the prospectus is of the most general character. Every company of the kind must have special regulations for its management; and unless they are of some very exceptional and anomalous character, such as to be beyond the possible contemplation of the engaging shareholders, the circumstance of their being inserted in the articles of association will not, in the general case, infer any fatal variance from the prospectus.

In the present case, I think that no essential discrepancy exists between the prospectus and articles of association. The company was established for the purpose of brewing ale and beer in Edinburgh or its vicinity. So the prospectus bears. The articles of association do not transform it into a company for spinning cotton, or building vessels, or manufacturing wine, or brewing on any but the purest principles; nor do they change or extend the proposed locality of the company. The capital of the company is stated in the prospectus as £50,000, "with power to increase;" so it is stated in the articles of association. The objection is, that in one of the regulations for the management of the company, power is reserved to the company to reduce, if it seem expedient, the aggregate amount of capital, and to divide it into shares of larger or lesser amount. This is just one of those not infrequent regulations for the administration of such a company, very important to have in potential exercise, with a view, were there no other, to its financial guidance and prosperity. I consider its insertion in the articles to be no breach of the good faith of the prospectus. The argument of the defender has proceeded throughout on the fallacy of supposing that, whilst the prospectus sets forth a certain amount of capital, the articles of association set forth a reduced amount as fixed and absolute. But nothing of the kind occurs. The capital is maintained the same. The reduction is potential only. All that is done is to reserve to the company the power to reduce the aggregate amount, and to make the nominal shares larger or lesser; a power to be exercised by the voice of the shareholders, including Mr Gibson himself. I conceive that nothing is to be found here warranting a repudiation of the name and liability of a shareholder.

On only one other point was the alleged misleading said to exist. The prospectus set forth; "already a large number of gentlemen in the trade and others have become shareholders." It was contended that this was untrue in point of fact. The defender, as I conceive, has failed to prove that, in any sound sense, it was so.

I am of opinion that the Lord Ordinary's interlocutor should be affirmed.

Agents for Pursuer—Ferguson & Junner, W.S.
Agents for Defender—Murray & Hunt, W.S.

Wednesday, June 23.

SECOND DIVISION.

JAMES AIKEN JUN. *v.* ELLIOT.

Partnership—Company Debt—Admission by Individual Partner. Held (dub. LORD COWAN), that when an individual partner of a company admits a company debt, he is liable to be proceeded against in respect of such debt without the necessity of constituting by decree against the company.

This was an appeal from the Sheriff-court of Aberdeenshire in an action in which the appellant was convened for an alleged company debt of Aitken, Catto, & Co., of which the appellant was a partner along with two other parties. The other partners denied that the debt was a company debt; but the appellant, who had contracted it, admitted that it was so.

The Sheriff-substitute (COMRIE THOMSON), in respect of that admission, decerned against the appellant.

The Sheriff (JAMESON) adhered. He added the following note:—"The action was properly brought against the company, and the individual partners thereof, for the price of a share of a barque alleged to have been purchased by them. Two of the defenders, John Catto and Robert Catto, denied that there had been any purchase by the company. The appellant, however, candidly admitted that the debt in question was a company debt. Had he not done so, his plea would have been good, that it was incumbent on the pursuer to constitute his claim against the company before he could obtain a decree against him. His admission supersedes the necessity of such constitution against him, and he cannot insist upon the pursuer carrying on a litigation with the copartners merely to facilitate his relief. He must take his own course for that object. This result is not inconsistent with the doctrine founded on by the appellant, and stated in 2 Bell Comm., p. 619."

The appellant now appealed.

CLARK and ASHER, for him, pleaded that decree could not be given against an individual partner for a company debt, unless the decree in question was preceded or accompanied by a decree against the company as a company.

WATSON and THOMS in answer.

The Court adhered to the judgment of the Sheriffs. Their Lordships (*dub.* Lord Cowan) held that the rule that a company debt must be first constituted against the company was superseded in a question with an individual partner where that partner admitted the debt as due by the company. In a question with a partner so admitting, the debt was constituted against the company, and he, as a partner, was liable for the whole of it. If the appellant's view were adopted, the result would be that any one recalcitrant member of a company might prevent a creditor for an indefinite period from getting decree for a debt which all the other partners admitted.

The Sheriff-substitute's judgment in this case was dated 12th March 1869; that of the Sheriff was dated 14th April; and the appeal was brought into this Court on 18th May.

Agents for the Appellant—Henry & Shiress, S.S.C.
Agent for the Respondent—W. G. Roy, S.S.C.

Thursday, June 24.

FIRST DIVISION.

PERRENS & HARRISON *v.* BORRON & LITTLE.

Arbitration—Award exhausting the reference—Reservation of part of claim. Where a claim competent to one of the parties in a submission was not stated, but on the contrary was reserved by him, and the other party did not object, plea that the award (which contained a