Saturday, March 6.

SECOND DIVISION.

WHINNEY (LIQUIDATOR OF W. & A. M'ARTHUR, LIMITED) *v.* THE GULF LINE, LIMITED.

Company—Articles of Association—Alteration—Retrospective Effect—Creation of Lien on All Shares for Unpaid Calls—Prior Transfer of Fully-paid Shares—Right of Transferee to Registration as Holder of Unburdened Shares—Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *sec.* 50.

A holder of fully-paid and of partly-paid shares in a company which had, under its articles of association, a lien on all partly-paid shares for calls due on them, transferred the fully-paid shares to A. The company refused to enter A's name on the register, and thereafter, by special resolution duly confirmed, altered the articles of association so as to give the company a lien on all shares registered in the name of any member for calls due on any of his shares.

Held that A's right to be registered as the holder of unburdened shares could not be defeated by the subsequent alteration in the articles of association, and that A was entitled to be entered on the register as at the date of his application.

The Companies Act 1862 (25 and 26 Vict. cap. 89), sec. 50, enacts—"*Power to Alter Regulations by Special Resolution.*—Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any company formed under this Act may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association, or in the table marked A in the first schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association. . . ."

On 18th December 1908 Arthur Francis Whinney, liquidator of W. & A. M'Arthur Limited, presented a petition, under sections 35, 36, and 62 of the Companies Act 1862 (25 and 26 Vict. cap. 89), for rectification of the register of The Gulf Line, Limited, by removing therefrom the name of W. & A. M'Arthur (South Africa), Limited, as holders of 10,023 ordinary shares of £1 each fully paid, and substituting therefor the name of the petitioner.

The petition stated—"That the . . . company known as W. & A. M'Arthur, Limited, London, . . . was registered in London, and is a distinct company from the limited company of W. & A. M'Arthur (South Africa), Limited, referred to below. That for certain good causes and considerations the said W. & A. M'Arthur (South Africa), Limited, on 13th February 1908, granted a transfer in favour of the petitioner of 10,023 ordinary shares of £1 each, fully paid . . . of and in the undertaking called The Gulf Line Limited, a company registered in Scotland. . . . W. & A. M'Arthur (South Africa), Limited, also hold 10,821 shares of £1 each, 3s. paid, of The Gulf Line, Limited, and unpaid to the extent of the remaining 17s.

"On 29th May 1908 the petitioner wrote the secretary of the respondents stating that he was about to present for registration a transfer of said 10,023 shares. The respondents, on 1st June following, replied that they would not recognise said transfer owing to the calls on said 10,821 shares being in arrear, but that if the petitioner would pay the balance of the calls due, and give an approved guarantee for payment of the unpaid liability, then they would be prepared to recognise the transfer. The arrears amounted at that date to £541, 1s. On 3rd June following the petitioner wrote sending said transfer with relative certificate, and requesting registration.

"On 5th June following, the secretary of The Gulf Line, Limited, acknowledged receipt of the transfer, but wrote informing the petitioner that, apart altogether from the fact that certain calls on the partly-paid shares in the name of W. & A. M'Arthur (South Africa), Limited, were in arrears, they could not accept the transfer, as in his letter of 3rd June enclosing the transfer and certificate the petitioner had stated that he had given valuable consideration for the shares, while the transfer was stamped as for a nominal consideration only. The respondents were not entitled, in terms of their articles, to refuse registration in respect of said unpaid calls, and petitioner claims that his rights in the matter are fixed by the presentation of said transfer on 3rd June 1908.

"On the 9th of July 1908 the petitioner wrote for the return of the transfer so that he might have the stamp duty adjudicated, and stated that after this had been done he intended to take proceedings to enforce registration. The company, on the 11th July 1908, returned the transfer to the petitioner.

"Meantime the Gulf Line, Limited, in the month of June, after the petitioner's transfer had been presented for registration, called a meeting of said company for the 25th of June 1908, for the purpose of passing a resolution altering the articles of association with the object of preventing a transfer being passed by a transferor, who is also a debtor of the company, by giving the company a lien on all shares of the company held by the member, whether fully paid or not. . . . The resolution was duly passed on said 25th June 1908, and a confirmatory meeting was called for the 11th of July 1908, when the said resolution was duly confirmed.

"The stamp duty on the transfer having been adjudicated upon by the Inland

Revenue, and found to be correct, the transfer was again lodged by the petitioner with the respondents, on the 17th day of September following, and registration was again refused."

The original article, No. 13 of the articles of association of The Gulf Line, Limited, was in these terms—"The company shall have a first and paramount lien and charge on all the shares not fully paid, registered in the name of a member, whether solely or jointly with others, for all calls due on such shares."

The substituted article was as follows—"The company shall have a first and paramount lien and charge on all the shares registered in the name of a member, whether solely or jointly with others, for all calls due on any shares registered in the name of such member, and for all his debts, liabilities, and engagements, solely or jointly, with any other person to or with the company, whether the period for the payment, fulfilment, or discharge thereof shall have actually arrived or not, and such lien shall extend to all dividends from time to time declared in respect of any shares registered in the name of such member."

Answers were lodged for the Gulf Line, Limited, in which, after admitting generally the petitioner's averments, they submitted "that in terms of article 13 of their articles of association, as amended by special resolution, dated 25th June, and confirmed 11th July, both in the year 1908, they were entitled to refuse to register the said transfer so long as the said W. & A. M'Arthur (South Africa), Limited, were indebted to them."

The petitioner argued — The two companies of W. & A. M'Arthur, and W. & A. M'Arthur (South Africa), were distinct and separate, and further, the transfer which the respondents had refused to register was a transfer not by one company in favour of the other, but one in favour of the liquidator of the other, who of course represented the creditors and not the shareholders. The transfer was admittedly onerous, and effectually transferred the shares to the petitioner—Companies Act 1862 (25 and 26 Vict. cap. 89), section 22. The petitioner had therefore, when his transfer was presented for registration, a legal right to be entered on the register—*Société Générale de Paris* v. *Walker* (1885), L.R., 11 A.C. 20, *per* Lord Selborne at p. 28, Lord Lindley cited *per* Lord Blackburn at p. 40. If the pursuer had at the time registration was asked, a right to be entered on the register, that right could not be defeated by any subsequent liability sought to be attached to the shares—*In re Cawley & Company* (1889), L.R., 42 Ch. Div. 209, *per* Esher, M.R., at p. 227; *Bradford Banking Company* v. *Briggs* (1886), L.R., 12 A.C. 29.

Argued for the respondents—Where a company altered its articles of association, the alterations must be held to have come into force when the company was formed—Companies Act 1862, section 50. A shareholder in a company took his shares subject to any alteration which might be so effected—*Andrews* v. *Gas Meter Company*, [1897] 1 Ch. 361; *Allen* v. *Gold Reefs of West Africa, Limited*, [1900] 1 Ch. 656. The petitioner here was not a distinct and different person from the transferor, and was therefore subject to the same liability. Further, a transferee did not become a shareholder till he was entered on the register, and in accepting a transfer took the risk of alteration in the articles of association before registration—*Pepe* v. *City and Suburban Permanent Building Society*, [1893] 2 Ch. 311; *Moir* v. *Duff & Company*, July 20, 1900, 2 F. 1265, 37 S.L.R. 935, *per* Lord Trayner at p. 1272, p. 941.

LORD JUSTICE-CLERK—The view of the law maintained by Mr Sandeman would, in my opinion, lead to a most inequitable result, and I should not be prepared to adopt it except upon absolutely clear grounds. A number of cases have been cited to us, but I do not think any of them decide the question before us. The question is whether, if a shareholder is entitled, under the existing regulations of the company, to transfer his shares, and if the transferee has the right to demand that the transfer shall be registered, it is a good answer for the company to say that they decline to register because since the date when the transfer was presented for registration they have passed a resolution giving them the power to refuse to register it. I think it is not a good answer, and that this case has no relation to the cases where the company has been held entitled to alter its regulations. The person holding the shares was entitled to transfer them, his transferee was entitled to be registered, and that right could not be taken away by something subsequently done by the company solely for the purpose of preventing the registration of the transfer.

LORD LOW—I am of the same opinion. The petitioner in this case obtained a transfer of shares in the respondents' company, and in due course and in due form presented that transfer for registration. It is admitted that at the time when he presented the transfer for registration he was, according to the existing regulations of the company, entitled to have it registered. The directors of the company, however, thinking (for reasons which are quite intelligible) that it was desirable that the petitioner should not be put upon the register, called a meeting of the company and passed a resolution, the effect of which, if it applied to the case, was to make it competent for them to refuse to register the transfer, and accordingly they did refuse to register it. Now, *prima facie* that was a most inequitable proceeding, and I do not think we could sanction it unless it was warranted by statutory authority. The only statutory authority relied upon was the 50th section of the Companies Act of 1862, which gives a company power to . . . [*His Lordship read section* 50, *supra*]. That section makes it competent to alter the regulations during the existence of the company, and declares the altered regulations to be as valid as if

they had been original regulations, but it does not provide that an altered regulation shall be held to have come into force as at the date when the company was formed. The alteration comes into force at its own date, and if so, section 50 is no authority for Mr Sandeman's proposition. There is also this further element that the alteration was made, not so much because the directors deemed it to be an alteration required in the general interests of the company, as simply in order to meet the particular case of the petitioner's transfer. I am therefore clearly of opinion with your Lordship that the position taken up by the respondents is untenable.

LORD ARDWALL—The petitioner is the liquidator of a company called W. & A. M'Arthur, Limited, London, and it appears that there was an allied company of W. & A. M'Arthur (South Africa) Limited. These two companies were connected to a certain extent, but at the time when this transfer was presented the former company had gone into liquidation. What happened was that the South African Company, being holders of a number of shares of this Gulf Line Company, which they had mortgaged to the bank of Australasia, approached the liquidator of the London company, and asked him to relieve them of the debt to the bank and to take over the shares which had been mortgaged, which he did. That was a perfectly fair and open transaction without any collusion, and it was carried out with the sanction of the High Court of Justice in England. If there had been any collusion, that would, of course, have altered the complexion of the case. The petitioner accordingly got a transfer from the South African Company of 10,023 fully-paid shares in the Gulf Line Company. There were other shares held by the South African Company in the respondents' company which were not fully paid, but with these we have nothing to do at present as nothing is asked with regard to them. It is perfectly clear under the articles of association that the registration of transfers of the unpaid shares might have been objected to until the amount due in respect of them was paid up, but with regard to these 10,023 shares there is equally no doubt that when the transfer was presented to the respondents on 3rd June 1908 for registration, it was the absolute right of the petitioner to have the transfer registered, and I think it would be grossly inequitable if that right were held to be defeated by any resolution subsequently passed. The petitioner purchased the shares on the footing that they were free of liability, and it is out of the question that the respondents' company should be entitled to put burdens upon them by resolutions passed after the date of purchase. The petitioner, in my opinion, is in the same position in which he was on 3rd June 1908, when he presented the transfer for registration, and I think that we should now order the register to be rectified so as to give effect to the transaction.

LORD DUNDAS concurred.

The Court granted the prayer of the petition.

Counsel for the Petitioner — Constable, K.C. — Ingram. Agents — Langlands & Mackay, W.S.

Counsel for the Respondents—Sandeman. Agent—F. J. Martin, W.S.

Tuesday, March 9.

FIRST DIVISION.

[Lord Johnston, Ordinary in Exchequer Causes.

INLAND REVENUE *v.* EDINBURGH LIFE ASSURANCE COMPANY.

Revenue—Income Tax—Life Assurance—Annuities, Sale of—Deduction of Income Tax from Annuities—Company Assessed on Revenue from Invested Funds—Annuities Charged on Whole Funds—Income Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *sec.* 100, *Sched. D, and sec.* 102 — *Income Tax Act* 1853 (16 *and* 17 *Vict. c.* 34), *sec.* 40—*Customs and Inland Revenue Act* 1888 (51 *and* 52 *Vict. c.* 8), *sec.* 24 (3).

A life insurance company paid income tax on their invested funds, on which the interest had been uplifted by them in the United Kingdom, the amount so paid being greater than if they had been assessed upon their nett profit as a commercial concern. Their business included, *inter alia*, the selling of annuities in return for the payment of lump sums. In paying the annuities which were charged on their whole funds the company deducted therefrom income tax.

Held that the company were bound to debit the annuities against their revenue in proportion as that revenue had (as in the case of income from investments), or had not (as in the case of revenue from the sale of annuities), already paid income tax, and to account to the Crown for the income tax deducted from the annuities thus paid out of revenue which had not already paid income tax.

The Customs and Inland Revenue Act 1888 enacts—section 24 (3)—"Upon payment of any interest of money or annuities charged with income tax under Schedule D, and not payable, or not wholly payable, out of profits or gains brought into charge to such tax, the person by or through whom such interest or annuities shall be paid shall deduct thereout the rate of income tax in force at the time of such payment, and shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest or annuities as is not paid out of profits or gains brought into charge as the case