the actions were sustained was, that these persons were also described as being *partners of the companies*. It thus came to be a settled rule, that in judicial proceedings in which a company having such a descriptive name is a party, it is requisite that, in order that it have a *persona standi*, it should be described by the names of some of its individual partners being added to its own descriptive denomination. But still the purpose of such addition is only to supplement its descriptive denomination by announcing that the company has as partners of it the persons whose names are so added. It is only to give effect to that rule that the names of Austin & Company and of Mr Wingate required to be added to the descriptive appellation of the Antermony Coal Company. And this being the case, it matters not whether or not *both* of them authorised the action. Either of them, in virtue of his legal *prepositura* in the company's affairs, had ample authority, without the consent or the knowledge of the other, to institute the action at the instance of the company, in order to recover a debt which is owing to it (as *in hoc statu*, must be assumed), and in the exercise of that authority that partner was entitled, and indeed bound, to describe the company by setting forth not only its descriptive appellation, but also the names of its partners.

It is only further necessary to state that it was necessary for Austin & Company, in so exercising its *prepositura*, to insert the name of the other partner as well as its own, because it has been further settled that the names of two partners at least must be so added to the description. This was found in the case of the London, Leith, Edinburgh, and Glasgow Shipping Company, 19th June 1841 (3 D. 1045). It was there suggested that although there might be propriety in requiring the names of three partners, as three persons make a *collegium*, yet that "*plurality is enough.*" And in the present case the names of two partners are enough, because, besides being a plurality, they are all the partners of this company. I therefore think the allegation that Mr Wingate has not authorised the action is irrelevant as a defence against it.

Lord Deas and Lord Ardmillan concurred.

The reclaiming note was therefore refused, with expenses.

Agent for Pursuers—William Burness, S.S.C.

Agents for Defender—Bruce, Lindsay & Paterson, W.S.

SECOND DIVISION.

WYLLIE AND OTHERS *v.* WYLLIE AND HILL AND JOHN HILL.

Title to Exclude—Arbitration. Terms of a clause of arbitration in a contract of copartnery, which held (alt. Lord Mure) not to exclude an action for exhibition of accounts against one of the partners.

The contract of copartnery of the firm of Wyllie & Hill, coalmasters at Govan and Glasgow, contained a clause to the effect that the representatives of a deceased partner are *ipso facto* by the death of their predecessors to be partners. Mr Wyllie, one of the partners, having died on 4th September 1861, this clause came into operation. Mr Hill, the surviving partner, raised an action of declarator in 1862, to have it declared that Mr Wyllie's representatives were not partners, but in this action he was unsuccessful. Mr Wyllie's representatives now raised this action of count, reckoning, and payment. Mr Hill, the defender, pleaded, *inter alia*, that the pursuers were not partners, and that he intended to appeal against the judgment of the Court of Session in the previous action. Alternatively, he pleaded that if the pursuers are partners, the present action is excluded by a clause of arbitration in the contract of copartnery in the following terms:—"The said parties agree, if any difference or dispute shall arise between them anent this copartnery, or the true meaning and intent of these presents, to submit and refer the same to the amicable decision, final sentence, and decreet-arbitral to be pronounced by John Geddes, Esq., mining engineer in Edinburgh; whom failing William M'Creath, Esq., mining engineer in Glasgow, as sole arbiter mutually chosen by the parties, with power to the arbiter to issue decreets-arbitral, partial or final, which decreets, when issued, shall be final and binding on the parties."

The Lord Ordinary (Mure) dismissed the action on the ground that the whole matter was reserved for the arbiters.

The pursuers reclaimed.

Gifford and R. V. Campbell appeared for the pursuers and reclaimers.

Gordon and Scott for the defender.

The Court held that the question between the parties related at present solely to the first conclusion for exhibition of the firm's books, and for an account of intromissions. The objection which the defender made was simply that the pursuers were not his partners. Now, this was a matter which the Court had already decided in the pursuer's favour, and it could not be reasonably imagined that they were to allow the arbiters to become a court of appeal upon that point. As to the applicability of the submission clause to any other question between the parties no judgment was given. The Lord Ordinary's interlocutor was recalled, and the plea founded on the clause of arbitration was repelled in so far as it went to exclude the action. *Quoad ultra* a remit was made to the Lord Ordinary, and the defender was found liable in expenses.

Agent for Pursuers—Alex. Wylie, W.S.

Agent for Defender—John Walls, S.S.C.

COURT OF TEINDS.

Wednesday, July 4.

BUCHANAN *v.* MAGISTRATES OF DUNBAR.

Jurisdiction—Competency—Communion Elements. An application to the Court of Teinds for decree for communion elements, directed not against heritors, but persons said to be bound to furnish them under an obligation undertaken in 1618, held incompetent.

In the year 1860, the Rev. John Jaffray, then minister of the parish of Dunbar, raised a summons of augmentation, modification, and locality against the heritors of the parish, concluding for an augmentation of the stipend of the parish, with a competent yearly allowance for communion elements. On 16th January 1861 the Court of Teinds augmented the stipend to 21 chalders, "and that for stipend (the communion element money being paid by the burgh of Dunbar)."

It appeared that the Provost of the burgh had in the year 1618 consented on behalf of the com-