the Dean of Guild Court, shall be adjudged and disposed of by the Magistrates of the City and Royal Burgh" (that is, the extended City and Royal Burgh), "to whom all such actions and processes shall, according to the subject-matter thereof, by authority of this Act, be transferred." Now, no action or process pending before the County Justices could in ordinary course be adjudged and disposed of by the Magistrates, and the inference therefore is that the jurisdictions referred to in the earlier part of the section, and thereby determined, do not cover the jurisdiction of the County Justices.

The matter is not advanced by section 31, which provides that 'all laws, statutes, jurisdictions, powers, privileges, and usages now in force with relation to or within the districts annexed, in so far as inconsistent or at variance with the provisions of this Act, are, subject to the provisions of this Act, hereby repealed, put an end to, and extinguished.' The jurisdiction of the County Justices within the districts annexed may be inconsistent or at variance with the *preamble*, but, unless section 30 can be interpreted as is sought, is not inconsistent or at variance with the *provisions* of the Act.

We have, therefore, come to the conclusion that Edinburgh has now for the first time, in 1896, been expressly created a County of a City, but that, while the determination of the jurisdiction of the County Justices by force of this statute is more than doubtful even within the area of extension, there is no question that it has *not* been determined within the area of the existing City or Burgh as defined prior to the passing of this Act. And that is sufficient for the purposes of the present case.

We are, therefore, of opinion that the judgment of Lord Pearson should be adhered to and the note refused.

Lord Pearson—I remain of the opinion which I expressed in my judgment as Lord Ordinary. I observe, however, that the reclaimer's argument on the later statutes, and particularly on the Act of 1896, has been considerably developed since the case was before me. It was then used rather as corroborating the reclaimer's case on the earlier documents, and not as an alternative argument, which I think it truly is. Regarded as an alternative argument, it does not aid the reclaimer's contention in this particular case which has arisen within the limits of the ancient royalty. But even as regards the districts annexed to the City by the Act of 1896, I am of opinion that that Act has not, on a sound construction, the effect of determining the previously existing jurisdiction of the Midlothian County Justices.

Lord Dundas—I concur in the opinion expressed by Lord Pearson as Lord Ordinary, and also in the additional opinion returned by his Lordship as one of the Consulted Judges.

At advising—

Lord Justice-Clerk—I concur in the judgment of the Consulted Judges.

Lord Kyllachy—I am of opinion with all the Consulted Judges that the Lord Ordinary's judgment should be affirmed.

Lord Stormonth Darling—I have read and re-read with entire satisfaction the opinion of the Lord Ordinary, along with the additional opinion which he has sent in as one of the Consulted Judges, and I agree in the unanimous view of the Consulted Judges, that the Lord Ordinary's judgment should be adhered to.

Lord Low—I concur.

The Court unanimously adhered.

Counsel for the Suspender and Reclaimer—Cooper, K.C.—Hunter, K.C. Agents—Allan Lowson & Hood, S.S.C.

Counsel for the Respondent—C. N. Johnston, K.C.—Wilton. Agents—Dalgleish & Bell, W.S.

HOUSE OF LORDS.

(Committee for Privileges.)

Tuesday, July 4.

(Before the Chairman of Committees (Earl of Onslow), the Lord Chancellor (Earl of Halsbury), Earl Spencer, Viscount Cross, Viscount Knutsford, Lord Ashbourne, Lord Macnaghten, Lord James, and Lord Robertson.)

KINROSS.

Administration of Justice—Advocate—Peer—House of Lords—Right of an Advocate who is a Peer to be Heard at the Bar.

A Peer may be heard as counsel on an appeal at the bar of the House of Lords, but this does not include his appearing before Committees of the House, or before the House when sitting under the presidency of the Lord High Steward on a criminal case.

This was an application by Lord Kinross, who—admitted as Mr Patrick Balfour a member of the Faculty of Advocates in 1881—had succeeded his father, the late Lord Justice-General, as Baron Kinross in the Peerage of the United Kingdom, in January 1905, to be allowed to argue on appeals to the House of Lords sitting as a Court of Appeal. The circumstances of the case are stated by the Lord Chancellor (Halsbury).

Lord Chancellor—I think it right to mention the circumstances under which I have asked that your Lordships should give us your assistance. The son of the late Lord Justice-General of Scotland has been called to the bar and is a practising barrister. There is a case coming before your Lordships' House in which he is de-

sirous, and his client is desirous, that he should appear and represent him as counsel at the bar of your Lordships' House. I did not think it was very desirable that without an appeal to your Lordships' Committee we, who are a comparatively small number practically constituting the Court of Appeal, should decide the question as to hearing him for ourselves, because although practically those who are sitting for that purpose are merely a Court of Appeal, theoretically it is your Lordships' House. Therefore I have asked your Lordships' assistance in determining what answer should be returned to the noble Lord who desires to appear as counsel.

I do not conceal that I am myself strongly of opinion that he ought to be allowed to appear. I think the theoretic view that he is a member of your Lordships' House and so a member of the tribunal is not one which ought to prevail in practice. The House when sitting on appeals is confined to the legal members of the House of Lords, including the Lords of Appeal who are appointed for that purpose. A Court of Appeal has been specially constituted, before which no appeal can be entertained unless three of those members are present. Theoretically I can imagine that a good many things might be said against the view which I entertain; but it seems to me that practically the question is not one which ought to create much difficulty. I do not see why a Peer should be precluded from appearing before the final Court of Appeal.

Two things strike one at once with reference to the general question. In the first place, Lord Coleridge, who is a member of this House, is continually practising before the Courts, and therefore it may be assumed that there is nothing in the position of an advocate before the courts to prevent a Peer from practising at the bar. Then the question arises, is there anything to exclude him from appearing also before the highest Court of Appeal? Whatever may be said about that now, there is no doubt that in earlier times there was not a strong partition between the bench and the bar. If anything is to be said about the traditions of the bar, my impression derived from the old reports is that in the times of our early legal history a man was one day an advocate and the next day a judge. In fact, when you use the old reports for the purpose of authority, it is difficult, without making some sort of antiquarian inquiry, to ascertain whether or not the words you quote are words of authority coming from one of the judges, or whether they are merely the argument of counsel which may have been uttered the day before in his capacity as counsel, and not as a judge at all. From time to time they went from the bench to the bar and from the bar to the bench during all those years. And then I may refer to the present state of things in the Privy Council. We have a distinguished member of the House of Commons and of the bar—Mr Asquith—who is also a member of the Privy Council, practising before the Privy Council. It may be said that he is not a member of the Judicial Committee of the Privy Council. That is true; but it would be strange if that circumstance were to affect the question whether or not he ought to be heard as an advocate before the tribunal. It is plain that circumstances might arise any day in which the Sovereign might appoint him a member of the Judicial Committee. I only desire to make this motion in order to start the discussion, that we may receive your Lordships' help and countenance, whatever view we take of the matter, and that the noble Lord who wishes to appear should, before he formally makes his application to be heard, be informed whether he will be heard or not. I propose to move, with a view to starting the discussion—That according to the practice of the highest Court of Appeal, the House of Lords, there is no reason why a Peer should not be heard as an advocate to argue questions of law before your Lordships' House.

Lord James—As one of the older members of your Lordships' Committee, I should like to say, with very great deference, that I entirely differ from the view that has been presented by my noble and learned friend, and I trust your Lordships will consider well before you accept this motion. I am not for a moment suggesting that a Peer should not practise as a barrister in the courts of law. Until the case of Lord Coleridge occurred the question had never arisen; but it appears to me that the course taken by the noble and learned Lord was perfectly justifiable. If I may say so respectfully, I think the more the members of this House associate themselves with the profession the better. In my opinion Lord Coleridge was well within his right in practising at the bar. But that is not the question now before your Lordships. The question is, whether a man who is a member of a tribunal can practise before that tribunal. If we accept this motion, that Lord Kinross should be allowed to practise at the bar of the House, I cannot understand how we can refuse him the right to appear before committees of the House also. I cannot see any distinction, and the very important question arises whether we shall not by giving this permission be encouraging the House of Commons to determine that its members may practise before the committees of that House. There is a very thin partition between practising before committees of the House and before the House generally. What is there to prevent a Peer who practises before the House itself from practising before one of its committees? And let me refer to a recent case. Three or four years ago we had a Peer on his trial for a felony. If this permission is granted, what will there be to prevent a Peer from being heard as an advocate at the bar and then coming in and taking part in the decision of the very case in which he has been an advocate?

We must not forget that when we are sitting to hear appeals we are sitting as the House of Lords. According to the theory

of the Constitution we are the House of Lords, determining the question as such, and whether we sit as a limited number of legal Peers to hear appeals in civil causes, or as a judicial tribunal to determine the guilt or innocence of one of our Peers, we are in any case the highest court of law in the land. My noble and learned friend's motion involves this, in principle at least, that a member of this House may appear before the House and argue before it, with a right afterwards to take part in the decision. I say that would be a scandal. We have some analogy to guide us upon the principle as to whether a member of a tribunal can practise before it or not. As your Lordships are aware, there was a time when the House of Commons decided upon election petitions by its own committees, but in the year 1868 the determining of those petitions was placed in the hands of the Judges. Then because that tribunal (the Judges) reported to the House of Commons, those who had the care of the interests both of Parliament and the bar in their hands had to consider whether a barrister who was also a member of Parliament had a right to appear before that tribunal. If I recollect rightly, the determination of that question was chiefly in the hands of Sir John Coleridge and Sir John Karslake, and a few months later, in the spring of 1869, I was a party to it, We determined that no member of the House of Commons should appear before an election Judge, because the election Judge had to report to the House, and therefore the barrister practising before him would be practising before the same tribunal of which he was a member. I may remind my noble and learned friend, who was engaged in nearly all the election petitions until he took his seat in the House of Commons in 1876, that that rule was fully accepted. Some members of the House gave up appearing on a considerable number of petitions, and we maintained the principle that a member of the House of Commons should not practise before the tribunal which would have to report to the House.

One word as to the analogy which my noble and learned friend has spoken of in respect to the Privy Council in the case of Mr Asquith. The rule of conduct was that a barrister should not practise before the Judicial Committee if he became an ordinary Privy Councillor. Sir John Karslake, for one, entertained this view. Acting upon that rule in 1885, when I had the honour of being made a Privy Councillor, I refused to appear before the Judicial Committee because I could not bring myself to practise before that tribunal, although there was a strong partition between the general body of Privy Councillors and the members of the Judicial Committee. That was formerly accepted and acted upon as the proper rule which should guide those who practised before the Privy Council until very recently, and although my friend Mr Asquith has a right to do what he has done—and I have not a right or a desire to criticise him in the least—still there can be no doubt that that right was not acted upon, and had never been acted upon by anyone except Mr Asquith, in the long period which had elapsed before he chose to take that course. For the reasons I have given I am very strongly against breaking down this barrier, which in my opinion rightly exists, preventing any member of a tribunal from practising before it, although I daresay this motion might not in fact have a wide operation. I feel bound to express my opinion against it in the interests both of the dignity of this House and of the members of the bar who practise before it.

LORD ASHBOURNE—I must say the inclination of my mind is not in accord with my noble and learned friend Lord James. Nor am I impressed with his arguments, although I recognise their interest and the the great fairness with which he has presented them. My noble and learned friend has used an expression to the effect that members of your Lordships' House are members of the tribunal that hears appeals, and indeed he has referred to that fact more than once. It is true only in a historical and remote sense, for in all the years that any of your Lordships now present recall no Peer not learned in the law according to the technical description has attempted to take any part in a decision of your Lordships' House in legal matters. I venture to say that if, when an appeal was being heard in your Lordships' House upon a point of law, any member of the House not learned in the law sought to take part in the proceedings, those who were specially responsible for the legal business of your Lordships' House would feel compelled to animadvert very strongly upon it, if not to adjourn the hearing of the case. I can hardly imagine a step more inconvenient, more entirely opposed to constitutional usage, than for any member who had not held one of the qualifying offices which would justify him in taking part in hearing appeals to come here and seek to discuss the important questions of law which are from time to time coming before your Lordships' House. I admit, of course, that the House of Lords is the House of Lords for all purposes, and every member of it is a Peer of Parliament entitled to be present on every occasion when it sits, but I cannot but think it is putting a technical point into undue prominence when you speak of every Peer as being a member of your Lordships' House for the decision of important legal questions.

Then my noble and learned friend says this would be only introductory to wider claims, and if a Peer were permitted to come and appear for a client at your Lordships' Bar it would be competent for him then to appear for a client before a committee of the House. I am disposed strongly to question that. No doubt if he were selected by the Lord Chairman of Committees as a member of a committee of your Lordships' House he would be entitled to sit upon that committee. But this is not a matter of technicality, it is a matter of substance. If he sought to appear on behalf of a client before a committee, he

might be a member of that committee or a member, if not of that particular committee, of another committee in another room, there being no technical bar against his sitting on a committee. I see therefore a great difference, a vital difference, between practising in your Lordships' House and appearing before a committee, when he might have sat on that very committee or on another committee the day before in another room. My noble and learned friend Lord James spoke of a "thin partition." I am unable to see any thinness about the partition at all. If you get away from mere technicalities and come to substance it is an extremely thick partition. If a Peer who had not held a qualifying legal office would be unable to sit here without violating your Lordships' practice as a matter of constitutional usage, I do not call it a thin partition but a substantial one—one that could only be overcome after very serious discussion, and perhaps some inconvenient interruption of the ordinary business of the House.

Then my noble and learned friend refers to an assumed analogy between what is sought on the present occasion and the action of the House of Commons in reference to election petitions. I was not myself able to follow that. It is quite true that for purposes deemed wise by Parliament the hearing of election petitions was transferred to the Judges, but the report comes back to the House of Commons, and therefore every member of that House has a right, and if there was a call of the House it would be his duty, to be present at whatever proceeding might take place in reference to that report.

I do not think the analogies and reasons mentioned by the Lord Chancellor have been displaced by what has been said by my noble and learned friend Lord James in his very interesting remarks. The practice of the Privy Council is, I think, important, and has a significant bearing on the present discussion. My noble and learned friend says that when he was made a member of the Privy Council he did not practise before that tribunal, although we all know that he was a very leading and distinguished member of the Bar. But we are aware that a very distinguished or prominent member of the Bar, also a Privy Councillor, now practises there, and no doubt to the assistance of the tribunal and the advantage of his clients. Therefore we find that the existing practice of the Judicial Committee of the Privy Council is not to question the right of the Privy Councillor to appear and argue for his clients in cases in which he may be instructed. I think that is a matter of very considerable importance when we are considering analogies. It must be borne in mind also, as was pointed out by the Lord Chancellor, that by an exercise of the royal prerogative it might come about that any barrister practising before the Judicial Committee might be placed on that Committee itself; therefore what my noble and learned friend opposite has called a thin partition would vanish, and a Privy Councillor who was also an advocate would, by the removal of that partition, be sitting as a member of the tribunal on the very next day.

My noble and learned friend the Lord Chancellor has mentioned the fact of Peers practising in other Courts. I think that is a matter of considerable importance. The question is not a large one, because none of us have a right to suppose, or can expect, that there would be any substantial number of Peers practising their profession at your Lordships' Bar or seeking to avail themselves of the right to appear there; but the fact that a Peer is permitted, and as I think rightly and fairly permitted, to appear before the tribunals of this country is a fact of considerable importance. What does it mean? Assuming that he is entitled to be regarded as a member of the House of Lords, and therefore technically within the description of one who could hear appeals, is it not a step in the argument to find that he is allowed without question to discuss and to take part in cases which have come before tribunals lower than that of your Lordships' House, it may be on Circuit, it may be in one of the Divisions, it may be in the Court of Appeal? All that he does without question; and yet it is suggested—those being inferior courts—that when an appeal from them comes up to this House he is not to be allowed to stand at your Lordships' Bar to argue it; that he must remember that when your Lordships hear an appeal he is no longer in an inferior court where he can be heard but in a Court where he cannot be heard. This is a new question; it has never been presented before for decision as regards the Bar of this House or its committees. I admit that there is something in what my noble and learned friend Lord James has said—there are certainly considerations to be weighed on both sides; but I must say that the balance in my own mind is in favour of what has been said by my noble and learned friend the Lord Chancellor.

Earl Spencer—I am rather reluctant to say anything among a body almost entirely composed of Law Lords, but as this is a matter which affects the House at large perhaps I may have some little right to say some thing upon it. Probably I am the only lay peer present to-day who has sat in the House when hearing an appeal. I remember very well when I was a mere boy I was called in one morning to make a quorum, and I recollect sitting here and hearing appeals. Happily that state of things has passed away; it was certainly open to objection, and the doing away with it was, in my opinion, one of the best of reforms. According to the statement we have heard, not only from the Lord Chancellor and Lord Ashbourne, but from Lord James, it is well understood that of late years lay peers no longer take any part in the procedure of hearing appeals before the highest tribunal of the land.

I have listened with the greatest care to the arguments which have been addressed to the House this morning. I confess my sympathy is very strong in favour of

making this concession to Lord Kinross. I followed the precedents and analogies which were brought forward by Lord James, and I confess I did not think that some of them exactly applied. One of the strong points he made was with regard to the Privy Council. Lord Ashbourne has met that. It seems to me that the Crown has that matter entirely in its own hands, because until a Privy Councillor is called to sit on the Judicial Committee he is not a member of the tribunals. Then comes the question of practising before committees of this House. I think what is proposed now could hardly be a precedent for that. I at once admit that it is not right that anyone pleading before a tribunal should also sit upon that tribunal as judge. No doubt any Peer might sit on a committee, but it does not follow that he would be put on a committee by the Lord Chairman. It is not likely that he would put a legal Peer upon the committee if he has been in the habit of practising before committees. The only precedent which certainly does throw a little difficulty in my way is the precedent of the House sitting as it did a few years ago—[1901] A.C. 446; trial of Earl Russell—when the Lord Chancellor presided over a trial of a peer for what I may call a criminal offence. There of course the whole House did sit. I remember on that occasion being appealed to by several of my friends and others to make a motion; but I declined to do so, as I thought it was more right that the question should be decided by the Law Lords than by the lay Peer. At the same time there we were, and I should have had a perfect right to make a motion with reference to the sentence. That is a case in which there might be a difficulty. Lord James was present there I think. I was going to throw out this suggestion: Is it possible that in passing the resolution in the Committee of Privileges or in the House that Lord Kinross may practise, to confine it to your Lordships' House when sitting as the highest Court of Appeal? If that could be done, it would sweep away the only difficulty I have.

LORD CHANCELLOR—My motion was so intended.

LORD MACNAGHTEN—I am very glad that the Lord Chancellor has submitted this question to the Committee for Privileges, and I am very glad to hear the opinion that has been expressed by a member of the House who is not a member of the legal tribunal. I entirely agree with everything the Lord Chancellor has said. One consideration which weighs practically with me a good deal—possibly because I spent a good part of my life at the bar—is this. If you recognise that a barrister may practise before other tribunals you place him at a great disadvantage if you say he may not appear here, and you place his clients at a great disadvantage also, because they may have his services in the Court of first instance and up to the Court of Appeal, and if you say that he may not follow the case when it comes by appeal to this House you are placing both him and his clients at a very great disadvantage.

VISCOUNT KNUTSFORD—As we were summoned here, perhaps I may be allowed to say a very few words to express my complete concurrence in the views which have been stated by the Lord Chancellor and the Lord Chancellor of Ireland. It seems to me that we are dealing in this case with a matter of substance and not of technicality. There may be difficulties, but substantially there can be no doubt that the Lord who now seeks to appear before you would have no right, and could under no circumstances have a right, to sit also as a member of the Court in the case; therefore he would not be pleading before a Court in which he could be a judge. That seems to me to be substantially the view of the question we ought to adopt. With the view entertained by Lord Spencer as to defining more clearly in the resolution the particular point we are engaged upon, I desire to express my hearty concurrence, and I understand that the Lord Chancellor agrees to that suggestion.

LORD ROBERTSON—I am not one of the habitual orators of this House, and therefore you will not be surprised to know that I merely rise to put one particular point. It is this—I do not see any technical difficulty at all in what is proposed, and for this reason. The suggestion is made that the noble counsel, having pleaded upon his case, could constitutionally come into the House and vote on that very case. That is not so. No man is entitled to sit and take part in a decision in this House or anywhere else unless he has heard the cause, and heard it as a judge. Now the Bar is outside the House of Lords altogether. Therefore a Peer who has heard the cause at the Bar has not heard the cause. Consequently that difficulty entirely vanishes. I fully concur with the view taken by Lord Spencer.

LORD JAMES—Of course I accept the view that has been expressed almost unanimously, adding as a rider to the motion that the resolution is not intended to apply to the appearing of barristers who are Peers before the Committee of this House, or before the House when sitting as a full Court in a criminal case.

LORD CHANCELLOR—With reference to the case of Lord Russell, it was not a trial before this House. It was a trial before the Lord High Steward of England, the House sitting as the judges of fact. It was not a sitting of the House within the language of my resolution. The resolution I propose is—"That according to the present practice of the House of Lords there is no reason why a Peer should not be heard as an advocate to argue questions of law before your Lordships' House; but this resolution is not intended to apply to the appearing of barristers who are Peers before committees of this House."

LORD JAMES—Could we add such words as "or before this House when sitting for the trial of criminal cases?"

LORD ASHBOURNE—"Or when sitting under the presidency of the Lord High Steward on a criminal case?"

VISCOUNT CROSS—I agree, subject to the remarks made by Lord Spencer, and now that that point has been met I entirely agree with the motion.

Report from the Committee for Privileges:—"That according to the present practice of the House of Lords there is no reason why a Peer should not be heard as counsel on an appeal at the Bar of this House; but that this resolution is not intended to apply to the appearing of barristers who are Peers before committees of this House, or before this House when sitting under the presidency of the Lord High Steward on a criminal case." Made and agreed to, and resolved accordingly.

Tuesday, November 21.

FIRST DIVISION.

SYMINGTONS, PETITIONERS.

Company — Statute — Winding-up — Grounds for — Construction of General Words in Separate Sub-section of Act—Ejusdem Generis—"Just and Equitable" Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *sec.* 79, *sub-sec.* 5.

Section 79 of the Companies Act 1862 enacts—"A company under this Act may be wound up by the Court as hereinafter defined under the following circumstances, that is to say, (1) whenever the company has passed a special resolution requiring the company to be wound up by the Court; (2) whenever the company does not commence its business within a year of its incorporation or suspends its business for the space of a whole year; (3) whenever the members are reduced in number to less than seven; (4) whenever the company is unable to pay its debts; (5) whenever the Court is of opinion that it is just and equitable that the company should be wound up."

Held that sub-sec. (5) was a substantive enactment to which effect would be given although the conditions present might not be *ejusdem generis* with those enumerated in sub-secs. (1), (2), (3), and (4) of that section.

Observations (*per* Lord M'Laren) as to when in the construction of a statute general words are to be confined to things *ejusdem generis* with those enumerated.

Company — Winding-up — Grounds for — "Just and Equitable"—Deadlock—"Substratum" Gone—Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *sec.* 79 (5).

A limited company was formed to take over a business formerly carried on by two brothers A & B as partners. A, B, and C (another brother) were appointed directors. B was appointed managing director. No shares, however, were issued, and the assets of the firm were never formally transferred to the company. Owing to continuous quarrelling on the part of A and B, who between them had the whole substantial interest in the company, no business was done. Finally, with the support of four members of the company, who, however, had merely a nominal interest in it, B was made sole director. A and C having petitioned the Court to wind up the company, *held* that it was just and equitable that a winding-up order should be pronounced, and petition *granted.*

This was a petition at the instance of David Kennedy Symington, Belmont, Dunbeth Avenue, Coatbridge, and John Symington, tube manufacturer, Airdrie, contributories of Symingtons' Quarries, Limited, incorporated under the Companies Acts 1862 to 1900, and having its registered office in Bank Street, Coatbridge, for winding up of the company.

The company was formed in September 1899 to take over from the firm of D. K. & H. Symington the working of two quarries, Kipps and Annanlea, then held on lease by that firm. No formal agreement to do so was ever entered into between the firm and the company. The members of the firm, however (who were two brothers, Hugh Symington and the petitioner D. K. Symington), signed a memorandum dated 15th August 1899 by which they agreed to transfer the quarries to a limited company to be registered under the name of Symingtons' Quarries, Limited. No formal transfer of the quarries ever took place, no assignation of the leases was ever granted, and neither leases nor plant were ever vested in the company.

By the said memorandum it was also agreed that the nominal capital of the company should be £20,000 in ordinary shares of £1 each, of which £15,000 were to be issued, one-half to D. K. Symington and the other half to Hugh Symington. By the articles of association it was provided that Hugh, John (another brother), and D. K. Symington should be the directors of the company, and that Hugh Symington should be appointed managing director for the first three years. It was further provided that the business of the company should be conducted by the directors, and that managing directors should be bound to observe the orders of the directors. At the first meeting of the directors, held on 24th January 1900, it was agreed to allot one share to each of the subscribers as well as to the petitioner D. K. Symington. No share certificates were, however, issued to them, and no payment was ever made to the company for shares. No other shares were ever allotted.

The petition further stated that the said Hugh Symington, as managing director of the company, from the first appropriated to himself the management and control of the company, and failed to obey the instructions of the directors. In particular, he sent away materials from the quarries to