warrant of the trustee shall operate as an adjudication in their favour, and dispenses with the necessity of their doing separate diligences within the three years. Now, to return to the important words of the exception, that the vesting of the heritable estate in the trustee shall have no effect on the rights of the creditor of the ancestor, it seems to me that it would have been difficult to find words of more comprehensive application than these. It is not simply a saving of the rights, but it is that all these effects vesting in the trustee to the effect of an adjudication in implement and in security, and of a poinding as in this case, are to have no effect upon the rights of the creditor of the ancestor. Now, then, whether the creditors of the ancestor be personal or secured creditors upon the heritable estate, they are to stand just exactly in the same position as they would have done if this estate had not been vested in the way here provided in the trustee in the sequestration. That saves to them therefore not merely their rights in the same restricted sense of the term, but it reserves to them also all their diligences, because the right would be very much affected if the remedy by which it is enforced is taken away. It would be a very serious matter if the trustee's confirmation was to have that effect. But the confirmation of the trustee is to have no effect upon their rights, and therefore their rights must not merely subsist as rights of creditors, but they must subsist with all the proper remedies that belong to these rights. And accordingly a creditor secured by an heritable conveyance of whatever kind over the estate of the ancestor in security of debt must have all the rights that he would have had if this sequestration had never taken effect, and amongst these is the right to poind.

Now, if that be so, I think the Lord Ordinary's reasoning *quoad ultra* is quite logical and unimpeachable when he says if that be so then the creditor of the ancestor is entitled to poind the moveables on the ground, just as he would have been entitled to do if there had been no sequestration at all, and therefore I can see no fault in this interlocutor or in the reasoning by which it was supported.

Lord Mure—I have come to the same conclusion, and very much on the same grounds as the Lord Ordinary has given in his note, and the grounds which your Lordship has expressed, and have nothing to add.

Lord Shand—I have come to be of the same opinion.

By the 102d section of the Bankruptcy Act 1856 the vesting of the estate of the bankrupt in the trustee to the same effect as if diligence had been done, is limited by the proviso to which your Lordship has referred, which practically enacts that the section shall have no effect upon the rights of the creditor's ancestor. One of these rights is to execute such a poinding as we have here, and therefore I think that right is saved. The enactment proceeds—"except that the act and warrant of confirmation shall operate in their favour as complete diligence." It may be unnecessary by way of decision to construe these words now. But I should be disposed to hold that they are to be read as meaning that the Act and warrant of confirmation shall operate as diligence, to the effect of vesting the trustee with the general estate of the ancestor for behoof of the ancestor's creditors generally, and to no other effect, so that the moveables in question, which never were the property of the ancestor, but were poinded as being within the property and belonging to the owners of the property, were not carried by the statute to the trustee for behoof of the ancestor's creditors.

Lord Adam—I am entirely of the same opinion.

The Court adhered.

Counsel for Pursuers—Mackintosh—J. A. Reid. Agents—Mitchell & Baxter, W.S.

Counsel for Defender — Moncreiff — Ure. Agent—Geo. Andrew, S.S.C.

Thursday, February 4.

SECOND DIVISION.

BROWN AND ANOTHER *v.* LENNOX AND OTHERS.

Partnership—Unincorporated Company—Sale of Business—Dissolution—Burghs (Scotland) Gas Supply Act 1876 (39 *and* 40 *Vict. cap.* 49), *secs.* 20 *and* 21—Ultra vires.

A joint-stock company was formed in 1859 to supply the burgh of Kilsyth with gas, the second article of the deed of copartnery providing that it was to continue for the space of twenty-one years, at the end of which period, it was further provided, under article 30, that the partners might prorogate the period to any number of years they should think proper, or in their option dissolve sooner, but neither the prorogation nor the dissolution was to take place unless proposed by a motion made and not negatived at two meetings duly advertised in certain specified newspapers, and by circular to all the shareholders advising them of the business to be taken up, with a month's interval between them, which two meetings must sanction the dissolution by a two-thirds majority of those present or voting by proxy. The contract was never prorogated, but the company continued to carry on the business till 1884, when the Police Commissioners of the burgh proposed, and subsequently agreed with the directors, to take over the whole plant of the company conform to minute of sale, which proceeded on the narrative that the Commissioners were about to adopt the Burghs Gas Supply (Scotland) Act 1876, which in fact they subsequently did adopt. Sections 20 and 21 of the latter Act empower the commissioners to buy such a concern on condition that the company agree by at least three-fourths of the shareholders. The sale was confirmed by the company at two meetings, which were not called under the provisions of section 30 of the contract. Two of the shareholders of the company raised action of reduction of the minute of sale on the grounds (1) that there being no power of sale in the original contract of copartnery,

the deed was *ultra vires* of the directors; (2) that the alleged sale being virtually a dissolution of the copartnery, could only be made in terms of clause 30, the procedure enjoined by which had not been followed. The Court *sustained* the minute of sale on the grounds (1) that the contract not having been prorogated, was a partnership-at-will, and that the terms of clause 30 being inconsistent with such a partnership, did not require to be observed in carrying out the sale; (2) that the sale bearing to be sanctioned by a unanimous meeting of shareholders called for that purpose was valid in respect of sections 20 and 21 of the Burghs Gas Supply (Scotland) Act 1876, though the adoption of that Act was only in contemplation at the date of sale and did not take place till after it.

In 1839 the Kilsyth Gas-Light Company was formed as an unincorprated joint-stock company for the supply of gas to the inhabitants of the burgh of Kilsyth. Its shares were transferable, and the management of its ordinary business was delegated to a board of directors. Its paid up capital was £1500. By the second article of the contract of copartnery it was provided that the company, if not sooner dissolved in terms of the powers therein expressed, should continue for the space of twenty-one years from the first day of January 1839, and until the first Tuesday in the month of May then next following, or such further period as the company should determine in manner thereinafter specified. Article 30 provided that, notwithstanding the provision that the company should endure a definite period, it should be lawful to and in the power of the partners either to prorogate or extend the period to any number of years they should think proper beyond the original period of endurance; or, on the contrary, if they should see cause, to dissolve the company before the expiry of the said original period or of any such prorogation; declaring that neither the said prorogation nor the said dissolution should in any event take place except the same should be proposed by a motion made and not negatived at a general meeting of the company, and agreed to at another general meeting of the company specially called for the purpose by public advertisement for the space of one month before such second meeting was to be held, in which advertisement the purpose of such second meeting should be distinctly specified, and that by a majority at such second meeting of at least two-thirds of the votes of partners present, and entitled to vote, either personally or by proxy.

On the 1st April 1884 the company met under the chairmanship of Mr John Brown of Brownville, and a letter was read from the Commissioners of Police of the burgh of Kilsyth, in which it was stated that the latter were desirous of entering into an amicable arrangement whereby they might take over the gas-works for behoof of the inhabitants. On the 8th April 1884 the company met again, and it was reported that a provisional arrangement had been made as regards the matter with the commissioners, subject to the sanction of the shareholders, to be obtained at a general meeting held for the purpose. The clerk was instructed, in terms of article 12 of the contract of copartnery, which provided for the mode of calling general meetings, to advertise a special meeting on the 18th April for the purpose of considering the proposal. On the 18th April the company met and confirmed the informal provisional arrangment previously come to, and on 6th May, when the annual general meeting was held, a draft minute of agreement was read to the meeting and approved of. On the 25th September 1884 the agreement was duly executed, and bore, that "whereas the commissioners deem it advisable and expedient, and in the interests of the ratepayers of the burgh, to adopt the Burgh Gas Supply (Scotland) Act 1876 before the end of the current year, and in terms of the last recited Act, for the purpose, *inter alia*, of acquiring the works and plant belonging to the said company . . and whereas the said company has agreed to sell the said works and plant to the said commissioners, it is hereby mutually agreed that the company should on 11th November 1884 grant a valid conveyance, and give possession of and transfer to the said commissioners, or any person to be named by them for their behoof, the whole gas-works, business, property heritable and moveable, plant, pipes, meters, and other assets, and the whole rights, powers, and privileges belonging to the company, with the exception of certain moveable property therein set forth, and that at the price of £1400 sterling, payable on 11th November aforesaid, on the company handing over the said conveyance to the said commissioners, it being further agreed that the said moveable articles should be taken over by the said commissioners at a valuation and the price thereof paid to the company."

Shortly before this sale a rival company had been promoted in Kilsyth for the purpose of competing with the Kilsyth Gas-Light Company in the supply of gas to the burgh.

The Burgh Gas Supply (Scotland) Act 1876, though not yet adopted at the date of this agreement, was adopted subsequently to it.

The 20th section of the Burgh (Scotland) Gas Supply Act provided—"Where there is a company not incorporated by Act of Parliament, or authorised by provisional order confirmed by Act of Parliament, supplying gas within a burgh, the commissioners may, subject to the provisions of this Act, buy from such company, and such company, if formed or registered under the Companies Act 1862, with the sanction of a special resolution in terms of that Act, and if not so formed or registered, with the consent of a majority of three-fourths in value of the shareholders or members of such company, either personally or by proxy, at a meeting specially convened for the purpose, sell and transfer to the Commissioners, on such terms as may be agreed on between the commissioners and the company, the undertaking of such company, and all the rights, powers, and privileges by all or any of the lands, premises, works, and other property of the company, but subject to all liabilities attached to the same at the time of the purchase."

Section 21 provides—"Where there is a company not incorporated by Act of Parliament . . . supplying gas within a burgh, the commissioners, before they shall exercise any of the powers conferred by this Act, shall give notice that they are willing to buy or treat for the purchase of the undertaking of such company . . . and if such company shall consent in manner provided by the last preceding section to sell the same, the commissioners shall purchase the undertaking on

terms mutually agreed upon, and to be fixed by arbitration in the manner provided for by the Lands Clauses Consolidation (Scotland) Act 1845," &c.

On the 4th November, at a meeting of the directors of the company, Mr Brown of Brownville objected to the sale being carried out, but the meeting refused to entertain the objection as coming too late.

This action was raised by William and John Brown, sons of Mr Brown of Brownville, and designed as resident in Cumberland, in the capacity of shareholders of the company, against Robert Mackay Lennox and others, the Police Commissioners of the burgh of Kilsyth, and also against The Kilsyth Gas-Light Company, and its purpose was to reduce the sale of the business, property, and plant which had been carried out in terms of the minute of agreement. The grounds of action were as follows:—1st, That the directors of the company had signed the agreement without the authority or consent of the pursuers and other shareholders of the company, and notwithstanding their objections thereto, and they had no power, express or implied, under the contract of copartnery or otherwise to carry through the sale or bind the pursuers and other shareholders by such an agreement, and the pursuers never assented to the sale either personally or by a mandatory. 2d, It was *ultra vires* of the Police Commissioners to make the purchase or carry on the gas-works, inasmuch as at the date of the agreement they had not adopted The Burgh Gas Supply (Scotland) Act 1876, empowering burghs to enter into contracts of the description. 3d, The price paid by the agreement was grossly inadequate, and in prejudice of the pursuers' rights as shareholders of the company.

The Police Commissioners answered (1) that the directors had professed to be able and willing to sell the plant, &c., of the company, and did so. (2) That, as the agreement itself bore, the commissioners had entered into the contract with a view of adopting the Act, and that the Act was subsequently adopted by them.

The Kilsyth Gas-Light Company answered—(1) Looking to the terms of articles 2 and 30 of the contract of copartnery, the original period of endurance had expired and no prorogation in terms of the contract had at any time taken place, and therefore the company had since 1860 continued to conduct the business as a partnership-at-will. (2) The company had unanimously agreed at the meeting of 18th April to the proposal to sell, and had confirmed that agreement on the 6th May. Although the pursuers approved of the transaction in May, they had taken no objection till shortly before raising the action. (3) The price was regarded by all the partners of the company as adequate. In view of the rival company which was being started just before the sale, it was very desirable that they should sell the business, as to compete against the new proposed company with their present plant, which was old and defective, would have required a large expenditure of money which they were anxious to avoid.

The pursuers pleaded—"(1) The said pretended agreement being *ultra vires* of the said directors, and in violation of the rules and regulations of their said contract of copartnery, and in prejudice of the pursuers' rights as members thereof, and also *ultra vires* of the said Commissioners of Police, the pursuers are entitled to have the same reduced as concluded for."

The Police Commissioners pleaded—"(1) The statements of the pursuers are irrelevant and insufficient in law to support the conclusions of the summons. (2) The said agreement not being *ultra vires* of either of the parties thereto, ought not to be reduced."

The company pleaded—"(3) The sale in question having been carried out with the consent of the partners of the company, and in all respects legally and in conformity with the contract of copartnery, the defenders should be assoilzied."

In the proof which was led, and for the import of which reference is made to the Lord Ordinary's note and the opinions of the Judges, the following facts appeared—At the meeting of the company on the 18th April the pursuer John Brown was personally present, and at the meeting of the 6th May the pursuers were represented by a mandatory, who was their father Mr Brown of Brownville, and who was a director of the company and present at the meetings at which the proposed sale was discussed and arranged. He was chairman at most of the meetings, and approved of the sale during the earlier part of the negotiations, though he afterwards changed his opinion. As regards the price paid for the business, while it appeared that the company had been giving 25 per cent. for the last six years, there was a discrepancy of evidence. The Police Commissioners, in view of the rival company being started, offered what they thought a fair price, while the directors of the company, looking to the possibility of their being placed in difficulties by having to compete with old plant against a new company, thought it best to close for £1400.

The Lord Ordinary (M'Laren) assoilzied the defenders from the conclusions of the action.

"*Opinion.*—This is an action of reduction instituted by two of the shareholders of the Kilsyth Gas-Light Company for the purpose of setting aside a sale of the business, property, and plant of the company to the Commissioners of Police of the Burgh of Kilsyth for public purposes.

"A parole proof was allowed and taken. The documents to which I have found it necessary to refer are the company's contract of copartnery and the minutes of its proceedings in relation to the sale. The Kilsyth Gas Company, I may here explain, is an unincorporated joint-stock company, and in its legal position and powers it does not differ sensibly from a private partnership, except that its shares are transferable and that the management of its ordinary business is delegated to a board of directors. The paid-up capital of the company is £1500. Its affairs appear to have been economically administered and at the time of the sale it was earning fair commercial profits to its shareholders. The chief inducement to the sale was the general wish of the inhabitants that the burgh should undertake the supply of gas to the community. It is in evidence that a rival company was in course of formation with a view to its undertaking being eventually taken over by the burgh, and had this movement been brought to completion there can be little doubt that the value of the stock of the Kilsyth Gas-

Light Company would have been much depreciated.

"The complaining shareholders object to the contract of sale that it was *ultra vires* of the Police Commissioners, that it was a sale for an inadequate price, and also that it was *ultra vires* of the Kilsyth Gas-Light Company.

"(1) The objection stated to the powers of the Police Commissioners is that at the time of the sale the burgh had not adopted the Act of Parliament of 1876 empowering burghs to enter into contracts of this description. It is explained that the agreement was entered into in anticipation of the adoption of this Act, that the Act has since been adopted, and that the contract price has been paid. The pursuers (who are sons of a Kilsyth citizen) are designed as resident in Cumberland. They are not ratepayers in Kilsyth, and they have no claim to put forward this objection in the interests of the burgh or its inhabitants. They can only maintain the objection as shareholders of the Kilsyth Gas-Light Company, if they can make out that by reason of defect of power the Police Commissioners are unable to pay the price of the sale, or that the price (which has in fact been paid) may be evicted from the company. Now, the company are perfectly safe against any claim for repetition of the price, for this sufficient reason, that the sale has been carried through without objection or protest from any ratepayer of Kilsyth. The case in this respect is an almost unique illustration of the rule that the consent of the whole body of corporators will suffice to validate an agreement which is otherwise open to objection on the ground of defect of power. It will be understood that I am of opinion that it would now be too late for any ratepayer to challenge the sale in the interest of the burgh should anyone be disposed hereafter to raise the question.

"(2) The objection that the contract price is inadequate was hardly maintained as a substantive ground of reduction, but was put forward rather as a support to the objection founded on alleged defect of power on the part of the directors, should that objection appear to need stiffening. The evidence comes to this, that there is a difference of opinion as to the price which in all the circumstances the burgh might reasonably be expected to pay. The Burgh Commissioners were in a position to drive a bargain, because they were ready, if necessary, to bring forward a rival company. They were not entitled to be generous with the ratepayers' money, and they offered what I may term a fair commercial price, but not a monopoly price, for the Gas Company's property. The directors saw it to be for the interest of the company to accept the offer, and they accepted it subject to confirmation by a meeting of shareholders. I have not the smallest doubt that the directors acted prudently in the interests of their constituents, and I see no reason why we should review their resolution or propose to set aside their resolution in respect of the alleged inequality of the bargain.

"(3) It is further maintained, and I rather think that this is the objection relied on, that the sale is defeasible because it is a virtual dissolution of the company, and that it was not confirmed at two successive meetings of the proprietary body as prescribed (in the case of a dissolution) by the 30th article of the contract of copartnery.

"It is the fact that the sale was confirmed by the unanimous vote of a special general meeting of the company, called by advertisement for the 18th April 1884, in manner prescribed by article 12 of the contract, and held on that day. But the pursuers say this is not enough; there ought to have been a second special general meeting as prescribed by article 30 in the case of a resolution for winding-up. The defenders say that article 30 is no longer in operation, because the company was originally constituted only for a limited period, with power of prorogation, and as the prescribed term of endurance was allowed to expire without prorogation the company is only a partnership-at-will, its existence being dependent on the joint assent of all its members, and no particular form of dissolution being necessary to put it out of existence.

"I do not adopt this reasoning in all its consequences, for I think that in the case of a company managed by directors, electing its directors at annual meetings, and making up annual accounts, the more correct view is, that the association is renewed from year to year by the election of a board of management for each ensuing year, and I am not of opinion that this company could be actually dissolved in the middle of a financial year otherwise than by following out the prescriptions of article 30.

"For other reasons I am, however, of opinion that the objection must fail; and first let me observe that the company is not at present dissolved, and that after the settlement of the present dispute the directors or shareholders would be strictly in order in putting the machinery of section 30 into operation for the purpose of winding-up the company, discharging its liabilities, and dividing its surplus assets amongst its shareholders.

"Next, it is to be observed that the meeting of 18th April 1884 was a regularly called and constituted meeting. It was unanimous, because although Mr Brown senior (the pursuers' father) rose and took exception to the sale, he did not challenge a division or make a protest, and it is a fair inference that he acquiesced in the resolution of the other shareholders who were present. No one expressed (at that time) the wish that the matter should be considered at a second meeting, and there is no reason to suppose that the resolution of a second meeting would have been anything different from that of the meeting which was held. The objection then is purely technical. If there had been a surprise or unfairness—anything like an attempt on the part of the directors to snatch a vote at a general meeting, we should give weight to the consideration that the resolution, although not a dissolution, was one which would naturally lead to a dissolution, and was thus within the scope though not within the letter of the 30th article. But we are asked to give an equitable extension to article 30, not for the purpose of doing justice, but for the purpose of defeating a bargain honestly entered into, and carried out with substantial formality. In such a case I think we have no occasion to look beyond the letter of the article, which does not in its terms apply to the case of a sale of the undertaking, but only to a dissolution of the company.

"A separate defence is maintained by the Police Commissioners on the ground that there is a

good sale to them of the property of the company whether the provisions of the company's contract have been complied with or not.

"Reference was made to the opinion of the Lord President in the case of *Heiton* v. *Waverley Hydropathic Company*, 4 R. 830, and it was argued that a purchaser is only affected by notice of the articles of copartnery to the extent of being apprised of any disability or defect of power in the company to enter into the contract, but is not under obligation to see to the regularity of the procedure according to which the company's powers are to be exercised.

"I think the distinction is well-founded, with this qualification, that I should prefer to say that a purchaser or third party contracting with a company is not affected by irregularities of procedure of which he has not had notice. If a shareholder means to stand upon an objection to the procedure, as disabling the directors from executing their agreement with an outside party, he must give notice to that party before the contract is executed, and must follow up his notice by legal measures within a reasonable time. In the present case it is not alleged that any steps were taken to put the Burgh Commissioners in *mala fide* to complete their contract for the purchase of the gas-works.

"I say nothing as to the annual meeting held on 6th May, at which instructions were given to the directors to sign the agreement. I find that the consent of the company to the sale was given at the special general meeting held on the 18th April, and that the resolution of 6th May made the matter neither better nor worse. Still less can the subsequent protest of Mr Brown senior be held to interfere with the completion of the transaction. The objection came too late, because the directors were then executing the orders of the company given at the special general meeting."

The pursuers reclaimed, and argued—There was no power of sale in the deed of copartnery. The sale, then, was *ultra vires* of the directors as such. Such a sale could not be sustained at law unless shown to have been made with the consent of all the copartners, for a mere majority, however large, could not alienate the whole concern and bring it to an end—Lindley on Partnership, i. (4th ed.) 600. 2. The contract was still in force so long as not inconsistent with a partnership-at-will, on the authority of *Neilson* v. *Mossend Iron Company*, January 9, 1885, 12 R. 499, *vide* opinions of Lord President, p. 527, and of Lord Shand, p. 522, and if that were so there, the sale, which was virtually a dissolution, could only be made in terms of clause 30 of the deed of copartnery, which had not been complied with. 3. The price was totally inadequate. There was no reasonable probability of the rival company being started, and the concern had been paying 25 per cent. on an average of the last six years.

The Kilsyth Gas-Light Company argued—1. They had statutory authority under the Burgh Gas Supply Act 1876 (the adoption of which was contemplated when the agreement was made, as its preamble bore) to sell the concern. The sale was regularly proceeded with, and unanimously approved of by the directors, and the fact that there was no power of sale in the deed of copartnery would not invalidate the sale. 2. Further, the effect of the expiry of twenty-one years without prorogation was to leave the company a partnership-at-will, dissoluble at the will of any one of the partners, and therefore all the stipulations with regard to dissolution during the currency were of no effect, and not binding on the company. But even if that were not so, and there was a renewal from year to year, this was not a dissolution, but a sale with a dissolution in view. 3. The property had not been sold under its value. Considering the special circumstances of the rival company being started, it was thought expedient by the directors, who had a discretion in the matter, to accept £1400 for the concern.

The Police Commissioners adopted the argument for the other defender, and further argued—The company had a common law right to sell, and the statute gave them a new right. The articles of association showed nothing except that the company had power after certain procedure to dissolve, and even assuming against the commissioners that the sale was equivalent to dissolution, all that could be found in the contract of copartnery was that they had this power of dissolution after certain formalities, and the commissioners were not bound to inquire whether these formalities had been carried out—*Heiton* v. *Waverley Hydropathic Company*, June 6, 1877, 4 R. 831, *vide* opinions of Lord Shand, p. 841, and Lord President, p. 844. But they were not bound to look at the articles of association, for in the case of unincorporated associations such an examination was not necessary—Lindley on Partnership, i. sec. 35. The commissioners were entitled to assume that everything had been properly done in this respect—*Royal British Bank* v. *Turquand*, June 2, 1885, 24 L.J., Q.B. 327.

At advising—

Lord Justice-Clerk—I have read the excellent note of the Lord Ordinary, and am satisfied with the result which he has reached. Some very subtle questions have been raised in the course of the argument, but they are not all of importance to the ultimate issue. The case shortly is this. This is a copartnership at common law. It is not even on the register of joint-stock companies. It has its own rules, and therefore so far as the rules extend, they regulate the administration of the company, and so far as they do not apply, the particular case must be determined by the ordinary rules. This Gas-Light Company has existed for many years, and was a flourishing concern, but lately there seems to have arisen a disposition to start a rival company which was looked upon with suspicion and jealousy, and then the Police Commissioners, empowered by Act of Parliament to purchase gas-light companies, began negotiations for buying up the copartnership. Now, I should rather begin where the argument ended—from the side, that is to say, of the Police Commissioners—and think that clause 20 clears away a great deal of the abstract questions of copartnership law. The 20th section is in these words—[*His Lordship read sec. 20 of the Burgh Gas Supply (Scotland) Act quoted supra*].

Now, under that the Commissioners made the offer, and are bound. They had not then adopted the Act, but they have done so since, and the offer was subject to its adoption, as also was the ultimate agreement. They have now adopted the Act, I repeat, and concluded the agreement,

and now the question comes to be, whether it is illegal at common law or by statute? I think under the statute we have to ascertain nothing but whether this company by a three-fourths majority at a meeting convened for the purpose of making the bargain are bound and acted regularly under the statute. I think they are, for I think it is clearly proved that there was a special meeting called by advertisement to consider the resolution with a view to adopt it, and that being done the commissioners are entitled to go forward and complete the sale, and no further question can arise on the matter. That is my general view of the clause, and indeed it would be impossible to work it if an objection by individual shareholders as to the regularity of the meeting by which three-fourths of the members adopted the resolution were to be given effect to. In point of fact the meeting of 18th April 1884 was unanimous, and I think it is only right to say that if the parties now appearing had intended to object, they should have done so earlier, and I cannot comprehend why they did not. Mr Brown senior was indeed a prominent person at the meeting, but took no division and made no protest. Therefore looking to the terms of the statute, and clause 20, which applies, no further question remains in the case. I will only say generally that I agree with the Lord Ordinary on the other questions which have been raised. This is a copartnership which outlived its term of twenty-one years, and it was thereafter simply one at the will of the partners. Now, that may give rise to a variety of questions as to the rights of the partners, and I do not dispute that the old rules will regulate their relations in so far as they are in their nature applicable. That is the reason and common sense of the matter, but except in so far as the period of the copartnership has been extended or prorogated, I think clause 30 is manifestly inapplicable.

Lord Young—I concur. The pursuers are shareholders of the Kilsyth Gas-Light Company, and bring a reduction of a contract dated September 1884, between the company and the commissioners on the ground of illegality. The Kilsyth Gas Light Company is one at common law, and I can find nothing in the terms of the contract of copartnery rendering the contract with the Police Commissioners illegal or in any way irregular. It was subsisting as a copartnership at the will of the partners and was dissolved at the time when the agreement was entered into with the consent of all the shareholders except two pursuers. I agree in thinking that there is nothing in clause 30 which at all interferes with a contract of this description being made at common law. But then it was not made at common law, but under the Burghs Gas Supply (Scotland) Act 1876. It is true that Act had not then been adopted, but the commissioners had its adoption in contemplation, and the contract was made on the assumption of its adoption. Now, on a familiar rule of our law and practice necessary for the convenience of business, where we have a contract made, whether on the passing of a statute or the adoption of an Act which it was in contemplation to adopt, it shall operate on the passing of that statute or the adoption of that Act, just as if it had been made after the passing or adoption of the Act. Now, clauses 20 and 21 taken together authorise the Police Commissioners of any such community as this to buy up the whole works of just such a company as this with this condition, that the company shall agree by at least three-fourths of the shareholders. The objection of more than one-fourth must end the matter; if three-fourths in value consent to the sale it may lawfully take place at a price agreed on, or to be fixed failing such agreement by arbitration. Well, the purchase was made, and more than three-fourths agreed, and what is the objection? Clause 30; but I have already said that even at common law clause 30 is not applicable to such a matter, but if it were, it could not prevail over the Act of Parliament, and if the Act of Parliament says it may be made if three-fourths consent, it is immaterial what clause 30 says. Therefore in every view I am able to take I agree in thinking the Lord Ordinary is right.

Lord Craighill—I am of the same opinion. There is one view which I think perfectly sufficient for the judgment though it does not appear to have been presented to the Lord Ordinary, for he does not put his judgment at all on the ground of the terms of the Burghs (Scotland) Gas Supply Act of 1876. But these terms seem to me perfectly conclusive of the question which we have here to determine. Suppose this question had occurred when the period of the company's original endurance was still running, or during a period for which its existence had been extended, would that have ousted the Act of Parliament? Not in the least. True, it may be that without the Act of Parliament the wishes of three-fourths of the members might not have prevailed, but the Act of Parliament in effect provides that whatever the rules of the company may say, if three-fourths agree, that is to be taken as sufficient just as if the whole members of the company had assented to what it was proposed to do. That consideration obviates truly the necessity of dealing with those intricate questions of company law which have been discussed so fully, I have no doubt to the entire benefit of all concerned.

The Court adhered.

Counsel for Reclaimers—Pearson—G. Wardlaw Burnet. Agent—George Andrew, S.S.C.

Counsel for Commissioners of Police—Mackintosh — Maconochie. Agents — Maconochie & Hare, W.S.

Counsel for Kilsyth Gas-Light Company—Lang. Agents—Yeaman, Fodd, & Simpson, S.S.C.

Thursday, February 4.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

MALCOLM *v.* LLOYD.

(*Ante*, vol. xxii. p. 554, 17th March 1885).

Road — Servitude — Cart Road—Declarator of Servitude.

In an action raised in 1885 for declarator of right to a servitude road the jury found that the pursuer, his predecessors and authors, had