tion to the Court. For example, where a maximum fee is fixed for a particular step in procedure, the Court cannot allow a larger fee. But I cannot doubt that the Court has some discretion in applying the general regulations, and is entitled to make some modification upon the strict letter of such regulations if the justice of the case so requires. The case of *Shirer* v. *Dixon*, 12 R. 1013, seems to me to be an authority for that view.

At the same time I recognise that the discretion is one which must be exercised with extreme caution, and only in very special circumstances. But here the circumstances are altogether exceptional. Without a *post mortem* examination of Mr Govan's body the defenders could have no idea how they stood in regard to the very serious and peculiar claim which was made against them, nor could they state a defence except a purely hypothetical one. Further, although the exception in the rule in regard to precognitions does not directly apply to the case, it comes very near to doing so, because it was obvious that the result of the case would mainly depend upon the medical evidence, and the facts necessary to enable medical men to give evidence at all could not be ascertained without a *post mortem* examination, and a *post mortem* examination was not a thing which could be delayed indefinitely, but had to be proceeded with at once. In these very special circumstances we are all of opinion that an allowance should be made for the expenses in question.

In giving effect to that view we were anxious to save the parties from the expense of a further remit to the Auditor, and that gentleman has furnished us with a note of certain charges which, in his opinion, would fall to be disallowed in any event. These charges amount to £5, 5s. 2d., which being deducted from the £40, 10s. 7d. leaves £35, 5s. 5d., to which we shall find the defenders to be entitled.

The other question relates to charges incurred by the defenders to medical witnesses employed by them. The total amount is £368, 14s. 1d.; the Auditor has taxed off £242, 14s. 1d., leaving £126. I do not think it is necessary to go into detail upon this branch of the case. We have carefully considered what was urged by both sides of the bar; we have before us the views of the Lord Ordinary in the opinion which has been printed; and we have had a meeting with the Auditor. It was suggested by the defenders' counsel that the Auditor had struck out altogether the charges relating to the *post mortem* examination. The Auditor, however, informed us that that was not the case, but that he had taken into consideration and had taxed the whole of the charges. He also gave us explanations as to the principle upon which he proceeded in taxing this part of the account, and we are satisfied that he has exercised his discretion wisely, and that there is no reason for interfering with what he has done. To that extent also we shall therefore disallow the objections to the report.

LORD LOW intimated that the LORD JUSTICE-CLERK, who was absent when the case was advised, concurred.

The Court recalled the interlocutor of the Lord Ordinary, sustained the note of objections to the extent of £40, 10s. 7d., less £5, 5s. 2d., and *quoad ultra* repelled said objections.

Counsel for the Pursuer (Respondent)—Cooper, K.C.—M. P. Fraser. Agents—Patrick & James, S.S.C.

Counsel for the Defenders (Reclaimers)—Hunter, K.C. — Munro — A. Crawford. Agents—Auld & Macdonald, W.S.

Wednesday, February 3.

FIRST DIVISION.

[Lord Dundas, Ordinary.

ANDERSON *v.* MANSON AND OTHERS.

Club — Resolution of Council Suspending Member—Reduction—Ultra vires—Alleged Irregularity in Procedure—Disqualification—Bias—Interest.

The rules of a pony-breeding society provided, *inter alia*—"All entries when lodged become the property of the council, and are received subject to the decision of the council, to whom is reserved full right . . . to publish . . . or not to publish, any or every pedigree presented for entry. . . ."

A, a pony-breeder and a member of the society, having drawn its attention to certain inaccurate entries in its studbook by B, another member, the society remitted the matter to its council "with full powers." The council passed a resolution suspending B and instructing the secretary to refuse to accept any entries from him or to grant him any certificates pending the further consideration of the matter at the next general meeting of the society. At the meeting of council A presided and concurred in the resolution. B thereafter brought an action against the society for reduction of the resolution, in respect, *inter alia*, that (1) the council had no power to suspend him, and (2) that A, who was a trade rival of his and therefore presumably biassed, had presided at the meeting of council at which he was suspended.

Held (1) that as B had not been deprived of any of his contractual rights he was not entitled to the reduction craved, and (2) that mere community of interest did not disqualify A from presiding at the meeting in question, there being no proof that he had exercised an undue influence over the other members; and defenders *assoilzied*.

On 8th October 1907, Peter Anderson, Globe, Lerwick, brought an action against Anderson Manson, Maryfield, Bressay, Shetland, and others, the president and members of

council of the Shetland Pony Stud-Book Society for 1907, and George Hendry, 43 Carlton Place, Aberdeen, the secretary of the Society, for, *inter alia*—(1) reduction of a resolution of the council suspending him from membership of the Society till the next general annual meeting, and (3) £200 damages. (The conclusion for damages was directed against those members of the council of the Society who took part in the meeting at which the pursuer was suspended. A declaratory conclusion (2) that the pursuer was entitled to remain a member of the Society was departed from.)

The pursuer pleaded, *inter alia*—"(1) The resolution complained of being *ultra vires*, ought to be reduced, either wholly or partially as condescended on. (2) In the circumstances condescended on, decree of reduction and of declarator as craved should be pronounced. (3) The pursuer having sustained loss and damage through the illegal actings of the defenders, is entitled to compensation."

A narrative of the *facts* upon which the case was based and the *contentions* of parties is given in the opinion (*infra*) of the Lord Ordinary (DUNDAS), who, on 18th January 1908, allowed a proof before answer.

Opinion.—"The pursuer, who owns and breeds Shetland ponies and deals in them, was admitted on 6th June 1906 a member of the Shetland Pony Stud-Book Society. The members of this Society consist mainly of breeders and owners of Shetland ponies, and its main objects are to maintain the breed of such ponies and to publish a stud-book in which their pedigrees are registered. The 16th volume of this stud-book, being the register issued by the Society for the year 1906, contained a number of entries referring to the pedigrees of Shetland ponies owned by the pursuer. On 30th January 1907 one of the defenders—Mr Manson, a member of the Society—wrote a letter to the secretary to the effect that some of the entries regarding these ponies were false. The secretary sent a copy of Mr Manson's letter to the pursuer, who on 16th February replied admitting that the entries (made from particulars on forms signed by him) were erroneous, and making certain explanations. On 9th March the council met and passed a resolution agreeing, *inter alia*, that the erroneous entries be deleted from the stud-book and that this be notified in the next volume, and that 'further action in this matter' be deferred till the general meeting of the Society. This resolution was communicated to the pursuer. The general meeting was held on 10th July, but the pursuer did not attend it. A motion was made and carried that 'the case of Mr P. Anderson . . . be remitted to the council with full powers, and that the secretary be instructed to ask Mr P. Anderson to attend next meeting of council in his own interests, when the matter will be disposed of.' The secretary intimated this to the pursuer, and informed him that the council would meet on 31st August. The council accordingly met on that day, when five members (a bare *quorum*) were present other than the pursuer, and Mr Manson occupied the chair. The pursuer made certain statements and explanations to the effect, *inter alia*, that he had signed the forms blank, and that the erroneous statements which subsequently found their way into volume xvi of the stud-book had been filled in by a Mr Simpson of Chicago, who had purchased the ponies from him. The minute concludes that 'after full consideration of the correspondence and of Mr Anderson's verbal statement, it was moved by Mr Miller that the council suspend Mr Peter Anderson from membership of the Society till next annual general meeting, and instruct the secretary to refuse to accept any entries from Mr Peter Anderson for next volume of the stud-book, and to decline to grant any transfer, export, or other certificates to him, and to report the finding of the council to next annual general meeting for further procedure, which motion was seconded by Mr Joseph Duncan and agreed to.' The next annual general meeting of the Society does not fall to be held until the summer of this year (1908). On 8th October 1907 the present acction was raised. The defenders called are the president, secretary, and whole members of the council of the Society for the year 1907; and the summons concludes—(1) for reduction of the said resolution of council, dated 31st August 1907; . . . and (3) for £200 of damages against the five members who were present at the meeting on 31st August, jointly and severally."

"At the debate in the Procedure Roll counsel for each of the parties contended that his adversary had stated no relevant case, and while neither was prepared to renounce probation they both invited me to decide the case (except, of course, the assessment of damages if that matter should arise) upon the record and the documents which are produced. After careful deliberation I do not see my way to dispose of the case upon this footing in favour of either party. It cannot in my judgment be safely or properly determined upon a bare consideration of the pleadings and documents, and without full inquiry into the facts. As the argument on both sides was not only interesting but was conducted with ability and elaboration, it is right that I should explain, or at least summarise, my reasons for the course which I propose to adopt.

"The defenders' counsel pressed upon me an argument based on the broad general doctrine that the Court takes no concern with the resolutions of voluntary associations or societies except in so far as they affect civil or patrimonial rights, and they contended that the pursuer has not relevantly averred any patrimonial loss or damage arising through the actings of the defenders. The law on the matter is, I think, well settled, and is illustrated in the cases to which I was referred at the debate—*e.g.*, *Murdison*, 1896, 23 R. 449 (a football case); *M'Kernan*, 1874, 1 R. 453; *Aitken*, 1885, 12 R. 1206; *Rigby*, 1880, 14 Ch. Div. 482 (trades union cases); and *M'Millan*, 1861, 23 D. 1314, 1862, 24 D. 1282; *Forbes*, 1865, 4 Macph.

143, *affd.* 1867, 5 Macph. (H.L.) 36; and *Skerret*, 1896, 23 R. 468 (ecclesiastical cases). But I am not prepared to hold that the pursuer's averments may not support sufficient evidence of patrimonial loss arising to him not only by reason of his suspension but also from the defenders' refusal to accept from him any entries for the stud-book, and to grant him any certificates; nor am I satisfied that (as was maintained for the defenders) this view is conclusively negatived by making reference to a rule of the council which reserves to it 'full right to . . . publish . . . or not to publish any or every pedigree presented for entry.' Again, it was contended for the pursuer that the resolution complained of was manifestly *ultra vires* of the council, and must be *de plano* reduced, and also that the conduct of the meeting was *ex facie* of the record and documents contrary to the principles of natural justice and fair dealing. His counsel referred to some well-known English decisions in relation to clubs—*Dawkins*, 1881, 17 Ch. Div. 615; *Labouchere*, 1879, 13 Ch. Div. 346; *Fisher*, 1878, 11 Ch. Div. 353, which lay down that the Court will not interfere with the decision of a club professing to act under their rules, unless it can be shown that the rules are contrary to natural justice, or that what has been done is contrary to the rules, or that there has been *mala fides* or malice in arriving at the decision. The argument upon *ultra vires* was to the effect that the constitution of the Society contains no express power to suspend members; that the power to expel (which might be held to include suspension) rests solely with the Society in general meeting, and is safeguarded by certain conditions as to procedure, and that the power to expel (or suspend) could not be delegated by the Society to the council—*Thomson*, 1887, 15 R. 164. The defenders, on the other hand, not only rely upon the Society's remit to the council 'with full powers' as a valid delegation to them to exercise the right of suspension which they hold the Society itself possesses—and differentiate *Thomson's* case as being one of attempted sub-delegation of certain statutory powers, but also present a separate and independent argument based upon the duty imposed upon the council by the constitution, *inter alia*, 'to deal with all matters concerning the Society arising between the annual general meetings.' As bearing upon this part of the case I was referred to *Barton*, 1886, 11 A.C. 197; *Rex* v. *Mayor of London*, 1787, W. Term Rep. 177; *Innes*, 1845, 1 Car. & K. 257; *Barnes*, 1898, 1 Ch. 414; *Osgood*, 1872, L.R., 5 E. and I. App. 636. Even upon the question of *ultra vires* it would, in my opinion, be somewhat rash to pronounce a judgment solely upon a construction of some clauses of the Society's constitution, and without full knowledge of what precisely was done and intended to be done with regard to the pursuer. There remain other points which, if they are to be decided, must, I think, necessarily involve inquiry into the facts. The most important of these has regard to Mr Manson's position in the matter, and his occupancy of the chair at the meeting on 31st August 1907. A number of cases were cited as bearing on this point—*e.g.*, *Huggins*, 1895, 1 Q.B. 563; *Wildridge*, 1897, 25 R. (J.C.) 27; *Rae*, 1904, 6 F. (J.C.) 42; *Leeson*, 1889, 43 Ch. Div. 366. The decisions appear to me to illustrate and emphasise the necessity of having accurate knowledge of the facts in each case of the kind before proceeding to determine it. For the reasons which I have now indicated I am satisfied that there must be inquiry. . . . [*His Lordship then dealt with the declaratory conclusion subsequently withdrawn.*] . . ."

Thereafter on 20th June 1908 the Lord Ordinary assoilzied the defenders, finding that the resolution libelled was not *ultra vires* of the council, and that their proceedings were not irregular, oppressive, or contrary to justice or in any way illegal.

Opinion.—"For a general outline of the case, and of the legal questions involved in it, I refer to the opinion I delivered when proof was allowed on 18th January 1908. The proof has now been taken. At the hearing which followed, Mr A. M. Anderson for the pursuer departed (wisely, as I think) from the declaratory conclusion of the summons, but he insisted upon the conclusions for reduction and for damages. In support of these he submitted a very able argument to the effect (1) that the resolution complained of could not stand, (*a*) because it was *ultra vires* of the council to pronounce it, and (*b*) because their procedure was irregular and oppressive, and the circumstances under which the resolution was arrived at were such as to amount to a denial of natural justice; and (2) that the pursuer had proved patrimonial loss and damage to a substantial amount.

"I have come without difficulty to the conclusion that the resolution was not *ultra vires* of the council. Mr Anderson urged that suspension is just a form of expulsion; and that by the Society's constitution no member can be lawfully expelled except by a general meeting of the Society upon motion carried by at least three-fourths of the members present, and after intimation previously made in the manner prescribed. I think this argument is erroneous. Expulsion and suspension are, I apprehend, essentially different things. Expulsion means permanent extrusion from the Society; suspension infers a temporary and conditional deprivation of the privileges of membership. But, in any view, the introduction into the resolution of the word 'suspend' is really superfluous; for it adds no weight to the substantive part of it, viz., an instruction to the secretary to refuse to accept entries from the pursuer for the next volume of the stud-book, and to decline to grant certificates to him pending the further consideration of the matter by the Society at its next annual general meeting. Now, I think the council were quite entitled, if they thought fit, to decline to accept entries from the pursuer, or to grant him certificates pending a final decision. The matter was, in my judgment, one peculiarly suited to be dealt with in

the first instance by the council. Its attention had been drawn to the position by Mr Manson's letter of 30th January of 1907; and after explanations had been asked and obtained from the pursuer, the council, on 9th March 1907, took the practical step of resolving that the false entries should be deleted from the stud-book and the fact of deletion notified in the next volume; and they deferred further action until the general meeting. That meeting took place on 10th July 1907, when the Society remitted the matter to the council 'with full powers.' It seems to me that the subsequent resolution of council now complained of was quite competent to them, not only in virtue of their 'full powers,' but also because, looking to the sequence of events, this was a 'matter concerning the Society arising between the annual general meetings,' and, as such, one with which the council had an express right (and indeed duty) to deal.

"The pursuer's counsel next complained, as I understood, that the notice for the general meeting of 10th July did not include his case in the *agenda*, that is true; but I do not see how it could possibly prejudice the pursuer, for all that was then done was to remit to the council with full powers—a perfectly proper step in the interests of all concerned. He did receive due notice that the remit had been made, and that the council would meet on 31st August, and he was advised that he should then be present, or at least that a written or oral statement should be submitted for him; and before attending the meeting he had consulted and been advised by a very competent law agent. But it was next contended that the procedure at the meeting on 31st August, and the resolution pronounced, were unfair and oppressive. I do not think this has been made out at all. The pursuer was fully heard on his own behalf, and made no request for an adjournment, and the scope of the inquiry lay within narrow limits. I have, of course, no right to assume the functions of a Court of Appeal to review the merits of the resolution pronounced. I can only consider whether it was such a resolution as might in the circumstances have been reasonably and honestly arrived at; and I have no hesitation in affirming that it was. The pursuer admitted before the council that he had signed blank a large number of entry—as well as export—forms, his explanations in his previous correspondence, and orally at the meeting, might certainly be regarded as unsatisfactory, and he asserted he had written a letter to the secretary which that gentleman had never received. Whether or not there was ground for suspecting the pursuer of fraudulent intent—as to which I need pronounce no opinion—it seems clear that the council might not unreasonably conclude that he had acted with wanton recklessness, and in a manner calculated to defeat the primary object of the Society, and that they ought not to permit such a person to insert further entries in the stud-book, or to receive further certificates pending further consideration of his case by the Society. Four of the five gentlemen who formed the meeting were witnesses at the proof, the fifth being unable to attend through illness. I see no reason whatever for supposing that any one of the five was actuated by anything like malice against the pursuer, or applied his mind to the matter otherwise than a fair and honourable man should do. There remains, however, a question which was earnestly pressed upon me by Mr Anderson. One of the five gentlemen present was Mr Manson, and it was urged that his presence—to which, be it observed, the pursuer took no objection at the time—vitiated the whole procedure, because no man is entitled to be alike prosecutor and judge in the same cause. The legal proposition is sound, but I think it fails in its application to the facts. I do not consider that Mr Manson can fairly be described as the pursuer's prosecutor. His letter of 30th January 1907 merely drew the council's attention, as was right and proper, to entries in the stud-book which to the personal knowledge of the writer were false, and left it to the council to deal with the matter as they might think proper. His attitude at the meeting on 31st August—from which he could not have withdrawn without leaving less than a quorum present—was to do no more than vote; he abstained from taking any active part in the matter, or from influencing in any way the determination of the meeting. But it was maintained that, whether prosecutor or not, Mr Manson was, at all events, a trade rival of the pursuer, and as such was disqualified, because even if he was not in fact biassed by his pecuniary interest, there was a possibility of his being so biassed. It is true that it has sometimes been laid down, in cases where an order or a conviction by magistrates or justices of the peace—or even (as in *Leeson* v. *General Council of Medical Education*, 1889, 43 Ch. Div. 366) a decision by a council constituted by Public Acts of Parliament with drastic powers of dealing with cases of 'infamous' professional conduct—was under consideration by the Court, that a person who has a judicial or quasi-judicial duty to perform disqualifies himself for performing it if he has a pecuniary interest in the decision, or a bias which might render him otherwise than an impartial judge; and that if a pecuniary interest exists the law will not allow any further inquiry as to whether his mind was actually biassed by it—the possibility of bias being sufficient to disqualify. The English cases have gone further in this direction than anything that has been decided in Scotland. They are very numerous, and some of them at least do not go the length of supporting the doctrine above enunciated to its full extent. I doubt whether in Scotland the Courts would so sustain it. I should perhaps note some of the cases which serve to illustrate how delicate and difficult may be the task of drawing a consistent line between what ought and what ought not to infer disqualification under varying circumstances—*Milledge*, 4 Q.B.D. 332; *Gibbon*, 6 Q.B.D. 168;

Gaisford, [1892] 1 Q.B. 381; *Henley*, *ibid.*, 504; *Handsley*, 8 Q.B.D. 383; *Meyer*, 1 Q.B.D. 373; *Huntingdon*, 4 Q.B.D. 522; *Huggins*, 1895, 1 Q.B. 563; *Rand*, 1866, L.R., 1 Q.B. 230; *Rae*, 1904, 6 F. (J.C.) 42; *Wildridge*, 1897, 25 R. (J.C.) 27. But whether or not the doctrine which I have tried to formulate is of sound application in the kind of circumstances to which it has been applied with greater or less rigour in the decided cases, I am not disposed to apply it too strictly in the present case. I am not here in the position of reviewing a sentence, or quashing a conviction; I am considering whether a resolution by the council of a private society ought to be set aside, with resulting damages, because one of those who took part in its pronouncement had a pecuniary interest in the matter, although in fact—as I am prepared to hold—he was not thereby biassed or prejudiced. The pursuer avers on record that the members of the Society 'consist mainly of breeders and owners of Shetland ponies'; and the evidence shows that all or nearly all of them have a pecuniary interest, smaller or larger, in the breeding and selling of such ponies. If, therefore, pecuniary interest — even a slight one — is sufficient to infer disqualification, it might be impossible for the Society or its council to deal effectively with any case of the kind which has here arisen. Pushed to its logical extreme, this doctrine, applied to such a Society, appears to me to result in absurdity. I think all the members must be held to have joined this Society in the knowledge that offences of this sort would require to be dealt with by persons having pecuniary interest, greater or less, in the subject-matter under consideration. If this be so, the problem seems to be one not of principle but of degree; and the question comes to be whether or not Mr Manson was in fact biassed by his pecuniary interest when he sat as a member of this meeting. I am of opinion, upon the evidence, that he was not. This seems to me to end the matter as regards the crave for reduction of the resolution; and reduction being negatived, no question of damages arises.

"But, even if I had felt myself bound to reduce the resolution upon the technical ground with which I have last dealt, I gravely doubt—it is not necessary to put it higher—whether the pursuer would have been entitled to damages. It would, I think, be a strange and inequitable result that he should recover damages because a resolution pronounced by the council, *intra vires* and (*ex hypothesi*) fairly and honestly, and without any actual bias, was open to challenge upon the ground that such bias might possibly have existed, though in fact it did not."

The pursuer reclaimed, and argued—(1) The resolution complained of was invalid, in respect that (*a*) it was contrary to the constitution of the Society, and (*b*) the proper procedure had not been followed. (*a*) This was a penal resolution, and no justification for such a resolution could be found in the constitution of the Society. Moreover, there was no contract between the pursuer and the Council of the Society, and it was therefore *ultra vires* of the council to pass the resolution in question. *Esto*, however, that the council had power to "expel" the pursuer, they had no power to "suspend" him, and his suspension was therefore illegal. (*b*) The proper procedure had not been followed. No proper notice was given to the pursuer, no evidence was led, and no opportunity of explaining his conduct was given to the pursuer, who was not a member at the date of the alleged offence. The resolution was therefore invalid — Wertheimer on Clubs (3rd ed.), p. 113 *et seq.*; *Fisher* v. *Keene*, L.R., 11 C.D. 353; *Labouchere* v. *Earl of Wharncliffe*, L.R., 13 C.D. 346; *Dawkins* v. *Antrobus*, L.R., 17 C.D. 615. (2) The defender Manson, who presided at the meeting of the council, was disqualified in respect of bias. He was a trade rival of the pursuer's, and had therefore an adverse interest. That was sufficient to render the resolution invalid—*Leeson* v. *General Council of Medical Education and Registration*, 1889, L.R., 43 C.D. 366; *The Queen* v. *Gaisford*, [1892] 1 Q.B. 381; *The Queen* v. *Huggins*, [1895] 1 Q.B. 563.

Counsel for the respondents were not called on.

LORD PRESIDENT — This case has been very thoroughly argued before us, but I cannot say that anything which has been presented to your Lordships leaves any doubt in my mind as to the soundness of the very carefully prepared judgment of the Lord Ordinary, who has expressed in well-chosen language views which certainly commend themselves to my mind. In a case like this we are not sitting as a tribunal of review on the proceedings of the Society, but can only interfere if it can be shown that in some way or other the council has committed a wrong against one of their own members by breaking a contract with that member. The Society here is a society for the encouraging the breeding of Shetland ponies, that object being promoted by the keeping of a stud-book in which the pedigrees of the ponies are entered. I suppose that here, the Society not having been very long in existence, there is not the same certainty of pedigree as in the case of thoroughbred horses, and the Society had to take matters as they found them to begin with. Now that the stud-book has been going on for some time, it is quite evident that it would be of the utmost advantage to a pony-breeder to have a traceable pedigree in the stud-book, and it is also perfectly clear that that object could be effected only if the stud-book were kept accurate. Although it is necessary that the secretary of the Society should be able to check a pedigree which is given, it is absolutely necessary for him to rely upon the local information that is given him by those seeking to have an entry made in the book as to the immediate parentage of a foal which is sought to be entered for the first time. The pursuer in this case, who says he is a breeder of ponies, and is certainly a dealer, says he sold some ponies to an American and handed to the

American certificates in blank. Whether by accident or design we do not know, but these certificates were in fact wrongly filled up, and some of the ponies which were sold by the pursuer were accordingly entered in the stud-book as the stock of sires to whom they did not belong. That inaccuracy was noticed by one of the members of the Society, Mr Anderson Manson, and was reported to the Society. The council brought up the matter at a general meeting, and the general meeting remitted the matter to the council. The council called upon the pursuer to explain how certificates bearing to be signed by him came to contain the false information in question. The pursuer then gave the explanation that he had signed the certificates in blank, and the council considered the handing over of the certificates in blank such a grave offence in the interest of the Society, that they passed a resolution by which they suspended the pursuer as a member, and intimated that they would not receive any further applications from him up to and until the time when the whole matter could be dealt with by general meeting. What the general meeting did is not judicially known to us, but we have been told that the pursuer was expelled by the general meeting. That is neither here nor there so far as this case is concerned. The conclusions of the action are twofold. The pursuer wishes the resolution of the council reduced, and he wishes damages for the injury which such a resolution caused to his trade. Learned counsel has brought before your Lordships' notice cases in which clubs have expelled their members, but where they have not proceeded in doing so according to club rules or have otherwise failed to attend to the legal rights of the members expelled. In all the cases that have been quoted, there was no question that by the action of the committee of the club or society in question, a member was being deprived of his contractual rights. Here I have been unable to find any contractual right of the pursuer which has been violated. If he could have shown that one of the privileges which he obtained by admission to the membership of the Society was, as a matter of right, to have all entries tendered by him put into the stud-book, then I could understand the application of the cases cited. But there is nothing of that sort here. On the contrary, there is a very careful rule among the rules of the Society to the effect that the Society shall be entitled without cause shown to refuse any entry they like. The only operative part of the resolution was the refusal to entertain entries from the pursuer. I do not think that any argument can be founded on the use of the word suspension. Suspension may have a meaning in some cases, but I am satisfied that here it is a mere word, because there was nothing from which the pursuer could be suspended. In the present case I am satisfied that the council was acting in an administrative and not in a judicial capacity. I wish only to add that although proceedings for expulsion must be carefully gone about, I am far from laying down that it may not be within the power of a committee to protect themselves by a temporary measure of suspension till the whole body of the club can deal with the matter.

On the whole matter, therefore, I think the Lord Ordinary has come to a right conclusion, and that his interlocutor should be adhered to.

LORD M'LAREN—I agree with your Lordship and with the Lord Ordinary. In the Lord Ordinary's very careful examination of the grounds of action, the only one that presented any difficulty to my mind was the circumstance that Mr Manson took the chair at the meeting at which the investigation took place. The Lord Ordinary has not allowed weight to this consideration, because he says that Mr Manson at that meeting (from which he could not have withdrawn without leaving less than a quorum) took no active part in the discussion, but merely assented to what the others had done. I should be inclined to go further, and to point out that in every society where men combine to promote some common object, not of a social nature, such as, in the present case, pony breeding, a community of interest in the object to be promoted is essential to the existence and welfare of the society. It seems to me that a member joining such a society enters into a contract to abide by its rules, and in general his conduct will, under these rules, be investigated by his fellow members. Therefore I cannot think that, when such an investigation takes place, a valid objection can be taken to the presence of a fellow member at the investigation on the ground of community of interest, unless it can be shown that he has exercised an undue influence over the other members. I think in all such cases it must be left to the judgment and good feeling of the member whether he will come to the meeting or not, and I can well understand that Mr Manson might say—"I make no particular complaint that my stallion was entered as the sire of these foals, but I have an interest in seeing that the stud-book is reliable." I think in the circumstances that the Lord Ordinary's view is sound, and that it should be confirmed.

LORD KINNEAR—I am of the same opinion.

LORD PEARSON—I agree.

The Court adhered.

Counsel for Pursuer (Reclaimer)—Wilson, K.C.—Anderson, K.C.—Garson. Agents—Balfour & Manson, S.S.C.

Counsel for Defenders (Respondents)—Constable, K.C.—Valentine. Agents—Davidson & Syme, W.S.