Tuesday, December 10.

SECOND DIVISION.

[Lord Jerviswoode, Ordinary.

WALKER AND OTHERS *v.* LAW AND OTHERS.

Charitable Institution—Corporation—Managers, election of—Title to Vote—Firms—Composite Subscribers.

Partnership—Partner, power of—Mandate.

By the charter of erection of the Royal Infirmary of Edinburgh, all the contributors are erected into one body corporate, and the affairs of the corporation are to be managed by twenty managers. Three are named *ex officio*, and of the remaining seventeen, six are "to be elected out of the number of contributors to the said charity residing in or near the said city." It is further provided that "all and every the members of the said corporation who shall have contributed £5 each, or more, to the said Infirmary," are "to assemble and meet together on the first Monday of January in each year, and that the said members of the corporation so assembled shall be, and be called, a general court." By the Royal Infirmary of Edinburgh Act 1870, section 16, it is enacted that every person who was previously a member of the corporation shall continue to be so; that a certain subscription shall qualify for membership; and "that every person so qualified shall be a member of the corporation, and be entitled to be a member of the general court of contributors." By section 17 of the same Act it is provided, in regard to the six managers to be chosen out of the number of contributors, that they "shall be chosen by the general court of contributors." Proof of usage having been led, the Court *held* that the votes given by individual partners in respect of contributions to the requisite amount by the firms or companies of which they are partners are good; but that only one partner is entitled to represent the firm, or to vote on the motions on which the vote is taken, and that without any written mandate of the firm; that votes given in respect of joint contributions are good in cases in which the amount of the contributions when divided by the number of contributors are sufficient to qualify each such contributor, but in no other case.

This was an action of suspension and interdict, raised by John Walker, W.S., Graham Binny, W.S., and George Cunningham, C.E., all of Edinburgh, complainers; against the Right Honourable William Law, Lord Provost of the City of Edinburgh, and others, respondents. In the note of suspension the complainers prayed the Court to interdict, prohibit, and discharge the respondents, or any of them, to have been elected as managers of the Royal Infirmary of Edinburgh; "As also to interdict, prohibit, and discharge the said respondents Andrew Coventry, James Cowan, David Masson, William White-Millar, and Alexander Nicholson, and each of them, from taking the oaths of office as managers of the said Royal Infirmary, on the footing of their having been elected as such by the said court or meeting of contributors on 1st January 1872; as also from acting, or attempting or professing to act, as such managers in any manner of way; as also to interdict, prohibit, and discharge the whole respondents from preventing or obstructing in any manner of way the said David M'Laren, Henry Duncan Littlejohn, M.D., Edinburgh, Edward L I Blyth, civil engineer, Edinburgh, John Weir, merchant, Edinburgh, David Smith, writer to the signet, Edinburgh, and Andrew Wood, M.D., Edinburgh, from being declared to have been duly elected as managers of the said Royal Infirmary by the said court or meeting of contributors on 1st January 1872, and from preventing or obstructing the said persons, or any of them, from taking office and acting as managers of the said Infirmary, duly elected to that office: as also to interdict, prohibit, and discharge the said Right Honourable William Law, or any other person who may be or act as chairman at the court or meeting of contributors to the said Infirmary, to be held on Monday, 15th January current, or on any other day to which such Court or meeting may be adjourned, from receiving, counting, or giving effect to and from permitting to be received, counted, or given effect to, at the said court or meeting, any votes of companies or firms, or any of the votes generally known as 'composite' votes, being votes given by more persons than one jointly; as also from receiving, counting, or giving effect to, or permitting to be received, counted, or given effect to, at the said meeting, any votes by partners, mandatories, or any other persons, in respect of contributions to the funds of the said Infirmary, given by or in the name of companies or firms, or by or in the names of more persons than one jointly; and from declaring the said respondents, Ardrew Coventry, James Cowan, David Masson, William White-Millar, and Alexander Nicholson, or any of them, to have been duly elected as managers of the said Royal Infirmary by the said court or meeting of contributors held on 1st January 1872, as aforesaid."

The averments upon which the complainers supported this note were as follows:—The constitution of the Royal Infirmary of Edinburgh is regulated principally by the Royal Charter of Incorporation, granted by His Majesty King George II., of date 25th August 1736. This charter "erected and created all contributors to the charitable design therein described into one body, corporate and politic, by the name of the Royal Infirmary of Edinburgh, with power *inter alia* to make such bye-laws, rules, and orders consistent with the laws of the realm, as might best conduce to the charitable end and purpose above mentioned." The charter also declared that the affairs of the corporation should be governed and directed by twenty managers, whereof the Lord Provost of the City of Edinburgh for the time being, and in the case of his absence the Dean of Guild, should always be one, and the President of the Royal College of Physicians of Edinburgh, and in case of his absence the Vice-President, should be always another, and the Deacon-Convener of the Crafts of the said City of Edinburgh for the time being should be always another, and the remaining seventeen should be annually elected at the times and in the manner thereinafter directed, out of the classes therein mentioned, being *inter alios* "six more to be elected out of the number of contributors to the said charity residing in or near the said city, if such can be found ready to undertake the office." By the said charter it was also provided that the twenty managers for the time, or any seven or more of

them, should, on the first Monday of January in each year, by a majority of voices, elect and name their successors in the management and direction of the affairs of the said corporation; and the managers were empowered, at their first meeting in January yearly, to appoint any twelve of their own number to be the ordinary managers of the affairs of the corporation for that year, of which ordinary managers five should be a quorum. The charter farther directed that all members of the corporation who shall have contributed £5 sterling each may meet together "on the first Monday of January in each year, and that the said members of the corporation so assembled shall be and be called a general court." And that they, or a majority of them so assembled, should have full power and authority to make and constitute such bye-laws, ordinances, and regulations of the corporation as to them should seem meet. In pursuance of the power thus conferred upon them, the managers enacted various regulations, and *inter alia* the following—First, every contributor to the amount of £5 sterling shall be entitled to be a member of the general court of contributors; second, that that court shall be held annually on the first Monday in January; third, that the general court of contributors shall appoint a committee of their number to examine and report upon the papers and books laid before them on the day to which the general court shall think fit to adjourn; and fourth, that the adjourned court shall confirm or amend the report of their committee as they shall see cause. It is also declared in these regulations that "at each such annual election of managers, four, five, or six of the managers of the preceding year shall be changed, and new ones belonging to the same classes shall be chosen in their places, but fewer than four, or more than six, shall not be changed at any annual election." Then, by the Royal Infirmary Act, 1870, entitled "An Act for authorising the Corporation of the Royal Infirmary of Edinburgh to remove their Infirmary buildings to a more suitable position, and to acquire for that purpose the site of George Watson's Hospital and adjacent lands, and for other purposes,"—section 16, it is enacted that "every person who was immediately previously to the passing of this Act a member of the Corporation, shall continue to be a member thereof; and from and after the passing of this Act the qualification necessary for a member of the Corporation shall be the contribution by the person desiring to be a member thereof of an amount not less than £5 in one sum, or the continuous annual contribution of an amount not less than £1, after such annual contribution shall have been made during three consecutive years, and every person so qualified shall be a member of the Corporation, and be entitled to be a member of the general court of contributors." By section 17 of the said Act it is declared that "from and after the first Monday of January, in the year 1871, the number of the managers of the Corporation shall be twenty-one, of whom the Lord Provost of the City of Edinburgh, or in his absence the Dean of Guild of the City of Edinburgh, shall *ex officio* be one, and the other managers shall be appointed annually by the following bodies in the manner hereinafter mentioned, that is to say, *inter alios* six managers shall be chosen by the general court of contributors, of which six managers two shall be chosen from among the persons who are members of the Corporation, and also at the same time subscribers to the Convalescent House belonging to the Corporation," and the said section concludes thus—"And each of the bodies hereinbefore empowered to choose one or more of the managers may make such rules as to them shall seem proper, with respect to the manner of choosing such manager or managers." By section 19 of the said Act it is *inter alia* declared that "the six managers to be chosen by the general court of contributors shall be so chosen at the meeting of such general court to be held on the first Monday of January in each year, after the passing of this Act, or at some adjournment thereof, and shall hold office as managers from the time of their election until the next annual election by the said general court of contributors."

Some difficulty having arisen as to the votes at the general courts of contributors, a remit was made, at the suggestion of the scrutineers of January 1871, to the managers to consider and report "the mode in which the votes of contributors at general meetings of the corporation should be taken, and who are entitled to vote." On 1st January 1872 the managers made their report in accordance with the remit. On the first branch of the remit they recommended the preparation of an annual list of members, and on the second branch they reported that they had taken the opinion of Counsel, and that that opinion was (1) that a firm was not entitled to vote; and (2) that an individual partner was not entitled to vote in the firm name, and that the firm could not authorise him to do so by mandate. After the said report was read, a motion was made, seconded, and agreed to, that, in accordance with the usual practice, it be remitted to a committee of the contributors to bring up a report upon it 14 days after said 1st January 1872, and such a remit was made accordingly. Thereafter Dr Maxwell Nicholson read to the said general court of contributors a motion which had been agreed upon by the managers of the Infirmary for the purpose of being so read, viz.—"The managers resolve strongly to recommend to the contributors that no change in their representatives should be made for the ensuing year, these gentlemen having acquired experience which is specially useful at the present time, and being connected with the important matters of business not yet completed, affecting alike the efficiency and economy of the present Infirmary, and the building of the new." And in pursuance of the said recommendation Dr Nicholson moved that the contributors at the said meeting should re-elect their representatives at the board of management during the past year, viz.—Mr David M'Laren, Dr Littlejohn, Mr Edward Blyth, Mr John Weir, Mr David Smith, and Dr Andrew Wood. This motion was duly seconded by Mr Edmund Baxter, W.S. The Lord Provost, Mr Law, then moved a counter motion, that the following gentlemen should be elected as the representatives of the contributors, viz.—Mr Edward Blyth, Mr David M'Laren, Councillor James Cowan, Professor Masson, Mr White Millar, and Mr Alexander Nicolson, advocate. This motion was seconded by Mr Andrew Coventry; and Mr Edward Blyth thereupon intimated his disapprobation of the proposal to make a material change in the administrative body of the Infirmary at the present time—that he refused to take the responsibility of holding office with the removal of nine managers out of twenty-one; and after some further explanations and remarks he concluded by

requesting the Lord Provost and Mr Coventry to remove his name from the list proposed by them. Sometime afterwards the Lord Provost again read his list, intimating that as Mr Blyth had declined to be proposed he would substitute the name of Mr Coventry. A vote was thereafter called for, which was taken in the first instance by a show of hands, and the Lord Provost intimated that the numbers appeared to be so nearly equal that he must divide the house. Tellers were then appointed, to whom cards were given by the voters or persons claiming to vote; and, on these cards being counted, it was reported that there had voted for the Lord Provost's motion 177, and for Dr Nicholson's motion 168—majority for the Lord Provost's motion 9. A poll was then demanded, and the tellers were appointed to scrutinise the votes, and report the result to the adjourned meeting of contributors, to take place on Monday 15th January. At the end of the meeting the Lord Provost said that in place of Mr Blyth Mr Coventry had been elected, and that the other gentlemen elected were David M'Laren, Councillor James Cowan, Professor Masson, William White Millar, and Alexander Nicolson.

This election the complainers maintained to be bad, on the ground that the majority of votes given by qualified voters, or persons entitled to vote, were given, in point of fact, in support of Dr Nicholson's motion, and that therefore the gentlemen declared to be elected were not really so. The votes objected to as bad, were (1) votes given by companies or firms or partners thereof, and (2) votes in respect solely of contributions to the funds in some composite name, consisting of several separate persons, such as "Messrs A," or the "Misses B." It was in consequence of this alleged illegality in the election that this suspension and interdict was raised.

In answer to the above averments, the respondents maintained—that under the terms of said Royal Charter of 25th August 1736, and under the terms of said private Act of Parliament of 20th June 1870, the contribution of the sums of money, in the Charter and Act of Parliament respectively specified, to the funds of the Royal Infirmary, entitled the party contributing to a voice in the deliberation and voting of the contributors, whether such contributor were an individual or a private partnership having *persona standi in judicio.* They further maintained that the contribution of the sum required to qualify for membership by an individual entitled the contributor to a voice in the deliberations and voting of the said court, although his contribution might have been massed with others, and given in under a common name, such as "Messrs A," or "Misses B;"—such composite contributions were at all events sufficient to qualify for membership where the amount of the composite contributions, when divided by the number of contributors, was sufficient to give a qualification to each of the persons subscribing collectively.

In support of their averment of the meaning of the clause of the said Royal Charter having reference to membership of the court of contributors, the respondents founded on the contemporaneous and subsequent usage following on said charter. They averred that from the institution of the Royal Infirmary, and continuously to the present time, large sums have been contributed to the funds of the Royal Infirmary by partnerships, in the company name or firm and by members of a family, in the form of composite contributions. The amount contributed by firms, and the number of contributing firms, have progressively increased, and their contributions now constitute a considerable proportion of the annual revenue of the corporation. By the usage of the corporation, originating at the time of its institution, and continued without interruption to the present time. contributing companies and composite contributors have been admitted to all the privileges of members of the corporation, and of its court of contributors. From time immemorial it has been the usage of the court of contributors that companies so qualified were admitted to the deliberations of the court, the company attending the meetings of contributors by one of its partners, and voting on disputed questions. Firms have thus been admitted through their partners, and composite contributors individually, to take part in the proceedings of the Infirmary in three different ways:—(1) As members taking part in the proceedings of the ordinary meetings of the contributors, and voting in divisions. (2) As members appointed by such meetings to act on committees of the court of contributors, for examination of the managers' report on the affairs and accounts of the incorporation generally. (3) As managers of the institution, with no other qualification than the contribution in name of the firm, or composite contribution respectively.

The usage in these three different ways has been uniform and unchallenged during the entire period of the existence of the corporation; and evidence of it appears in all the extant records of the proceedings of the corporation.

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 20th July* 1872.—The Lord Ordinary, having heard counsel and made avizandum, and considered the debate and whole process, Finds, with relation to the terms of the 16th section of 'The Edinburgh Royal Infirmary Act 1870,' as referred to in the seventh statement of facts for the complainers, that the enactment therein set forth, to the effect that every person who was, immediately previously to the passing of the said Act, a member of the Corporation, should continue to be a member thereof; 'and from and after the passing of this Act the qualification necessary for a member of the Corporation shall be the contribution by the person desiring to be a member thereof of an amount not less than £5 in one sum, or the continuous annual contribution of an amount not less that £1, after such annual contribution shall have been made during three consecutive years, and every person so qualified shall be a member of the Corporation, and be entitled to be a member of the General Court of Contributors,' is sufficient, and must, under the due interpretation of the said enactment, be held to include not only individuals contributing the sums of £5 and £1, as therein stated, in their individual character, but also to include and embrace firms, to the effect of entitling such firms to vote, by and through a member thereof, personally appearing, if the sole member, or by any member thereof holding the written authority of the firm, if consisting of more than one partner; but always so that the vote of such firm shall be taken, and have effect, at any general meeting of the Corporation, as the vote of one member of the Corporation only:—And, with the above finding, appoints the case to be enrolled, with a view to further procedure, and to such enquiry,

as respects those matters of fact in regard to which the parties are not at one, as may be found necessary—reserving *in hoc statu* the matter of expenses."

The respondents reclaimed.

It was argued for them that there was no difficulty in incorporating a firm as a member of a corporation, or even a corporation as a member of another corporation, as exemplified in the common case of a Railway Company holding shares in another Railway Company. In the case of the Infirmary there was nothing improper or unnatural in firms contributing, but very much the reverse, and why should firms as contributors not be members of the corporation? The charter authorises—(1) contributions to be received even from firms, and (2) that the affairs of the Infirmary shall be managed by contributors. And there was no difficulty in firms being represented in the management, as was clear from the fact that it had been found perfectly practicable for a hundred and fifty years. As to the contention on the other side, based upon the meaning of the words "firm" and "person," any such fine distinction as was there insisted on would stop even ordinary business, if carried to its legitimate conclusion. As to composite contributors, it was argued that they contribute as one contributor, and should therefore have a vote as a contributor.

It was argued for the complainers that a firm is not a person in the meaning of the charter of the Royal Infirmary. When a company becomes a member of another, it is for purposes of trade, for which alone a firm is in law recognised as a person. And in the case of Railway Companies—the case instanced on the other side—the fact that the company may be represented by one partner, and that that partner has power to make oath for the company, is not a matter of common law, but a power given by express statute. Again, a company is not a person for all purposes—for example, it cannot hold feudal estate, and that because it is not a person. The Act requires "persons" to be contributors, and it is clear from the whole Act that individual persons are meant, and not a corporation of persons. It is no greater anomaly to exclude a firm than to exclude a corporation, and if a corporation is not excluded, then, by a donation which entitles to a life membership, a person which never dies would become a member for ever, and this could not have been intended. Then, as to the election of managers, the Act requires the corporators electing to have the qualification and to be bodily present, and there is no provision for any one who absents himself having a voice in the election. In regard to this matter also, the word "persons" plainly means individuals, and the contributors are to select a certain number to act as managers. But if a firm were a contributor, and were chosen to act as a manager, the meeting would really be delegating to the firm itself the power to select its representative to sit at the managing board, and so the power of choice given to the court of contributors would be lost. As to the usage, custom may explain but cannot destroy the terms of the charter, and it is impossible by any usage to convert firms into persons, where personal presence is required by the charter.

Magistrates of Wick, M. 1848; *Governors of Heriot's Hospital* v. *M'Donald*, 4 W. and S. 101.

The Court then, before answer, allowed the respondents to print and box such excerpts as they might think fit from the records of the Royal Infirmary, bearing upon their allegations of usage.

This was accordingly done, and the result will sufficiently appear from the opinions of the Lord Justice-Clerk and Lord Cowan.

At advising—

Lord Cowan—The Royal Infirmary has its origin as a corporation in a charter of erection by George II., in August 1736. Under the terms of that charter, and of the bye-laws and rules enacted in virtue thereof, the Infirmary has continued to be managed to the great benefit of the public of Edinburgh. A recent statute, passed in June 1870, makes certain alterations, and contains certain provisions regulating the administration of the Infirmary, and to some extent affecting the constitution of the corporation.

By the Royal Charter all and every the contributors who should have already contributed to the charitable design, and all such persons as should thereafter contribute thereto, are erected into one body corporate, and are empowered to make such bye-laws and others "consistent with the laws of the realm, as might best conduce to the charitable end and purpose" contemplated.

Provision is made for the management of the affairs of the incorporation by twenty managers, three of whom are named *ex officio*, and the remaining seventeen appointed to be annually elected out of certain classes therein mentioned, and *inter alios* "six more to be elected out of the number of contributors to the said charity residing in or near the said city." Provision is farther made for an annual meeting of the contributors, in these terms, viz., that "all and every the members of the said corporation who shall have contributed £5 each or more to the said Infirmary" are "to assemble and meet together on the first Monday of January in each year, and that the said members of the corporation so assembled shall be and be called a general court," with full power to make bye-laws, ordinances, and regulations as to them should seem meet.

The qualification of those contributors entitled to be members of corporation, and to attend the general court, was the subject of special enactment by the statute of 1870, section 16 of which enacts —"that every person who was immediately previously to the passing of this Act a member of the corporation shall continue to be a member thereof; and from and after the passing of this Act the qualification necessary for a member of the corporation shall be the contribution by the person desiring to be a member thereof of an amount not less than £5 in one sum, or the continuous annual contribution of an amount not less than £1, after such annual contribution shall have been made during three consecutive years, and every person so qualified shall be a member of the corporation, and be entitled to be a member of the general court of contributors."

And by section 17 of the Act 1870 it is declared that from and after January 1871 the number of managers should be twenty-one, the Lord Provost being one *ex officio*, and the other managers being appointed by the bodies therein enumerated. *Inter alios*, it is provided "that six managers shall be chosen by the general court of contributors," and by section 19, that the six managers to be chosen by the general court of contributors "shall hold office as managers from the time of their election until the next annual election by the said general

court of contributors." It may be mentioned that each of the bodies empowered to choose one or more of the managers may make such rules as they think fit "with respect to the manner of choosing such manager or managers." As regards the general court of contributors, no such rules have been made.

At the annual meeting of contributors in January 1872, a difference of opinion was found to exist in reference to the members to be elected managers for the ensuing year. This led to a vote being taken, and to a subsequent scrutiny of the votes tendered and given in support of the two motions respectively submitted to the meeting, and this again has led to these legal proceedings, the adoption of the one motion or the other being dependent upon certain questions affecting the qualification to vote of certain persons present at the general court who tendered and gave their votes on that occasion.

These questions relate, 1st, to the right of individuals who appeared at the meeting and voted for the one or other of the motions, claiming to be entitled to do so as members of the corporation, in respect of their being individual partners of mercantile firms or companies, by whom contributions of the necessary amount had been made to the funds of the corporation; and 2d, to the right of individuals to appear at the meeting and vote as members of the corporation, by whom, jointly with other members of their families, contributions were made to the requisite amount, being what are called in the record composite votes.

The Lord Ordinary has held that the votes so tendered by individual partners of firms or companies were properly tendered, these individuals being entitled to vote in respect of the qualifying contribution of their respective firms; but his finding to this effect is qualified by the condition, that the individual so tendering his vote as a partner of the firm must hold "the written authority of the firm, if consisting of more than one partner." His Lordship does not dispose of the question raised as to the legality of the composite votes.

Before disposing of the questions thus raised, the Court, having regard to the allegation of usage contained in article 4 of the respondents' statement, considered that it would be right and expedient that such excerpts as the respondents might think fit to print, bearing on the facts therein stated, from the records of the Royal Infirmary, should be before them, so that the extent and character of the usage alleged might be ascertained. It is with this information before us (no farther proof being desired by either party) that we have to determine the two questions I have stated.

On the first of these questions I concur in the finding embodied in the interlocutor of the Lord Ordinary, viz., that contributions by firms of the requisite amount, constituting membership of the corporation, entitled any one of their partners to appear at the meeting and vote as representing the company; but I am of opinion that to entitle the partner so to act no written mandate is necessary, although the firm consisted of more partners than one.

It is not to be lost sight of that in its origin, and throughout its management, those with whom it originated, and who have had charge of the institution, threw themselves upon the benevolent support of the community, and presented the institution as one pre-eminently deserving of the patronage and pecuniary contributions of all classes; and in this they acted with true wisdom. The result did not disappoint the expectations of the founders of this popular charity. It has issued in an extent of pecuniary support from its origin in 1736 until now of which no other public institution can boast. The contributions to its funds have from its outset been made, not by individuals only, but by mercantile firms and companies. They felt that their prosperity was deeply interested in the health of the community; and as regards manufacturing bodies and firms in particular, whether carried on by one or many parties, it is manifestly important that they should have some place of refuge for their servants and workmen when incapacitated through illness or from accidents in the course of their employment, where they may be cared for, and the means of their probable recovery secured. Contributions from firms consequently have been a considerable source of the annual income of the corporation; and, being contributors to the requisite amount, the question is—Whether there be anything in the constitution of the corporation or in the law of the land to exclude them from a share in the management by and through one of their partners?

In the provisions of the charter or of the statute I can find no words of express exclusion, whatever may be held to be the effect of the words "contributors," "person or persons," and "members of the corporation." These terms, no doubt, in one view, may be held as implying individuals. At the same time, it is certain that, by the very first provision of the charter, the corporation is declared to consist of "all and every the contributors" who should contribute the necessary amount to the funds. But, irrespective of this, it must be remembered that what we are dealing with is the right to vote at the general court, conferred upon all contributors; and it appears to me that when contributions have been taken from firms or companies, the corresponding privilege to vote ought naturally to be held possessed by such contributors. That in many respects a company has a separate existence and may be denominated a person is undoubted, with regard at least to their mercantile pursuits and status. In such matters one partner is held to represent the company, and to vote and act as for them, and as their representative. Any partner may, by the Bankrupt Statute, make the requisite affidavit to debt owing to the company with a view to being ranked. And Mr Bell holds that the acting trustee under a private trust may do so. Why, then, may it not be held that companies or firms should, in such a matter as we are here dealing with, be similarly represented? It is but just that they should, seeing that they have contributed that amount which the charter and statute of the corporation declare to constitute membership, and there is no inherent illegality in their so acting.

But, supposing these views to be more doubtful than I think them, the words are at all events not so stringent or exclusive as to make them not open to be construed by usage. In questions of this kind that is a criterion of the greatest value; and the usage from the institution of the corporation downwards, averred by the respondents, if we have evidence enough to satisfy us, in the absence of any attempt to prove the contrary, that such usage has in fact prevailed, must be conclusive. The question is not whether legal evidence, strictly

speaking, has been adduced in support of the alleged usage. It is whether, looking at the excerpts which we have from the minutes of the corporation, so far as they are extant, there is not a *prima facie* case established by the respondents that the usage has been substantially to the effect which they allege. To the credit of the managers of this institution, it would appear that except in 1818 no such difference of opinion had existed as to require a vote of the general court to be taken. There has not therefore been any occasion for that scrutiny that might have been necessary to test the right of the persons attending the general court to be present and vote as members of the corporation. *De facto*, however, at least from 1840 or 1846 downwards, I hold it to be established by these excerpts, and the unanswered explanatory commentaries thereon upon the part of the counsel for the respondents—(1) that firms have been represented at the general court of contributors by individual partners thereof, and having no other qualification than the subscription of the firm, and been recognised as members of the corporation; (2) that such individuals have been elected to be members of committees, appointed from time to time, with reference to the accounts and to the affairs of the institution, and (3) that in many instances they have been chosen by the court of contributors to be of the six members sent by the court annually to the board of management. With such usage, and holding that the terms of the charter and statute describing the qualifications are such as to admit of construction, I have no hesitation in holding that the votes in question tendered and given by individuals in name of their firms ought to be counted as valid.

Various technical difficulties were urged by the counsel for the suspenders. Two individuals, partners of the same firm, it was said, might attend the meeting,—to which the answer is, that if such an occurrence took place, it would be the duty of the clerk to intimate the same, and to prevent any more than one vote for the company being recorded. An individual, it was said, might represent himself as the partner of a firm whose name appeared in the subscription list, and the meeting would have no power to detect the deception; but the same may occur in the case of individuals personating subscribers. Any such attempt at deception, if not capable of instant detection, would be open to be exposed in the case of a division, or in a scrutiny of votes. But then it is said that unless the company furnish the individual who is to attend the meeting with a written mandate, the clerk who takes down the sederunt cannot tell whether he is really entitled to state himself as representing the company. That again, like the other instances to which I have referred, will be capable of being verified or falsified at the time or afterwards, or by a scrutiny of votes should that be necessary. It was farther urged, and with great plausibility, that as the company is the contributor, and not the individual partner, he cannot be held a member of the corporation, and as such eligible as all contributors are to be sent up by the court to act as manager. The answer to this is, in the first place, that the present question alone regards the qualification to be present at the general court, and to vote and act as members of the corporation in that court, and this being established, it is sufficient for the disposal of this case, whatever objection on the ground of inelegibility may exist in the selection of such member of the court to be a manager. And, in the second place, assuming that an individual partner may sit in the general court of contributors as the representative of his firm, I see no real difficulty in holding that he may be one of the six members selected to fill the office of manager, in terms of the statute, until the next annual meeting of contributors. But what, it was urged, is to follow if the company meanwhile be dissolved or a new partner be admitted—Would not this terminate the individual partner's right to sit and act as one of the managers? In my view it is most likely it would. The company represented by him being at an end, his representative character must cease, and a vacancy might thus be created, just as there would by a manager dying, not civilly but actually.

On the whole, I cannot but feel that what has been pressed in the Court on this matter partakes rather of subtlety than of solid objection to the mode of procedure at the meetings of the corporation, which has hitherto been followed, and with so much advantage to the interest and popularity of an institution depending so entirely on the contributions of the community.

On the question as to the composite votes, I have no difficulty. These votes were given by ladies, but I have not heard it objected in this argument that females are not entitled to be members of the corporation. The subscription being joint, it was objected that no vote at all could be claimed in virtue of it. The element of firm and representation does not here enter into the argument. The question is, whether, as individuals, these ladies are not qualified by their subscription? On this point I cannot think that a subscription of £10 by two ladies can, in principle. be regarded as at all different from the two subscribing £5 each as individuals, and so in the case of three ladies subscribing £15. In my opinion that subscription must presumptively be held to have been equally contributed by the three, and to have consequently placed them in the position of each being a contributor to the requisite amount. This is the principle by which the validity of these composite votes fall to be considered. For if the subscription be not to such amount as when divided by the number of contributors to give each the qualification of £5, there can be no vote at all to any of them in virtue of that subscription.

Lord Benholme concurred.

Lord Neaves agreed in the result of the judgment given by Lord Cowan, though he did not concur in all his views. In regard to the practice of the general court of contributors, he must confess he thought it was extremely vague and unsatisfactory, particularly so considering the constitution of the institution until the recent Act of Parliament. But, on the whole, he thought that an individual partner of a contributing firm was entitled to represent his firm at the court of contributors, and also that no written mandate was necessary to entitle him so to vote. He also quite agreed with the opinion of Lord Cowan as to "composite" votes. In regard to the question as to whether individual partners were qualified to sit and act as managers, he thought it was extremely doubtful whether they could be elected as managers, or could act as such. It would certainly never do to send a company to act as a manager, and

then to allow any one of the partners of such company to go as representing it, changing about from time, and from one to another, as might suit their circumstances, would never do. But if, on the other hand, you fixed upon one partner, excluding the rest, you would not have the firm representation carried out. And then if a company were dissolved, you had the election of the partner for twelve months. No doubt if the partner died the office perished; but it by no means followed that if his company were dissolved, his office perished; and, if so, who was to go in his stead? But the office of manager was one of very special difficulty, In this view of the question as to the eligibility of such partners to be chosen and act as managers, his Lordship attached all the less importance to the practice of the general court of contributors as to voting.

The LORD JUSTICE-CLERK was of the opinion of Lord Cowan, and concurred, as far as was necessary to the decision of this case, in the judgment Lord Cowan had expressed. As to the point of usage, his Lordship could not lay out of view the evidence they had on that point. The Infirmary was, they must remember, a charity purely eleemosynary, and not a company formed for profit; it was entirely supported by public subscriptions. His Lordship thought that the provisions of any charter or statute under which such a charity was managed must receive a liberal construction in the light of the most expedient result for the purpose for which the charity was instituted. If in this case it had turned out that there had never been a vote by a partner up to the present time, his Lordship should have thought that a very serious element in considering the words of the statute or charter. But those words "all and every" were in themselves sufficient to comprehend votes of firms through their partners, and the words further received confirmation from custom; and he thought it would thus be difficult for contributors to an incorporation including those firms now to turn round and say, after a long period of usage to the contrary, that those firms were not to be held as contributors in terms of the charter. It might be difficult to carry out to the full extent the abstract right of the partner of a firm to be considered as a contributor in relation to taking his seat as manager. He did not give any opinion upon that, but, as far as the Court had gone, the practice of receiving the votes of contributing firms in the general court of contributors was, he thought, sufficient.

The Court pronounced the following interlocutor:—

> "Find that the votes given by individual partners in respect of contributions to the requisite amount by the firms or companies of which they are partners were good; but that only one partner was entitled to represent the firm or to vote on the motions on which the vote was taken, and that without any written mandate from the firm; find that such of the votes which were given in respect of joint contributions were good in cases in which the amount of the contributions, when divided by the number of contributors, would have been sufficient to have qualified each such contributor, but in no other case; find that the vote given for Armstrong & Hogg and employes was not good; find that the majority of legal votes given on the occasion in question were given in favour of the motion of the Lord Provost; therefore repel the reasons of suspension, recall the interdict, and find the reclaimers entitled to expenses, &c., and decern."

Counsel for the Suspenders—Solicitor-General and Watson. Agents—Webster & Will, W.S.

Counsel for the Respondents—The Lord Advocate, Fraser, and M'Laren. Agents—Millar, Allardice, & Robson, W.S.

TEIND COURT.

Monday December 9.

M'NEIL'S TRUSTEES *v.* OFFICERS OF STATE AND OTHERS.

(*Ante*, vol. ix, p. 480.)

Teind— Sub-valuation — Reduction — Approbation— Decree in foro—*Consent.*

> 1. A party having obtained decree of approbation of a sub-valuation in the absence of the defender, thereafter brought a reduction of the said decree, on the ground that it was disconform to the report of the Sub-Commissioners, on which it bore to proceed. *Held* that the action was competent.
>
> 2. *Held* that it was no defence to a summons of approbation that the Bishop was not expressly stated to have been a consenting party *quoad* his fourth share of the Teinds, of which the parson of the parish was titular.

The facts of this case will be found in the previous volume referred to.

The Court dealt first with the reductive conclusion of the summons.

At advising—

LORD PRESIDENT—We have now to dispose of the reductive conclusions of the summons. The object of the reduction is to set aside a decree of approbation of a sub-valuation obtained in 1866, on the ground that it contains an error fatal to its validity, the decree of approbation being disconform to the report of the Sub-Commissioners, on which it bears to proceed.

The pursuers are possessed of two different parcels of land in the parish, which, for shortness, may be described by the leading names of Glenmore and Kilmelford. The teinds of Glenmore were valued by the Sub-Commissioners at 23 bolls of meal and £30 Scots money. The teinds of Kilmelford were valued at 3 bolls of meal and £2, 16s. Scots money, thus making a total valuation of 26 bolls of meal and £32, 16s. Scots money.

The summons of approbation raised by the pursuers in 1866 set out the report of the Sub-Commissioners, but unfortunately they committed this mistake. The summons set out these two sets of lands, and concluded that the teinds should be valued at 23 bolls of meal and £30 Scots of money, omitting to notice that this was the valuation, not of the whole lands, but only of that part which I have called Glenmore. But as the whole lands were set forth in the summons, the decree of ap-