HOUSE OF LORDS.

Thursday, May 6.

(Before Viscount Haldane, Viscount Finlay, Viscount Cave, Lord Dunedin, and Lord Moulton.)

KEMP *v.* GLASGOW CORPORATION.

(In the Court of Session, November 16, 1918, 56 S.L.R. 52, and 1919 S.C. 71.)

Burgh—Burgh Accounts—Common Good—Illegal Payments—Glasgow Corporation Act 1909 (9 *Edw. VII, cap. cxxxvii*), *sec.* 14 *—Glasgow Boundaries Act* 1912 (2 *and* 3 *Geo. V, cap. xcv*), *sec.* 80.

An elector of Glasgow, under section 14 of the Glasgow Corporation Act 1909, took objection to the Corporation's accounts dealing with the common good, and presented a petition in the Sheriff Court. His averments were to the effect that the accounts were imperfectly vouched, giving lump sums where details should have been given; that such lump sums included illegal payments, viz., the payment of the election expenses of candidates at municipal elections in adjoining burghs who would favour annexation to Glasgow. *Held* that such payments would be illegal as being contrary to public policy, and would not be protected by the subsequent Act of Parliament giving effect to the annexation scheme, which provided for the payment of the expenses of preparing for, obtaining, and passing the Act, and consequently that a proof should have been allowed.

This case is reported *ante ut supra.*

Kemp, the pursuer, appealed to the House of Lords.

At delivering judgment—

VISCOUNT HALDANE—The Glasgow Corporation Act of 1909 directs the Corporation to prepare yearly accounts of the revenue, expenditure, and balances arising from their Common Good as well as from rates and other assets. These accounts must show, among other things, all sums paid. They are to be audited, and any municipal elector is to be permitted to inspect and examine them along with the auditor's confirmation or report. An elector who is dissatisfied with any of the accounts or any item therein may petition the Sheriff specifying the grounds of objection, and the Sheriff is to hear and determine the matter of complaint, and his decision may be the subject of appeal.

In 1912 an Act was passed extending the boundaries of Glasgow. Section 80 provided that the costs, charges, and expenses of and incident to the preparing for, obtaining, and passing the Act, or otherwise in relation thereto, were to be paid by the Corporation.

The accounts of revenue and expenditure as presented under the statute contained an item of £6666, 14s, 10d. under the heading of Parliamentary Expenses, Session 1912, and referred to as fees for professional services. The appellant, who is a municipal elector, made inquiry and ascertained that the item contained, *inter alia*, two payments of £1157 and £795, 9s. 5d. made to two writers in Glasgow, Mr Robert Kyle and Mr David Crawford, respectively. He alleges that these sums were paid for services rendered in organising a movement for securing support in areas outside Glasgow which were sought to be, and in the end were, brought within the enlarged area of the city proposed by the Bill which afterwards became the Act of 1912. He alleges further that the money was, in part at least, spent in defraying the election expenses of candidates for membership of the councils of burghs outside Glasgow in the areas sought to be included, and that such expenditure was illegal. He presented a petition in the Sheriff Court of Glasgow craving that the item might be disallowed.

The Sheriff-Substitute allowed a proof, but his interlocutor was recalled by the Sheriff-Principal, who decided that the averments so made were not relevant. This decision was affirmed by the First Division. It was there held that it was in the interest of the City of Glasgow to make such expenditure for the purpose of developing public opinion, and that it could therefore properly be made out of the Common Good which the Corporation administers.

It is quite true that by the law regulating the title of a royal burgh in Scotland to the common good the town council has a wide discretion in making payments out of it so long as these are made for the benefit of the burgh. But this latitude of course does not enable payments to be made for purposes that are not legal. Expenditure made by the Corporation of Glasgow with the direct object of influencing a candidate for the representation on the council of a burgh outside Glasgow to stand and to vote if returned for incorporation, may well be illegal as being contrary to public policy. If the purpose really is that he should act in the interest, not of the burgh which he is seeking to represent in its council, but in that of the Corporation of Glasgow which is promoting a Bill for the incorporation of his constituency within the area of Glasgow, and is desirous of producing evidence of public opinion in the areas sought to be incorporated favourable to their incorporation, I am not prepared to accept without further consideration the view that money may lawfully be spent out of the Common Good of the City of Glasgow for such a purpose. Nor do I think that the fact that money so spent has been included in the taxed account of the expenses of and incident to the obtaining and passing of the Act subsequently obtained, an Act which contains a section directing payment for such expenses by the Corporation, precludes the point of legality from being subsequently raised. But before an opinion can adequately be pronounced as to whether the particular expenditure actually made is of a description that is thus objectionable, it is, I think, necessary to know in some detail the character and purposes of that expen-

diture, how it was made, and its items. Until this information is before the Court it cannot satisfactorily decide a question of public policy which turns on matters of fact and of ethics rather than of abstract law.

In the pleadings in the case before us there seem to me to be averments which make it right that the Court should call on the Corporation of Glasgow to produce the fuller details to which I have referred. When but not before these are produced it will be possible to pronounce whether the expenditure was of an objectionable character. I do not think that the pursuer has at the present stage in the proceedings a higher right than this, but in my view he has this right now. My impression is accordingly that the most suitable way of dealing with the action is to remit it to the Court of Session with a declaration limited to this result, and to direct that there should be a proof before answer. This form of procedure will keep the final question of relevancy intact until it becomes capable of being properly dealt with.

VISCOUNT FINLAY — This action was brought in the Sheriff Court of Lanarkshire by John Kemp, as an elector of the city of Glasgow, against the Corporation, and the claim is that some of the items appearing in the accounts of the Corporation as "Parliamentary Expenses, Session 1912" under the special heading "Glasgow Boundaries Act 1912," being "fees for professional services," should be disallowed. The application of the pursuer is based on the Glasgow Corporation Act 1909, and especially upon section 14 thereof.

Condescendence 4 and condescendence 6 challenge as illegal certain items in the account, more particularly two outlays of £507 and £250. Condescendence 8 alleges that the said payments are illegal in respect that they contained, *inter alia*, payments in respect of election expenses of annexationist candidates for membership of the municipal councils in Govan, Partick, and Pollokshaws, and in various portions of the counties sought to be annexed. Condescendence 9 asks that the pursuer's objection to the accounts should be sustained and that the accounts should be rectified accordingly.

The defenders' 4th and 5th pleas-in-law were as follows:—"4. The defenders having been authorised by section 80 of the Glasgow Boundaries Act 1912 to pay all costs, charges, and expenses of and incident to the preparation for obtaining and passing of that Act or otherwise in relation thereto, and the expenditure being all incident to the preparing for, obtaining, and passing of said Act or otherwise in relation thereto, is a legal and valid payment out of the said Common Good. 5. The expenditure complained of being neither illegal nor *ultra vires* on the part of the defenders, and they having in the exercise of their discretion authorised said expenditure to be paid out of the Common Good their discretion is not subject to review, and the action should therefore be dismissed."

The Sheriff-Substitute allowed proof, but his decision was reversed by the Sheriff-Principal, whose opinion was sustained on appeal by the First Division of the Court of Session. Your Lordships are now asked to restore the order of the Sheriff-Substitute.

On the 7th August 1912 there was passed an Act for extending the boundaries of the city of Glasgow, and the items which are now challenged appear in the accounts of the Corporation with reference to the expenditure incurred in connection with the bill. The 80th section of the Act (2 and 3 Geo. V, cap. 95) provides as follows:—"80. The costs, charges, and expenses of and incident to the preparing for, obtaining, and passing of this Act, or otherwise in relation thereto, shall be paid by the Corporation, and if paid out of borrowed money shall be repaid out of revenue within five years from the passing of this Act." It is alleged that for the purposes of promoting the passage of the bill the Corporation employed funds forming part of the Common Good in promoting the election in the adjoining burghs and districts proposed to be annexed of candidates who were in favour of the policy of annexation.

The short question in the case is whether the allegations in condescendence 8 are relevant and should as such be admitted to probation as the Sheriff-Substitute held. In other words, could the Corporation properly apply the Common Good of Glasgow in the payment of the election expenses of candidates in the adjoining constituencies which it was proposed by the bill to incorporate with Glasgow? It was urged on behalf of the Corporation that the Common Good is the property of the Corporation, and may be lawfully applied for any purpose which is for the advantage of the City. The annexation of the adjoining constituencies it was said was for the advantage of Glasgow as well as for the advantage of these other constituencies, and it was urged that the Common Good of Glasgow might properly be applied in securing the return to the municipal bodies in these adjoining constituencies of members in favour of the extension of the boundaries as the prospects of the passing of the bill would be improved if candidates holding such views were returned.

There is no doubt that the Corporation have a very wide discretion as to the application of the Common Good. Lord Dunedin during the argument in your Lordships' House referred to a Scottish statute with reference to the common good passed in the reign of James IV in the year 1491. This statute appears in vol. 2 of the Acts of the Parliament of Scotland, Thomson's edition, p. 227, and the material portion of it is quoted in Balfour's Practicks at p. 45 under the heading "Burrow Lawis." It is as follows:—"Item—It is statute and ordanit, anent the commoun gude of all our soverane Lordis burrowis within the realme, that the said common gude be observit and keipit to the commoun proffeit of the town, and to be spendit in commoun and necessare thingis of the burgh, be the avise and counsall of the town for the time, and dekinis of craftis quhair thay ar; and inquisitioun

zeirlie to be tane in the chalmerlane air, of expensis and dispositioun of the samin.—Ja. IV, fol. 93, act. 59, 18 Maij 1491."

In the case of *Nicol* v. *The Magistrates of Aberdeen* (1870, 9 Macph. 306, 8 S.L.R. 231) a proposed application of the funds of the Common Good was challenged in an action of suspension and interdict. Lord President Inglis at p. 308 is reported as having said as follows:—"It is in the jurisdiction of this Court to interfere and control the proceedings of a municipal council upon sufficient ground—upon the ground either that there is plain excess of power on the part of the council, or upon the ground that what they are proceeding to do is plainly against the interests of the community which they represent; but where there is no excess of legal power it certainly requires a very strong case to induce the Court to interfere with the discretion which the law vests in the municipal council in the first instance."

It was said in *M'Dowal* v. *The Magistrates of Glasgow* in 1768 (Morrison's Dictionary of Decisions p. 2525)—"It is true that magistrates who act for the town are in the common case of tutors, curators, and other administrators. They are trustees only, and if they betray their trust they are subjected to the control of a court of law, and to that control they cheerfully submit."

It is, however, clear from such cases as the *Aberdeen* case, to which I have just referred, that the Courts will be very slow to interfere with their discretion in the application of the common good. If the application proposed be illegal, it is, of course, another matter.

If the payment in question in this case is illegal it must be on the ground that it is against public policy. It is to be noted that the pursuer does not aver on record that the candidates to whom such assistance was given were required in any way to pledge themselves to the support of annexation when the matter came up in the councils for which they were standing. It is consistent with the allegations made by the pursuer that the candidates who were helped in this way were left perfectly free as to their municipal action. The question is neatly raised whether a corporation may lawfully spend money from the common good on the expenses of electioneering in adjoining constituencies.

This question has never arisen for decision on any previous occasion. We have been referred to the *Osborne* case, 1909, 1 Chancery 163, in the Court of Appeal, and 1910 A.C. 87, in the House of Lords. In that case the question was as to the application of the funds of trade unions in securing the return of Members of Parliament. In the Court of Appeal Moulton and Farwell, L.JJ., pronounced it illegal on the ground that a pledge was exacted from the candidates who were supported fettering the freedom of their parliamentary action. This is the ground on which Lord Shaw rested his decision in the House of Lords against such application of the funds of the union. But so far as the record here is concerned it is silent as to any such pledge being required from the candidates whose return for adjoining constituencies was promoted by the Corporation of Glasgow. The observations made in the *Osborne* case are, however, very important as illustrating the application of the doctrine of illegality on ground of public policy to the conduct of elections, and what is there said seems on principle just as applicable to municipal as it is to parliamentary elections.

In *Neville's* case (1915, 3 K.B. 556) an agreement was held unenforceable on grounds of public policy, as it was in effect a contract that a newspaper should be conducted in a manner not consistent with the proper conduct of a newspaper in the public interests. This is another illustration of the application of the principle of public policy, but it has no direct bearing upon the particular case which now arises. The same observation may be made with regard to *Montefiore* v. *Menday Company* (1918, 2 K.B. 241) before Shearman, J., but some of the observations made by the learned Judge in deciding that case are worthy of attention. After citing Lord Eldon in *Norman* v. *Cole* (1800, 3 Esp. 253), and Coltman, J., in *Hopkins* v. *Prescoti* (1847, 4 C.B. 578, p. 596), Shearman, J., says (at p. 245) with reference to the question whether an agreement is against public policy—"It is well settled that in judging this question one has to look at the tendency of the acts contemplated by the contract to see whether they tend to be injurious to the public interests." He went on to say that it had been urged upon him that a judge should act with great caution in declaring a contract void as against public policy, and cited various dicta to this effect, but said, adopting the language of Pollock, C.B., in *Egerton* v. *Earl of Brownlow* (1853, 4 H.L.C. 1, at 149)—"I think I am bound to look for the principles of former decisions, and not to shrink from applying them with firmness and caution to any new and extraordinary case that may arise."

The case that has now come before us is new and in some respects remarkable. It appears to me that it is certainly against public policy that a Corporation like that of Glasgow should be at liberty to devote its resources to promote the return in adjoining constituencies of candidates who would be prepared to support a particular policy which at the time in the view of Glasgow is desirable.

Such expenditure certainly has a tendency to influence the representation of the adjoining constituencies, which ought as far as possible simply to reflect the opinion of these constituencies themselves. It is obvious that such expenditure would have to be kept secret at the time of the election at which the subsidised candidate was standing. If the fact were known it would tend seriously to impair his chances of success, as it is, I think, obvious that any constituency would look with great disfavour upon any candidate who had accepted assistance which might tend to affect his opinion upon the question of the pending bill. That the transaction has necessarily to be kept secret goes some way in my opinion to show that there

is something wrong in such an arrangement.

During the argument the Lord Advocate, who appeared for the respondents, was asked whether it would be competent to apply the Common Good in paying the election expenses of candidates for the Municipal Council of Glasgow itself who were in favour of some particular line of policy which commended itself to the Magistrates. I understood the Lord Advocate to say that he would not consider such expenditure proper, but that such expenditure in Glasgow itself would not stand on the same footing as expenditure in an adjoining constituency. I agree that such expenditure in Glasgow would be unlawful, but I cannot see any valid distinction for this purpose between such expenditure on the municipal elections in Glasgow itself and similar expenditure on elections in adjoining constituencies. The Common Good is not held to be applied for electioneering purposes either in the city itself or in other municipalities, and I do not see how such expenditure can be brought within the terms of the statute of James IV, however liberally it may be construed.

In my opinion any such expenditure in adjoining constituencies is against public policy as tending to interfere with the local elections in the interest of the Corporation of Glasgow, and therefore illegal.

The Sheriff-Substitute in sending the case to proof said—"I think the pursuer's contention is right, and that if he can substantiate his averments he has just ground for complaint and may have the account rectified." It may be that the allegations are unfounded, or that facts may be established on the trial which would put a different colour upon the transaction, but condescendence 8 appears to me to state a good ground of action and the pursuer should not be deprived of the opportunity of showing that it is true in fact.

For these reasons I think that the appeal should be allowed, with costs of the appeals here and below, and that the interlocutor of the Sheriff-Substitute should be restored.

VISCOUNT CAVE—The appellant, an elector in the city of Glasgow, being dissatisfied with an item of expenditure of £6666, 14s. 10d. contained in the Common Good Account for the city for the year ending May 31st, 1913, complained against this item by a petition to the Sheriff of Lanarkshire in accordance with section 14 of the Glasgow Corporation Act 1909. The item in question purported to be a payment of "fees for professional services" in connection with the Bill for the Glasgow Boundaries Act 1912, by which the burghs of Govan, Partick, and Pollokshaws were annexed to the city of Glasgow, and the main objection to the item was stated in the condescendence for the pursuer (the appellant) as follows:—"(Cond. 8) It is averred the said payments are illegal, in respect that they contain, *inter alia*, payments in respect of election expenses of annexationist candidates for membership in the municipal councils in the burghs of Govan, Partick, and Pollokshaws, and in various portions of the counties sought to be annexed. A number of these payments were made and expenses incurred through alleged ratepayers' committees in Govan, Partick, and other districts annexed, said committees having been formed by the said Robert Kyle and David Crawford as agents for the defenders and acting solely for them."

The condescendence also contained averments to the effect that the law agents to whom these payments were made rendered detailed accounts of their services and outlays, but that these detailed accounts disclosed illegal payments in consequence of which some of them were returned to the law agents, and a simple receipt for "professional services" taken in lieu of a discharge of the accounts.

The defenders, the Corporation of Glasgow, raised certain pleas-in-law, of which the first was as follows:—"The averments of the pursuer, so far as material, being irrelevant and insufficient to support the crave of the petition, the action should be dismissed."

The Sheriff-Substitute repelled this plea and allowed a proof, but his interlocutor was recalled by the Sheriff, who sustained the first plea-in-law for the defenders and dismissed the action. The decision of the Sheriff was confirmed by the First Division of the Court of Session, and the pursuer has appealed to this House.

The opinions of the Sheriff and of the learned Judges of the First Division proceeded upon the ground that payments out of the Common Good for the purpose described in condescendence 8 are legal and proper. I cannot think that this view is correct. The allegation comes to this, that at a time when the Corporation of Glasgow was seeking to annex the neighbouring districts, the Corporation paid out of the Common Good the expenses of candidates for membership in the municipal councils of those districts who were in favour of the annexation. Such a payment must surely be against public policy. It is no doubt true that, generally speaking, a candidate for municipal honours is entitled to accept payment of his election expenses either from personal friends or from those who support his policy, but where a competition of interests has arisen or is likely to arise between the municipality which he seeks to serve and some other person or body, he should be free from any pecuniary influence on the part of the latter. I assume for the purposes of this decision that in the present case the candidates in question were genuinely convinced that the annexation of their districts to Glasgow was desirable on public grounds, and that they gave no pledge to the Corporation or its agents as to their future action if elected. But the question raised must be determined with reference to the tendency of the course pursued, and not to its actual result, and it is impossible not to see that the existence of a pecuniary *nexus* must tend to influence the judgment and action of a candidate. It appears to me that the practice adopted in this case, if generally followed, would tend to interfere

with the rights of electors and with the independence of members of municipal authorities, and that the case falls within the category of cases described by Lord Shaw in *The Amalgamated Railway Servants* v. *Osborne* (L.R., 1910 A.C. 87, at p. 114) as contrary to public policy. There appears to be no other authority directly bearing on the point, but reference may be made to *Neville* v. *Dominion of Canada Company* (L.R., 1915, 3 K.B. 55) and *Montefiore* v. *Menday Motor Components Company* (L.R., 1918, 2 K.B. 241), and to the American case of *Marshall* v. *Baltimore, &c., Company* (1853, 16 Howard, 314), quoted in Pollock on Contracts (ed. viii, p. 340).

If the payments were wrong as being contrary to public policy, they are not validated by the general authority conferred upon the Corporation by section 80 of the Glasgow Boundaries Act 1912 to pay the costs, charges, and expenses of and incident to the preparing for, obtaining, and passing of the Act; and however wide may be the discretion of the Corporation in the expenditure of the Common Good it cannot extend to authorise payments which are illegal or against public policy.

For the above reasons I am of the opinion that this appeal should be allowed, and I would restore the interlocutor of the Sheriff-Substitute and allow to the parties a proof of their averments. The respondents should pay the costs of the appeals here and below.

LORD DUNEDIN—I concur with the opinion of the noble and learned Viscount on the Woolsack. The judgment as it stands dismisses the petition by upholding the plea of irrelevancy. Condescendence 8 has been quoted and I need not quote it again. The view of the respondents really comes to this, that the moment you say that the candidates were annexationists, then inasmuch as annexation was allowed by Act of Parliament and must be for the benefit of Glasgow, the payment of an annexationist candidates' expenses must be also for the benefit of Glasgow, and thus a proper subject on which to spend the Common Good. I cannot accede to that proposition. The powers of the Magistrates over the Common Good are doubtless very extensive, but they are not entirely unfettered. My noble and learned friend Viscount Finlay has quoted the words of Balfour, which are a reproduction of the Statute of James IV, 1491, cap. 19. These ancient authorities show that the Magistrates are not entirely unfettered, and indeed the counsel for the respondents admitted in argument that there must be something in the object of the expenditure connected with the good of the burgh to justify it. No doubt the discretionary powers of the Magistrates are very wide, and as the law originally stood no one could call them to account except the Exchequer. I refer to the remarks as to the history of these matters which I made to your Lordships in the case of *Dundee Harbour Trustees* v. *Nichol* (1915 A.C. 550; 1915 S.C. (H.L.) 7; 52 S.L.R. 138), but the title now rests on statute and is undisputed. While on the one hand I cannot treat the averments in condescendence 8 as irrelevant on mere statement, I do feel some difficulty, having regard to the wide discretion to which I have alluded, by simply affirming the relevancy and allowing a proof, to settle that *ipso facto* a payment of such expenses is an *ultra vires* act. I am inclined to think that said payments might be so, but for myself I think the safer course would be to send back the case with a direction that a proof should be allowed before answer. If that were done—and it is entirely in accordance with Scottish practice—we should see exactly what had taken place, and the Court below, guided by the observations which have fallen from your Lordships, would be able to decide on the matter without the door being absolutely shut if any payment for expenses of extraneous candidates were proved. I therefore somewhat regret the form which this judgment, in virtue of the view of the majority of your Lordships, will take.

LORD MOULTON — The pursuer in this action is an elector in the City and Royal Burgh of Glasgow, and the defenders are the Corporation of that City and Royal Burgh and have control of the Common Good. As such, it is the statutory duty of the defenders to publish annual accounts of the expenditure of such Common Good, and the pursuer as an elector is entitled under sections 13 and 14 of the Glasgow Corporation Act 1909 to inspect such accounts, and if dissatisfied with any of them or any item therein, to complain against the same by petition to the Sheriff specifying the grounds of objection. The Sheriff is empowered to hear and determine the matter of complaint, and his decision is subject to the same right of appeal as in ordinary actions in the Sheriff Court.

The item as to which the pursuer is dissatisfied and in respect of which these proceedings are brought is an item of £6666, 14s. 10d. which appears in the published accounts of the defenders as "Fees for professional services" under the heading "Glasgow Boundaries Act 1912."

The account in which the above item appears relates to a bill that was promoted by the defenders in the session of 1912, which had for its object to extend the boundaries of the city of Glasgow by the inclusion therein of the police burghs of Govan, Partick, and Pollokshaws and certain other suburban areas, and for other purposes of like kind. The promotion was successful and resulted in the passing of the Glasgow Boundaries Act 1912. By clause 60 of that Act it was provided as follows — "60. The costs, charges, and expenses of and incident to the preparing for, obtaining, and passing of this Act or otherwise in relation thereto shall be paid by the Corporation." It is under this provision that the item of £6666, 14s. 10d. appears as having been paid by the defenders as "Fees for professional services."

The pursuer avers that the said item includes payments which were wrongfully made by the defenders, and therefore cannot be charged against or paid out of the

Common Good, and he asks the Court to sustain his objection to the item and to ordain the defenders to rectify the Common Good accounts by excluding therefrom such items as are not adequately or properly vouched and such as are for illegal payments.

As an example of items in the said payment of £6666, 14s. 10d. which are open to such objection, the pursuer in condescendence 4 cites the payment of £1157 to Mr Robert Kyle, writer, of Glasgow, and of £795, 9s. 5d. to Mr David Crawford, writer, of Glasgow. It appears from the matters alleged in condescendence 5, and not denied by the defenders, that these sums include sums of £507 and £250 respectively in respect of outlays, but the defenders decline to give any further details either as to the services or as to outlays in respect of which the payments were made. In condescendence 6 the pursuer avers that the defenders are bound to produce to the Court such details, that they have received detailed accounts of them, and that such detailed accounts disclosed illegal payments. It is admitted that such detailed accounts were in fact rendered to the defenders, but they deny that they showed any illegal payments.

In condescendence 8 the real gist of the dispute appears. It reads as follows — "(Cond. 8) It is averred that said payments are illegal in respect that they contain, *inter alia*, payments in respect of election expenses of annexationist candidates for membership in the municipal councils in the burghs of Govan, Partick, and Pollokshaws, and in various portions of the counties sought to be annexed. A number of these payments were made and expenses incurred through alleged ratepayers' committees in Govan, Partick, and other districts annexed, said committees having been formed by the said Robert Kyle and David Crawford as agents for the defenders and acting solely for them."

The pursuer's complaint came before the Sheriff-Substitute on March 8th 1917. He held that the averments were relevant and allowed a proof. On appeal to the Sheriff Principal he reversed this decision, and held that the payment of the election expenses of annexationist candidates in the neighbouring burghs were expenses incurred "in preparing for, obtaining, and passing the Glasgow Boundaries Act 1912, or otherwise in relation thereto," within the meaning of section 80 of that Act, and that therefore the averments were irrelevant, and dismissed the action.

An appeal was brought from the decision of the Sheriff to the First Division. They sustained the decision of the Sheriff and held that the averments were irrelevant, but I observe that they abstained from any reference to section 80 of the Glasgow Boundaries Act 1912 and base their decision solely on the powers of the defenders under the common law to make the alleged payments out of the Common Good. I am not surprised at their abstaining from basing their decision on section 80 of the Act. Wide as are the words of that clause with regard to the expenses which the Corporation is authorised to pay, they are words of a type not uncommonly used in such Acts, and to my mind it is impossible to suppose that they include the payment of election expenses of candidates in other burghs chosen by reason of their being in favour of the annexationist policy of the defenders. It must be remembered that this is a question of interpretation of the language of a statute and has nothing to do with the special position of Common Good in royal burghs in Scotland, and if we were to hold that such language covered the expenses of political agitation of the kind referred to the decision would apply universally both in England and Scotland, whether the corporation to which it referred were a royal burgh or not.

Passing by this wholly untenable ground for a decision in the defenders' favour the case reduces itself to the question whether the powers of the defenders by common law over the Common Good are sufficient to authorise them to apply its funds to such purposes as the payment of the election expenses of candidates favourable to the annexation scheme in the other burghs affected by it.

I am fully conscious of the wide discretion that the corporations of royal burghs in Scotland have over the uses to which the funds of the Common Good shall be applied, but the suggestion that they might rightly be applied to the purposes in question has seemed to me from the first to be so extraordinary that I waited with great interest to see what would be the test of the propriety or impropriety of a payment out of the Common Good which would be put forward on behalf of his clients by the very able counsel who appeared for the defenders. His one and only test was whether an individual might do the same out of money belonging to him. If the payment would not be illegal in the case of an individual he maintained that the defenders might make it out of the Common Good. In other words the Corporation might deal with the Common Good as freely as an individual might deal with his own money if they believed that what they were doing was for the advantage of the city.

It is clear to me that this cannot be the test. We must remember that, after all, the decisions of the Corporation represent only the opinions of the majority of its members. I therefore put to him the case of a majority of the Corporation being of one political party and sincerely believing that it was to the interest of Glasgow that the supremacy of that party in municipal politics should continue in the future. Would it be right for the Corporation to subscribe largely out of the Common Good to the election funds of that party or to assist them in other ways, such as building for them convenient permanent premises as headquarters for their political work? He naturally shrank from maintaining that such action could be permissible. Yet a private individual holding these opinions might legitimately apply his own money in this way with a sincere desire to benefit the city and with a belief that he was so doing.

A still stronger case might be that of payments from the Common Good into a fund for defraying the election expenses of such candidates in the next municipal election as belonged to the party of the majority in the Corporation. The judgment of the Court below lays down that such an act as paying for election expenses can lawfully be done by an individual with his own money, and if we accept the proposed test it follows that the Corporation might lawfully do the same with the Common Good. This appears to me sufficient to show that the proposed test cannot be the true one.

The true test must be obtained from a consideration of the position of the Corporation with regard to the funds of the Common Good. It is a civic body holding these funds impressed with the duty of using them for the benefit of the burgh.

Both its own position and the nature of its duties bring limitations to the freedom of its use of the funds. It may not use them in a way unfitting a civic body nor apply them to purposes which are not rightly for the benefit of the burgh. Within these limitations it has, no doubt, very wide discretion.

The case of the defenders is that by interfering with the municipal elections in the neighbouring burghs they will secure to tend to secure the election of representatives pledged to support the annexation scheme, or in other words to vote in favour of supporting the bill when the question should come up before the municipal council of the burgh. It is not open to them to say that starting candidates with this object and paying their election expenses will not affect the municipal representation in these burghs, because their justification for spending the Common Good in this way is that it will have that effect and thus benefit Glasgow. But it must be borne in mind that the candidates elected will govern the burghs in all municipal matters. They are not elected for a single vote upon the bill. Can anyone pretend that it is compatible with the position of a corporation that it should spend its funds in influencing the choice of another burgh of those who are to manage its municipal affairs in its own interests. To my mind it is an utterly illegitimate use of its funds and one wholly contrary to public policy.

It must not be thought, however, that I should have considered such payments permissible even if the candidates elected had merely to vote on the question of the bill. In some aspects this appears to me to be the worst feature of the case. Parliament attaches great importance in matters of this kind to the opinion of the burghs which it is sought to annex, and it rightly looks to the result of the municipal elections as indicating this opinion. That it should be permissible for the Corporation of Glasgow to use the funds of its Common Good to affect the results of such an election and to make those results different to what they would have been if the election had not been interfered with by them, is really to try to mislead Parliament as to the true and unbiassed views of the inhabitants of the burgh. Indeed it is very possible that the candidates whom the Corporation of Glasgow had started, and whose election expenses it had paid, might be called by the Corporation as witnesses for the bill and presented to the committee dealing with the bill as persons whose testimony should have greater weight attached to it by reason of their being the chosen representatives of the people of the burghs.

I am therefore of opinion that the averments in condescendence 8 are relevant, and that payments of election expenses and otherwise in connection with the starting and running annexation candidates in the burghs that it was proposed to annex are not legitimate payments out of the Common Good of Glasgow, and that the interlocutors appealed against ought to be reversed, and that of the Sheriff-Substitute restored, and that the respondents should pay the costs of the appeal here and below.

Their Lordships, with expenses to the appellant, reversed the interlocutors appealed against, restored that of the Sheriff-Substitute, and allowed a proof.

Counsel for the Appellant—Macmorran, K.C.—J. B. Paton. Agents—Bird, Son, & Semple, Glasgow; Inglis, Orr, & Bruce, W.S., Edinburgh; John Kennedy, Westminster.

Counsel for the Respondents—The Lord Advocate and Dean of Faculty (J. A. Clyde, K.C.)—Macquisten, K.C.—T. A. Gentles. Agents—Sir John Lindsay, Town Clerk, Glasgow; Campbell & Smith, S.S.C., Edinburgh; Martin & Co., Westminster.

Thursday, May 6.

(Before Viscount Haldane, Viscount Finlay, Viscount Cave, Lord Dunedin, and Lord Moulton.)

BROWN'S TRUSTEES *v.* GREGSON.

(In the Court of Session, March 19, 1919, 56 S.L.R. 333, and 1919 S.C. 438.)

Succession—Election—Approbate and Reprobate—Foreign—Provisions in a Settlement Null by the Law of the Country in which Situated.

A testator domiciled in Scotland conveyed his estate to trustees in trust for his seven children equally, six of them to take in fee and the seventh, a daughter, in liferent, the fee going to her issue. The estate included immoveable property in Argentina, and the courts of that country declared the testator's provisions with regard to it null and void as being contrary to the laws of that country. These laws prohibit any trust in heritable property. The seven children consequently took that property *ab intestato*, and the daughter further claimed her legitim. Her issue now claimed that the other six children of the testator could not take benefit under the settlement without bringing into