the actions were sustained was, that these persons were also described as being *partners of the companies*. It thus came to be a settled rule, that in judicial proceedings in which a company having such a descriptive name is a party, it is requisite that, in order that it have a *persona standi*, it should be described by the names of some of its individual partners being added to its own descriptive denomination. But still the purpose of such addition is only to supplement its descriptive denomination by announcing that the company has as partners of it the persons whose names are so added. It is only to give effect to that rule that the names of Austin & Company and of Mr Wingate required to be added to the descriptive appellation of the Antermony Coal Company. And this being the case, it matters not whether or not *both* of them authorised the action. Either of them, in virtue of his legal *prepositura* in the company's affairs, had ample authority, without the consent or the knowledge of the other, to institute the action at the instance of the company, in order to recover a debt which is owing to it (as *in hoc statu*, must be assumed), and in the exercise of that authority that partner was entitled, and indeed bound, to describe the company by setting forth not only its descriptive appellation, but also the names of its partners.

It is only further necessary to state that it was necessary for Austin & Company, in so exercising its *prepositura*, to insert the name of the other partner as well as its own, because it has been further settled that the names of two partners at least must be so added to the description. This was found in the case of the London, Leith, Edinburgh, and Glasgow Shipping Company, 19th June 1841 (3 D. 1045). It was there suggested that although there might be propriety in requiring the names of three partners, as three persons make a *collegium*, yet that "*plurality is enough*." And in the present case the names of two partners are enough, because, besides being a plurality, they are all the partners of this company. I therefore think the allegation that Mr Wingate has not authorised the action is irrelevant as a defence against it.

Lord DEAS and Lord ARDMILLAN concurred.

The reclaiming note was therefore refused, with expenses.

Agent for Pursuers—William Burness, S.S.C.

Agents for Defender—Bruce, Lindsay & Paterson, W.S.

SECOND DIVISION.

WYLLIE AND OTHERS *v.* WYLLIE AND HILL AND JOHN HILL.

Title to Exclude—Arbitration. Terms of a clause of arbitration in a contract of copartnery, which held (alt. Lord Mure) not to exclude an action for exhibition of accounts against one of the partners.

The contract of copartnery of the firm of Wyllie & Hill, coalmasters at Govan and Glasgow, contained a clause to the effect that the representatives of a deceased partner are *ipso facto* by the death of their predecessors to be partners. Mr Wyllie, one of the partners, having died on 4th September 1861, this clause came into operation. Mr Hill, the surviving partner, raised an action of declarator in 1862, to have it declared that Mr Wyllie's representatives were not partners, but in this action he was unsuccessful. Mr Wyllie's representatives now raised this action of count, reckoning, and payment. Mr Hill, the defender, pleaded, *inter alia*, that the pursuers were not partners, and that he intended to appeal against the judgment of the Court of Session in the previous action. Alternatively, he pleaded that if the pursuers are partners, the present action is excluded by a clause of arbitration in the contract of copartnery in the following terms : — "The said parties agree, if any difference or dispute shall arise between them anent this copartnery, or the true meaning and intent of these presents, to submit and refer the same to the amicable decision, final sentence, and decreet-arbitral to be pronounced by John Geddes, Esq., mining engineer in Edinburgh; whom failing William M'Creath, Esq., mining engineer in Glasgow, as sole arbiter mutually chosen by the parties, with power to the arbiter to issue decreets-arbitral, partial or final, which decreets, when issued, shall be final and binding on the parties."

The Lord Ordinary (Mure) dismissed the action on the ground that the whole matter was reserved for the arbiters.

The pursuers reclaimed.

GIFFORD and R. V. CAMPBELL appeared for the pursuers and reclaimers.

GORDON and SCOTT for the defender.

The Court held that the question between the parties related at present solely to the first conclusion for exhibition of the firm's books, and for an account of intromissions. The objection which the defender made was simply that the pursuers were not his partners. Now, this was a matter which the Court had already decided in the pursuer's favour, and it could not be reasonably imagined that they were to allow the arbiters to become a court of appeal upon that point. As to the applicability of the submission clause to any other question between the parties no judgment was given. The Lord Ordinary's interlocutor was recalled, and the plea founded on the clause of arbitration was repelled in so far as it went to exclude the action. *Quoad ultra* a remit was made to the Lord Ordinary, and the defender was found liable in expenses.

Agent for Pursuers—Alex. Wylie, W.S.

Agent for Defender—John Walls, S.S.C.

COURT OF TEINDS.

Wednesday, July 4.

BUCHANAN *v.* MAGISTRATES OF DUNBAR.

Jurisdiction—Competency—Communion Elements. An application to the Court of Teinds for decree for communion elements, directed not against heritors, but persons said to be bound to furnish them under an obligation undertaken in 1618, held incompetent.

In the year 1860, the Rev. John Jaffray, then minister of the parish of Dunbar, raised a summons of augmentation, modification, and locality against the heritors of the parish, concluding for an augmentation of the stipend of the parish, with a competent yearly allowance for communion elements. On 16th January 1861 the Court of Teinds augmented the stipend to 21 chalders, "and that for stipend (the communion element money being paid by the burgh of Dunbar)."

It appeared that the Provost of the burgh had in the year 1618 consented on behalf of the com-

munity, "so oft as the communion shall happen to be celebrated thereanent, in all time coming, to furnish the elements to the celebration of the communion at the said kirk;" and accordingly a decree of modification of stipend pronounced in that year contains the following finding:—"And sic like the said commissioners, in respect of the consent of the said Mr John Aitchison, Provost of Dunbar, above written, finds and declares that the Provost, Bailies, Council, and community of the town of Dunbar above mentioned are and shall be obliged, so oft as the communion shall happen to be celebrate thereanent, in all time coming, to furnish the elements to the celebration of the communion at the said kirk." In subsequent decrees of modification of stipend pronounced in 1767 and 1833, the obligation of the burgh to furnish the communion elements, according to use and wont, was recognised. A dispute has arisen betwixt the minister and the magistrates as to the quantity of wine which the latter are bound to furnish, the minister contending that he is entitled to six dozen annually, while the magistrates say they are only bound to furnish as much as is actually necessary. The minister accordingly presented a petition to the Court, on the footing that the conclusion of the summons of 1860 were not exhausted, no decree having been pronounced for communion elements, in which he prayed the Court to "award and decern, to and in favour of the petitioner and his successors in office, serving the cure at the Kirk of Dunbar, in name of communion elements, by decree against the Magistrates and Town Council of Dunbar, as representing the said burgh and community thereof, either the annual allowance of twenty-two loaves of bread and six dozen of wine, as hereinbefore set forth, or else a money payment of £15 a year in lieu and place thereof; and to remit to the Lord Ordinary, before whom the locality of the stipend of the said parish is now depending, to give effect to said decerniture in framing and adjusting the locality of the stipend.

It was stated in the petition that "for upwards of sixty years the burgh of Dunbar had been in use to give the minister of the parish annually, in satisfaction of his claim against them for communion elements, twenty-two loaves of bread and six dozen of wine; but in the month of November 1865 it was officially intimated to the petitioner by the Town-Clerk that the Magistrates and Town Council hold that this allowance is too large, and that they intend in time coming to approximate the supply of bread and wine to the quantity which may be actually consumed in church at the celebration of the communion." It was also stated that "by this procedure on the part of the burgh of Dunbar the interest of the benefice will be injuriously affected, and it has in consequence become the duty of the petitioner, on behalf of himself and his successors in office, to take steps for having the allowance for communion elements put on a satisfactory and permanent footing, according to use and wont, or otherwise according to law."

The Magistrates stated in their answers that they were willing to implement the obligation upon them, but that in consequence of there being now a Chapel of Ease in the parish, and of the number of communicants in the Parish Church being thereby, as well as by the progress of dissent, considerably reduced, it was not now necessary that so much wine should be furnished as formerly.

GORDON, for the petitioner, argued—This is a petition in the augmentation process, the conclusions of which are not exhausted. It was omitted, when the augmentation was granted, to ask a decree against the Magistrates, in terms of the finding in the decree of 1618, and the use and wont which has followed thereon.

(Lord CURRIEHILL—Has this Court any jurisdiction to pronounce a decree for any sum of money not payable out of teinds?)

We have a finding or declarator in 1618 that the elements shall be furnished by the Magistrates in all time coming, and the Court has surely power to give effect to its own finding.

GIFFORD and D. B. HOPE, for the Magistrates, answered—This is not a demand made against the heritors. It is made against the Magistrates, but not *qua* heritors. The conclusion of the summons of augmentation was for a decree against the heritors, as intromitters with the teinds, for sums payable out of them. There is no conclusion against the Magistrates for communion elements.

The LORD JUSTICE-CLERK—I do not entertain any doubt in regard to this matter. It has been admitted that the demand is entirely unprecedented. It is admitted that this Court has never awarded a sum for communion elements, except in terms of a summons of augmentation, modification, and locality, and never except out of teinds. That itself goes a long way to show the incompetency of this Court to award what is asked out of the common good of the burgh. But further, the summons under which an augmentation was obtained in 1861 was framed in the usual way, and contained a conclusion for payment of the communion elements by the heritors who usually pay for them. The judgment granting the augmentation assigned as a reason for making no award for communion elements the fact that they were otherwise provided for. The conclusions, therefore, seem to me to be exhausted. We cannot pronounce the decree asked, partly because the conclusions are exhausted, and partly because what is asked is not within the conclusions; for what we are asked to do is to pronounce a decree, not against the heritors, but against the Magistrates of the burgh. Then, when we look to what was done in 1618, it seems to me to constitute an ordinary civil obligation founded on contract, and to be interpreted by use and wont. It was not a decree by the Court of Teinds, but a finding by a particular Commission of Parliament created for a temporary purpose, which lasted only one year, and which cannot be in any way regarded as the predecessor of this Court. I am therefore of opinion that this is an incompetent application.

The other Judges concurred, and the petition was accordingly refused as incompetent.

Agents for Petitioner — Mackenzie, Innes, & Logan, W.S.

Agents for Respondents — J. & J. Milligan, S.S.C.

COURT OF SESSION.

FIRST DIVISION.

CASSELS *v.* KEITH.

Poor—Adequacy of Relief—Boad of Supervision—Sheriff—Jurisdiction. Held that a party receiving temporary relief, and who was entered in the casual and not the permanent roll of paupers in a parish, was a pauper in the sense of the Poor Law Amendment Act, and that being in actual receipt of relief, the Sheriff