after deduction of the legitim due to the second party, and in my opinion the marriage-contract cannot be used to obtain more, either for the children of the second marriage or for the children of the first.

Legitim is a debt due at the date of the father's decease, and it bears interest at 5 per cent. from that date till payment. I need not enter on this question. It is sufficient to refer to the case of *M'Murray*, 14 D. 1048, and especially to the interlocutor of the Court.

LORD JUSTICE-CLERK—That is the opinion of the Court.

LORD YOUNG was absent.

The Court found (1) that two-sevenths of the free personal estate of the truster did not fall to be deducted before striking the amount of legitim due to the late Thomas Bishop; and (2) that the rate of interest payable by the trustees in respect of the legitim found due was 5 per cent. per annum.

Counsel for the First Parties—Dundas—Sym. Agent—William C. Bishop, W.S.

Counsel for the Second Party—Rankine—C. Watt. Agents—Irvine & Gray, S.S.C.

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*Tuesday, March 20.*

## SECOND DIVISION.

## THE SCOTTISH VULCANITE COMPANY, LIMITED.

*Company—Reduction of Capital—Minute—Qualification—The Companies Act* 1867 (30 *and* 31 *Vict. cap.* 131), *secs.* 9 *and* 15—*Process—Errors in Petition and Minute—Intimation and Advertisement.*

By virtue of a special resolution passed at an extraordinary general meeting and confirmed at another extraordinary general meeting, a company proposed to return the shareholders capital to the extent of one-tenth part. The company thereafter presented a petition craving the Court to make an order confirming the proposed reduction of capital, and to approve of a minute to be registered in terms of section 15 of the Companies Act 1867. This minute, after enumerating the amount of the capital and the number of shares into which it was divided, proceeded, "But in respect of each of the said shares, the company is empowered to pay or return to the shareholders 20 per cent. of the amount so paid up, upon the footing that the amount so paid or returned or any part thereof may be called up again."

The reporter, to whom the petition was remitted, brought under the notice of the Court both the qualification in the minute and also the error of putting 20 per cent. instead of 10 per cent. He also pointed out an error in the prayer of the petition in a wrong reference to the section of a statute, but reported that in other respects the petition and proceedings had been regular, and that the order craved might in his opinion be granted.

The Court, in respect of these two errors, *ordered* the petition to be intimated and advertised anew, and *remitted* to the Lord Ordinary on the Bills to *grant* the prayer of the petition, after intimation and advertisement had been made.

This was a petition by the Scottish Vulcanite Company, Limited, under the Companies Acts, and particularly the Companies Act 1867, craving the Court to make an order confirming a proposed reduction of capital, and to approve of a minute to be registered in terms of section 15 of the Companies Act 1867.

The company was incorporated under the Companies Acts 1862 and 1867, having its registered office at Viewforth, Edinburgh, and carrying on business in Scotland. Its original capital was £60,000, divided into 1000 shares, of which 500 were A shares of £100, and 500 B shares of £20 each. The memorandum of association authorised the company "To increase or reduce the capital of the company to provide sinking or reserve funds . . . and to undertake and carry out such financial operations as may be incidental or useful to the general business of the company." By special resolutions passed and confirmed at extraordinary general meetings in 1884, the capital was increased to £72,000 by the addition of 600 B shares of £20 each; 60 of these shares were not taken up, and the capital was afterwards reduced to £70,800 by cancelling these 60 shares. . . . The petitioners stated—"A considerable portion of the additional capital brought in as before mentioned can now be dispensed with, and a return to the shareholders of capital to the extent of one-tenth part thereof has been considered desirable. To carry out the repayment of capital a special resolution was passed at an extraordinary general meeting of the company held on 24th January 1894, and confirmed at another extraordinary general meeting of the company held on 12th February 1894, by which it was resolved—'That in respect of each share of £100 in the company's capital upon which the sum of £100 has been fully paid up, and in respect of each share of £20 in the company's capital upon which the sum of £20 has been paid up, capital be paid off to the extent of £10 on each of the £100 shares, and £2 on each of the £20 shares, upon the footing that the amounts returned, or any part thereof, may be called up again.' . . . There are no debts due by the company, and therefore the petitioners do not propose to lodge a list of creditors in terms of section 13 of the Companies Act 1867. The company presents this application to the Court for an order confirming the special resolution above quoted, and to have the other statutory requirements for giving effect to such confirmation carried out."

The minute proposed to be registered was as follows—"The capital of the Scottish Vulcanite Company, Limited, is £70,800, divided into 500 A shares of £100 each, and 1040 B shares of £20 each. At the time of the registration of this minute, the whole of the said 500 A shares have been issued, allotted, and £100 each paid up or deemed to be paid up thereon; and the whole of the said 1040 B shares have been issued, allotted, and £20 each paid up or deemed to be paid up thereon. But in respect of each of the said shares the company is empowered to pay or return to the shareholders 20 per cent. of the amount so paid up, upon the footing that the amount so paid or returned, or any part thereof, may be called up again."

There was also a prayer that the Court should dispense altogether with the addition of the words "and reduced" to the company's name, or otherwise after a short period.

The petition was intimated and advertised in the usual way, and the Court remitted to Mr Edward Young, W.S., to report upon the proceeding.

Mr Young reported that the whole proceedings had been regular, and that, subject to the approval of the Court on certain points he mentioned, the confirmation order might be pronounced. He also reported that in his opinion this was a case in which the Court might authorise the petitioners to dispense with the addition of the words "and reduced" to the name of the company. He further reported—"I think it proper to call your Lordships' attention to the qualification of the proposed reduction and return of capital, contained in the company's resolutions of 24th January and 12th February 1894, viz.—'That it shall be made upon the footing that the amounts returned, or any part thereof, may be called up again.' The petitioners ask your Lordships to confirm the proposed reduction and return, subject to this qualification. . . . I think it proper to notice that in the proposed minute set forth in the petition, and referred to in the prayer, '20 per cent.' is erroneously put instead of '10 per cent.' The blunder is obvious, and probably therefore harmless. Your Lordships will judge whether or not it affects the validity of the intimations and publications of the application. I must, however, further notice that in the prayer of the petition reference is made to 'section 23 of the Companies Acts 1867' (which section applies to 'associations for profit,' and does not in any way apply to the present case), instead, apparently as intended, to 'section 13 of the Companies Act 1867.' This, although also an obvious error, would appear to affect the intimations and publications, more especially as it also occurs in the interlocutor of 1st March, appointing the petition to be intimated and advertised," &c.

At advising—

LORD JUSTICE-CLERK — I think there must be intimation and advertisement of the petition of new.

LORD RUTHERFURD CLARK and LORD KYLLACHY concurred.

LORD YOUNG and LORD TRAYNER were absent.

The Court ordered further intimation and advertisement in terms of their previous interlocutor, and remitted to the Lord Ordinary on the Bills to grant the prayer of the petition after such intimation and advertisement had been made.

Counsel for the Petitioners—Lorimer. Agents—Boyd, Jameson, & Kelly, W.S.

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*Tuesday, March* 20.

## FIRST DIVISION.

[Lord Low, Ordinary.

## ELDER'S TRUSTEES *v.* ELDER AND OTHERS.

*Succession—General Disposition and Settlement—Conditio si sine liberis decesserit—Implied Revocation by Subsequent Birth of a Child.*

A testator died in 1891 leaving a trust-disposition and settlement dated in 1886, whereby he directed his trustees, after payment of certain legacies and annuities, to hold the whole residue of his estate for behoof of his daughters Elizabeth, Martha, and Margaret, in liferent and their issue in fee. At the date of the settlement these daughters were the only children of the testator, but a son was born in 1890, ten months before the testator's death. The testator left a considerable amount of heritable as well as moveable estate.

*Held* that the settlement was subject to the *conditio si sine liberis*, and was revoked by the subsequent birth of the testator's son.

Thomas Elder died on 24th October 1891, leaving a trust-disposition and settlement dated 26th March 1886, whereby he conveyed his whole estate, heritable and moveable, to trustees. After providing for payment of debts and expenses, for implement of marriage-contract provisions in favour of his second wife, and for payment of certain legacies and annuities, the testator directed his trustees in the last place to hold the free residue of his estate for behoof of such of his three daughters—Elizabeth, Martha, and Margaret, as might be alive at his death, equally among them, and to pay over to each the free annual income of her share, during her life, as a strictly alimentary provision, the fee of each daughter's share at her death to be paid over to her issue, and survivors and survivor of them, in such shares as she might direct, and failing which then equally among them. In the event of any of his daughters failing without leaving issue, the testator provided that they should have power to test on the fee of the shares liferented by them, and