter alios*, a schedule for the digger, mason, and brick works of four tenements proposed to be erected in Garrioch Road, North Kelvinside, Glasgow, for the defenders. (Cond. 2) The pursuer on or about 27th June 1910 lodged with the said Alexander Adam an estimate for the digger, mason, and brick works of said four tenements, with offer attached thereto to undertake the work for the sum of £3495, 15s. This offer was subsequently amended by being made subject to 2¾ per cent. discount. By letter of 31st March 1911 Mr Adam on behalf of the defenders accepted the pursuer's said offer as follows:—'On behalf of my clients, the Scottish County Investment Company, Limited, I hereby accept your offer of Three thousand four hundred and ninety-five pounds, fifteen shillings stg. (£3495, 15s.), subject to 2¾ per cent. discount, for the digger, mason, and brick work, supplying all material and labour in connection with same. Payments are to be by five cash instalments on completion of 1st, 2nd, 3rd, and 4th storeys, and on completion of chimney heads, stalks, and drains, balance to be paid on presentation of measurement.'"

On completion of the contract the defenders declined to pay the said sum of £633, 16s. sterling, being the balance of the price claimed by the pursuer, in respect that the work was not in certain respects conform to contract, and accordingly the pursuer raised the present action.

The defenders, *inter alia*, averred—"(Stat. 5) According to the said estimate (as provided for in items 44, 45, 46, 47, and 48), the front wall of the buildings was to contain the following rybats, viz., out and inband rybats of windows 24 inches and 12 inches long on face alternately, and 17 inches and 10 inches long on face alternately, rybats of oriel windows 24 inches and 12 inches long on face alternately, and 17 inches and 10 inches long on face alternately, and rybats of close openings 24 inches and 12 inches long alternately. In building the said front wall the pursuer did not give effect to the provisions in the contract above referred to. Many of the inband rybats supplied are not of the prescribed length on face. No outband rybats of the prescribed length have been supplied, and the pursuer has in place thereof inserted headers or other stones. The pursuer has thus not adhered to the dimensions, pattern, and definite arrangement prescribed by the contract, but has adopted an entirely different mode of construction from that prescribed by the contract. The mode of construction adopted by the pursuer entailed less labour and was cheaper, and it involved the loss of the