

bequests. Then the question really is,—Was it her intention to deal with this particular fund, and to exercise this power of disposal, by bringing it, without specifying or defining it, or in any way indicating its amount, into the residue of her estate?

The question is one of much delicacy. But, on the whole, I have arrived at the conclusion that it was not her intention to exercise this power of disposal by the will which she executed on 10th March 1873.

LORD JERVISWOODE concurred with Lord Ardmillan.

The Court answered the first question in the affirmative, and the second in the negative.

Counsel for the First and Second Parties—Duncan. Agents—Mackenzie & Fraser, W.S., and Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Third Parties—Pearson. Agents—Menzies & Coventry, W.S.

Counsel for the Fourth Parties—Mackintosh. Agents—Murray, Beith & Murray, W.S.

Tuesday, June 23.

SECOND DIVISION.

[Lord Mackenzie, Ordinary.]

THE DICK TRUSTEES AND OTHERS v. THE EDINBURGH VETERINARY MEDICAL SOCIETY.

Contract—Voluntary Association—Usage.

Held (1) that a majority of the members of a voluntary association are entitled to sue in name of the association; (2) where one of the rules of the association provided that “no rule shall be cancelled or altered unless a fortnight’s notice be given, and then only by the votes of a majority of at least two thirds of the society,—*Held* that according to the usage of the society the votes of a majority of two-thirds of the members present at a meeting of the society was sufficient to comply with the rule.

This action arose out of differences between the Dick Trustees and the late Principal Williams. The pursuers in the action were the office-bearers and a large majority of the members of the Edinburgh Veterinary Medical Society, while the defenders called were the Corporation of Edinburgh, as trustees of the late Professor Dick, Professor Fearnley, at the time Principal of the Edinburgh Veterinary College, Clyde Street, and several members of the pursuers’ Society. The purpose of the action was to have it declared that the pursuers constituted the Edinburgh Veterinary Medical Society, and had right to all its property and effects, and particularly to the library and certain specimens now situated in the college in Clyde Street, formerly occupied by the Society. Defences were not, however, actually put in for any of the defenders except the Dick Trustees and Principal Fearnley.

The pleas in law for the pursuers were—“(1) The pursuers being the office-bearers and a large majority of the whole members of the said Veterinary Medical Society, they, along with the remaining members thereof, constitute the said

Society, and have right to the whole property and effects belonging thereto. (2) The foresaid library and other articles in the Edinburgh Veterinary College being the property of the said Society, the pursuers are entitled to remove the said articles from the said college, and to have the custody and use and enjoyment thereof, without any control or interference on the part of the defenders, or any of them. (3) None of the defenders appearing in this action having any right or title to the said library, or other property, they are bound to deliver the same to the pursuers. (4) The said defenders having refused to allow the pursuers to remove the said library and other articles from the said college, and the whole grounds on which they claim right to retain the same being groundless and untenable, and, *separatim*, being *jus tertii* of the defenders, the pursuers are entitled to decree against them, in terms of the conclusions of the summons, with expenses. (5) The defenders have no title to maintain the pleas stated by them in defence.”

The pleas for the defenders were—“(1) The pursuers have no title to sue the present action. (2) The pursuers’ averments being unfounded and irrelevant, the defenders ought to be assolized. (3) The pursuers having connected themselves with a Veterinary School other than the Edinburgh Veterinary College, have forfeited all right to the use of the library and periodicals of the Edinburgh Veterinary Medical Society of the said college. (4) It is an essential part of the constitution of the said Veterinary Medical Society, in the intention of its originators, and also by its rules, that it shall be an adjunct of the Edinburgh Veterinary College, and only exist in connection therewith, and the alleged alteration of this part of the constitution of the Society is invalid. (5) The pretended alterations made by the pursuers on the rules of the Society not having been legally proposed and carried, cannot be given effect to. (6) In respect that the library of books and other effects concluded for were founded and in part endowed by Professor Dick, as a library and museum intended to be auxiliary to the study of veterinary science and medicine in the Edinburgh Veterinary College, and that the said library and museum, by the rules of the Society, are to be locally connected with the said college; the defenders are not entitled to make delivery in terms of the conclusions of the summons.”

The Lord Ordinary pronounced the following interlocutor:—

“*Edinburgh, 10th April 1874.*—The Lord Ordinary having heard the counsel for the parties, and considered the closed record, proof, and process; finds and declares that the defenders, the Lord Provost, Magistrates, and Council of the city of Edinburgh, as trustees of the deceased William Dick, professor of veterinary medicine in the Veterinary College, Edinburgh, under his trust-disposition and settlement libelled on, and the defender, William Fearnley, as Principal of the said Veterinary College, have no right or title to the library, *materia medica*, and other specimens, models, and other property belonging to the Edinburgh Veterinary Medical Society, and the members thereof, presently situated within the premises in Clyde Street, Edinburgh, of the said Edinburgh Veterinary College: Finds and declares that the pursuers, as office-bearers and members, and the other members of the Edinburgh Veterinary

Medical Society, have right to the whole books, periodicals, *materia medica*, and other specimens, models, and effects purchased for or acquired by and belonging to the Edinburgh Veterinary Medical Society, and presently situated within the said premises in Clyde Street, and decerns: Appoints the pursuers to lodge in process, on or before the first sederunt day of May next, a list of the said books and other effects which they aver to be the property of the said society, and to be in the possession or under the control of the said defenders: Reserves all questions of expenses, and appoints the cause to be put to the roll with a view to further procedure.

“*Note*—The Edinburgh Veterinary Medical Association was established in 1834, for the advancement and diffusion of veterinary knowledge, particularly among veterinary students, to whom there were by its rules afforded opportunities for the discussion and consideration of questions connected with their profession. The minutes and rules of the society previous to 1841 have been lost; but by the rules of that year it is provided, that ‘the members of the association shall consist of veterinary surgeons and veterinary students only, that members shall be elected by the association, and that out of the members there shall be chosen six office-bearers—namely, a president, two vice-presidents, a treasurer, secretary, and librarian.’ It appears from the minute-books that the title of the ‘Edinburgh Veterinary Medical Association’ was retained until 1865; in that year the title of the ‘Edinburgh Veterinary Medical Society’ was adopted, and it was afterwards retained. Mr Gamgee having in 1857 started another veterinary school in Edinburgh, a by-law was passed by the society on 20th January 1858, providing that the members shall consist of veterinary surgeons and veterinary students attending the London or Edinburgh veterinary colleges, and that if any member should attend any rival school or society in Edinburgh he should forfeit his membership and the whole privileges thereof. The right of students to become members was subsequently limited to those attending the Edinburgh Veterinary College, and in 1868 the above-mentioned rule was altered to the effect of providing that a member becoming a student of any other college should not cease to be a member of the society, so far as attending its meetings, but should forfeit his right to the use of its library and periodicals. In 1863 the rules, as altered, provided that Professor Dick should be president, and that the other lecturers in Clyde Street College should be vice-presidents of the society. It was afterwards provided in 1868 that the principal of the college should be president. These rules, as so altered, remained in force until October 1873.

“The minute-books of the society show that the society managed its own affairs, applied its funds, which were derived from the entry-money and fines of members, in the purchase of books and periodicals, and otherwise for the benefit of the members made from time to time catalogues of its library, and framed rules which regulated the use of its library by the members.

“Professor Dick died in 1866. By his trust-disposition and settlement he conveyed his means and estate to his sister in liferent, and to the defenders, the Lord Provost and Town Council of Edinburgh, in fee, as trustees, for the purpose of maintaining in efficiency his veterinary school in

Clyde Street. Mr Williams was appointed by these trustees principal of the college in 1867, and held that office until he was succeeded by the defender, Mr Fearnley, who was appointed principal in August 1873. Mr Williams thereafter started another veterinary school in East London Street, Edinburgh.

“No place is specified in the rules where the society should hold its meetings and keep its library; but the society always held its meetings in the theatre or lecture-room of the Clyde Street school down to 1873, and kept its books in a room there, called the reading-room, where its periodicals lay on the table for the use of its members. This was done by permission of Professor Dick, and afterwards of his trustees, no payment being made for the same.

“The first meeting of the veterinary society for the winter session of 1873–74 was held, in conformity with its rules, on 31st October 1873, and it took place, by permission of Mr Fearnley, in the college lecture-room. Mr Fearnley took the chair. Upon a motion being made that another member should take the chair, Mr Fearnley immediately stated that he dissolved the meeting, and ordered the members of the society to leave the room. This they did, and nearly the whole of them forthwith adjourned to No. 5 St Andrew Square, where they proceeded with the business of the society directed by the rules to be done at that meeting. A very large number of the students resolved not to attend the Clyde Street College, but to attend the lectures given by Mr Williams. These members, who constituted a majority of the student members of the society, considered that the objects of the society would be best promoted by the students of both schools having perfect freedom of attendance at its meetings, and the full use of its library. Accordingly, at the said adjourned meeting of 31st October a committee of six members was appointed to alter the rules, and to submit them, as altered, to the society for approval. The report of this committee was submitted to a meeting of the society, held on 14th November 1873, in No. 5 St Andrew Square, when the proposed alterations on the rules were submitted and unanimously approved of. These rules were also, at a meeting held on 5th December 1873, unanimously ordered to be authenticated by the president’s signature. By these altered rules, it is provided that any veterinary student may be elected a member, that the president, vice-presidents, and office-bearers shall be elected by the society annually, and that every member shall have the use of the library and all the advantages of membership.

“On Monday, 17th November 1873, Mr Fearnley and ten student members of the society who had resolved to study at the Clyde Street College, held a meeting in the Clyde Street lecture-room, and proceeded with the election of office-bearers and also of members, on the footing that they constituted a meeting of the society, and they, and other persons elected by them as members, have since that date held meetings in the same place, on the same footing. Mr Fearnley and these ten members were aware of the meetings held in St Andrew Square, and six of them had attended the adjourned meeting on 31st October held in that place.

“The trustees of Mr Dick, and Mr Fearnley, having refused to deliver the library and other effects of

the society to the office-bearers and members meeting in No. 5 St Andrew Square, the present action has been raised against them, and also against the student members of the society who met in Clyde Street on 17th November 1873, and others, to obtain such delivery. No appearance has been entered by these student members, and the only defenders who have lodged defences are the Lord Provost, Magistrates, and Council, as Mr Dick's trustees, and Mr Fearnley.

"These defenders plead that it is an essential part of the constitution of the society that it shall be an adjunct of the Edinburgh Veterinary College, and only exist in connection therewith; and that the library and other effects concluded for were founded and in part endowed by Mr Dick as an auxiliary to the study of veterinary science in the Edinburgh Veterinary College.

"The Edinburgh Veterinary College is not incorporated; it is merely a private school for teaching veterinary science and medicine. The buildings in Clyde Street, in which it is carried on, were the property of Mr Dick, and now belong to the defenders, his trustees, for the purposes of his trust-settlement. The Edinburgh Veterinary Medical Society is a voluntary association, which is not dependent upon the Veterinary College, or upon Mr Dick or his trustees for its existence. It was no doubt started for the purpose of assisting in their studies Mr Dick's students, then and for many years afterwards the only veterinary students in Edinburgh, and accordingly it was allowed the gratuitous use of his lecture-room for its meetings, and of a room in his premises for its library and reading-room. But it is a separate and independent association, having office-bearers chosen by its members, who are entrusted with its affairs. The expenses of the society were paid out of its own funds, and its books were purchased with these funds, or were presented to it, and it had and has a treasurer for the care of its funds, a librarian for the management of its library, and a curator for the care of its property. Its books are the property of the society and of its members, and not of Mr Dick's trustees, or of their veterinary college or school, and that college may cease to subsist without affecting the existence of the society. The Lord Ordinary is therefore of opinion that the above-mentioned pleas of the defenders, Mr Dick's trustees, and of Mr Fearnley, are not well founded, and that these trustees, and Mr Fearnley as principal of the college, have no right or title to the library, museum, or property of the society.

"Mr Fearnley, being principal of the college, was, by the rules of the society then in force president of the society, and entitled to take the chair at its first meeting during the winter session of 1873-74, held on Friday, 31st October 1873. But the Lord Ordinary thinks that Mr Fearnley was not, as president, entitled to dissolve that meeting. If the motion made was contrary to the regulations, he should have ruled accordingly; but if it was in accordance with these regulations, he should have put it to the meeting. Being principal of the college, he had charge of its premises, and the members of the society did right in leaving these premises when ordered by him to do so, although nothing had occurred at the meeting which rendered any such order necessary, or, as the Lord Ordinary thinks, proper. Mr Fearnley's act did not prevent the society from proceeding with its business on that night in

accordance with its rules, and the majority of the members at that meeting were entitled, the Lord Ordinary conceives, to adjourn as they did to No. 5 St Andrew Square, and to transact the business of the society prescribed to take place at its first meeting. The members were also entitled to meet there weekly afterwards, and to conduct its business in accordance with the rules. According to the usage of the society, the management of that business was left, as in the case of similar societies, to its student members, who were bound to attend under the penalty of a fine for non-attendance. It appears to the Lord Ordinary that the student members who met in St Andrew Square on 31st October, and weekly afterwards, were entitled to hold these meetings, and that the defenders, Mr Dick's trustees, and Mr Fearnley as principal of their college, are not entitled to object to what was done at these meetings. The rules of the society provided that meetings should be held every Friday during the winter session, and no notice of these was prescribed or required. The whole ordinary members knew that the society was holding its meetings at No. 5 St Andrew Square. The Lord Ordinary considers that these meetings were meetings of the society; that the procedure at these meetings was in accordance with the rules; and that the meetings which took place in Clyde Street on and after 17th November were not meetings of the society.

"The defenders object to the procedure whereby the rules of the society in force in October 1873 were altered, on the ground that the rule was not complied with which provides that 'none of these rules shall be cancelled or altered unless a fortnight's notice be given, and then only by the votes of a majority of at least two-thirds of the society.' That majority means, it is thought, and according to the usage of the society is, a majority of two-thirds of the members present at a meeting of the society, and cannot mean a majority of two-thirds of those who had joined the society since its commencement in 1834, and were alive. Edinburgh; and if the latter view were the correct These members are, it is proved, upwards of 400 in number. Very few of them are resident in construction of the rule, the result would be that the rules could never be altered. The procedure whereby the rules were altered was, in the opinion of the Lord Ordinary, sufficient compliance with the above-mentioned rules. These rules were altered on the report of the committee appointed for the purpose. More than a fortnight's notice was given before the alteration, and the rules, as altered, were adopted unanimously on 14th November, and were unanimously appointed to be authenticated by the president of the society on 5th December 1873.

"On these grounds, the Lord Ordinary is of opinion that the pursuers, as office-bearers and members of the society, have right to obtain possession of the library, museum, and other property of the society, in order that they may hold and administer the same for behoof of its members. It is of importance to the prosperity of the society, and benefit of veterinary students in Edinburgh that its affairs should be conducted so as to give its benefits to every veterinary student who is or may desire to become a member, irrespective of the school at which he may study. The Lord Ordinary therefore trusts that an amicable arrangement may be made, which may render it unnecessary to pronounce any finding under the petitory conclusion

of the summons. Such an arrangement would be beneficial not only to the students of both schools, but also to the society, whose finances are scanty enough to secure the beneficial objects for which it was instituted and exists."

The defenders reclaimed.

LORD NEAVES—In this case we have a reclaiming note presented by the trustees of the late Professor Dick. The circumstances are peculiar in some respects, and one regrets to see so much discord and insubordination. It is impossible to overlook the first plea of the defenders, namely, that the pursuers have no title to sue the present action. Now this plea may mean (1) that the pursuers, who are a voluntary association, do not sue in competent form, or (2) that the pursuers have really no association. This plea, if taken in the former sense, might at one time have been successfully urged, but now if a sufficient body came forward, although not a legal person, they will be allowed to do so, particularly if the party against whom the action is directed has no competing title. But the plea may mean that the pursuers are not really a society, but only call themselves so, or that they have extinguished their own existence by deviating from the rules and regulations of the society. I think there was a design on the part of a member of the society to violate the laws, and there is evidence, or at least strong ground for thinking, there was a combination to prevent Principal Fearnley keeping the place he should have had. He ought to have kept the chair, but he lost his temper, and the chair too, and dismissed the meeting, thereby giving a strong technical objection that the parties by his actions were prevented carrying on the business. The result was another meeting, and they proceeded to give irregular notices of their intention to alter the laws of the society. But there is no one to object to these things, and the question just comes to this, are there any regular defences on the merits? Those parties who joined the other college did not cease to be members, they only lost the right to use the library. I think the defenders are not entitled to say the pursuers are no longer members. I am for adhering substantially, with a slight alteration on the form of the interlocutor. I think the first plea should be repelled and then the others, but while I am of this opinion, I must state that the conclusion is arrived at quite independently of any question as to any books given by Professor Dick. There is no claim for those books, said to be bequeathed by him.

LORD ORMDALE—In this case I consider it of the greatest importance to keep in view who really are pursuers and defenders. The pursuers are not only the Edinburgh Veterinary Medical College, but also some forty people, office-bearers and others of the Association. The defenders are not merely the late Professor Dick's Trustees as holding the property forming the subject of present action, but also some ten members of the society who did not choose to unite with the pursuers in the course adopted by them, and who have in consequence been called along with the trustees as defenders, although they have not entered appearance. It is admitted that these last defenders, together with the pursuers, form the whole society.

Various pleas have been set up in defence, of which the first is that there is no title to sue. Now, whatever may have been the former practice

of the Court, it is certainly now settled that in the case of a voluntary association pursuing an action, it is sufficient if the descriptive name of the society be employed conjoined with the name of three at least of the members. Another plea has been maintained to us that this society are not what they call themselves; certainly if this were so it would exclude their right to sue, but this would do. It is clear to my mind that the pursuers really form the great body, the majority of the members of the Association. Again, we have been told that the laws of the society have been irregularly altered, its name changed, and its constitution modified. It may be observed, however, that certainly laws were altered and the name itself changed long prior to the date of these disputes. These irregularities which occurred might have given rise to dispute and dissension within the society itself, but so long as they are here in Court with a large majority of the association as pursuers, and with no defenders at all save a third party altogether, Dick's Trustees, we cannot attach weight to the irregularities. Notwithstanding all this, however, it must be a good defence to the pleas of the pursuers if the trustees could show that this association was inalienably attached to and bound up with the college in Clyde Street, but I am unable to find either in the constitution of the society, or so far as we know in that of the college in Clyde Street any link of union beyond a certain complementary connection with the late Professor Dick. He seems to have taken much interest in the Society, he acted as its patron and was elected its perpetual president, but this was all. I quite concur in the view suggested by Lord Neaves, that there may be a question as to the right of the society to the books gifted to it by Professor Dick, owing to certain peculiarities in the form of the donation, but that question it is not necessary to determine at present. I would only add that I rather think the form of the interlocutor should be altered as suggested.

LORD BENHOLME—I concur substantially, and will only make some observations in the hope they may be of use to the parties. I might suggest that they should accept of advice and adjust their difficulties by a compromise. I have no doubt that the trustees of Professor Dick did no more than what they thought their duty. The great object of Professor Dick was to advance the study of veterinary surgery, and he thought by giving a kind of monopoly to his own college, his own buildings, and his own lectureships, he was giving it a permanent character, but the society has got beyond its infancy, and these means of monopoly which suited its infancy became no longer applicable to it. It would never do that this college, founded by Professor Dick and managed by his trustees, should now have a monopoly of the place, and assert it. It appears to me that the Lord Ordinary has afforded opportunity by his interlocutor for considering this suggestion I now offer, and has left room for the parties to consider whether there might not be some compromise so as to avoid a separation of this property, and that advantage should be taken of this college, suited for the meetings of the society. It is for the magistrates to consider how they can best follow out the views of Professor Dick. I agree in thinking that though the interlocutor is quite right in principle its form requires alteration.

The LORD JUSTICE-CLERK having been absent at the discussion delivered no opinion.

The Court pronounced the following interlocutor:—

“Alter the interlocutor complained of to the following effect:—Repel the first plea stated in defence: Find that the pursuers, for the purpose of the present action, represent the society first instituted in 1834, as stated in the record: Find that the said society required right from time to time to the library and other property referred to in the record, and that no relevant statement has been made which can afford a defence to the action at the pursuers' instance for delivery of the said library and other property: Repel the defences so far as inconsistent with the said findings: Decern and declare to the above effect in terms of the declaratory conclusions of the action, and appoint the pursuers to lodge *quam primum* a list in terms of the interlocutor complained of: Remit the cause to the Lord Ordinary to proceed further therein as may be just, with power to him to dispose of the question of expenses attending the reclaiming note.”

Counsel for Pursuers and Respondents—Balfour, and Strachan. Agents—Macgregor & Ross, S.S.C.

Counsel for the Dick Trustees—Dean of Faculty, and M'Laren; and for Principal Fearnley, Asher. Agents—Millar, Allardice & Robson, W S.

Friday, June 25.

FIRST DIVISION.

[Lord Shand, Ordinary.

HUNTER v. CLARK.

Process—Pauper—Caution—Sist.

The pursuer of an action was with her family in receipt of parochial relief to the extent of 7s. a-week. She did not attempt to get upon the poor's roll, but obtained counsel and agent to conduct her case. The defender pleaded that she was bound to find caution. The Court *sisted* proceedings to allow the pursuer an opportunity of being put upon the poor's roll.

This action was brought by Mrs Janet Henderson or Hunter, against Mr Andrew Clark, S.S.C., Leith, for £250 sterling, in the name of damages and solatium. The pursuer averred that being lawfully in possession of certain furniture of which she had got the use, she was violently dispossessed of it to her loss and damage, and that it was taken away and sold by the defender without any authority. It appeared that the pursuer and her family had for several years been in receipt of parochial relief to the amount of 7s. a-week.

The defender's fifth plea in law was—“The pursuer being a pauper in receipt of parochial relief, and not suing in *forma pauperis*, is bound to find caution for expenses before suing.”

On 19th March 1874, the Lord Ordinary repelled the fifth plea in law stated by the defender.

In a subjoined Note his Lordship said:—

“The question, whether the pursuer shall be ordained to find caution for expenses is one of discretion for the Court, and the Lord Ordinary does not think the case is one in which such an order should be granted. The alleged disposition *omnium bonorum* by the pursuer, dated in 1864, is not signed by her, and it is blank in the names of the disponees, and cannot be regarded as an effectual deed. The only fact on which the defender's claim to caution rests therefore is, that the pursuer is on the poor's roll; and, in the circumstances as alleged, the Lord Ordinary is of opinion that this is not a fact sufficient to warrant an order for caution being pronounced.”

The defender appealed.

Argued for him—The pursuer's proper course would have been to have applied to be put upon the poor's roll. That she had not done so raised a suspicion that she knew she could not shew a *probabilis causa*. And a pursuer who was a pauper, and suing under suspicious circumstances, was bound to find caution.

The pursuer argued that there was nothing suspicious in the pursuer not having tried to get upon the poor's roll, but the contrary, as the reason why she did not make the attempt was that counsel and agent were willing to take up her case.

Authorities—*M'Donald v. Duchess of Leeds*, May 16, 1860, 22 D. 1075; *Henderson v. Rollo and Mitchell*, Nov. 18, 1871, 10 Macph. 104; *Maxwell v. Maxwell*, March 3, 1847, 9 D. 797.

At advising—

LORD PRESIDENT—The question here is one of some importance. This pursuer is in receipt of parochial relief of 7s. a-week, and although that is not sufficient for the maintenance of herself and her children, still the allowance is considerable, and the position of this woman may be expressed by the one word “pauper.” Now it would be a strong thing to say, as a general rule, that a pauper can sue without finding caution for expenses. The pursuer has a title to be placed on the poor roll, and so as to sue advantageously; but to do that she must satisfy the reporters in *probabilis causa* that she has a *probabilis causa*. She has made no attempt, however, to do so, and one cannot help suspecting that she fears that she may not be able to satisfy the reporter. I think that at present we should proceed no further with the case, but *sist* proceedings in order to give the pursuer an opportunity of being put upon the poor's roll. If, however, she does not succeed in that, the probability is that she will have to find caution.

The other Judges concurred.

Counsel for Pursuer—Solicitor-General (Millar), and Grant. Agent—James Barton, S.S.C.

Counsel for Defender—C. Smith. Agents—Keegan & Welsh, S.S.C.