the prospectus is of the most general character. Every company of the kind must have special regulations for its management; and unless they are of some very exceptional and anomalous character, such as to be beyond the possible contemplation of the engaging shareholders, the circumstance of their being inserted in the articles of association will not, in the general case, infer any fatal variance from the prospectus.

In the present case, I think that no essential discrepancy exists between the prospectus and articles of association. The company was established for the purpose of brewing ale and beer in Edinburgh or its vicinity. So the prospectus bears. The articles of association do not transform it into a company for spinning cotton, or building vessels, or manufacturing wine, or brewing on any but the purest principles; nor do they change or extend the proposed locality of the company. The capital of the company is stated in the prospectus as £50,000, "with power to increase;" so it is stated in the articles of association. The objection is, that in one of the regulations for the management of the company, power is reserved to the company to reduce, if it seem expedient, the aggregate amount of capital, and to divide it into shares of larger or lesser amount. This is just one of those not infrequent regulations for the administration of such a company, very important to have in potential exercise, with a view, were there no other, to its financial guidance and prosperity. I consider its insertion in the articles to be no breach of the good faith of the prospectus. The argument of the defender has proceeded throughout on the fallacy of supposing that, whilst the prospectus sets forth a certain amount of capital, the articles of association set forth a reduced amount as fixed and absolute. But nothing of the kind occurs. The capital is maintained the same. The reduction is potential only. All that is done is to reserve to the company the power to reduce the aggregate amount, and to make the nominal shares larger or lesser; a power to be exercised by the voice of the shareholders, including Mr Gibson himself. I conceive that nothing is to be found here warranting a repudiation of the name and liability of a shareholder.

On only one other point was the alleged misleading said to exist. The prospectus set forth; "already a large number of gentlemen in the trade and others have become shareholders." It was contended that this was untrue in point of fact. The defender, as I conceive, has failed to prove that, in any sound sense, it was so.

I am of opinion that the Lord Ordinary's interlocutor should be affirmed.

Agents for Pursuer—Ferguson & Junner, W.S.
Agents for Defender—Murray & Hunt, W.S.

Wednesday, June 23.

SECOND DIVISION.

JAMES AIKEN JUN. *v.* ELLIOT.

Partnership—Company Debt—Admission by Individual Partner. Held (dub. LORD COWAN), that when an individual partner of a company admits a company debt, he is liable to be proceeded against in respect of such debt without the necessity of constituting by decree against the company.

This was an appeal from the Sheriff-court of Aberdeenshire in an action in which the appellant was convened for an alleged company debt of Aitken, Catto, & Co., of which the appellant was a partner along with two other parties. The other partners denied that the debt was a company debt; but the appellant, who had contracted it, admitted that it was so.

The Sheriff-substitute (COMRIE THOMSON), in respect of that admission, decerned against the appellant.

The Sheriff (JAMESON) adhered. He added the following note:—"The action was properly brought against the company, and the individual partners thereof, for the price of a share of a barque alleged to have been purchased by them. Two of the defenders, John Catto and Robert Catto, denied that there had been any purchase by the company. The appellant, however, candidly admitted that the debt in question was a company debt. Had he not done so, his plea would have been good, that it was incumbent on the pursuer to constitute his claim against the company before he could obtain a decree against him. His admission supersedes the necessity of such constitution against him, and he cannot insist upon the pursuer carrying on a litigation with the copartners merely to facilitate his relief. He must take his own course for that object. This result is not inconsistent with the doctrine founded on by the appellant, and stated in 2 Bell Comm., p. 619."

The appellant now appealed.

CLARK and ASHER, for him, pleaded that decree could not be given against an individual partner for a company debt, unless the decree in question was preceded or accompanied by a decree against the company as a company.

WATSON and THOMS in answer.

The Court adhered to the judgment of the Sheriffs. Their Lordships (*dub.* Lord Cowan) held that the rule that a company debt must be first constituted against the company was superseded in a question with an individual partner where that partner admitted the debt as due by the company. In a question with a partner so admitting, the debt was constituted against the company, and he, as a partner, was liable for the whole of it. If the appellant's view were adopted, the result would be that any one recalcitrant member of a company might prevent a creditor for an indefinite period from getting decree for a debt which all the other partners admitted.

The Sheriff-substitute's judgment in this case was dated 12th March 1869; that of the Sheriff was dated 14th April; and the appeal was brought into this Court on 18th May.

Agents for the Appellant—Henry & Shiress, S.S.C.
Agent for the Respondent—W. G. Roy, S.S.C.

Thursday, June 24.

FIRST DIVISION.

PERRENS & HARRISON *v.* BORRON & LITTLE.

Arbitration—Award exhausting the reference—Reservation of part of claim. Where a claim competent to one of the parties in a submission was not stated, but on the contrary was reserved by him, and the other party did not object, plea that the award (which contained a

reservation of the claim) did not exhaust the submission *repelled.*

In 1866 and 1867 the pursuers, clay merchants at Stourbridge, supplied the defender Borron, glass and bottle manufacturer in Glasgow, with clay for pots for manufacturing glass. Disputes arose as to the quality of the clay, whereupon the parties referred to Little "all claims, disputes, questions, and differences presently depending and subsisting between them." . . . . "Whatever the said arbiter shall determine in the premises, whether interim or final, to be pronounced by him within one month from the last date thereof." Little received claims, heard the parties, and then found that Perrens & Harrison claimed from Borron the sum of £126, 14s. 11d. for a quantity of clay supplied by the former to the latter on 2d and 4th April 1867, at the price of £116, 9s. 2d.; further, that Borron pleaded that he is not indebted in the said sum of £126, 14s. 11d., or any part thereof, in respect, (1) that the clay in question was of a very inferior quality, and not of the quality contracted for or required for his business, and it having been timeously objected to by him, he has suffered damage to an extent exceeding said sum; and (2) that, in any view, he is entitled to set off against said sum a claim of damages amounting to £683, 10s., which he pleads against the said Perrens & Harrison, in respect of the inferior quality of certain clays supplied by them to him between the months of May 1866 and April 1867; further found it proved that the clay, the price of which is so claimed for, and the clay in respect of which damages are claimed as above mentioned, was ordered and sold as of the best quality, and for the purpose of making pots in which to manufacture glass bottles; further, that the claimants, Perrens & Harrison, had failed to prove that the clay supplied to them on 2d and 4th April 1867 was of the best quality, but in respect Borron had used the whole of the said clay by making it into pots, a number of which have not yet been used, and in respect he had not offered to return the clay from which the unused pots were made, but has reserved all claim of damage competent to him in consequence of their alleged defectiveness through the bad quality of the clay, found Perrens & Harrison entitled to the price of the clay claimed by them, being £116, 9s. 2d., but reserved to Borron all claim of damages competent to him in respect of the unused portion of said pots Further, found it proved that the clay in respect of which the claim of £683, 10s. is made, was of bad quality, and not conform to order; and that Borron has suffered loss and damage thereby, for which the said Perrens & Harrison are responsible, and assessed the same at the sum of £450 sterling; further, found that Borron is entitled to set off this sum against the foresaid sum of £126, 14s. 11d., and that this sum being deducted from the said sum of £450, Perrens and Harrison are indebted to Borron in the sum of £323, 5s. 1d., and accordingly decerned and ordained Perrens & Harrison to make payment to Borron of the said sum of £323, 5s. 1d.

The pursuers were also found liable in expenses; and Borron's claim, in respect of the unused clay, was reserved.

The pursuers now sought reduction of the decree, on this ground among others—that it did not exhaust the reference. The Lord Ordinary (ORMIDALE) repelled the plea, on the ground that the submission expressly bore that the parties bound themselves to acquiesce in, implement, and fulfil whatever the articles should determine in the premises, in whole or in part, by decree or decrees arbitral, whether interim or final.

The pursuers reclaimed.

SCOTT for reclaimers.

WATSON for Borron.

GUTHRIE for Little.

The Court adhered, but holding that it was unnecessary to go on that clause of the deed. A general submission is limited by the claims of the parties. Borron's claim contained that reservation which the arbiter had given effect to, and no objection had been taken in the answer to that claim by the pursuers, who were thus barred from founding on the omission by the arbiter to dispose of a claim which had not been brought before him, and which might never arise. A submission could not be held unexhausted simply because a possible claim was not disposed of. The case was accordingly remitted to the Lord Ordinary for argument on the other grounds of reduction.

Agent for Pursuers—D. Curror, S.S.C.

Agents for Borron—Gibson-Craig, Dalziel, & Brodies, W.S.

Agent for Little—D. Macbrair, S.S.C.

Thursday, June 24.

SECOND DIVISION.

CAMERON *v.* LORD LOVAT.

Teinds—Valuation of Lands—Parish—Misdescription. Held that a misdescription of lands to the extent of being described in one parish, while they were really situated in another, could not support a plea of non-valuation, there being no question as to the identity of the lands, and the minister having been called in the process in which they were valued.

This was a declarator brought by the minister of Kilmorack to have it declared that certain lands in his parish are unvalued. The present question related to the lands of Ardnagrask, Tomich, and Barnyards, which were said to be situated in the parish of Kilmorack, and to have been valued by mistake as in the united parish of Urray and Gilchrist. The pursuer contended that, being valued in the wrong parish, the lands were unvalued; and the Lord Ordinary (BARCAPLE) sustained this contention, holding himself bound by an old decision referred to in the recent case of *Rescobie.*

The following is his Lordship's interlocutor:—

"The Lord Ordinary having heard counsel for the parties, and considered the closed record, productions, and whole process—Finds it is admitted by the defender that the lands of Easter Muilzie, Muilsie Riach, and Eilean Aigas are unvalued for teind: Finds that the only lands, or portions of lands of Ardnagrask, Tomich, and Barnyards contained in either of the decree of valuation founded upon by the defender, are there valued as lying within the united parishes of Urray and Gilchrist: Finds that, in so far as any portions of the said lands so valued as lying within the united parishes of Urray and Gilchrist may actually lie within the parish of Kilmorack, the same have not been effectually valued: Finds that the pursuer avers, and the defender denies, that portions of said last-mentioned lands are situated in the parish of Kilmorack: Allows to the pursuer a proof of his said averment, and to the defender a con-