

## COURT OF SESSION.

Tuesday, November 20.

### SECOND DIVISION.

CAMPANIA NAVIGATION SOTA  
 Y'AZNAR v. CLAN LINE STEAMERS,  
 LIMITED.

*Expenses—Taxation—Ship—Collision—  
 Auditor's Report—Cost of Keeping Wit-  
 nesses till Diet of Proof.*

The chief officers of a ship which had been in collision, in order that they might be available as witnesses at the proof in counter-actions of damages for large sums, were kept idle in this country for two months before a diet was moved for, and in all for about ten weeks. On objection to the Auditor's report taken by the losing party, the expense of detaining the witnesses for a fortnight only was allowed.

The Campania Navigation Sota y'Aznar, who had been the losing party in counter-actions with the Clan Line Steamers, Limited, arising out of a collision at sea, lodged a note of objections to the report of the Auditor, who had allowed to the extent of £177, 14s. 8d. their opponents' charge of £267, 14s. 8d. for detaining on shore for two months and ten days four members of the crew of the ship which had been in collision in order to enable them to give evidence at the ensuing proof.

The facts of the Case were set forth in the opinion of Lord Salvesen as follows—"The question raised by this note of objection is one of general importance in connection with the examination of witnesses in maritime causes. There were counter-actions of damages arising out of a collision between vessels belonging to the pursuers and defenders respectively. The leading action was at the instance of the Clan Line (whom I call pursuers) for a sum of £9000, and the counter action concluded for £3500. The cause was therefore one of considerable pecuniary importance to the parties. The collision, it appears, happened in May 1915, the action was raised on 6th December, and the proof took place in the Sheriff Court at Glasgow in the second week of April 1916. The Clan Line Company, who were the successful parties, in their account of expenses charged £267, 14s. 8d. as the expenses incurred through the detention of four members of the crew of the vessel on shore while waiting for the trial, these expenses being applicable to a period of two months and ten days prior to the trial. Part of the expenses consisted of the cost of victualling, and this has wholly been disallowed by the Auditor on the ground that the wages paid should have enabled the men to pay for their own board and lodging while on shore. The Auditor has also made a rough and ready deduction of approximately £50, although it is not plain upon what principle he has proceeded. He has allowed the balance on the ground

that as two of the witnesses were the captain and the chief officer, who were the most important witnesses for the pursuers, it was desirable that they should be examined before the judge who ultimately decided the case, and that therefore it was not incumbent on the pursuers to apply for a commission to examine these witnesses, and so to have avoided the expense of detention. In so doing he had in view, as we were informed, the magnitude of the pecuniary interests at stake."

Argued for the objectors—It was under any circumstances, but particularly in view of the present pressing needs of the country, unreasonable to keep in port the captain and the first and second officers and the second engineer from 2nd February until 10th April 1916. This had been done without any intimation. The expense as regards this item was unreasonable, and should be disallowed—*Parker v. North British Railway Company*, (1900) 8 S.L.T. 18.

Argued for the Clan Line Steamers, Limited—The Auditor, after full consideration of all the circumstances laid before him, had only allowed a part of the item objected to. Where, as in the present case, the sums of damages claimed were large, the Court as a rule was slow to interfere with the Auditor's ruling. Accordingly the item should be allowed.

At advising—

LORD SALVESEN—[After the narrative above given, proceeded]—I am far from saying that the expense of detention of a crew on shore, so that they may be examined at a trial, may not be a proper charge against the unsuccessful party. To what extent it is so, however, must generally be a question of circumstances. The general principle is that only such expenses as are reasonably necessary for the proper conduct of the cause are proper charges in a taxation between party and party. In the present case I think the expenses charged were not reasonably incurred. The pursuers had had about nine months to prepare their case before the four members of the crew arrived in Glasgow, and they kept them there for other two months before formally applying for a diet of proof. When application was made for a diet of proof the Sheriff-Substitute was able to fix a date within seven days. I do not think, as in a question with the unsuccessful party, that it was reasonable to incur this great delay. I agree that it was desirable that the judge who was to take the rest of the proof should see the important witnesses, so that he might have such means of judging of their credibility as might be gathered from their demeanour; but when I was a judge of the Outer House I was invariably able to give a diet before myself, at short notice, for the examination of special witnesses in maritime causes who might be absent at the proof when it came to be fixed, and I cannot doubt that the Sheriff-Substitute would have found time within a week or fortnight after application had been made to him to have had these witnesses examined before him, even if as we

are informed he could not assign the requisite number of days to take the proof continuously. If he was unable to give such a diet the pursuers were entitled to ask for a commission to have them examined; and I think they could not reasonably detain the four witnesses in question for so long a period as two months and ten days at their opponents' expense. In this case, therefore, having in view the time at which the action was raised, and the time when the witnesses became available for examination, I am of opinion that it is not reasonable to allow more than the expenses for a fortnight of the witnesses detained, and even this allowance would probably have been largely in excess of the expense of executing a commission. If this view be acted on, the amount to which the pursuers should be found entitled would be reduced to the sum of £45, 18s. 6d., which sum I think we ought to allow instead of the sum of £177, 16s. 8d. fixed by the Auditor.

The LORD JUSTICE-CLERK, LORD DUNDAS, and LORD GUTHRIE concurred.

The Court sustained the objection to the extent of allowing, in place of the sum of £177, 14s. 8d. objected to, the sum of £45, 18s. 6d.

Counsel for the Objectors—C. H. Brown. Agents—J. & J. Ross, W.S.

Counsel for the Clan Line Steamers, Limited—W. T. Watson. Agents—Webster, Will, & Co., W.S.

Wednesday, October 31.

## SECOND DIVISION.

### UNION BANK OF SCOTLAND LIMITED, PETITIONERS.

*Company—Memorandum of Association—Objects of Company—Alteration of Constitution—Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), secs. 9 and 264.*

A bank, which was constituted by contract of copartnership, and was entitled to carry on business in the United Kingdom only, presented a petition under the Companies (Consolidation) Act 1908, secs. 9 and 264, for confirmation of a memorandum, with articles of association, to take the place of the contract of copartnership, and in the memorandum took, *inter alia*, power to extend the operations of its business to any part of the world, and also power to amalgamate the business of the company with other businesses. The Court granted these powers, but refused power to sell the undertaking and assets, and also a clause providing that objects expressed in any paragraph setting forth objects should not be limited by reference to any other paragraph or to the name and description of the company.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts—Section 9—“(1)

Subject to the provision of this section a company may by special resolution alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it (a) to carry on its business more economically or more efficiently; or (b) to attain its main purpose by new or improved means; or (c) to enlarge or change the local area of its operations; or (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or (e) to restrict or abandon any of the objects specified in the memorandum. (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; and (b) that with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained, or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court: Provided that the Court may in the case of any person or class, for special reasons, dispense with the notice required by this section. (4) The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper. (5) The Court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no part of the capital of the company may be expended in any such purchase. (6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the Registrar of Companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company. The Court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the Court may think proper. (7) If a company makes default in delivering to the Registrar of Companies any document required by this section to be