is not alleged that at any time within three months a motion was made to disapprove of the resolution of 13th June, and I observe from the minutes that not only was the minute of 13th June read and approved at the next meeting, but within the period of three months, viz., on 7th and 24th August, when the revised articles and regulations were under consideration and approved, the opportunities presented themselves on which motions disapproving of the resolution in question might legitimately have been proposed. Moreover, the proceedings on these three occasions—13th June, 7th and 24th August—bear to be unanimous, and on the last of these occasions the minute bears that the revised articles and regulations were read over and signed by the deacon and other members present, being the whole members of the scheme. I do not find these revised regulations in the printed papers, but if they do not expressly include the resolution of 13th June, they do so by necessary implication, because no benefit scheme could have any meaning or effect which did not fix, either directly or by reference to other documents, so important a point as the age at which the right of admission should cease. Thus, as I have said, the proceedings were throughout unanimous; and there is authority for the proposition that a corporation, acting for a legitimate purpose and within its powers, may dispense with formalities, provided the members are unanimous. If this principle be good for anything, it ought at least to cover the case of a society or corporation rescinding an unlawful resolution, which it is their duty to put out of the way at the first opportunity when its illegality is brought to their notice.

Now, if I have rightly judged the facts of this case, there cannot be the smallest doubt that the resolution of 8th March 1860, reducing the age of limit to thirty years, was an illegal act in the sense of being an abuse of the powers of the then existing members of the body corporate. It may here be observed that the 23rd article of the scheme, to which I have already more than once referred, gives only a qualified power of altering the rules. It begins with the significant phrase—"Should it be found necessary for the advancement of this fund to alter any of these articles." But by the admission of the gentlemen who assisted at the passing of the resolution of 1860, this resolution was not passed with any view to the "advancement" of the scheme, but in the hope of putting an end to the scheme and appropriating the revenues to their own purposes. The attempted alteration of the scheme was therefore not within the powers conferred by the 23rd article, and while it may be that an action would be necessary to set it aside at the instance of an outside party, it appears to me that if the corporators themselves, who knew the motive of the resolution, and were aware of its illegality, and were unanimous in their wish to return to the path of legitimate administration, chose to treat the resolution as a proceeding *ultra vires*, they were justified in doing so without waiting the expiration of the period of three months which is prescribed as requisite in the case of passing a new law or an alteration or amendment of the old laws. I do not look upon the proceedings at the meeting of 13th June 1891 as being of the nature of an amendment of the scheme falling within the provisions of the 23rd article, but rather as the fulfilment of a necessary duty incumbent on the corporation, which is to be performed in the same way as any other corporate act, viz., in this case by a unanimous resolution recorded in the minute-book, and approved at a subsequent reading of the minutes.

For these reasons I propose that the interlocutor brought under review in the action at the instance of Sadler and others be adhered to. With respect to the counter action, the Lord Ordinary has found it unnecessary to pronounce a decree reducing the minutes of 8th March and 12th June 1860. While I do not dissent from the reasons which resulted in this finding, yet as the rescission of these minutes was challenged by Mr Sadler and the two other pursuers, I think it was a proper step of procedure to bring these minutes under reduction, and that the minutes ought now to be reduced in order that there may be no dubiety regarding your Lordships' opinion as to their essential nullity. With this variation I propose that the interlocutor in the action at the instance of Webster and others should also be adhered to.

The LORD PRESIDENT, LORD ADAM, and LORD KINNEAR concurred.

The Court adhered to the Lord Ordinary's interlocutor, but also reduced the minutes of 1860.

Counsel for Sadler and Others — W. Campbell—James Reid. Agents — Macpherson & Mackay, W.S.

Counsel for Webster and Others—H. Johnston—C. N. Johnston. Agents—Henderson & Clark, W.S.

Wednesday, November 15.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

HAMILTON & BAIRD *v.* LEWIS.

Contract—Compromise of Action—Joint-Minute—Proof of Agreement Varying Terms of Compromise in Joint-Minute.

After decree had been pronounced disposing of an action in terms of a joint-minute, the defender reclaimed, and lodged a statement of *res noviter veniens ad notitiam*, averring that before the decree was pronounced the parties concluded a verbal agreement varying the terms of the joint-minute.

Held that as the joint-minute was a written contract, parole proof of an

agreement modifying its terms was incompetent.

Messrs Hamilton & Baird, writers, Glasgow, sued Edward Dillon Lewis for payment of various sums, amounting in all to £2868.

After proof had been allowed, counsel for the parties signed a joint-minute, wherein they "concurred in stating to the Court that the parties had settled this action by the defender consenting to pay to the pursuers the sum of £700 in full of the conclusions of the summons, including expenses, on or before the 30th day of June 1893, and failing payment of the said sum of £700 sterling by the defender on or before that date, then the defender consents to decree being granted against him in favour of the pursuers for the sum of £950 sterling, with expenses, in full of the conclusions of the summons; and they concurred in craving the Lord Ordinary to interpone authority to this joint-minute, and *quoad ultra* to assoilzie the defender from the conclusions of the action, and to discharge the diet of proof fixed for the 18th day of May 1893."

On 17th May 1893 the Lord Ordinary (KINCAIRNEY) allowed the joint-minute to be received, and discharged the diet of proof.

On 6th July 1893 the Lord Ordinary pronounced this interlocutor:—"The Lord Ordinary, in respect of the joint-minute for the parties, and also in respect of the defender's failure to pay to the pursuers the sum of £700, including the expenses of the action on or before the 30th day of June last, Decerns against him for payment to the pursuers of the sum of £950 sterling in full of the conclusions of the libel: Finds the pursuers entitled to expenses," &c.

The defender reclaimed, and lodged a minute in the Inner House craving to be allowed to amend the defences by adding a statement of *res noviter veniens ad notitiam*, with relative pleas-in-law.

In this statement he averred that before the 30th of June, being the date fixed for payment of the £700 in the joint-minute, one of the partners of the pursuers' firm had a meeting with the defender in a hotel in London. At this meeting the said partner, having full authority from the pursuers to settle the action, agreed, in lieu of the payment of £700 which the defender was bound to make under the joint-minute, to accept certain guarantee policies which an insurance company were under obligation to grant to the defender, and the action was settled on this footing. In breach of this agreement, and notwithstanding the protests of the defender, the pursuers moved the Lord Ordinary to pronounce the interlocutor reclaimed against.

The defender argued that he was entitled to prove the alleged agreement by parole—*Love* v. *Marshall*, June 12, 1872, 10 Macph. 795; *Thomson* v. *Fraser*, October 30, 1868, 7 Macph. 39.

Counsel for the pursuers were not called upon.

At advising—

LORD PRESIDENT—The parties in this action settled the case by joint-minute signed by counsel. The terms of that minute are quite unambiguous, and it constituted a contract upon which either party was entitled to take decree. The case now made is, that a meeting between the parties took place in a London hotel, at which it was verbally agreed that a different mode of payment should be accepted by the pursuers than that proposed in the minute, and a parole proof is asked. There is no warrant for allowing a party to get over a solemn contract by parole proof of communings of this sort.

I think the decree of the Lord Ordinary should stand.

LORD ADAM—There was here a written compromise of the action. What is now averred is a distinct variation of the terms of the written contract, and that is not proveable by parole.

LORD M'LAREN concurred.

LORD KINNEAR was absent.

The Court adhered.

Counsel for the Pursuers—A. J. Young—A. S. D. Thomson. Agent—Robert John Calver, S.S.C.

Counsel for the Defender—M'Lennan. Agent—D. W. Paterson, S.S.C.

Wednesday, November 15.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY *v.* BAIN.

Railway—Mines and Minerals—Freestone—Railway Clauses Consolidation (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 33), *sec.* 70.

Held that freestone fell within the exception of "mines of coal, ironstone, slate, or other minerals" contained in the 70th section of the Railway Clauses Consolidation (Scotland) Act 1845, and was not carried to a railway company which had acquired lands under the powers of said Act by a disposition which did not mention mines and minerals.

Railway—Mines and Minerals—Right to Work Freestone Under Railway Line—Railway Clauses Consolidation (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 33), *sec.* 71—*Bona fides.*

A railway company sought to interdict the lessee of a quarry who had given them notice under section 71 of the Railway Clauses Consolidation Act that he intended to work the freestone under their line. They made averments to the effect that in the ordinary and