

title sufficient to give Lord Lovat the salmon-fishings in this stream. But under his title I think Lord Lovat cannot claim the salmon-fishings beyond the limits of his barony. It would require something very express in his title to give him a right to fishings locally situated, it may be, in another man's barony, or at all events in another man's lands, and, separately, I do not think there is sufficient proof of possession outside the defender's barony.

The Court therefore recalled the Lord Ordinary's interlocutor, and decreed in terms of the conclusions of the summons with respect to the rivers Affric and Cannich. *Quoad ultra* they assozied the defender.

Counsel for Pursuer (Respondent)—Dean of Faculty (Fraser)—T. Ivory—Pearson. Agent—Donald Beith, W.S.

Counsel for Defender (Reclaimer)—Balfour—Mackintosh—Guthrie. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Friday, March 7.\*

## FIRST DIVISION.

[Lord Adam, Bill Chamber.

### LANDALE AND ANOTHER v. GOODALL AND OTHERS.

*Arbitration—Extent of Reference—Where Arbitrator appointed in "Matters relating to Copartnership."*

Where a contract of copartnership between five persons provided that—"In all matters relating to the copartnership, whether during its subsistence or at and after its dissolution, and also in all matters relating to the meaning of these presents, where any question or dispute or difference of opinion shall arise between the partners, or between any of them, and the representatives of a deceasing bankrupt or insolvent partner, and which is not otherwise herein specially provided for, every such question, dispute, or difference shall be and is hereby referred to," &c.—held that this clause conferred upon the arbitrator the jurisdiction of a court of law only, and that a dispute in which a majority of the partners desired to appoint a new manager (an office provided for in the contract) did not fall within the reference, as it was a matter relating to the internal arrangements of the business, and was not a question which would have been within the jurisdiction of a court of law had there been no reference.

The complainers, Mrs Goodall and others, in this suspension and interdict were the majority of the partners of the Denend Coal Company, and the respondents were Andrew Landale and Alexander Thomson, the remaining members of the company, together with Robert Frew, mining engineer, Glasgow, who was nominated arbitrator in the contract of copartnership.

The company was a private partnership consisting of five members, who were all related to one another either directly or through marriage. The fifth article of the contract of copartnership was as follows—"Each of the said parties shall do his or her utmost endeavour to promote the interest of the

\* Decided January 28, 1879.

foresaid joint trade, and for the more efficient conduct of said trade or business the partners shall appoint from time to time some qualified person, either of their own number or a stranger, to take the management thereof, to whom they shall allow from the concern suitable remuneration for his trouble, and who shall, if required, be obliged to find security." &c. The eleventh article was as follows—"In all matters relating to the copartnership, whether during its subsistence or at and after its dissolution, and also in all matters relating to the meaning of these presents, where any question or dispute or difference of opinion shall arise between the partners or between any of them and the representatives of a deceasing bankrupt or insolvent partner, and which is not otherwise herein specially provided for, every such question, dispute, or difference shall be and is hereby referred to Robert Frew, mining engineer, Glasgow, whom failing," &c.

A dispute arose with reference to the appointment of the manager, the three partners who formed the majority being desirous that the old manager should be superseded in favour of a near relative of their own. The two remaining partners resisted this, and took the matter before Mr Frew, the arbitrator. The majority declined his jurisdiction, but Mr Frew decided that the matter was one falling within the reference. This note of suspension and interdict was then presented.

The complainers pleaded, *inter alia*—“(1) The appointment of a manager being a matter of ordinary administration, regarding which the partners cannot be held to have delegated their powers, and, *separatim*, being provided for in the contract, the same does not fall within the arbitration clause. (3) Upon a sound construction of the arbitration clause in the contract of copartnership, the question of the powers of a majority of the partners to appoint a manager is not a matter referred to the arbitrator; and being therefore *ultra fines compromissi*, he has no jurisdiction, and should be interdicted from dealing with the question in any way.”

The respondents pleaded, *inter alia*—“(2) A dispute having arisen between the parties to the contract of copartnership, in matters relating to the meaning of the said contract and to the copartnership, the clause of reference has come into operation, and the reference to Mr Frew should be allowed to proceed.”

The Lord Ordinary on the Bills (ADAM) passed the note and granted interim interdict without caution.

The respondents reclaimed, and argued—This was a dispute arising between the partners, and therefore was within the arbitration clause. To hold otherwise would be to deprive the clause of most of its meaning.

The complainers argued—This was a matter affecting the internal management of the business—it was not a dispute between the partners in the sense of the arbitration clause. To hold that it was would be to make the arbitrator the sole manager of the concern—*Lauder v. Wingate*, March 9, 1852, 14 D. 633.

At advising—

LORD PRESIDENT—This reclaiming note really raises the whole question between the parties so far as this suspension and interdict is concerned, because if we affirm the Lord Ordinary's interlocutor there is an end of the interference of the

arbitrator. I am of opinion that the Lord Ordinary is right.

It is necessary to keep in view that this is a private partnership among parties all more or less closely related to one another, and intimately acquainted, and therefore quite able to judge of each other's qualifications to be partners. It is eminently a case of *delectus personæ*, and in a partnership of that kind parties must be careful how they bind themselves to act. Hence in most cases it is provided that the opinion of the majority shall prevail, and in all the ordinary transactions of the partnership that must be so, or the business could not be carried on at all. Now, it appears to me that the appointment of a manager is just an ordinary act of administration, and I put to myself this question,—Whether because parties differ as to who shall be appointed manager, the majority could bring the matter to this Court to determine who shall be manager, and thus, it may be, overrule the opinion of the majority? I suppose there cannot be a doubt that the answer would be that they could not; of course if the majority were abusing their power, the minority could then get the aid of this Court, but not except on very strong allegations of abuse of power. But if the Court could not interfere, why should the arbitrator be able to do so, unless the matter has been specially committed to him? Because I could understand a clause of that kind, but it would require to be very specific, such as I have never seen in any contract of copartnership. But what is the clause here? It is this—[reads art. 11, *ut supra*]. Now, I do not care to look beyond that clause. Let it be every dispute between the partners as partners—that is to say, every dispute in regard to their position as partners. When a dispute of that sort arises, it is a matter which it is possible to bring before a Court; and in putting an arbitrator in place of the Court it is only giving him the power of the Courts. Therefore the width of the meaning of the clause does not seem to affect the question.

It is said that this interpretation takes away all the meaning from the clause. I see no difficulty about that at all. Suppose there was a dispute as to the clauses of the contract. That is a proper subject of reference. Suppose that there is a dispute between two partners, or between a partner and the company as to the division of the profits, that unquestionably goes to the arbitrator. In short, I think that if the parties were litigiously disposed, the arbitrator would have plenty to do. But that he is to act as a court of appeal over the internal management of the company is a thing that I never heard of falling in a clause of arbitration before, and it is altogether out of the arbitrator's jurisdiction in this case.

LORD DEAS and LORD SHAND concurred.

LORD MURE was absent.

The Court adhered.

Counsel for Complainers (Respondents)—  
Graham Murray. Agent—H. B. Dewar, S.S.C.

Counsel for Respondents (Reclaimers)—  
M'Kechnie. Agents—Pearson, Robertson, &  
Finlay, W.S.

Friday, March 7.\*

## FIRST DIVISION.

[Lord Curriehill, Ordinary.]

SCOTT V. LOCAL AUTHORITY OF CARLUKE.

*Arbitration—Disqualification—Where Arbitrator also Engineer.*

Under a contract for the execution of certain water-works the engineer was appointed arbitrator "in the event of any dispute or difference in relation to the execution, construction, or completion of the work." In the course of the operations he reported to his employers that the works were in "a disgraceful state" through the fault of the contractor, and detailed the faults he had to find. *Held* that he was not thereby disqualified from acting as arbitrator.

In the execution of a contract between the Local Authority of Carlisle and Mr John Scott, contractor, Hamilton, for the execution of certain water-works, disputes arose between the parties which eventually led to this action being brought by Mr Scott for payment of certain sums which he alleged were due to him by the defenders. The contracts, of which there were two, contained the following clause of reference:—"In the event of any dispute or difference arising between the Local Authority and the contractor and his cautioners in relation to the execution, construction, or completion of the work contracted for, or any of them, or any part or portion thereof, or as to the quality or quantity of the work or materials thereof, or as to settling of accounts, or as to any other point or matter whatever in regard to the works, or as to the contract, or to the true intent, meaning, or effect thereof, or of the drawings, specification, and conditions, the same shall be referred to the amicable decision, final sentence, and decret-arbitral of James Tait, C.E., Wishaw, whose decision shall be final and binding on all parties."

In answer 3 to the defenders' statement of facts the pursuer averred, with reference to the clause of reference:—"Explained that Mr Tait is disqualified from acting as arbitrator in the reference by partial counsel, and by having formed and expressed views adverse to the pursuer on all the points in dispute, both in letters to the pursuer and in an *ex parte* report obtained from him by the defenders on 7th October 1878, and otherwise. The questions in dispute are truly and substantially questions between the pursuer and the said James Tait. Moreover, in his said report the said James Tait makes entirely unfounded accusations of dishonest practices against the pursuer or his men, and in consequence of this feeling he is incapable of judging fairly or impartially between the parties."

Mr Tait was the engineer of the works, and on the 7th October 1878 he had made the following report to the Local Authority:—"After opening up a piece of the track at several points, and seeing the disgraceful state in which the pipes had been laid, and the heavy expense it would take to put it right, I gave intimation to Mr Scott and told him I would allow it to stand open for a day or two so that he might see it if he felt so inclined. He, however, paid no atten-

\* Decided February 1, 1879.