formed, not at the pursuer's working-place, but at an "air-course." Special Rule No. 75 only applied where the workman was working at his ordinary working-place and at his ordinary work—that was, at the "working face" engaged in getting coal. "Working-place" was used in mining and also in the Coal Mines Regulation Act 1887 with this special restricted meaning, and not in the general sense of any place where the miner happened to be working. See section 49, General Rules 1 and 21. There was at least a dubiety as to the meaning of these words as used by miners which made it undesirable to decide the case without inquiry. Further, Special Rule No. 75 did not apply, because it only forbade working when no timber at all was supplied. Here timber was supplied, although it was unsuitable for this particular purpose in respect of length. General Rule 22 enacted that "suitable timber" should be provided, whereas the expression used in Special Rule 75 was "a sufficient supply of timber." (2) Whether Special Rule No. 75 applied or not it did not afford a good defence to this action, in respect that, if the pursuer acted in contravention of its provisions, he did so in obedience to the orders of the oversman, and the employer was not entitled, for the purpose of barring an action against him at the instance of his workman, to found upon the workman's contravention of a rule which the employer's superintendent had ordered the workman to disregard—*Campbell* v. *Calderbank Steel and Coal Company, Limited, cit.*, see especially *per* Lord Trayner at page 759; *Marley* v. *Osborn* (1894), 10 T.L.R. 388. [Lord Trayner—In that case the rule contravened was merely a rule promulgated by the employer, which he could alter or dispense with. It is different when the rule contravened is statutory, and can only be altered by the Legislature.] The special rules can be altered without the intervention of the Legislature. The case of *Heaney* v. *Glasgow Iron and Steel Company, cit.*, was distinguished from the present in respect (*a*) that there it was not disputed that Special Rule No. 75 applied, and (*b*) that no special order to go on working was averred.

At advising—

Lord Trayner—The decision in the case of *Heaney* to which we were referred by the defenders does not appear to me necessarily to govern the present case. The pursuer's averments in that case are not identical with the averments made by the pursuer here; and it may turn out that the difference between them is sufficient to lead to a different result as to their relevancy. On the relevancy of the averments before us I think it is not desirable at the present stage to pronounce any judgment. It seems to me that the better course is to adhere to the course adopted by the Sheriff-Substitute, and before answer to allow a proof. The questions of law which have been raised on the construction and application of the general and special rules appear to me to make the case unsuited for jury trial. The case should be remitted to the Sheriff to proceed, with power to him to dispose of the expenses of this appeal as part of the expenses in the cause.

Lord Young and Lord Moncreiff concurred.

The Lord Justice-Clerk was absent.

The Court pronounced the following interlocutor:—

"Dismiss the appeal: Before answer, allow the parties a proof of their averments and remit the cause back to the Sheriff-Substitute to proceed therein: Find the expenses of this appeal to be expenses in the cause."

Counsel for the Pursuer—W. Thomson. Agent—Richard Johnstone, S.S.C.

Counsel for the Defenders—Salvesen—C. K. Mackenzie. Agent—W. G. L. Winchester, W.S.

Wednesday, November 2.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

KESSON *v.* ABERDEEN WRIGHTS AND COOPERS' INCORPORATION.

Corporation—Ultra Vires—Management of Funds—Effect (1) *of Usage and* (2) *of Contract in Limiting Power of Dealing with Corporate Funds.*

A trade incorporation, whose exclusive trading privileges were abolished in 1846, in order to induce persons to become members, issued a scale of allowances and annuities to which members would be entitled out of the corporate funds in return for payment of certain fees on entry.

A member who had entered on this footing brought an action against the incorporation to have certain annual expenditure out of the corporate funds on social entertainments declared illegal and interdicted.

Held (1) that there was nothing in the contract between the pursuer and the incorporation to limit the previously existing right of the latter to administer its funds in accordance with the practice of the incorporation at the time the contract was entered into; and (2) that the pursuer had failed to prove that the expenditure in question was inconsistent with the constitution or the established usage of the incorporation.

Expenses—Trade Incorporation.

A trade incorporation *held* entitled to charge upon the corporate funds the expenses of unsuccessfully defending an action against it by one of its members.

This was an action at the instance of Mr John Kesson, carver and gilder, Aberdeen, against the Aberdeen Wrights and Coopers'

Incorporation, and the office-bearers and managers thereof, of which body the pursuer was what was called a "superannuated" member. The action concluded for declarator that "the defenders, in administering and managing the funds of the said Incorporation or trade acted *ultra vires*, illegally and incompetently, and in breach of the trust reposed in them by the constitution of the said Incorporation or trade, and of the contract entered into between the said Incorporation and the pursuer on his admission thereto, in making the following disbursements from the funds thereof during the year from October 1895 to October 1896, viz.—*First*, an item amounting to £43, 4s. 7½d. entered in the accounts of the Incorporation for the said year, under the heading 'Audit and Election Expenses;' *Second*, an item amounting to £27, 10s. 2d. entered in the said accounts under the heading 'Huntly Jaunt;' *Third*, an item amounting to £5, 10s. 1½d. entered in the said accounts under the heading 'Christmas Eve Expenses; *Fourth*, an item amounting to £5, 10s. 4d. entered in said accounts under the heading 'Marches Visitation;' and *Fifth*, an item amounting to £2, 7s. 10d. entered in the said accounts under the heading 'Deficient on Assembly, 24th January." There was a further conclusion for declarator that in determining the annuity due to the pursuer the defenders were not entitled to take the above payments into account, and for interdict against laying out any funds of the Incorporation in these or similar payments, or from paying out of the funds the expenses of a Sheriff Court action which they had defended unsuccessfully against the pursuer.

The Incorporation had existed in Aberdeen from time immemorial, the seal of cause having been obtained from the Provost, Bailies, and Council in 1527. Originally the members of the trade possessed the exclusive privilege of carrying on their trade of wrights and coopers within the burgh of Aberdeen, but by the Act of 1846 (9 and 10 Vict. c. 17) this privilege was abolished. The pursuer became a member of the Incorporation in August 1880, paying entry dues of £106. At that time there were two classes of members, viz., "table members," being those who had the active management of the Incorporation's affairs and "superannuated members.' By the rules of the Incorporation those who had been members for ten years, and were at least fifty years of age, might claim from the funds of the Incorporation an annuity or superannuation allowance, and as soon as they did so they became "superannuated," and ceased to take any part in the management of the Incorporation affairs.

The rules which were in vogue when the pursuer joined contained the following provisions with regard to this allowance:—"*5th.*—That the trade has the right to increase or diminish the allowances to superannuated members as the state and future prospects of the funds may admit. The increase shall be made by a uniform percentage being added to the annuity at each age on the superannuation table now adopted, and every reduction of the allowances by the same uniform deduction. *6th.*—That no member has a right to claim admission upon the funds until he is fifty years of age and has been ten years a member, but the trade may, in urgent and necessitous cases, superannuate a member according to the table of payments at an earlier age, or give him a temporary advance by warrant." Appended to the rules was a table containing the scale of allowance to be made to annuitants having regard to the age at which they claimed it, and a note was appended to that table stating that "Any increase to or diminution from this table is to be made by a uniform percentage being added to or deducted from the above allowances at all ages."

The pursuer applied for an annuity in October 1896, and was offered one of £25, 0s. 6d., being at the rate fixed in tables issued in 1889. He maintained, however, that the state of the funds admitted of a larger annuity being paid to him and the other annuitants, and that it at anyrate should not be less than £27, 16s., which was the rate he would have obtained according to the tables of 1877, which were in force when he entered. He called upon the defenders to make an actuarial investigation into the state of the funds, and after demanding exhibition of the books, which was refused, raised an action in the Sheriff Court for exhibition, in which he was successful, the Sheriff pronouncing an interlocutor on 7th November 1896, whereby he found that the pursuer was entitled to exhibition of the books, and found the defenders liable in expenses.

The pursuer thereafter raised the present action. He averred with respect to the payments specified in the summons:—"The entertainments on which they were spent are not immemorial customs of the Incorporation, but are all innovations of comparatively recent date, and have frequently been protested against by the pursuer and others. The pursuer while a table member endeavoured to keep them within as narrow limits as possible, but in spite of his efforts said payments have been increasing from year to year. The payments now complained of were wholly *ultra vires* of the defenders, and were made illegally and unwarrantably in breach of the trust reposed in the defenders as the managers of the funds of the Incorporation, and to the serious prejudice of the pursuer and the other annuitants and beneficiaries presently entitled by the terms of the constitution to participate in the funds. The said payments were made without the consent of the pursuer or the other annuitants or beneficiaries, who did not participate in the various entertainments specified, and they were entirely unnecessary in connection with the proper conduct of the Incorporation affairs. The purposes on which they were spent are not included among the benefits to which members are entitled under the rules of the Incorporation. No provision is made in the constitution or rules of the Incorporation for spending its

funds on such purposes or any of them. But for said illegal and unwarrantable payments the state and future prospects of the funds of the defenders' Incorporation for said year 1895-1896 would have been amply sufficient to admit of payment to the pursuer of his annuity of £27, 16s., and of proportionally increased annuities being paid to the other superannuated members of the Incorporation."

The defenders maintained that the pursuer was entitled only to the amount offered by them in accordance with the rates in the new tables, which had been framed at meetings at which the pursuer had been present.

They averred "that the payments in question are in respect of proper and competent expenses incurred according to the immemorial use and wont of the Incorporation and of other similar societies, and are not *ultra vires* of the defenders, or illegal in any way. They are not in any way innovations or of recent introduction. Explained that the promotion of social intercourse among the members has always been and still is one of the objects of this Incorporation, as of all the trade incorporations of this country, and is one of the means by which the life and popularity of the Incorporation are maintained. The opportunities for social intercourse among the members which such incorporations afford have throughout their history supplied an effective inducement to members to continue as table members after they become entitled to superannuation. Inasmuch as superannuation involves forfeiture of the right to take part in these social meetings, many members who are in comfortable circumstances and heartily support the funds and objects of the Incorporation prefer to continue as managers and table members of the society rather than to exchange their rights and duties as such for the annual dole to which the superannuated member is entitled. With regard to the five payments objected to, it is explained as follows:—(4)'*The Audit and Election Expenses.*'—Annually the accounts of the boxmaster are presented to the trade, and six members of the trade and the deacon are appointed to audit the accounts. The auditors meet separately in pairs in the hall of the Trades and go over the accounts. After the auditors have thus gone over the accounts separately they have a general meeting, at which they confer on the terms of the accounts, and these on being passed are thereupon presented to the trade at the annual general meeting at which the election of office-bearers for the ensuing year is made. After the election the annual dinner of the trade is held. It is attended by the members, and each member is entitled to invite a guest. Past office-bearers, who are on the annuitant list, are also invited, and the annual attendance averages from sixty to eighty. After the annual dinner the settlement meeting for considering the state and prospects of the funds and fixing the allowance to beneficiaries is held. The sum entered under the head of audit and election expenses includes the expense of the annual dinner, and of the meetings of the auditors and of the general meeting. The sum entered in the accounts for the year from October 1895 to October 1896 under this head is, owing to special circumstances, somewhat higher than usual, the average expenditure on the audit and election for the last ten years being £28, 6s. (2) '*The Annual Jaunt.*'—This is an annual summer outing, or picnic by the table members of the trade to some place of interest in the vicinity of Aberdeen, and is attended by members of the trade only. (3) '*Christmas Eve Expenses.*'—Under the old constitution of the trade the office-bearers were alternately wrights and coopers. The coopers of Aberdeen were at one time a numerous and widely-known body. But the craft decayed, with the result that the few cooper members of the joint trade enjoyed far more than the fair share of office-bearing which should have fallen to their number. This preponderance of the coopers led to somewhat keen feeling in the trade, and after much negotiation in 1873 the old method of choosing office-bearers was abolished, and it was agreed that office-bearers should be in future chosen irrespective of whether they were coopers or wrights. To commemorate the healing of this old dispute, about which much keen feeling had arisen, an annual trade supper was instituted, and is regularly held on Christmas Eve. (4) '*The Marches Visitation.*'—This is a time-immemorial custom. The members of the trade have always annually paid a visit of inspection to their properties. Part of their property consists of an estate a few miles from Aberdeen, and the sum entered in the accounts under this head covers the hirer's account for providing horses and vehicles and the cost of light refreshments at the nearest place where such can be procured. (5) '*Assembly.*'— There has also been from time immemorial an annual trade ball or assembly. The members of the trade subscribe by buying tickets to defray the expense of this entertainment, and when, from the presence of official guests or otherwise, there is a deficit on the funds, that deficit is paid from the funds of the trade. Explained further that when the pursuer joined the society he was well aware of the character and usages of the body of which he became a member, and of the social meetings of which he now complains. During the whole fifteen years that the pursuer was himself a table member, and during part of which he was himself boxmaster or treasurer, and subsequently deacon, he attended with regularity all the social functions, of the expense of which he now complains."

The Lord Ordinary (KYLLACHY) on 15th July 1897 allowed parties a proof. The purport of the proof sufficiently appears in the opinions of the Court *infra.*

The Lord Ordinary on 17th December pronounced an interlocutor by which he assoilzied the defenders from the conclusions of the action.

Opinion.—"The pursuer here is what is called a superannuated member of the

Incorporation of Wrights and Coopers—one of the seven incorporated trades of Aberdeen—and he brings this action in order to have certain expenditure by the corporation declared illegal, and interdicted. The expenditure consists of certain annual payments connected with what have been called 'social functions,' and amounted during the past year to £86. The particular payments are—(1) £43, 4s. 7½d., entered in the accounts under the heading 'Audit and election expenses,' (2) £27, 10s. 2d., entered under the heading 'Huntly Jaunt,' (3) £5, 10s. 1½d., entered under the heading 'Christmas Eve Expenses,' (4) £5, 10s. 4d., entered under the heading 'Marches Visitation,' and (5) £2, 7s. 10d., entered under the heading 'Deficient on Assembly.'

"The pursuer challenges these several outlays (1) as constituting an illegal application of the corporate funds, and (2) as involving an alleged breach of contract between him and the corporation.

"There is not, I think, any reason to doubt the pursuer's title to sue if he has a case on the merits. He does not, it will be observed, sue simply as a member of the corporation. He has, or alleges he has, certain contract rights which give him a direct patrimonial interest in the disposal of the corporate funds. His case is not, therefore, within the principle of the case of *Ewing* v. *Glasgow Police Commissioners*, 15 S. 389, 1 M'L. & R. 847, or of the cases of *Lauder*, *Inverurie*, and others there referred to. The doctrine of those cases is that an individual corporator cannot merely as such complain of misapplication of the corporate property, the title so to complain being in general confined to the Crown—*Muir* v. *Rodger*, 9 R. 149. But the pursuer here alleges certain rights by contract to a superannuation allowance depending for its amount on the state and prospect of the corporate funds. And that—although a contingent interest—has been held in various cases to give a sufficient title to sue—*Rodgers*, 5 D. 295; *Alexander*, 5 D. 127; *Morrison*, 16 D. 86.

"Neither does the present case—as I understand it—raise or involve questions such as occurred in the cases of *Scotland* v. *Fleshers of Glasgow*, 3 W. & S. 209, and *Thomson* v. *The Wrights and Masons of Edinburgh*, 16 S. 842, cases which were referred to at the debate. The pursuer is not here claiming any annuity or other allowance alleged to be due to him. He may have right so to claim, or he may be open to answers founded on the contingency of his right. But that is not at all the question which is here raised. All he at present asks is that the funds in which he has at least a contingent interest shall not be misspent.

"The question is therefore solely as to the lawfulness of the impeached expenditure. And that question is quite properly raised. But here again it may be well to narrow the issue by pointing out that there is in this case no suggestion of encroachment on capital, or violation of some condition expressed or implied in the defenders' charter, that is to say, in their seals of cause. It has been held more than once that a corporation cannot lawfully divide its capital stock among its existing members—*Muir* v. *Rodger*, 9 R. 149, and cases there cited. That probably follows from its character as a corporate body having perpetual succession. It is perhaps also the law that for the same reason a corporation is debarred from systematically encroaching upon its capital so as to procure or accelerate its own dissolution. And it is certainly settled—and is indeed trite law—that no corporation can do anything contrary to its constitution as expressed in its charter. But the defenders make no claim to encroach upon capital. They claim only right to continue a certain annual expenditure out of annual income. Neither is there any suggestion that there is anything in either of the seals of cause (which, as I have said, form the defenders' charter) touching the matter of the application of the corporate funds.

"Now, all this being so, what is the principle to be here applied? I think it is this—that, subject to the qualifications I have just expressed, every corporation has *prima facie* the free management of its property; but while that is so, its freedom of management may be further controlled either (1) by usage sufficient to import implied conditions into its charter; or (2) by contract express or implied between the corporation and its members. The case of *Sanderson* v. *Lees*, 22 D. 24 (the Musselburgh case), is an example of the first exception. The case of *Scotland*, before referred to, is an example of the second. There, claims, originally eleemosynary, depending on discretion and goodwill, became, by the introduction of certain contractual elements, converted into legal rights.

"*First*, then, as to usage, I must observe, to begin with, that this seems to me to be a kind of case in which it would be more than usually difficult to import by usage into the constitution of the corporation, conditions affecting the use of its corporate funds. The corporate funds are here derived, not from any grant or foundation, but from the contributions of the members. Originally, therefore, it is presumable that what the members contributed they had a right to spend; and to displace that presumption by contrary usage would require, I should think, usage of a very unequivocal kind. But it is not really necessary to pursue that line of reasoning, because I am of opinion upon the evidence that so far from the usage here being adverse to the continuance of these social functions, the usage, so far as it goes has been quite the other way. There has been always, throughout the whole history of this corporation, a certain expenditure, not only on charities and subscriptions to public objects, but in dining, supping, and similar forms of entertainment. The audit and election dinner goes back to the earliest period. The expenditure at the visitation of marches goes as far back as there were marches to visit. The annual jaunt goes

back for at least thirty years. The Christmas supper (commemorative of the settlement between the coopers and the wrights) goes back to 1872; and the trifling payment towards the deficiency in the annual assembly goes back at least to 1874. It is true that the amounts expended have of late years increased; but they have not done so much, if at all, out of proportion to the increase in the corporate income. And it does not appear to be material, when the kind of expenditure is once recognised, whether it has at particular times been more or less liberal than might be approved by outsiders. Abuse of corporate funds can of course be checked. It may become a ground of forfeiture by the Crown, but the Court can only interfere on the ground of illegality. Its function in such matters is, as Mr Bell points out, not visitorial but purely judicial—Bell's Prin. 2178.

"It must therefore be taken that the pursuer's case—if he has a case—rests on contract. Now, how does that matter stand? He joined the corporation in 1877, and I think I must hold that by that time the relations of the corporation towards its members were not what they had originally been. Originally each member at entry paid certain sums greater or less, and for this he received certain trading privileges, and had also the prospect of certain benefits if he became disabled or fell into poverty. But even prior to the abolition in 1846 of the trading privileges, the benefits granted by the corporation to its decayed members and their widows and children had ceased in practice to be charity, or to involve anything of the nature of a poverty qualification. There was still, perhaps, no legal claim; but in point of fact every member of the corporation who had been so for a certain time got a pension or allowance on a fairly definite scale; and the widows and orphans of deceased members were treated in the same way. This had been, as I have said, the practice for many years. And by 1865—if not earlier—the practice which had thus crept in took a definite shape, and the society (having shortly before dropped the formality of designing its annuitants as 'the poor of the trade') began to publish, as an inducement to entrants, a certain scale of allowances, payable under certain conditions, and contingent only upon the state and prospects of the corporate funds. This was certainly so in 1877, when the pursuer joined, and the Handbooks, Nos. 12, 28, and 29 of process, shew very distinctly what sums he had on one hand to pay, and what on the other hand were the benefits he was led to expect. What the pursuer contends is that in these circumstances he had not only a legal claim on the funds of the corporation—a claim not less contractual because so far contingent—but that the contract made with him implied, *inter alia*, that the corporate funds should in future be administered no longer simply as corporate funds, but according to the rules applicable to trust funds, and in particular to the trust funds of a benefit society."

"Now, I am disposed to agree that the pursuer has a contract right to payment of such annuity as the income of the corporation duly administered (and of course duly apportioned) can afford. But the question is what is the kind of administration for which he (the pursuer) is to be held as having contracted. And here I am unable to go along with his arguments. I think that he—and others like him—must be held to have contracted with reference to the existing (and *ex hypothesi* lawful) mode of administration existing at the date of his entry. It may be that he obtained (or, if the expression is preferred, purchased) a certain interest in the funds of the corporation; but the interest which he so obtained was an interest in corporate funds managed as those funds had always been, and subject to such preferable or competing charges as had been recognised and were known to exist. I do not, I confess, find grounds for carrying the pursuer's right further than this. And that being so, I do not see my way to sustain his objections to the items of annual outlay which are in question. As I have already said, these outlays are not in themselves illegal—that is to say, contrary to the law and usage of the corporation. Nor is there any doubt that they were customary at the date of the pursuer's entry, and well known to him and other entrants. It is, in my opinion, impossible in these circumstances to hold that the pursuer by simply entering the corporation on the usual terms, contracted for the discontinuance of these payments. In point of fact, the pursuer's position is with respect to this whole matter somewhat unfavourable. He not only knew generally when he joined in 1877 how the corporation applied its income, but he was for many years a party to, and took the benefit of, the expenditure of which he now complains. I do not say that that sets up, as contended by the defenders, a plea of personal bar. But it makes the pursuer's case, so far as founded on contract, at least more difficult. . . .

"I have only to add that I am not to be held as indicating that the defenders may extend indefinitely the limits—hitherto, I think, not immoderate—of the expenditure on social functions. When a corporation enters into contractual relations with its members it is upon delicate ground, and in such matters as those in question innovations in degree may very well become innovations in kind.

"On the whole matter, however, I have come to the conclusion that the defenders have not acted unlawfully, and that they are entitled to absolvitor."

The pursuer reclaimed, and argued—The money which was spent in this way was spent, not by the Incorporation itself, but by certain of the members, who were diverting the funds for the purposes of their own enjoyment. What had originally been a very small item had been increased until it formed a serious charge upon the funds. The expenditure in question was all of recent origin except that in connection with the election dinner and

the visiting of the marches; the former of these had originally been of very small amount, and in substance nothing but refreshment to members of the Incorporation while engaged in its business. Even so it had frequently been discontinued for long periods of years by resolutions of the Incorporation which had never been formally cancelled. It had now become a pure social function involving a twenty-fold cost. The expenditure under these heads used to be only a very few pounds. Now the expenditure under the heads complained of was about £90 out of an income of £1100, and it could not be said that it formed part of the legitimate costs of management. Accordingly the pursuer as a member of the Incorporation had a right to challenge these payments apart from his rights under a direct contract to be paid a specified annuity—*Fleshers of Glasgow* v. *Scotland*, January 28, 1826, 4 S. 405; *Howden* v. *Incorporation of Goldsmiths*, June 2, 1840, 2 D. 996; *Rodgers* v. *Incorporation of Tailors of Edinburgh*, December 10, 1842, 5 D. 295; *Morrison* v. *Incorporation of Fleshers of Edinburgh*, November 24, 1853, 16 D. 86; *Anderson* v. *Incorporation of Wrights of Glasgow*, February 10, 1865, 3 Macph. (H. of L.) 1. The expenses of the unsuccessful defence in the Sheriff Court action were not chargeable against the annuities—M'Laren, Wills and Succession, sec. 2328; *Cameron* v. *Anderson*, November 12, 1844, 7 D. 92.

Argued for respondents--The quality of a corporation with its rights and incidents had not been abolished by the Act of 1846, and it was not as the pursuer stated merely a benefit society. Such bodies as theirs devoted a great deal of money to hospitality, which was one of the ordinary incidents of administration. *Prima facie* there was no restriction as to their disposal of their funds subject to "constitutional limits," and from the beginning they had entertained in a frugal sort of way; any increase in the scale of entertaining was only proportionate with the increase in their income. The "table members" were the corporation, and expenditure by them was by the corporation and not as the pursuers maintained by a part of it.

At advising—

Lord President—The title of the pursuer was not disputed in so far as he challenges appropriation of moneys to purposes alien to the objects of the Incorporation. His right rests on contract but his contract, as I read it, does not limit the right of the Incorporation to spend their money on purposes otherwise lawful to them and to do this before increasing his annuity. The question is whether the expenditure objected to is on purposes unlawful to the Incorporation. Now, on the one hand, it cannot be held that the Incorporation has an arbitrary power to do what it likes with its funds, and this was not contended on its behalf. On the other hand, it is inaccurate to represent the Incorporation as merely a benefit society. The abolition of its monopoly left the Incorporation with little else to do, but its position is not quite the same as if it had originally been instituted for that one specific purpose. I may here observe that the Act of 1846 has not the radical and sweeping effect which has been ascribed to it. It took away the monopolies of the incorporations but it left the incorporations standing. This Incorporation elects its office-bearers just as before, it retains its dignified relations to the town, and it has been and is customary to make contributions out of its funds to public purposes connected with the town. The records of the Incorporation show that, after as before the abolition of the monopoly, there was a certain amount of very modest entertainment charged to the Incorporation. It is true that it would appear that this eating and drinking was on occasions when business was being or had been transacted, and may well be regarded as more or less necessary refreshments, but very likely the same explanation might be found for the gaudy days of less austere communities. It is true also that now and then, when debt had to be cleared off, or perhaps when cakes and ale were in temporary disgrace, there are resolutions to discontinue the application of the funds to those purposes. But by the time this action was raised, and by the time this pursuer had joined, it might safely be asserted that the custom of the Incorporation, sometimes interrupted but persistent, was to spend some money on entertainments. And once this is established it is evident that the question of amount is in the region of administration, and that the growth of the estate and the change of social customs preclude the idea of a stereotyped allowance.

The not very exacting argument of the defenders, I think, derives help from the fact that this is an Incorporation the scope and methods of which are to be gathered from custom, and which is not to be checked and questioned on every point of more or less. But their main reliance is on more general grounds. This Incorporation has an aggregate estate, the capital value of which is about £36,000, much of it invested in land. A good deal of pains and attention is given by the table members to the business of the Incorporation without fee or reward, and this volunteer work is said (without contradiction) to be well and usefully done. It pleases these gentlemen to have an annual trip of people connected with the institution and their friends, and it is said with much plausibility that this keeps everybody in good humour, keeps up *esprit de corps*, and encourages the attention of the attentive. I mention this jaunt, because the pursuer's counsel seemed to think it the strongest part of their case, and it is so to this extent, that the jaunt is without ancient precedent, and is not on the day of any work done. But then if, for example, the dinner were now to be held, not on the day of election, but on some different day, I do not think its legality would be much affected, and I am satisfied that the having a dinner is quite legal. Well, then, speaking of this as a

matter of estate management, can it be said that an annual jaunt rises to the dignity of an illegality? It is not said, be it observed, that the jaunt any more than the other entertainment is conducted extravagantly — that would open a different chapter—the objection to the jaunt especially, but also to the other entertainments, is that such things ought not to be held at the cost of the Incorporation, and that this outlay is illegal.

I adopt the moderate and, as I think, very sensible views of the Lord Ordinary. They cover all the disputed items of entertainment, including the commemoration ball, which, although it cannot claim a high antiquity, is a very modest addition to the sober hilarity of this corporation.

As regards the costs of the Sheriff Court litigation, I do not think the pursuer can successfully challenge them as an item affecting the whole account. The Incorporation was held to be wrong in the suit, but this does not make it the less a proper debt of the Incorporation.

Lord Adam and Lord Kinnear concurred.

Lord M'Laren was absent.

The Court adhered.

Counsel for the Pursuer — H. Johnston, Q.C. — Chree. Agent — Alex. Morison, S.S.C.

Counsel for the Defenders—Balfour, Q.C. —Clyde. Agents — Auld & Mackenzie, W.S.

Friday, November 4.

FIRST DIVISION.

[Sheriff Court of Aberdeen.

BELMONT LAUNDRY COMPANY *v.* ABERDEEN STEAM LAUNDRY COMPANY.

Process—Summons--Competency--Accumulation of Defenders—Reparation—Breach of Contract by Servant.

In an action of damages raised by an employer against a servant who had left his employment in alleged breach of contract, and against another employer who it was averred had induced the servant to break his contract either directly, or by "harbouring" in the knowledge of his contract, the summons concluded against the defenders "conjunctly and severally" for a lump sum of damages. *Held* that the action was competent as laid.

An action was raised in the Sheriff Court of Aberdeen by the Belmont Laundry Company, Limited, against The Aberdeen Steam Laundry Company, Limited, and Robert Innes, manager of the last-named company, craving the Court "to grant a decree ordaining the defenders conjunctly and severally to pay to the pursuers the sum of £150."

The grounds of action as stated by the pursuers were as follows:—The pursuers engaged the defender Innes as their manager on 5th March 1896, on the footing that his salary for the first three months would be at the rate of £100 per annum, and in the event of his giving satisfaction a rearrangement on more favourable terms would be made at the end of that period. Innes commenced his engagement on 16th March, and at the end of three months—as averred by the pursuers—he was re-engaged by them as a yearly servant at the salary of £125 per year, which amount was increased to £135 in 1897.

The pursuers averred—("Cond. 5) On or about 27th August 1897 the defender Robert Innes intimated to the pursuers his resignation of his position of manager of their laundry as he had received another appointment, and his desire to leave a fortnight thereafter, and the pursuers shortly afterwards learned that he had been induced to break his engagement with them through the continued solicitations of the other defenders, who had approached him through their directors, and by their offers to give him an increased salary in the event of his leaving the pursuers and going to them. The pursuers declined to accept the resignation of the defender Innes, and intimated to him and to the defenders, the Aberdeen Steam Laundry Company, Limited, that as the defender Innes's engagement with them did not expire till 8th March 1898, they would be both held liable in damages in the event of the defender Innes failing to fulfil his engagement. Notwithstanding this, the defender Innes left the pursuers' employment on or about 27th September 1897, and entered on an engagement with the defenders, the Aberdeen Steam Laundry Company, Limited, in whose employment he presently is. The defenders, the Aberdeen Steam Laundry Company, Limited, allowed the defender Innes to leave the pursuers and to enter their service in the full knowledge of his contract, in the face of the pursuers' warning, and without taking, as they were bound to do, sufficient steps to satisfy themselves on the subject of his contract with the pursuers. In any event (assuming that the defender Innes had no fixed engagement with the pursuers) he was bound in his position as manager of the pursuers' works to give them not less than three months' notice of his intention to leave. In failing to do so he acted wrongfully and illegally. In accepting his services as they did, the defenders, the Aberdeen Steam Laundry Company, Limited, acted wrongfully and illegally and in prejudice of the pursuers' rights. (Cond. 6) The pursuers' business was much dislocated through the defender Innes leaving them as he did, and through the other defenders' illegal and unwarrantable conduct in enticing him to do so, and in accepting his services after they were warned by the pursuers of his contract with them, and the pursuers were unable to secure a suitable manager to fill his place, and they have suffered loss and damage thereby. They have also suffered loss and damage through