a new state of things, but if we were to make a reservation in this decree it might only give rise to an erroneous notion, with regard to the effect of that reservation, and it might be interpreted into a judicial determination of some point which has not yet arisen. I think my noble and learned friend will probably agree with me, that as there is nothing in the facts of the case rendering any reservation necessary, it is not a usual thing, or a desirable thing, to make a reservation which is uncalled for by the circumstances in the decree which we propose to pronounce.

LORD COLONSAY.—I do not think that that would be the result afterwards. I only propose that we should decline to pronounce anything with regard to the surface.

LORD WESTBURY.—There are no facts calling upon us for any judicial declaration as to that.

LORD CHANCELLOR.—Will my noble and learned friend who has just been addressing the House be kind enough to state, whether there is anything in the action from which the defender would now be assoilzied, which puts in dispute any questions in respect to the surface. I am not aware that the defender in any way raises a question as to the rights upon the surface.

LORD COLONSAY.—The defender does not set up any such right.

LORD CHANCELLOR.—Then no prejudice to the pursuer in this action could possibly arise in any new action, upon a totally different cause of action.

LORD COLONSAY.—It was to prevent any question of that kind arising, that the reservation was inserted in the interlocutor of the Lord Ordinary.

LORD WESTBURY.—The summons contains a declaratory conclusion, upon which in truth we have no necessity to come to a determination, by reason of there being no facts warranting it. If there should be hereafter facts to warrant any such conclusion, then that would not be interfered with by our present decision.

Lord Advocate.—If I am not out of order, will your Lordships permit me to suggest—

LORD WESTBURY.—I think you are out of order. We cannot hear any further argument now.

Lord Advocate.—I must appeal to your Lordships' indulgence. I am stating no argument. I merely wish to ask my LORD COLONSAY to inform your Lordships, that the word "absolvitor" has a technical meaning in Scotland, and that it imports a judgment upon the merits—upon the substance of the conclusion.

LORD WESTBURY.—That raises an argument. We shall necessarily have a contradiction and contention upon that. I think it must remain as we have put it.

Lord Advocate.—Surely, my Lords, your Lordships will hear one word.

LORD WESTBURY.—We never do so after we have decided a case; we do not hear a supplemental argument. If we were to give way, and grant an indulgence to any one who desired to say anything more, we should have a repetition of the whole argument from beginning to end.

LORD COLONSAY.—I must say I think the safest course would be to put in the reservation.

Lord Advocate.—There is a reservation generally in absolvitors in Scotland in similar cases.

Interlocutors reversed, defender to be assoilzied from the whole conclusions of the libel. Pursuer to be liable to defender in expenses.

Appellant's Agents, H. and A. Inglis, W.S.; Gregory, Rowcliffe, and Rawle, London.—*Respondent's Agents*, Graham and Johnson, W.S.; Loch and Maclaurin, Westminster.

FEBRUARY 19, 1872.

ERSKINE BEVERIDGE AND CO., and JAMES ADAMSON BEVERIDGE, surviving Partner, *Appellants*, *v.* ROBERT BEVERIDGE and Others, *Respondents*.

Partnership—Provision to continue business after death of Partner—Manager for a Firm—Powers as against Partners—*A partnership deed between A. and B. provided, that in the event of A.'s death the partnership should continue between B. on one hand, and A.'s trustees on the other hand. The firm had appointed R. to be manager of the business of the firm, and A. having died, R. was one of A.'s trustees. R. having done acts which were challenged by B. as* ultra vires, *and having claimed to have the powers of a partner:*

HELD (affirming judgment), (1.) *That R. was entitled merely to manage for the firm* qua *manager for all parties, and not to exercise the powers of a partner;* (2.) *That he was not entitled, without B.'s consent, to leave blank cheques to be filled up in the name of the firm by clerks in his*

absence; (3.) *That he was not entitled, without B.'s consent, to change the investments of the partnership firm.*

HELD FURTHER (reversing judgment), (1.) *That R. was not entitled, without B.'s consent, to make long engagements of clerks at increased salaries, though he might engage and dismiss ordinary workmen;* (2.) *That he was not entitled, without B.'s consent, to substitute power looms on a large scale for hand looms, in carrying on the business;* (3.) *That R. was not entitled to sign the company name to documents, but was bound to act under a procuration defining his powers in that respect.*

HELD FURTHER, *On the construction of the partnership deed, that A.'s trustees were, after his death, collectively on the footing of a single partner along with B., the other partner.*

QUÆRE. *Whether in such an action, challenging acts approved by the other partner, B. is entitled to use the name of the firm as pursuer as well as his own name.*[1]

This was an appeal from a decision of the Second Division. James Adamson Beveridge, surviving partner of the firm of Erskine Beveridge and Co., of Dunfermline, raised an action of declarator and interdict in the name of the firm and in his own name, against Robert Beveridge, concluding, that the said Robert Beveridge was not entitled to do certain things which he had assumed power to do in conducting the business of the firm as manager. Mr. Erskine Beveridge, the father of James Adamson Beveridge, had been in partnership with Mr. M'Cance, and the term of partnership was about to expire on the 1st July 1865. The father, with a view to a future partnership thereafter between himself and his son, entered into an agreement on 26th September 1864, by which he appointed Robert Beveridge, his brother, to be manager, at a salary of £1200 a year, on the terms contained in the agreement, until 19th March 1874, when the youngest son should attain majority. On 24th October 1864 a completed contract of copartnery was executed, providing for the partnership between father and son commencing on 1st July 1865, the firm to have the name of Erskine Beveridge and Co. If the father should die during the above term, the partnership was to continue notwithstanding between his trustees and representatives on the one hand, and James Adamson Beveridge on the other. Erskine Beveridge died on 2d December 1864, and one of his trustees was Robert Beveridge, the manager of the firm. During the management, Robert Beveridge had signed the company's name to bills and documents; had lent part of the company's funds to banks; had enlarged the premises, and introduced power looms in substitution for hand looms; had left blank cheques with the clerks to be filled up in his absence; had made permanent engagements with managers, or heads of departments, in the works; and otherwise conducted himself as a partner, all against the remonstrances of James Adamson Beveridge. The pursuer, James Adamson Beveridge, sought to have it declared, that these acts were illegal, and that Robert should be interdicted from continuing so to act.

The defender contended, that he had, under the agreements, right to manage the business, and all the rights of a partner, and had power to do the acts complained of.

The Second Division agreed with the Lord Ordinary, (though recalling his interlocutor,) that the pursuer had no title to sue in the name of the firm, but that he was entitled to sue as a partner. The Court also held, that Robert had no right to sign the name of the firm, but ought to sign in his own name as manager; that Robert had no right, without James's consent, to sign cheques binding on the firm; that Robert had no right to lend or deposit the funds of the firm without James's consent; therefore declared and interdicted in terms of the above conclusions. But the Court also held, that Robert acted within his power as manager in ordering power looms and in fixing the salaries of managers and clerks, and assoilzied Robert from these conclusions. Both parties appealed from the parts of the interlocutor unfavourable to each respectively.

Sir R. Palmer, Q.C., and *C. G. Wotherspoon*, for the appellants.—The Court below was wrong in holding that the pursuer could not sue in the company name, for, by the law of Scotland, a firm is a separate person, and having been directly injured as a firm, was properly made a party to the action—Bell's Pr. §§ 351, 354, and 365 (4th ed.); *Antermony Coal Company* v. *Wingate*, 4 Macph. 544, 1017; 38 Sc. Jur. 278. The Court also should not have dismissed those conclusions of the summons which were to the effect, that Robert Beveridge was not a partner, for, on the construction of the deeds and documents, he had not the rights or *status* of a partner. The Court ought to have declared, that Robert has no right to exercise a control over the appellant, James, and to impair his authority as a partner. At common law a manager was not entitled to sign bills and contracts in the name of the firm so as to bind the partners. Robert ought to have accepted from the partners a procuration giving him express authority and defining such authority, and the Court below ought to have declared that he was bound to accept such procuration. As manager, Robert had no implied authority to alter or extend the factory without the consent of James, it being an absurdity in terms, that a servant can overrule the master in these matters.

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[1] See previous report 7 Macph. 1034; 41 Sc. Jur. 575. S. C. L. R. 2 Sc. Ap. 183; 10 Macph. H. L. 1; 44 Sc. Jur. 171.

Nor had he power to enter into long engagements with clerks and managers of departments, thereby entailing burdens on the firm to which the partners had not consented.

Pearson Q.C., and *Cotton* Q.C., for the respondents.—The trustees of Erskine Beveridge were partners of the firm, and Robert also was a partner, and they had authorized Robert to sign the company firm on their behalf. If the trustees are partners, each trustee must also be a partner —*Hill* v. *Wylie*, 3 Macph. 541 ; *Wightman* v. *Townroe*, 1 M. & S. 412. There was no just ground for the Court of Session to interfere with the conduct of the partners, and if the partners cannot agree, the only proper remedy is a dissolution of the partnership.

Sir R. Palmer was not called upon to reply, but handed in a draft of an order embodying the terms on which part of the interlocutors should be reversed.

LORD CHANCELLOR HATHERLEY.—My Lords, in this case, which was argued before us very fully, I could not refrain, at the commencement of the proceedings, from expressing some regret at the dispute having arisen between the parties with respect to the management of an extremely flourishing business, which appears, notwithstanding this litigation, to exist in full vigour, and not in any degree to have been seriously inconvenienced by any course of proceeding either on the one side or the other, which has given rise to the litigation. But in consequence of the questions which have been brought to our attention, it becomes necessary to consider very briefly the precise position of the case at the present moment.

This very valuable manufacturing business appears to have been founded by the father of the present pursuer, and to have been carried on by him under the firm of Erskine Beveridge and Company. The state of things immediately anterior to the cause of dispute between the parties seems to have been this, that the founder of the business, the father of the pursuer, being at that time in bad health, entered into an arrangement with his son for allowing his son, the present pursuer, to become, at a period at some little distance from the date of the arrangement between himself and his son, a partner with himself in the business. The reason for this arrangement not being immediate was, that there was an existing partnership between the father and another gentleman of the name of M'Cance, which was to subsist until the month of July 1865, and it was not desired that the son should enter into that partnership, but that the new partnership should commence when that original partnership between the father and the stranger terminated, and that the son should then be introduced into the business, viz. in July 1865. In fact, the father died before the partnership between himself and his son ever commenced, he having been somewhat out of health at the time when the arrangement was made with the son. He expired in the month of December 1864.

In making this arrangement with the son, the father provided, that his brother, a Mr. Robert Beveridge, the uncle of the pursuer, should be the manager of the concern with very full powers, which were expressed in a deed between the father and the son ; but it was also expressly stated in that deed, that it was to be without any prejudice to the rights of the son under the partnership. That arrangement appears to have been the source of all the difficulties that arose between the parties. The father by his will made provisions for the carrying on of the business, and for the son's having a larger share than, under the original articles of partnership between him and his father, if they had taken effect in his father's lifetime, he would have had, his share being brought up to one fourth of the whole, and the remaining shares being reserved for the benefit of the family of the father, who appointed certain trustees under his will, in whom those shares so retained for the benefit of his family should become vested. They became in effect vested accordingly in a joint body, namely, the trustees under the father's testamentary disposition ; that is, the persons who were to hold the shares reserved out of his estate, one of whom was Mr. Robert Beveridge, (the uncle of the pursuer,) who was to carry on and manage the business in the same manner as had been provided originally in the articles between the father and his son. This gentleman, so managing the business with these full powers, would manage in effect for and on behalf of both of the parties interested. He would manage it for the parties who represented the father's interest, of whom he was one, being one of the trustees under the father's will, and he would also be the manager of the concern as between the father's share of the business and the son's, (the pursuer's,) but subject to all the pursuer's rights and interests *qua* partner.

Now, although there is no complaint made with respect to the effect of Mr. Robert Beveridge's management, which seems indeed to have been extremely prosperous, (at least the pursuer makes no complaint in that respect,) he appears unfortunately to have arrogated to himself powers which certainly and beyond all dispute exceeded the powers vested in him as manager. I say beyond all dispute, because he himself has not appealed against the decision which was come to in the Court below with respect to his exercise of some of those powers, which he declares to have proceeded to a very great length, undoubtedly in perfect good faith, and acting as he thought for the benefit of the partnership, but with a degree of arrogation of a power and authority which was not entrusted to him. I need only mention the instances of this about which there is no question, viz. the fact of his signing blank cheques and leaving them to be afterwards filled up by clerks and others, (that being done for the better management, as he supposed, of the business,)

and the fact of his leaving large sums with different bankers, which in fact amounted to investments of the partnership property.

Besides that, however, there were other matters which led to a dispute between the pursuer and his uncle, the pursuer being of opinion, that the uncle's acts were acts of assumption of an authority which exceeded his powers, and which it was not agreeable to him, the pursuer, to submit to. Amongst other things, great complaint was made in respect of two specific points with regard to which the pursuer now asks your Lordships to reverse the decision of the Court of Session. The Court of Session have decided, as I have said, that there was an excess of power with reference to the mode in which this gentleman proceeded as regarded the signing of blank cheques and the loans which had been made to the banks. But there were two other main questions raised before us. The one was with respect to a considerable augmentation of the salary of certain clerks and other persons employed by the partnership, which augmentation was made without the concurrence of the pursuer by his uncle in his capacity as manager. The other main complaint was of the manager, Mr. Robert Beveridge, having ordered a considerable number of power looms instead of hand looms to be introduced at a considerable expense into the business. He justified this order by saying, that the power looms were wanted for the requirements of the business, and therefore he insisted upon ordering them with or without the concurrence, at all events without asking for the concurrence, of the pursuer in the present action. The Court below appears to have been of opinion, that the acts were done in his capacity of manager, and with the authority and power of manager, and that they were justifiable on that ground.

It appears to me, I confess, that when the matter is strictly analyzed, this gentleman seems in some degree to have mistaken his position, in consequence probably in part of his having previously been in the habit of managing the business with full power without any fetter or control upon his exercise of that power, and partly also in consequence possibly of his being misled by his double position, viz. as manager and as one of the trustees (but only one of the trustees) under the father's will of the share in the concern held in trust for those for whom the father had ultimately designed it, viz. the other members of the family. But these acts were done by him as manager, and I apprehend that as manager he could not any more than the manager of any other business, act contrary to the express wishes of the firm or any member of the firm. What he might do with the concurrence of the whole firm, he joining in that concurrence on the part of his co-trustees as representing the reserved share, would be a totally different matter for consideration. The question is, whether, as manager *simpliciter*, he would have power or authority, if it were objected to on the part of any one of the partners, to do those acts which would necessarily lead to a very considerable charge upon the partnership property viz. the increase of the sums allowed to the clerks and the increase of the capital of the concern, if one may so say, by a considerable addition to the machinery which is the fixed capital in the business. It appears to be proved (the success of the business seems to shew it, and that probably influenced the views of the Judges in the Court below) that it was for the benefit of the concern that these additional looms should have been introduced, and the measure may have been necessary if the existing contracts were to be fulfilled, or if the execution of fresh contracts was to be undertaken for which increased manufacturing power would be required. Then, if the introduction of power looms was to take place, it may well be, that it was necessary that the manager should be the person to effect it; but that necessity could only arise when it came to be the joint will of the whole firm, that that scheme should be adopted for carrying into effect the extension of the business with a view to its greater prosperity and efficiency. The business could hardly be enlarged except with the concurrence of the partnership as a whole; it could not surely be enlarged by the simple act of him whose sole duty it was to conduct and manage on behalf of those by whom he was employed as manager.

That being so, another point of considerable importance to the parties arose as to how this gentleman was to act with reference to the use of the signature of the partnership firm to documents by which the partnership firm might be charged. There is an express article in the deed of copartnery that the firm is only to be bound, when the signature of the firm is adhibited to writings which may be produced in order to charge them. The question arose as to whether Mr. Robert Beveridge was entitled to make use of the signature of the firm in his capacity as manager. The Court below appears to have thought that the difficulty would be sufficiently met by saying, that whenever he signed anything as manager he should not write per procuration of the firm, but that he should sign his name as manager for the firm. But the pursuer, on the other hand, says, and it has been argued before your Lordships in this appeal, that what he is entitled to is this: that for the purpose of defining what documents were and what were not to be signed by Mr. Robert Beveridge, a special mandate or authority should be given to him on behalf of the firm defining what his duties were with respect to this extremely important and vital point in the management of all partnership concerns, viz. the use of the signature by which the partnership may be charged. Accordingly a form was sent to Mr. Robert Beveridge on the part of the pursuer to be executed by him as manager, defining the exact extent of the power under which he was to act, and his refusal to execute this document (as of course he was entitled to refuse if

it simply came from the pursuer alone, and had not the concurrence of the other partners) had also became a matter in dispute, and it is one of the points which have been argued now before your Lordships.

There was another point raised by the appellant upon which it appears to me that your Lordships may follow the course which has been adopted by the Court of Session in not expressing any opinion, for it is unnecessary that any opinion should be expressed upon it, namely, whether or not the pursuer was entitled to use the name of the firm Messrs. Erskine Beveridge and Company in proceeding with this action of his instead of using his own name. Mr. Robert Beveridge does not simply act as manager, but he and his co-trustees are also jointly, as a body, partners in the concern, and they have a very considerable interest in the partnership. That being so, the Lord Ordinary decided, that it was not competent for the pursuer to make use of the name of the firm for sustaining his action in his individual capacity; and although the Court of Session at one time threw out some observation upon the subject in some degree favouring the contention of the appellant that he ought to be left at liberty to use the name of the firm in the present instance, yet in their decision they ultimately affirmed or rather did not meddle with the decision of the Lord Ordinary in that respect. They did not think it necessary to give any directions upon the subject, and I think it is not necessary for us to decide this point, which may possibly hereafter be one of some importance in some case where it is not merely an abstract question but one upon which the suit itself must depend. I think it is not desirable, that we should now express an opinion upon the subject, regard being had to the considerable difficulty which was suggested by some of your Lordships and by the counsel on the other side which might arise, if it was competent for every member of a partnership who was dissatisfied with any arrangements that were going forward, although his partners might be satisfied with them, to use the name of the copartnery, in which case any other member of the copartnership, a second or a third or a fourth member of the partnership, all of them possibly taking different views, might take upon themselves to use the name of the partnership firm; and the result might ultimately be what, to our minds (perhaps because we are more accustomed to the English form of pleadings) would be an exceedingly embarrassing form of record. I think it is unnecessary to say more upon that subject upon the present occasion. That part, therefore, of the minutes prepared by the pursuer's counsel upon this occasion is not one that I should feel disposed to adhere to, but I would simply leave the decision of the Court below as it stands on this point.

With reference to the rest of the minutes that have been handed in on behalf of the pursuer as the form in which he would ask your Lordships to deal with the decree of the Court of Session, it appears to me, that your Lordships may well concur in the view taken in the bulk of those minutes—I mean with reference to the part that declares distinctly, that the right of this gentleman as manager did not extend to those points which I have mentioned, viz. the increase of the salaries of the clerks and the introduction of additional loom power (which meant in effect additional capital) into the concern without the concurrence of the copartners, and also that part which requires that Mr. Robert Beveridge shall accept such power as may be given to him by the whole body of the copartners, (when I say the whole body of the copartners, I mean not the pursuer alone, but the body of trustees as representing the other share in the copartnership as one body, and the pursuer himself as another member of the copartnership,) and that that authority, if the parties should unfortunately differ, which we hope they will not, considering that the prosperity of the concern depends upon the good feeling amongst them, should be settled, if it cannot be otherwise, by the Court of Session, in order that there may be a final end of the question as to how and in what form the respondent Mr. Robert Beveridge's power should be exercised with respect to the documents to which he appends the partnership signature.

I think these are really the main points which have to be determined in this case, and these minutes appear to me to provide for them sufficiently, except as to expenses. That part, I confess, I do not thoroughly comprehend, in the mode in which the minutes are framed. The expenses were reduced I think by one fourth in the Court below, and what we propose is, that that portion which is so deducted should be repaid in a manner which it appears to me I confess in that case would be reasonable and proper, regard being had to the whole facts of the case, those facts being, that this is a suit in effect in the interest and for the benefit of the copartnership; that is, it is a suit in which all the rights of the copartnership are sought to be adjusted under an instrument which certainly introduced considerable difficulty in consequence of the way in which it was framed, viz. the appointment of Mr. Robert Beveridge for a definite term of years, with an absolute power of managing, rights being still reserved to the copartner who was about to be introduced as soon as the time arose, viz. the pursuer, that a subsequent complication arose from the testamentary disposition of the founder of the business, by which he introduced the trustees into the copartnery as representing in their collective capacity the share which he reserved for the rest of the family; that, under that by no means easy arrangement between the parties, under which Mr. Robert Beveridge filled the two capacities of manager and trustee, a state of circumstances arose which had not been fully foreseen, and as to which all the

difficulties had not been fully anticipated by him who was the author of the arrangement. I say, having regard to these facts, it would not be unreasonable, that the expenses should be paid out of the partnership fund, in which case the effect would be, that the pursuer would bear a small portion of the expenses, but he would bear it in proportion to his interest in the concern, whilst the heavier portion would fall upon the share which represents the interest reserved by the father under his trust disposition to be distributed amongst the family, and the heavier portions falling upon that share would exactly represent the larger amount of interest which the holders of that share have in the settlement of this dispute. It seems to me, that that would be a reasonable way of adjusting the question of expenses.

I think, with that exception, the minutes might stand, subject to the alterations which have been made in red ink, and which do not appear materially to affect the matter. One of them requires the concurrence not only of Mr. Robert Beveridge, but also of the remainder of those representing the other share, viz. the rest of the trustees in that instrument, by which the rights and duties of the manager with reference to the use of the name of the firm are to be defined with respect to documents which require his signature. It provides, that what he is to sign as manager shall be defined by some instrument to which all parties in the copartnery are concurrent parties. There is also an alteration by which "and" is proposed to be substituted for "or" in one part of the minutes. I confess I feel more doubtful upon that. It would seem to have the effect of depriving the pursuer of a veto in certain cases in which his veto ought to be effective; because the concurrence of the whole of the partners should be required, and not the concurrence only of one set of partners.

LORD CHELMSFORD.—My Lords, I entirely agree with my noble and learned friend. I cannot help also regretting that these parties have not been able to arrange amicably amongst themselves the mode in which the business ought to be conducted, but that they have been compelled to resort to a Court of Law in order to regulate its future management. Certainly the business has been prosperous under the skilful management of Mr. Robert Beveridge, but he has entertained rather an erroneous view of the extent of his powers, and in certain instances he has undoubtedly acted in a way which was extremely hazardous, and which might in the result have produced great loss and injury to the partnership. It was natural, therefore, that Mr. James Adamson Beveridge, who has been rendered I must say almost a cypher, should have desired to have his position in the partnership judicially determined, and to prevent the exercise of that uncontrolled and independent authority which was assumed by Mr. Robert Beveridge.

I shall very shortly go through the various heads of objection to the management which have been made, and I will advert, in the first place, to the assumption of Mr. Robert Beveridge of a right to bind the partnership by the signature of the partnership firm.

It has been contended, that he was entitled to do this as manager, or if not as manager, as a partner, and especially as fortified by the mandate of his copartner. Now, it is perfectly clear, that as manager he had no such power as he has assumed. In September 1864 he agreed to undertake the superintendence and management of the business on the 1st of July 1865, that being the time at which the existing partnership between Mr. Erskine Beveridge and Mr. M'Cance would terminate, and there was an additional memorandum, that in case Mr. Erskine Beveridge should die before the 1st July 1865, then Mr. Robert Beveridge should enter upon the management, but without prejudice to the rights of Mr. M'Cance. In the copartnery deed between Mr. Erskine Beveridge and Mr. James Adamson Beveridge, which was to commence on the 1st of July 1865, at the termination of the former partnership, there is a clause, that "the said trade and business in all its departments shall be more particularly under the charge and control of the said Erskine Beveridge during his lifetime, and after his death of his brother Robert Beveridge, who has been appointed manager until the period fixed for the expiry of this contract, but that without infringing upon the copartnery rights of the said James Adamson Beveridge." It was contended, that the power which Mr. Robert Beveridge was to possess was equivalent to that which was possessed by Mr. Erskine Beveridge. But it is quite clear, that that could not be so from the very terms of the contract, because, in the first place, it is provided, that "the copartnery shall be conducted under the style or firm of Erskine Beveridge and Company, and all obligations, bills, contracts, accounts, and other writings relating to the said trade, shall be taken and given under the said firm and designation, and either of the partners subscribing such firm shall bind the other partners to performance in matters of the Company's trade, but no deed whatever that is not so subscribed shall bind them to performance." Now Mr. Erskine Beveridge, being a partner, was, of course, entitled under this deed, as any partner would be entitled, in the partnership business, to sign for the partnership firm. But that it was not intended that Mr. Robert Beveridge should have a power equivalent to that of Mr. Erskine Beveridge in this respect is clear from another clause of the contract, the 12th: "The said parties bind and oblige themselves to grant the necessary procuration or other authority which may be required in the exercise of his office as manager by the said Robert Beveridge in granting and subscribing obligations for or on behalf of the copartnery." Now it is perfectly clear, that the argument that the power

which Mr. Robert Beveridge was to have was to be equivalent to that which Mr. Erskine Beveridge possessed cannot hold, and there is no doubt that as manager he had no power whatever to sign for the partnership firm.

But then it is said, that he was a partner, and that as a partner he had a right to sign for the firm.

Now there were five trustees appointed by Mr. Erskine Beveridge, which five trustees were to carry on the business upon the death of Mr. Erskine Beveridge. It is said, that each of those five trustees was a separate partner.

And there being power to add indefinitely to the number of partners, there might have been twenty instead of five, and if Mr. Robert Beveridge, by reason of being a partner, under those circumstances was fairly entitled to use the partnership name, then each of those five or those twenty persons would be entitled to do the same. And that would certainly be a strong argument against the possibility of such a power having been conferred under the circumstances of a trusteeship of this kind.

But the very terms of the deed shew, that the trustees in their collective capacity were to be *the partner* (as I must call it) in respect of the share of Mr. Erskine Beveridge, because, look at the 10th clause: "In the event of the death of the said Erskine Beveridge during the subsistence of this contract, the copartnery shall notwithstanding continue and remain in force as between the representatives or trustees acting under his trust disposition and settlement on the one part and the said James Adamson Beveridge on the other part." And if any doubt whatever could remain, I think it would be removed by the arbitration clause, the 13th: "The said parties agree, in the event of any difference arising between them or between the trustees and assignees of the said Erskine Beveridge and the said James Adamson Beveridge anent the copartnery, or the true intent and meaning of these presents, to submit and refer the same to the determination of two arbiters, one to be named by each of the partners," clearly meaning the trustees in their collective capacity as one partner, and James Adamson Beveridge as the other, ".or of an overs-man to be named by the said arbiters in case of variance between them, whose decreet arbitral to be pronounced shall be final and binding not "on all parties," but "on both parties." Therefore, it seems perfectly clear, that the argument, that Robert Beveridge, being one of the five trustees, was himself a partner, and that all the other trustees, of course in the same capacity, were partners too, cannot hold.

Then with regard to the mandate of the co-trustees of Robert Beveridge, I doubt whether it could have any effect at all, because it was a mandate given before the partnership commenced. It was in January 1865, that the mandate was given, and the partnership was not to commence till July 1865. Therefore I doubt very much whether it could have the slightest effect. But supposing it could have an effect, I think it is quite clear, that the trustees being the representatives of the share of Mr. Erskine Beveridge, and in that respect being one partner, had no right as trustees to delegate to one of the number all the authority to act, thereby resigning altogether their duties in respect of the trust which was imposed upon them. It is therefore clear to my mind, that neither as manager, nor as partner, nor under the mandate of the copartners, could Robert Beveridge have any authority to use the partnership name.

Then the other matters I will run over very quickly. One of the objections, and a very formidable one, is, that Robert Beveridge, when he was unwell and unable to attend to business, left blank cheques with the clerks which they might fill up to any amount. Now it is not necessary to say, that that is a most hazardous way undoubtedly of conducting a business of this kind, and one which might have led to considerable loss and injury to the partnership, and that there could be no power whatever, either as manager or as partner to conduct the business in that way. I will merely mention, with reference to that point, that the Lord Justice Clerk and Lord Cowan, I think, said, that although he might not leave with the clerks blank cheques, yet he might leave cheques signed to a limited amount. Now I confess it appears to me, that he could not provide for the contingency in that way, more especially when there was Mr. James Adamson Beveridge, a partner, who might in the absence of Mr. Robert Beveridge, if necessary, sign the cheques which were required for the business. What I have said with respect to leaving blank cheques would apply equally to lending money to the banking companies. It is quite clear, that without the consent of the whole of the firm such a course of proceeding could not be adopted.

Then, with respect to the removal of hand looms and the substitution of power looms, I will assume, that that was beneficial. It was said Mr. James Adamson Beveridge had at one time sanctioned the alteration, and therefore he must be taken to have admitted that it was a prudent and proper course to pursue. But at the time, when Mr. James Adamson Beveridge assented to the alteration, he reserved to himself all his rights to object to the future removal without his sanction and approbation.

With regard to the agreements with the managers and clerks, of course a manager would have a right to engage and dismiss ordinary workmen, but I do not think he would have any power to

bind the partnership by agreements entered into for a term of years, so as to compel it to continue those persons in its employment.

I omitted to mention upon the subject of the signature of the partnership name by Robert Beveridge, that I think, that the trustees are bound, under the terms of the partnership deed, to give a procuration defining and limiting the authority of Mr. Robert Beveridge as to granting and subscribing obligations. The contract is the 12th: "The said parties bind and oblige themselves to grant the necessary procuration or other authority which may be required in the exercise of his office as manager by the said Robert Beveridge in granting and subscribing obligations for or on behalf of the copartnery." Now the trustees represent Mr. Erskine Beveridge in this respect; "he binds and obliges himself" to do this. Therefore, I apprehend it was incumbent upon the trustees to define and limit the power which Mr. Robert Beveridge was to possess as manager with regard to subscribing obligations.

Agreeing as I do with my noble and learned friend as to the result of our judgment upon this matter, I have nothing further to say.

LORD WESTBURY.—My Lords, I have only one word to add in order to prevent the danger of any misconstruction of these minutes. The minutes contain a declaration which I think is quite right, that Mr. Robert Beveridge, in his capacity of manager, in regard to the past, had no right to bind the firm by any instrument executed contrary to the wishes of either the firm, that is, the trustees and the pursuer, or the partner the pursuer. But the words that are put into these minutes are not only that he had not, but that he has not.

Now the position of Mr. Robert Beveridge as manager will be defined by procuration, mandate, and authority for the future, which it is directed shall be executed, and which the Court of Session are to settle if necessary. Therefore, I should have thought, that it would be better to strike out the words "and has."

Sir Roundell Palmer.—There is no reason for keeping those words if your Lordships think so.

LORD WESTBURY.—It would be better to strike them out, otherwise this declaration may come into conflict with the mandate for the future, as settled by the Court of Session. It will be better to leave the future position of the manager to be wholly defined by that document and by that authority. Then the declaration will only amount to this, that with regard to past transactions, Robert Beveridge had no authority to bind any reluctant partner. That would certainly be quite right. With regard to the future, his rights will be defined by law. If that be so, the course would be to strike out the words "and by," and to restore in their place the word "or" as suggested in the pursuer's original minute.

Sir Roundell Palmer.—Before your Lordships put the question, perhaps you will permit me to remind your Lordships, that there was a cross appeal which was directed against the interlocutor so far as it dealt with the question of signature. That, I presume, your Lordships will dismiss, and you will say whether you do or do not dismiss it with costs.

LORD WESTBURY.—My Lords, I feel that the whole question is so much one with regard to the future, that I should be very glad if the parties would permit the cross appeal to be merged in the general consideration applying to the whole of the proceedings, namely, without weighing in very nice scales the right or the wrong in the conduct of an individual, to let the whole expense of the whole proceedings of the Court below be paid out of the partnership's funds.

Sir Roundell Palmer.—I have not a word to say against that.

LORD CHANCELLOR.—Then the cross appeal will be dismissed, and the costs of all parties in the cross appeal will be added to the costs of the original appeal. With the permission of your Lordships, I will put the question upon the cross appeal first, because of adding the costs to the costs of the original appeal.

Sir Roundell Palmer.—The minutes I handed in said nothing about the costs of the appeal.

LORD CHANCELLOR.—We must add, that the costs of the appeal and the costs of the cross appeal be paid out of the funds of the copartnery.

LORD WESTBURY.—Declare, that the expenses of the proceeding in the Court below, and also the expenses in both of the appeals to this House, of both parties, ought to be paid out of the partnership's estate, and direct payment accordingly.

The following was the *Order* of the House:—

"It is ordered and adjudged by the Lords Spiritual and Temporal in Parliament assembled:—

"That the said interlocutor of the 20th of July 1869, complained of in the said original appeal, so far as it finds, that any writings which the defender Robert Beveridge may have occasion to subscribe as manager of, or acting for, the Company, must be signed by him with his own name as such manager or as acting as aforesaid, be varied by substituting for the words "have occasion" the words "be entitled."

"And it is further ordered and adjudged, that the said interlocutor of the 20th of July 1869, so far as it finds, that Robert Beveridge acted within his powers as manager in the purchase of power looms for the use of the Company and in the displacement of hand looms in order

to the putting up of such power looms within the works of the company, be, and the same is hereby, reversed; and instead thereof, it is hereby declared, that the said Robert Beveridge had no power or authority against the remonstrances of the pursuer, James Adamson Beveridge, to make purchases of new and additional power looms or other machinery on account of the copartnership, or to remove from the partnership premises the hand looms or other machinery previously used therein in order to the reception of such new and additional power looms or machinery, or to alter or adapt the factory for the reception of any machinery of a different character from that placed under the care of the defender, Robert Beveridge, as manager of the works.

"And it is further ordered and adjudged, that the said interlocutor of the 20th of July 1869, so far as it finds, that the said Robert Beveridge acted properly and within his powers of fixing the salaries and emoluments of the persons in the employment of the said company, and so far as it assoilzies the defender from the conclusions of the libel, declaratory and petitory, in reference to the said purchases and in reference to the salaries and emoluments aforesaid, and *quoad ultra* dismisses the action, and also so far as it modifies the expenses to which the pursuer, James Adamson Beveridge, is found entitled to the extent of one fourth of the taxed amount, be, and the same is hereby, also reversed.

"And it is hereby further declared, that the defender, Robert Beveridge, has not, apart from his co-trustees, the right to act as a partner of the firm of Erskine Beveridge and Company, and that the rights of the pursuer, James Adamson Beveridge, as such partner, are not superseded, or in any respect impaired, by the appointment of the said Robert Beveridge as general manager thereof, and that the said Robert Beveridge had no right, power, or authority to enter into any written or other contracts or agreements with the managers, heads of departments or clerks of the said copartnership, which the firm or the pursuer, James Adamson Beveridge, as a partner therein, disapproves of or objects to, and that the said Robert Beveridge is bound to accept, and that the other defenders, as trustees and partners with the pursuer, the said James Adamson Beveridge, are bound to join with the said pursuer in granting to the said Robert Beveridge a written procuration, mandate, or authority, authorizing him to sign writs and documents as manager for and on behalf of the copartnership, and specifying the mode in which he shall sign them, the terms of such procuration, mandate, or authority to be adjusted by the Court of Session in case of difference between the parties.

"And it is further ordered and adjudged, that it be remitted to the Court of Session to give effect to the above declarations, and to grant interdict restraining the defender, Robert Beveridge, from doing any act contrary thereto.

"And it is further ordered and adjudged, that the said cross appeal be and the same is hereby dismissed this House: And it is further declared, that under the special circumstances of this case it appears to this House to be right, that the expenses of both parties of the proceeding in the Court of Session, and also the costs of both parties (appellant and respondent) of both the appeals to this House, should be paid out of the estate of the copartnership now subsisting, and it is hereby directed accordingly.

"And it is also further ordered, that with these declarations and directions the cause be remitted back to the Court of Session in Scotland to do therein as shall be just and consistent herewith."

Appellants' Agents, Wotherspoon and Mack, W.S.; Simson and Wakeford, Westminster.—*Respondents' Agents*, T. J. Gordon, W.S.; W. Robertson, Westminster.

MARCH 11, 1872.

Mrs. MARY MACKENZIE CATTON and Husband, *Appellants*, *v.* KENNETH MACKENZIE, M.D., *Respondent.*

Entail—Prohibitions—Power to grant provisions to younger children—11 and 12 Vict. c. 36, § 43—*M. made an entail which was sufficient in its prohibitions and clauses, but added, that, notwithstanding the limitations, it should be lawful to the institute and heirs of tailzie to provide their younger children with three years' free rent of the estate.*

HELD (affirming judgment), *That the entail was not defective in one of its prohibitions under* 11 *and* 12 *Vict. c.* 36, § 43, *for the relaxation of fetters to the extent of the provision to younger children was not inconsistent with the validity of the prohibition against contracting debt, etc.*[1]

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[1] See previous report 8 Macph. 1049: 42 Sc. Jur. 618. S. C. L. R. 2 Sc. Ap. 202; 10 Macph. H. L. 12; 44 Sc. Jur. 191.