equality arising at the counting of the votes. The analogy of the Ballot Act, which seems to contemplate that course, favours this view. Besides, he has declared the result of the election, and there is no machinery for his doing so again. In these circumstances the Sheriff-Substitute has arrived at the conclusion that the 15th section of the Education Act applies to the present position of the School Board. His interlocutor is framed accordingly, and he is of opinion that a remit to the School Board is not necessary, as the section in question itself imposes on the School Board the duty of filling up a vacancy when the election of a member has been declared to be invalid. It appears to the Sheriff-Substitute that it is sufficient to order the interlocutor to be intimated to the School Board, a quorum of which is in existence.

"The case, in the opinion of the Sheriff-Substitute, is one in which each party should pay their own expenses."

Counsel for Petitioner—E. E. Harper. Agent—J. Buchan.

Agent for Respondent—J. Bathgate.

COURT OF SESSION.

Tuesday, May 27.

OUTER HOUSE.

[Lord Ormidale.

PATON *v.* NEILL EDGAR & CO.

Process—Competency—English Company.

Held by Lord Ormidale (and acquiesced in) that an unincorporated English firm, against which jurisdiction has been founded by arrestment, may be sued in the Scotch Courts *socio nomine*, although in the English Courts it cannot be so sued.

The defenders in this case were an unincorporated trading company, carrying on business in England, and they were sued *socio nomine*; none of the individual partners being called as defenders. Jurisdiction had been founded by the arrestment of funds in this country belonging to the firm. In the defences it was averred that "by the law of England such companies or firms cannot be sued except by action against the individual partners thereof by their proper christian and surnames;" and it was pleaded—"1. The action is not competently laid, in respect the defenders' firm is an unincorporated English company."

This plea the Lord Ordinary repelled by the following interlocutor, which was acquiesced in:—

"*Edinburgh, 27th May* 1873.—The Lord Ordinary having heard counsel for the parties on the defenders' first plea in law, and having considered the argument and proceedings: Repels said plea and, under a reservation in the meantime of all questions of expenses, appoints the case to be enrolled in the Lord Ordinary's motion roll that a diet of proof may be fixed.

"*Note.*—By their plea in law, now repelled, the defenders mean, as was stated by their counsel, that as by the law of England an ordinary trading company, such as they are, unincorporated by statute or otherwise, cannot be sued in England, and as action in England lies against the individual partners alone, the present action, directed as it is against the ordinary trading firm of Neill Edgar & Coy. is incompetent.

"The Lord Ordinary considers it unnecessary to enquire or determine what the law of England is on the point referred to, as he holds it to be clear that, as matter of remedy and mode of procedure, it must be ruled in the present case by the law of Scotland, where the action has been brought. It is not disputed that there is such a firm or company as Neill Edgar & Coy.; and neither is it disputed that funds belonging to that company have been arrested *juridictionis fundandæ causa*. The action being, therefore, in itself in due and competent form according to the law and practice of Scotland, the Lord Ordinary can entertain no doubt that the *lex fori* applies and must rule the question. All this being so, there was no alternative but to repel the defenders' first plea in law, and were it necessary, the Lord Ordinary might refer as authority for the course he has adopted to the case of *Forsyth* v. *Hare & Coy.*, 18th November 1834, 13 Sh. 42. It is true that the point attempted to be made for the defenders here does not appear to have been raised in that case, for the reason, no doubt, that the law and practice was thought too clear and well settled to admit of its being raised with any chance of success. Cases are accordingly of frequent occurrence in this Court of actions by and against unincorporated English companies. The pursuers were an English unincorporated trading company in *Thomson, Bonar, & Coy* v. *Johnstone*, 30th November 1836, 15 Sh. 173; and in *Wheatcraft & Turner* v. *Hawthorns & Coy., et e contra*, 3 Scottish Law Reporter, p. 30, an English unincorporated company were pursuers of one action, and the defenders in another, but both were sustained as well brought into Court, in respect, among other authorities, of the decision in *Forsyth* v. *Hare & Coy.* In the cases of *Wheatcroft & Turner* v. *Hawthorns & Coy., et e contra*, Lord Barcaple, whose judgment was acquiesced in, appears to have taken the same view of the point in dispute, and disposed of it in the same way as the present Lord Ordinary.

"The case of the *Edinburgh and Glasgow Bank* v. *Ewan*, 14 D. 547, founded on by the defenders, does not appear to the Lord Ordinary to be in point, for there no English or other foreign company were called as defenders,—jurisdiction not having been, as in the present instance, founded against any such company."

Counsel for Pursuer—Mr Burnet. Agent—Mr Macgregor, S.S.C.

Counsel for Defenders—Mr Pearson. Agents—Webster & Will, S.S.C.

Friday, May 30.

FIRST DIVISION.

[Sheriff Court of Aberdeenshire.

TAYLOR *v.* MATHER.

Trustee—Liability—Accounting—Lapse of Time.

Long delay on the part of beneficiaries to demand an accounting from a person acting as trustee does not free the trustee from liability to account; but the trustee must not suffer prejudice on account of the lapse of time.