Counsel for Pursuers and Respondents—H. Johnston—Dickson. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for Defenders and Reclaimers—Graham Murray—Ure. Agents—Webster, Will, & Ritchie, S.S.C.

Friday, March 13.

FIRST DIVISION

[Lord Kincairney, Ordinary.

THE RENTON FOOTBALL CLUB AND OTHERS *v.* THE SCOTTISH FOOTBALL ASSOCIATION AND OTHERS.

Club—Unincorporated Society—Title to Sue—Instance

The Renton Football Club, an unincorporated society, its president, vice-president, match secretary, honorary secretary and treasurer, seven others described as office-bearers and members of committee, and five persons described as members of the club, sued the Scottish Football Association, its office-bearers, and the members of certain committees, for reduction of a minute of the defenders deciding that the pursuers' club be declared professional and expelled from the association. The defenders averred that the Renton Football Club was composed of a large number of members, that the pursuers did not represent and had no right to use the name of the Renton Football Club for the purposes of this action, that the club was not incorporated or entitled to sue under its name. No personal objection was stated to any of the parties named as pursuers. The pursuers averred—"The Renton Football Club is composed of nearly 200 persons. The pursuers were duly authorised at a meeting of the club to sue the present action."

Held that they were entitled to a proof that the requisite authority to sue was given.

The following narrative is taken from the opinion of the Lord Ordinary (KINCAIRNEY)—"This action by the Renton Football Club against the Scottish Football Association and others, concludes for reduction of a minute of the Business and Professional Committee of the Association, whereby the committee are said to have decided that the Renton Football Club be declared professional, and expelled from the association, and for declarator that the minute was *ultra vires* of the defenders, null, void, and illegal, and that the Renton Football Club are still members of the Scottish Football Association, are not professional, and are entitled to the rights, privileges and benefits of membership thereof. There is a conclusion for £5000 in name of damages, but any difficulty caused by that conclusion has been removed by its withdrawal by senior counsel for the pursuers; and a minute of restriction has since been lodged in process.

"It may be explained that there are stringent regulations by the Scottish Football Association against what is called professionalism, or playing for remuneration.

"The pursuers are the Renton Football Club, its president, vice-president, match president, honorary secretary, and treasurer, seven other individuals described as office-bearers and members of committee, and five other persons described as members of the club.

"There are called as defenders the Scottish Football Association, the president, vice-president, and honorary secretary and treasurer of the association, twenty-four individuals described as members of the General Committee, and nine individuals described as members of the Professional Committee of the Association.

"Appearance has been entered for the secretary of the association, for certain of the members of the General Committee, and for all the members of the Special Committee called as defenders, and they have lodged preliminary defences. No appearance has been entered in name of the Scottish Football Association.

"It is averred and admitted that the Renton Club has been for several years a member of the Scottish Football Association, which comprises a large number of clubs and affiliated associations, each of which is entitled to send representatives to the annual meeting.

"The pursuers aver that the Scottish Football Association has a constitution and rules, and that it has considerable funds and heritable property, that it leases offices in Glasgow, which are kept for the use of the members, and which all members of the Association have a right to use.

"The pursuers set forth their objections to the resolution under reduction, and the grounds on which they seek to reduce it, which need not be considered at this stage; and they say that the consequences to them of this attempted expulsion are very serious, because they will then cease to have the benefit of the funds and property of the association, and because—which is the real hardship—the other clubs and affiliated associations forming the Scottish Football Association are debarred from playing with them.

"I think there can be no doubt at all that, if their averments are true, the pursuers will gain a considerable advantage if they succeed in this action, and that it is quite worth their while to raise it if they are in law entitled to do so.

"The defenders aver that the Renton Football Club is composed of a large number of members, and that the pursuers do not represent and have no right to use the name of the Renton Football Club for the purposes of this action,—that the club is not incorporated or entitled to sue under its name.

"To this averment the pursuers make this reply—'The Renton Football Club is composed of nearly 200 persons. The pur-

suers were duly authorised at a meeting of the club to sue the present action.'

"Concerning the Scottish Football Association, the defenders aver that it comprises 172 clubs and 11 affiliated associations; that it has no individual members; that none of the clubs or associations have been called to the action; that three members of committee have not been called, nor the honorary president.

"The defenders have stated the following preliminary pleas—(1) The action is incompetent. (2) No title to sue. (3) The action should be dismissed, because—1st, The pursuers are not entitled to sue; 2nd, the defenders are not duly convened; 3rd, the defenders have not been legally cited; 4th, all parties are not called. (4) The averments are irrelevant.

"In support of the defenders' first plea that the action is incompetent, they contended that the questions raised and interests involved were not such as a court of justice could consider, and that no question of civil right or patrimonial interest was really raised. They quoted *Forbes* v. *Eden*, December 8, 1865, 4 Macph. 143—*aff.* April 11, 1867, 5 Macph. (H. of L.) 36, in support of the position that the Court could never entertain questions regarding violation of the constitution of voluntary associations where no patrimonial interests were involved.

"On this point I am of opinion, that assuming the truth of the pursuers' averments, the action is such that the Court may and is therefore bound to entertain. I do not require at this stage to consider whether it is competent for the Court to give the pursuers the full remedy they ask. It will be for consideration when the merits of the case are reached, whether a decree of declarator that the Renton Club is not professionial can be pronounced. Neither does it seem necessary to express any opinion as to the nature and amount of the patrimonial interest which will warrant recourse to the Court, nor to affirm absolutely that there cannot be cases in which courts of justice might intervene, even although no interest of a strictly patrimonial character could be alleged. For I think there is no doubt that there is in this case an ample allegation of that kind of patrimonial interest which in many cases has been regarded as sufficient to give jurisdiction to the English Courts in actions relating to expulsion from clubs. Reference was made by the pursuers to the *dicta* of Lord Denman in *Innes* v. *Wylie*, 1844, 1 Car. & Keenan, 257; to *Wood* v. *Wood*, June 1, 1874, L.R., 9 Ex. 190; to *Fisher* v. *Keane*, 1878, 11 Ch. Div. 353; to *Labouchere* v. *Wharncliffe*, 1879, 13 Ch. Div. 346; and especially to the judgment of Jessel, M.R., in *Rigby* v. *Connol*, 1880, 14 Ch. Div. 482. And, on the whole, I think it plain enough that this action cannot be thrown out as incompetent at this stage as not disclosing any question which can be judicially entertained.

"In support of the plea of no title to sue, it was maintained that the Renton Football Club, not being incorporated, could not sue by that name alone, and that as it was not a trading company, it was not sufficient to add the names of certain selected members, but that, being an unincorporated association not established for purposes of trade, it was essential that all the members should join in the action. No authority was quoted for that proposition, which was submitted as being elementary and self-evident. The pursuers contended that in joining with the club its office-bearers and several of its members they had stated a sufficient instance. This contention may be sound, although I do not think that any exact precedent was quoted. But the pursuers have not left their title to depend on that argument, because they have averred that they were duly authorised at a meeting of the club to sue the action. It appears to me that that is a relevant averment—*Bow* v. *Patrons of Cowan's Hospital*, December 6, 1825, 4 S. 276; *Jamieson* v. *Watson*, July 15, 1852, 14 D. 1021—and I propose to allow them to prove that averment. If they succeed in proving it their title will be considered on that footing; if they do not, it will be open to them to maintain that the instance is sufficient without that authority.

"The first head of the third plea seems a repetition of the second plea.

"The second head of that plea is that the defenders are not duly convened. I understand this plea to mean that the Scottish Football Association is not duly convened. It is a very peculiar body, and it is averred—what seems impossible—that there are no individual members of it at all. It holds meetings, however, passes resolutions, and possesses property, heritable and moveable. The defenders' argument came, I think, to this, that there could be no competent action of the kind now brought unless all the members of all the clubs and affiliated associations of which the Scottish Football Association consisted were called, which is obviously a practical impossibility; that otherwise the association could not be sued at all, and that if through the fault of its servants or the contract of its officers the association incurred an obligation its property could not be reached by its creditors.

"The defenders rested their argument chiefly on the case of *M'Millan* v. *The General Assembly of the Free Church*, July 9, 1862, 24 D. 1282, and in particular on the *dicta* of the Lord President at p. 1291, and also on the judgment and note of Lord Jerviswoode in a subsequent action by *Mr M'Millan* v. *The Free Church of Scotland*, and its officials, July 20, 1864, 2 Macph. 1444. The pursuers relied mainly on the case of *Somerville* v. *Rowbotham*, June 27, 1862, 24 D. 1182. I think it unnecessary to say more than that that decision appears to me to be substantially in point, and I consider that I follow it in repelling the defenders' plea now in question."

It is unnecessary to consider the objection to the citation.

The Lord Ordinary upon 6th January 1891 pronounced the following interlocutor:—"Repels the first plea-in-law, and

the second, third, and fourth heads of the third plea-in-law stated for the compearing defenders: Further, repels the fourth plea-in-law stated for the compearing defenders, in so far as stated as a plea against satisfying the production, and decerns: And before further answer, as to the second plea and the first head of the third plea for the said defenders, allows the pursuers a proof of their averment that 'they were duly authorised at a meeting of the club to sue the present action,' and to the defenders a conjunct probation." &c.

The defenders reclaimed, and argued—There was no valid authority given by the club to its office-bearers to sue the present action. The members as a whole could not delegate the power to sue to certain of their number—Mackay's Court of Session Practice, vol. i. 332, and vol. ii. 241; *Baptist Churches* v. *Taylor*, June 17, 1841, 3 D. 1030; *Culcreuch Cotton Company*, November 27, 1822, 2 Sh. 47. The Renton Football Club not being a *nomen juris* and not being a corporation, had no title to sue—*Duke of Portland*, November 23, 1852, 15 D. 62. The decree sought if granted would be practically inoperative, because the Court could not compel any of the associated clubs to play with the pursuers. No sufficient patrimonial loss had been alleged, and the action was therefore incompetent—*Rigby*, L.R., 14 Ch. Div. 482.

Argued for respondents—The instance here was sufficient; in addition to the title of the club, the names of the office-bearers and five others was given, and no personal objections were taken to any of these parties, and they were fully authorised by the club to prosecute the present action. Sufficient patrimonial loss had been averred by the pursuers, who alleged that the heritage held by the defenders had been purchased with funds contributed to by them. What the respondents wanted was to be reinstated, as the actings of the reclaimers had been oppressive and illegal—*Labouchere*, L.R., 13 Ch. Div. 346; *Fisher* v. *Keane*, L.R., 11 Ch. Div. 353; *Tantussi*, 2 Times Reports, 731; Wertheimer on the Law of Clubs, and cases there collected. In citing the defenders the pursuers did all that was required by calling the association, its office-bearers, and certain of its members. It was impossible that the whole membership amounting to upwards of 30,000 persons could be called.

At advising—

LORD M'LAREN—This is an action by an unincorporated society, formed of persons engaged or interested in a lawful sport, and directed against proceedings by a society which they are affiliated to, whereby the pursuers were expelled from the association on the ground of what is called professionalism. The question in the action is, whether the pursuers are amenable to censure or exclusion upon this ground. The only matter, however, now under consideration is the title of the pursuers to sue. The Lord Ordinary has dealt with that question, and the substance of his interlocutor is that he allowed the pursuers a proof of their averments that they were duly authorised at a meeting of the club to pursue the present action. The objection to the instance is that the Renton Football Club being an unincorporated society has no *persona standi in judicio*, and it is contended that the difficulty is not removed by the course which has been taken of joining certain individual names along with that of the association.

In considering this question we may start with the very elementary proposition that as every subject of the Crown is entitled to the protection of the courts of law, so every assemblage of persons who may conceive that their collective rights have been invaded, must be entitled to redress by taking proper means for having their case judicially considered. But it is also clear that an unincorporated society has not a title to institute an action of this kind in its name without further addition. Various reasons may be given for this rule, but it is sufficient to give one, and that is, that in the event of a decree for expenses being given against the society, or in the event of a counter-action being brought against the society under the designation which it has given to itself, there would be no person against whom a decree *ad factum præstandum* could be given, and it would be impossible that such a decree could be carried into execution in the ordinary way. On the other hand, it by no means follows as a consequence of this rule that every individual member of the unincorporated society must be made a party to the action. Where a society consists of a small number of persons it may be very convenient, and would save all questions, if the name of every individual member were inserted in the instance, but from the constitution of such societies, and from the very slight cohesion which sometimes exists between their members, it is evident there are cases where it would be exceedingly difficult to comply with such a requirement. It is certainly undesirable, and indeed I think inconsistent with sound principle, that we should lay down a rule with reference to the instance of unincorporated societies, with which in many cases it would be difficult, and in some impossible, to secure compliance. Indeed, I think that to require the insertion of the names of every member would be a rule which would be more likely to result in vexatious preliminary litigation as to the constitution of the society than productive of any benefit to either of the parties concerned. It is undoubtedly the right of the defenders to see that in addition to the instance of the society itself, they should have the instance of certain persons who are responsible for the proper prosecution of the action, and for giving obedience to the decrees that may given under it or under any counter action that may be joined with it.

In the present case we have, in addition to the title of the Renton Football Club itself, the names of all the persons described as office-bearers and five others—seventeen persons in all. I think it will be generally agreed that the office-bearers of an unin-

corporated society are always proper persons to be named along with the society itself, both because they are likely to be substantial persons and acquainted with the affairs of the society, and also because they are the persons to whom the society has deputed the conduct of its affairs. I do not say that in every case it would be sufficient that the office-bearers of the club or society were named, but in the majority of cases it may be fairly considered that the office-bearers fairly represent both the mind of the society with whom they are associated and the requirement of character and responsibility. In the present case, while we have had very full argument upon the legal questions, no personal objection has been stated to any of the parties named as pursuers, and I must take it that those persons sufficiently represent the wishes of the Football Club, and that the objection to the instance is maintained upon theoretical grounds.

There is, however, a further condition of the right of an unincorporated society to sue by a representation of its members, and that is, that those persons must be duly authorised by a meeting of the society. It is plainly not necessary that they should be authorised by every individual member of the society or that there should be a signed power of attorney, because there would be the same difficulty in getting such a deed as there would be to find out the names of the persons to be inserted in the summons. But there must be an authority given by at all events a majority of the known members of the club, either in writing or by a resolution of a meeting attested in the ordinary way. The Lord Ordinary has allowed proof on the subject, and on the first explanation of the case we were all disposed to affirm the principle which the Lord Ordinary had laid down. But with the view of saving litigation, counsel interposed and produced a signed minute giving the necessary authority. It is objected to that minute that while it authorised the institution of the action it did not say in what names the action should be prosecuted, and if that had been the only objection to the mandate I should not have thought it a good one. It was the function of the meeting of a society to give authority to institute an action, but it was not part of their duty, because they were not a meeting of lawyers, to state the form in which the action should be brought. But the position of the case is now somewhat altered, because it is stated by counsel for the defenders that they mean to deny the authenticity of the mandate upon the ground that the meeting was not properly convened, and the result of that objection is that we must simply adhere to the Lord Ordinary's interlocutor and leave it to be proved, if it can be proved, that the requisite authority was given.

LORD ADAM and LORD KINNEAR concurred.

LORD ADAM intimated that the LORD PRESIDENT, who was absent, also concurred in the judgment.

The Court adhered.

Counsel for the Pursuers — Graham Murray — A. S. D. Thomson. Agent — William Officer, S.S.C.

Counsel for the Defenders—Asher, Q.C.—R. V. Campbell—C. S. Dickson. Agents—A. J. & J. Dickson, W.S.

Friday, March 13.

FIRST DIVISION.

THE GLASGOW TRAMWAY AND OMNIBUS COMPANY, LIMITED *v.* THE LORD PROVOST, MAGISTRATES, AND TOWN COUNCIL OF GLASGOW.

Public Company — Companies Memorandum of Association Act 1890 (53 *and* 54 *Vict. cap.* 62)—*Alteration of Articles of Association—Confirmation Order.*

The Companies Memorandum of Association Act 1890, sec. 62, provides:—"1. Power for company to alter objects or form of constitution subject to confirmation by Court.—(1) Subject to the provisions of this Act, a company registered under the Companies Acts 1862 to 1886 may by special resolution alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company so far as may be required for any of the purposes hereinafter specified; . . . but in no case shall any such alteration take effect until confirmed on petition by the Court which has jurisdiction to make an order for winding-up the company. (2) Before confirming any such alteration, the Court must be satisfied —(*a*) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interest will, in the opinion of the Court, be affected by the alteration; and (*b*) That with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained, or his debt or claim has been discharged, or has determined, or has been secured to the satisfaction of the Court. . . . (5) The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company, if it appears that the alteration is required in order to enable the company—(*a*) To carry on its business more economically or more efficiently; or (*b*) To attain its main purpose by new or improved means; or (*c*) To enlarge or change the local area of its operations; or (*d*) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or (*e*) To restrict or abandon any of the objects specified