got his pay that day at the office. It was thus an implied term of the contract that M'Graw should go to the pithead on Friday to get his pay. In point of fact M'Graw was not working on the Friday, but there was no termination of the contractual relation between the workman, who was employed as a coal picker, and his employers. The accident in my opinion arose in the course of the employment.

It was argued that it did not arise out of the employment because M'Graw had added a peril by going to look for Shannon. But on a previous occasion when M'Graw was not working he had sought out Shannon, got his pay-line from him, and then got his pay from the office. Another workman, Hamilton, had done the same thing. It was further maintained that the accident was due to an added peril in consequence of M'Graw sitting down on the block by the fire. The fourth paragraph finds, however, "it was the regular custom for the triggers, coal pickers, and other workers at the pithead to come round the fire in cold weather and eat their 'pieces' during the short time off for refreshment. To get to the fire the coal pickers had to come down the stair from the pithead." It is further found that there was a block of wood forming a seat between the waggon which was spragged and the fire which was burning between the rails. It must be taken that the management acquiesced in the practice set out in the fourth paragraph, and the appellants cannot successfully found on the doctrine of added peril.

LORD SKERRINGTON—I agree with your Lordships.

LORD CULLEN—I concur in the conclusion reached by your Lordships.

On the facts as stated by the arbitrator I am of opinion that the respondent, at the time an employee of the appellants, was in the course of his employment when he was on the appellants' premises on the pay-day in question seeking to obtain payment of his earnings in a manner which is not said to have been irregular but which, on the contrary, he is said to have pursued previously with the appellants' acquiescence. He was not then doing industrial work, but he was, I think, doing what his employment included as a proper incident thereof.

I am unable to hold that the facts as stated make good the appellants' case of "added peril." It is true that the injury to the respondent arose from his being where he was while he, legitimately, waited for Shannon to come round with the pay-slips, and also that he might have waited in some other place where he would have escaped such injury. The accident, however, which occasioned the injury arose from the unexpected carelessness of certain workmen at a distance, and was one which, on the facts stated, it is not contended the respondent was bound to foresee as in any way likely to happen. In the absence of such unrequired foresight, his place of waiting was one which he was, I think, justified in regarding as licensed by the appellants. The fire for drying the scutches was, according to the ordinary course of working, placed between the rails of the Diamond Siding. We are told, further, that it was "the regular custom" for the boys working in the vicinity to gather round it during legitimate intervals of cessation from their work, and as there is nothing more in the findings on this particular head, I take it that this "regular custom" was not regarded as irregular by the appellants, but was one which had their acquiescence and sanction. The waggon in front of which the respondent sat had been duly scutched and rendered in itself inert and not dangerous. Thus there was nothing out of the usual in the conditions of the place to suggest to the respondent any reason why he should not, consistently with the appellants' treatment of it, select it as a convenient place to wait, just as other boys were allowed to resort to it when temporarily idle, in accordance with regular custom as aforesaid.

The Court answered the question of law in the affirmative.

Counsel for the Appellants — Sandeman, K.C.—Fenton. Agents — Simpson & Marwick, W.S.

Counsel for the Respondent—Watt, K.C. —Patrick. Agents—Macpherson & Mackay, S.S.C.

Friday, November 28.

FIRST DIVISION.

NORTH OF SCOTLAND AND ORKNEY AND SHETLAND STEAM NAVIGATION COMPANY, LIMITED, PETITIONERS.

Company—Procedure—Alteration of Constitution—Notice to Shareholders.

A company whose constitutive writ was a contract of copartnery proposed to alter its constitution by substituting for that contract a memorandum and articles of association, which made considerable alterations on the objects of the company. The notice to the shareholders of the meeting at which the proposal to substitute the memorandum and articles of association for the contract did not describe the proposed resolution as a special resolution. Copies of the proposed memorandum and articles of association were not sent to the shareholders, for the reason that they had already been furnished with copies, and the notice of the meeting did not refer to the copies previously sent. The notice also bore that "if passed" the resolution would be submitted to another general meeting of the company at a certain place on a certain date for final determination and approval. The Court *held* that the statutory procedure had not been followed, in respect (1) of the omission to send to the shareholders copies of the memorandum and articles of association or to refer to those formerly sent; and (2) (*v. Alexander* v. *Simpson,*

1890, L.R., 43 Ch. Div. 139) that conditional notice of the confirmatory meeting was not sufficient; and *continued* the petition to enable the statutory procedure to be carried out.

Opinion that it were better the notice should describe the resolution proposed as a special resolution.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts—Section 9—"(1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company. . . . (2) The alteration shall not take effect until and except in so far as it is confirmed on petition by the Court. (3) Before confirming the alteration the Court must be satisfied—(*a*) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration. . . ." Section 69—"(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given. (2) A resolution shall be a special resolution when it has been—(*a*) passed in manner required for the passing of an extraordinary resolution; and (*b*) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days nor more than one month from the date of the first meeting. . . . . . (6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles." Section 264—"(1) Subject to the provisions of this section, a company registered in pursuance of this part of this Act" [*i.e.*, Part VII, Companies authorised to register under this Act] "may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement. (2) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:— . . . . . (*b*) On the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company. (3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act. (4) In this section the expression 'deed of settlement' includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters-patent."

The North of Scotland and Orkney and Shetland Steam Navigation Company, Limited, *petitioners*, brought a petition for confirmation of alteration of constitution and extension of objects.

The *petition* set forth—"That the Petitioning Company was originally constituted under a contract of copartnery dated 7th November 1846 and subsequent dates under the firm and designation of The Aberdeen, Leith, and Clyde Shipping Company, and that it commenced as at 1st January 1847. The business of the company was that of general carriers at sea and on land, and the employment of steam or sailing vessels for the conveyance of passengers and goods between Aberdeen, Leith, and Glasgow or any other place or places were the company usually employed vessels in that trade. . . . 3. That the said deed of settlement has from time to time been altered by resolution of the members of the company passed and confirmed in conformity with the said contract of copartnery. In the year 1875 a new contract of copartnery was entered into whereby, in the first place, it was provided that the company, as constituted by the contract of copartnery of 1846 under the firm and designation of the Aberdeen, Leith, and Clyde Shipping Company, should from and after the 1st day of July 1875 be described and carried on under the firm and designation of the North of Scotland and Orkney and Shetland Steam Navigation Company. . . . 6. At a general meeting of the company held on 3rd March 1919, the following resolution was unanimously agreed to, and was confirmed at a subsequent general meeting held on Friday 4th April 1919, viz., 'That the North of Scotland and Orkney and Shetland Steam Navigation Company be registered under the Companies Acts, 1908 to 1917, as a company limited by shares.' In terms of the powers contained in the Companies (Consolidation) Act 1908 the company was duly registered under the Companies' Acts, 1908 to 1917, as a company limited by shares, on 24th April 1919. . . . 9. That the objects of the company as contained in said contracts of copartnery are very restricted, and expressed in too general terms, and the company considers that it is highly desirable that they should be expressed in greater detail and in modern form in order to preclude any doubt as to the scope of the company's powers. The company further desires, in order to meet the existing requirements and prospective developments of its business, that its objects should be extended so as to bring them into line with the objects of similar undertakings possessing a memorandum and articles in modern form. 10. That accordingly at a meeting of the company held on 13th June 1919 the following resolution was submitted for approval and passed, and at a subsequent meeting held on 18th July 1919 was submitted for final determination and approval and confirmed — 'That the memorandum and articles of association submitted to this

meeting, and for the purpose of identification signed by the chairman thereof, be and the same are hereby approved, and that pursuant to the provisions of the Companies Act 1908, sections 9 and 264, the form of the company's constitution be altered by substituting such memorandum of association with extended objects as therein set forth, and such articles of association, for the company's deed of settlement, dated 7th November 1846, and subsequent dates, and for all regulations of the company subsequently made and now in force; and that the directors be and they are hereby authorised to apply to the Court to confirm this resolution under the said Act.'"

By an amendment the following was added to article 10—"'The meetings held on 13th June and 18th July, both in the year 1919, were convened in terms of the company's contract of copartnery, which provides that the two general meetings shall be held at the distance of not less than one month from each other. In order to comply with the terms of section 69 of the Companies (Consolidation) Act 1908, a meeting of the company, duly convened by advertisement inserted in the *Aberdeen Daily Journal* and *Aberdeen Free Press*, was held on the 15th day of August 1919, at which the foresaid resolution was submitted for approval and unanimously passed, and at a subsequent meeting, duly held on the 5th September 1919, the said resolution was submitted for final determination and approval, and unanimously confirmed.'"

On 22nd September 1919 the Lord Ordinary officiating on the Bills (HUNTER) remitted to Mr Alfred Shepherd, W.S., to inquire into the regularity of the procedure and the facts set forth in the petition.

Mr Shepherd's *report* set forth, *inter alia* —"The procedure in the petition itself has been regular, and the steps taken by the company have probably been such as to enable the shareholders to understand the position of affairs and the effect of the resolutions submitted at the meetings after referred to. Unfortunately, however, it appears to the reporter that in some respects the procedure adopted has not strictly conformed to the requirements of the Companies Acts, and he therefore considers it necessary to point out in what respects this is so. . . .

"The terms of the resolution submitted to the meetings [of 15th August and 5th September] are unobjectionable. The meetings themselves satisfy the requirements of section 69 of the Companies (Consolidation) Act as to the interval required between the passing and confirming of a special resolution, and the necessary majorities were obtained, as shown by the minutes of meeting in process. There appear, however, to the reporter to be questions which nevertheless render open to objection the resolution purported to be passed and confirmed at these meetings.

"The meetings were convened only by advertisement in two Aberdeen newspapers in the following terms:—

"'*The North of Scotland and Orkney and Shetland Steam Navigation Co., Ltd.*

"'Notice is hereby given that a general meeting of The North of Scotland and Orkney and Shetland Steam Navigation Company, Limited, will be held within the Company's Office, Matthews' Quay, Aberdeen, on Friday, the 15th day of August current, at 12·30 p.m., when the subjoined resolution will be submitted for approval and, if passed, another general meeting of the Company will be held in the Company's Office, Matthews' Quay, Aberdeen, on Friday, the 5th day of September next, at 12·30 p.m., when the said resolution will be submitted for final determination and approval.—By order of the Board. WILLIAM MERRYLEES,
"'Matthews' Quay, *Manager.*
Aberdeen, 6th August 1919.'

"(Here follow terms of resolution as already quoted above.)

"The contract of copartnery of 1875, which in terms of section 263 of the Companies (Consolidation) Act 1908 and until your Lordships confirm an alteration of the company's constitution represents its memorandum and articles, authorises the calling of meetings either by circular or by advertisement in two Aberdeen newspapers, and section 69 of the Companies (Consolidation) Act provides that meetings for the passing and confirming of a special resolution may be convened in any way authorised by the articles of association. Notice by advertisement would therefore in the case of this company appear to be sufficient. But the terms of the notice actually given do not appear to the reporter to be entirely satisfactory.

"In the first place, the notice, while it gives the terms of the resolution to be submitted, does not describe it as either an extraordinary or a special resolution, or state that it is to be confirmed at the second meeting as a special resolution.

"Section 69 of the Companies (Consolidation) Act 1908 defines an extraordinary resolution as one which has been passed by a majority of not less than three-fourths of those present in person or by proxy at a general meeting, of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given. And a resolution is by the same section declared to be a special resolution when it has been (*a*) passed in manner required for the passing of an extraordinary resolution, and (*b*) confirmed by a simple majority at a subsequent general meeting, of which notice has been duly given and held after the interval already referred to. It has been held by Mr Justice Swinfen Eady in *Penarth Pontoon Company*, (1911) W.N. 240 and 56 S.J. 124, that the terms of section 69 do not require that the notice calling a meeting to pass a resolution, which is to be confirmed as a special resolution, should describe the resolution as an extraordinary resolution. But it is in accordance with the general practice, and it appears to the reporter to be proper, that some intimation should be given to the shareholders that the resolution proposed is, when passed

and confirmed, to be a special resolution, so that shareholders may know that the conditions which Parliament has attached to special resolutions will require to be complied with. . . .

"But the notice given by the said advertisements does not contain the terms of the memorandum and articles which are proposed to be adopted, nor was a copy thereof sent to the shareholders of the company with reference to the meetings called by the advertisements, nor were the shareholders even informed where the memorandum and articles could be seen. And it has been held—*Normandy* v. *Ind Coope & Company*, (1908) 1 Ch. 84 — that where substantial alterations are to be made on existing articles—and the case of the adoption of a new memorandum and articles and alteration of objects is probably *a fortiori*—that it is not sufficient notice to say that the terms of the alterations can be seen at the company's office. Taken by itself, accordingly, the notice given by the said advertisements of the business to be transacted at the meetings seems clearly insufficient, and would leave the resolutions passed at those meetings open to attack.

"It is necessary, however, to keep in view that, along with the notices calling the meetings of 13th June and 18th July 1919, under the contract of copartnery, there was, as already stated, sent to each of the shareholders of the company a copy of the memorandum and articles referred to in the resolution submitted to these meetings.

"Comparison of the prints submitted respectively to the meetings of 13th June and 18th July, and to the meetings of 15th August and 5th September 1919, show that the memorandum and articles submitted to all these meetings were identical. It might, therefore, reasonably have been considered that each shareholder, having already received a copy of the memorandum and articles in connection with the meetings of June and July, did not require again to receive a copy of these for the meetings of August and September. No reference was, however, made in the notices calling the latter meetings to the print of the memorandum and articles formerly sent out to the shareholders, nor were they informed that the memorandum and articles to be submitted at these meetings were those a copy of which had been sent when the previous meetings were called.

"Had the notice for the August and September meetings contained a statement to the effect above indicated, the reporter would have been disposed to regard the notice for these meetings as sufficient so far as this point is concerned.

"Apart from the objections above stated, however, the notice for the September confirmatory meeting may be considered defective, in respect that that meeting is only called conditionally on the resolution having been passed at the August meeting. It appears to be settled that such a conditional notice is not sufficient (*Alexander* v. *Simpson*, (1890) 43 Ch. D. 139, and *cf. Espuela Land and Cattle Company*, (1900) W. N. 139) unless where — what is not the case here — the articles specially provide that such a notice shall be valid. . . ."

Counsel for the petitioners referred to the following—*Union Bank of Scotland*, 1918 S.C. 21, 55 S.L.R. 62; *Alexander* v. *Simpson*, 1890, 43 Ch. D. 139; *In re North of England Steamship Company*, [1905] 2 Ch. 15; *Penarth Pontoon Company*, [1911] W. N. 240; Palmer's Company Precedents, 11th ed. pp. 1094 *et seq.*

At advising—

LORD PRESIDENT — We have before us here a very careful report on the procedure which has been followed by this company, in which three objections are taken by the reporter. We are now to consider whether these objections are substantial or venial.

First, it is said that the notice calling the meetings in August and September does not describe the resolution to be submitted as either an extraordinary or a special resolution, or state that it is to be confirmed at the second meeting as a special resolution. There is, I rather think, nothing in this objection. The statute does not require the resolution to be so described in the notice. The omission of the description is therefore not a failure to comply with any statutory requirements. The notice, in my opinion, complied with the provisions of the 69th section of the Act of Parliament, and I should not therefore have been prepared to sustain this objection. But I commend to the attention of the petitioners the observations of the reporter to the effect that it is in accordance with the general practice that some intimation should be given to the shareholders that the resolution proposed is, when passed and confirmed, to be a special resolution.

Second, it is said that the notice does not contain the terms of the memorandum and articles proposed to be adopted. In this respect the notice is, in my judgment, insufficient, and would, as the reporter says, leave the resolutions passed at the meetings open to attack. I do not overlook the fact that along with the notices calling the meetings of 13th June and 18th July there was sent to each of the shareholders of the company a copy of the memorandum and articles. But then no reference was made in the notices calling the later meetings to the print of the memorandum and articles formerly sent out. Further, the shareholders were not informed that the memorandum and articles to be submitted at those meetings were those a copy of which had been formerly sent. This objection seems to me to be substantial and to vitiate the whole procedure. This apparently is the view taken by the reporter, and I consider it to be well founded.

The third objection taken is that the notice for the September confirmatory meeting is defective because that meeting was only called conditionally on the resolution having been passed at the August meeting. This objection rests on the authority of the case of *Alexander* v. *Simpson*, (43 Ch. D. 139), referred to by the reporter. Counsel for the petitioners conceded that that case was directly in point. The sound-

ness of the decision was not challenged. It appears to have regulated the practice since it was pronounced in 1890, save where the difficulty has been surmounted by a clause in the articles of association. That is not the case here. I am therefore constrained to hold that this objection too is substantial. The result is, I fear, that the whole procedure to which these objections relate must be gone through again, due regard being paid to the statutory requirements. I reach this result with regret, for, as the reporter observes, "the procedure in the petition itself has been regular, and the steps taken by the company have probably been such as to enable the shareholders to understand the position of affairs and the effect of the resolutions submitted at the meetings." But although this may be so, we cannot overlook the failure in this case to follow closely the provisions of the Act of Parliament.

LORD MACKENZIE—It is always with regret that the Court feels compelled to insist on a due observance of what in one view of it may be represented as a formal matter. But I think in dealing with the body of legislation embodied in the Companies Act the only way to deal with the matter is to require that due observance be paid to the provisions of the statute.

Of the three points mentioned by the reporter the last seems to me to be fatal to the contention of the petitioners here. It was conceded that the case of *Alexander* v. *Simpson* (1889, 43 Ch. D. 139) could not be challenged. It appears to me conclusive on the matter, and the attempt which was made by Mr Macmillan to distinguish this case on the ground of specialty was not successful.

The second point mentioned by the reporter also seems to me to be not matter of form but matter of substance. If, as the reporter points out, a reference had been made in the notice calling the later meeting to the print of the memorandum and the articles formerly sent to the shareholders, or if information had been given them that the memorandum and articles to be submitted at these meetings were copies of those previously sent, then it might have been possible to get over the difficulty that the notice given by the advertisement did not contain the terms of the memorandum and articles. Unfortunately that was not done, and therefore I think that point is also fatal.

In regard to the first point, the view I take, after considering what was decided by Swinfen Eady, J., in the *Penarth Pontoon Company's* case ([1911], W.N. 240) is that the attention of the shareholders does require to be directed to the point that certain procedure prescribed by the Act must be observed in order that the conditions which Parliament has attached to a special resolution may be complied with. It is, in my opinion, essential, if sound general practice is to be followed, as the reporter points out, that some information must be given to the shareholders that the resolution proposed is, when passed and confirmed, to be a special resolution.

Accordingly in the result I come to the same conclusion as your Lordship.

LORD SKERRINGTON—I concur in the course which your Lordships consider ought to be followed. I desire to note that nothing in our decision to-day will compel anybody to describe a "special resolution" as an "extraordinary resolution," and that nothing which we decide to-day will throw any light upon the question whether the decision of the Court of Appeal in *Alexander* v. *Simpson* (43 Ch. D. 139) ought or ought not to be followed in Scotland. Counsel for the petitioners admitted that that decision was conclusive unless he could show that it did not apply, which he was unable to do.

LORD CULLEN—I am of the same opinion. As regards the first point, I am not disposed to question the soundness of the view that in the notice calling the first meeting the resolution intended to be proposed does not fall to be denominated an "extraordinary resolution." Under reference, however, to sub-sections (3) and (4) of section 69, I think it will be worthy of the consideration of the petitioners, in their renewed proceedings, whether the notice should not state that it is intended to propose the resolution as a "special resolution."

As regards the second point, it is clear that the notice sent did no more than state the form of the resolution, and gave no information as to its substance and practical import. I am unable to see how this defect can be regarded as cured by the fact that at a previous stage and for a different purpose the shareholders had been put in possession of the means of knowledge.

As regards the third point, the decision in the case of *Alexander* v. *Simpson* (43 Ch. D. 139), referred to by the reporter, has not been challenged by the petitioners, and I am of opinion that they have not succeeded in distinguishing that case from the present one.

The Court continued the petition.

Counsel for the Petitioners—Macmillan, K.C.—Cooper. Agents—Macpherson & Mackay, S.S.C.

Wednesday, November 26.

FIRST DIVISION.

[Sheriff Court at Hamilton.

WARD v. WALKER.

Process—Workmen's Compensation—Minor and Pupil—Title to Sue—Pupil without Guardians—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58).

Held (1) that in accordance with immemorial practice an action may be properly brought into Court by a pupil without guardians in his own name, and thereafter a curator *ad litem* be appointed, and (2) that there are no specialties in the Workmen's Compen-