MAJORITY RULE; THE DEVELOPMENT OF GENERAL PRINCIPLE IN CASES ON CHARTERED CORPORATIONS

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[*In this article, the author explores the origin of rules governing majority voting at meetings of chartered corporations. In particular, he discusses the type of majority required, the proper treatment of informal votes and abstentions, and rules as to a quorum. Although only one twentieth century case has specifically dealt with the issue of majority rule in a chartered corporation* — Knowles v. Zoological Society of London — *the author argues that these old authorities on chartered corporations have been widely recognised as the source of rules governing meetings generally, including meetings in the important contexts of statutory tribunals and registered companies.*]

I. TWENTIETH CENTURY EXPERIENCE

In the development of legal principle dealing with decision-making in groups and associations, cases on chartered corporations have been of central significance. Ideas developed in those cases in past centuries permeate the law today, whether or not their origin is recognized. In particular, many of the rules generally regulating meetings can be traced back to such cases.[1] But cases dealing directly with chartered corporations have been few and far between in the present century and it seems that only one has dealt with the issue of majority rule: *Knowles v. Zoological Society of London*,[2] a decision of the Court of Appeal in England in 1959.

The dispute in that case arose when a meeting was held to decide whether or not to confirm new by-laws for the defendant society. It then had over 7,000 fellows (members), of whom an unascertained, and apparently unascertainable, number was entitled to vote.[3] At the meeting, 1,788 fellows voted for the new by-laws, 1,227 against, there were eighteen abstentions and one vote was disallowed.[4] The plaintiff sued to affirm the old by-laws, seeking a declaration that 'on the true construction of the charters and by-laws, a resolution to make, alter or repeal a by-law required the confirming vote of a majority of all the fellows of the society for the time being entitled to vote on the resolution, whether actually voting

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[1] This point is commonly made in writing on the topic of meetings. See, for example, Boulton, A. H., *Shackleton on the Law and Practice of Meetings* (6th ed. 1977) chs 6 and 8, and Chappenden, W. J., *Joske's Law and Procedure at Meetings* (7th ed. 1982) ch 9.

[2] [1959] 1 W.L.R. 823.

[3] *Ibid.* 825, per Lord Evershed, M.R. The difficulty seems to have been in determining the number disqualified from voting at any one time under the charter and existing by-laws; *ibid.* 824.

[4] *Ibid.* 823-824.

thereon or not'.[5] Such a declaration would have required the confirming vote of about 3,500 fellows, a greater number than all those present in person or by proxy at the meeting.

The society had been incorporated by charter in 1829.[6] The charter created a council which could make by-laws[7] and could also 'alter suspend or repeal and . . . make such new . . . by-laws in their stead as they shall think most proper and expedient so as the same be not repugnant to these presents . . .'[8] Fellows of the society were entitled to receive notice of new or amended by-laws, and such by-laws were not to take effect 'until the same shall have been confirmed by method of ballot by the fellows of the said society or any eleven or more of them at the next general meeting of the society to take place after such notices shall have been given as aforesaid'.[9]

At the time of the dispute, the by-laws gave all fellows not in arrears with their subscriptions 'the right to be present and to vote at all "general meetings" '.[10] They provided that: 'Eleven fellows present in person and entitled to vote shall be a quorum'.[11] They also purported to regulate the making of new by-laws or alteration of existing by-laws. The most problematic provision, chapter 13 section 3, read in part as follows:

> A proposal for the making of new by-laws or for the alteration or repeal of any by-law . . . shall be deemed to have been confirmed if the majority of fellows entitled to vote shall vote in its favour and for this purpose voting may be in person or by proxy.[12]

Argument seems to have concentrated on the terms of the constituting documents and the dictates of reason and common sense; that is, the dispute was largely approached as if it involved issues which had not been considered before. For the plaintiff it was contended that the charter and the by-laws did not define the relevant quorum as eleven,[13] and, principally, that chapter 13 section 3 in using the words 'the majority of fellows entitled to vote' required 'the majority of the *total* number of fellows at the relevant date who were entitled to vote'.[14] The defendant advanced a number of opposing arguments.

Judgment was delivered immediately; the court took no time for consideration. Judgment was for the defendant society, overturning declarations granted at first

[5] *Ibid.* 824.

[6] *Ibid.* 825. A supplementary charter had been granted in 1948 but is not directly relevant to the present discussion. None of the judgments is explicit about the status of the society. The existence of a charter logically imports corporate status. This does not seem to have been disputed in subsequent comments on the case in legal literature. See *Halsbury's Laws of England*, (4th ed.) *Vol.* 9, 'Corporations', para. 1300, n. 7, and *Hood Phillips*, O., 'Alteration of Society's Rules', (1959) 75 Law Quarterly Review 452, both treating the society as incorporated. The only judicial comment to date appears to have been that of Urie, J., in the Canadian Federal Court of Appeal in *Cardinal v. The Queen* (1980) 109 D.L.R. (3d) 366, 382. It is submitted, with respect, that the existence of a charter denies his Honour's opinion that the case dealt with 'the voting requirements of an unincorporated body'.

[7] [1959] 1 W.L.R. 823, 825.

[8] *Ibid.*

[9] *Ibid.*

[10] Ibid. 826.

[11] *Ibid.*

[12] *Ibid.* 823-824.

[13] *Ibid.* 829-830, 833.

[14] *Ibid.* 824-825, emphasis added. This argument had been accepted by the judge at first instance, Vaisey, J.: *ibid.* and *ibid.* 827. Lord Evershed, M.R., was prepared to accept this as the meaning of the language 'bereft of its actual context . . . on its face . . .': *ibid.*

instance by Vaisey, J. The principal judgment was delivered by Lord Evershed, M.R. In separate judgments, Romer, L.J., and Pearce, L.J., agreed with him, each adding observations of his own. The defendant's arguments were in general accepted: the interpretation contended for by the plaintiff would lead to such inconvenience as to amount to absurdity,[15] it was inconsistent with some provisions in the charter and in the existing by-laws,[16] and more than that, it was actually repugnant to some other provisions in the charter.[17] The correctness of the decision in *R v. Darlington Free Grammar School Governors*[18] was accepted.[19] An interpretation of chapter 13 section 3 which avoided these problems was to be preferred; it meant 'if the majority of fellows who attend this meeting in person or by proxy and are not disqualified from voting shall vote . . .'.[20] Such a majority had been obtained.[21]

The ruling was in effect that new by-laws for the society could be confirmed by the favourable votes of an absolute majority of the qualified persons present at a properly convened meeting. Without disputing that the particular vote had been effective, it is still possible to question whether or not such a majority was essential, either as a matter of general principle or under the terms of the constituting documents. Absolute majorities are not common in other contexts; also, it would be curious if general principle were here to ignore abstentions and informal votes. Such questions in turn raise a further question of whether or not there exists relevant judicial authority which was not cited to the court.

A related issue which remained uncanvassed was that of quorum: the quorum required for a voting body of unascertainable size — as the society seems to have been — and the relevance of any provisions in the charters and by-laws which might be read as referring to quorum. Again it is appropriate to ask whether or not any judicial authority exists.[22]

[15] [1959] 1 W.L.R. 823, 828-829, 833-834. For this aspect of the defendant's argument, see *ibid* 825.

[16] *Ibid.* 829, 832-833, 834.

[17] *Ibid.* 829-830, 834. For this aspect of the defendant's argument, see *ibid.* 828.

[18] (1844) 6 Q.B. 682. This case had not been cited to Vaisey, J.: [1959] 1 W.L.R. 823, 828. There, the charter had granted certain powers to the governors; by-laws had later been introduced requiring those powers to be exercised only in particular ways. The by-laws were rejected by the Court as 'an added fetter to what the charter authorised the governors to do' (*ibid.* 831). Tindal, C.J., said:

> [N]othing can be better established than that a by-law of a corporation, which alters the constitution of the corporation, is void; and upon the same principle a by-law which restrains and limits the powers originally given to the governors by the founder himself we think must be bad (6 Q.B. 682, 717).

[19] [1959] 1 W.L.R. 823, 831-832, 834.

[20] *Ibid.* 830, 832, 834. For this aspect of the defendant's argument, see *ibid.* 827-828. This argument may not have been put to Vaisey, J.; at any rate he did not deal with it: *Ibid.* 828.

[21] All those present must logically be comprised in a description which enumerates those for, those against, those abstaining and those disqualified. See *supra* n. 4, p. 115 and accompanying text.

[22] Other issues might also be raised. For instance, the society had two charters; no authority on the relationship between them was adverted to. Yet this had earlier been the subject of discussion in many cases; see, for example, *R v. Miller* (1795) 6 T.R. 268; 101 E.R. 547 and cases there cited. It also seems surprising that only one authority on the relationship between the charters and the by-laws was referred to, and then only on appeal (*R v. Darlington Free Grammar School Governors* (1844) 6 Q.B. 682). By-laws were extensively discussed in Grant, J., *A Practical Treatise on the Law of Corporations in General* (1850) 76-97, where the case referred to was only one of a number cited on the point. However, such matters are beyond the scope of the present paper.

II. PREVIOUS DECISIONS

(1) *As Authority Today*

Although recent cases on chartered corporations are few in number and the form has not been the subject of extensive analysis in recent times,[23] a great body of earlier authority exists. The relevant cases may be difficult to discover, notwithstanding the availability of many in the the English Reports, but when they have not subsequently been contradicted even the most ancient must be assumed to continue to state legal principle. On the other hand, the possibility that particular cases might be distinguishable, perhaps because they dealt with types of corporations not analogous to those met with in the twentieth century, cannot be ignored.

A survey of authorities on majority rule in chartered corporations demonstrates that the principal uses to which the form has been put have changed over the centuries. In 1541 the Statute 33 Hen. VIII c.27 sought to enforce what was then seen as a rule of 'the Common Laws of this Realm' that 'the Assent and Consent of the more or greater part' of any corporation should be as effective 'as if the Residue or the whole Number . . . had thereunto consented and agreed'. The Statute expressly dealt with 'any Cathedral Church Hospital College or other Corporation', and it seems fair to assume that those groups were the ones then regarded as appropriate for designation and regulation as corporations. For the following two centuries, the leading cases on majority rule were concerned almost exclusively with such groups.[24] Then, about the beginning of the eighteenth century, the pattern began to change and until the early nineteenth century most decisions concerned municipal corporations.[25] Thereafter the number of cases on chartered corporations dwindled.

There are no serious problems in seeking to deduce general principles from the earlier cases. In some, for instance those involving cathedral chapters, it was possible for principles of ecclesiastical law to intervene, but the courts were generally aware of that and avoided confounding ecclesiastical law with the common law.[26] A large number of the cases on municipal corporations concerned elections and it may sometimes be necessary to distinguish principles applicable only to elections.[27] However, ultimately judges hearing election cases came to see

[23] The leading authorities are still Kyd, S., *A Treatise on the Law of Corporations* (Vol. 1 1793 and Vol. 2 1794) and Grant, J., *op. cit.* See also Angell, J. K. and Ames, S., *A Treatise on the Law of Private Corporations Aggregate* (1832). *Halsbury's Laws of England*, (4th. ed.) contains a valuable current treatment of the law in Volume 9, 'Corporations'.

[24] As examples of ecclesiastical cases, see *Le Case del Deane & Chapter de Fernes* (1607) Dav. 42; 80 E.R. 529 and *Hascard v. Somany* (1693) 1 Freeman 504; 89 E.R. 380. On colleges, see *The Case of New College, Oxford* (1565) 2 Dyer 247a; 73 E.R. 546, and *R v. Windham* (1776) 1 Cowp. 377; 98 E.R. 1139. Grant, J., *op. cit.*, accords a number of the groups separate treatment, although he does not of course confine himself to the issue of majority rule: see, for example, 'The Universities' (pp. 515ff.), 'Colleges' (pp. 529-551), 'Hospitals' (pp. 567-580), 'Dean and Chapter' (pp. 581-599).

[25] A very large number of other cases could be cited. Leading cases are discussed below. The Municipal Corporations Act 1835 (5, 6 William IV c. 76) abolished all the old municipal corporations and so ended this line of litigation.

[26] See, for example, *Le Case del Deane & Chapter de Fernes* (1607) Dav. 42; 80 E.R. 529 and *Hascard v. Somany* (1693) 1 Freeman 514; 89 E.R. 380.

[27] On this point, see the observations of Lord Truro in *Gosling v. Veley* (1853) 4 H.L. Cas. 679, 810-813; 10 E.R. 627.

themselves as dealing with problems of corporate decision-making rather than with elections in a parliamentary sense; they therefore considered, developed and applied principles on the former basis rather than the latter.[28] A significant number of cases now accepted without dispute as leading authorities of general principle on decision-making dealt with municipal corporation elections.[29]

There are other problems associated with the municipal corporation cases. They do not cite the earlier authorities. The reasons for this are obscure. It may have been thought inappropriate to refer to cases possibly involving canon law or distinguishable principles of the common law, or earlier relevant authority may have been overlooked due to unavailability of reports of decided cases. The latter suggestion is to some extent confirmed by a parallel failure in many of the municipal corporation cases to cite analogous decisions involving municipal corporations. Despite all this, the principles which slowly emerged in the municipal corporation cases were compatible with those worked out in the earlier cases.

It should also be noted that in many of the municipal corporation cases argument centred around the words of the particular charter. It might be thought that such cases could therefore express no general legal principles but would merely be decisions on the construction of particular words. At the time, this was often argued by counsel, who sought repeatedly to distinguish each case from its predecessors on the basis of minor differences in wording.[30] Some of the earlier municipal corporation cases taken individually look like cases of construction. But examining them together leads one to the inevitable conclusion that the courts in interpreting individual charters were adopting common assumptions about the law.

By the early nineteenth century the courts showed no reluctance to express and apply rules of a general nature.[31] The question then arising was of the place of individual charters. This was taken up and relevant principle articulated in a

[28] This view seems first to have been put, although obiter, by Lord Mansfield in *Oldknow v. Wainwright* (1760) 2 Burr. 1017, 1020; 97 E.R. 683. He expressed it again positively as part of his reasoning in *R v. Monday* (1777) 2 Cowp. 530; 98 E.R. 1224 where the other judges agreed with him:

> There are different kinds of elections: elections of members of Parliament, verderors, corporations, etc. and different questions may arise out of each. Therefore, they must not be confounded together . . . This is a motion in the shape and under the name of a proposal made to the body . . . by the mayor, and he proposes seven persons together in one list to fill up seven vacancies. The question put, upon these seven persons so proposed, is not, which of them shall be elected aldermen, but whether the seven shall be aldermen? The only answer to be given to such a question is, yes or no . . . It is not a question which of two candidates shall be preferred, but whether these seven persons so proposed should be chosen. Upon that motion there is a majority against them . . . Ibid. 538-539.

There is thus no overriding principle to prevent the rules about voting worked out in other corporation meetings from being applied to voting in corporation elections, and *vice versa*. The fundamental analogy is not between corporation elections and parliamentary elections but between corporation elections and other corporation meetings.

[29] For instance, *R V. Miller* (1795) 6 T.R. 268; 101 E.R. 547 and *R v. Bower* (1823) 1 B. & C. 492; 107 E.R. 182, to name but two.

[30] For example, *R v. Grimes* (1770) 5 Burr. 2598; 98 E.R. 366 *R v. Monday* (1777) 2 Cowp. 530; 98 E.R.; 1224 *R v. Miller* (1795) 6 T.R. 268; 101 E.R. 547 and *R v. Bower* (1823) 1 B. & C. 492; 107 E.R. 182, 215.

[31] One of the earliest decisions where this can clearly be seen is *R v. Grimes* (1770) 5 Burr. 2598, 2601; 98 E.R. 366 where after construing the charter the Court proposed several statements of general principle almost certainly intended as such — there is nothing in the report to link them to any specific words in the charter. Later cases became progressively more explicit in expressing general rules.

number of cases.[32] A later example is *R v. Bower*,[33] decided in 1823. Bayley, J., confirmed that the charter might override on issues of majority governance: 'a case of this nature may be taken out of the general rule by the words of the charter . . .'.[34] Abbott, C.J., accepted the same principle but added a rider: 'It [a particular general rule] should not . . . be broken in upon by nice and subtle construction'.[35]

Principles established in early cases dealing with a variety of corporations were thus enunciated afresh and developed further in eighteenth and nineteenth century cases dealing specifically with municipal corporations. Although most of the latter cases concerned elections, the judges there came to see themselves as applying principles of relevance generally to corporate decision making. And although the municipal corporation cases mostly dealt with bodies established by comprehensive charters, the judges ultimately expressed themselves in general terms which would apply unless a particular charter clearly provided to the contrary. All classes of cases mentioned are therefore appropriate material to examine in an attempt to elucidate the rules applying generally to chartered corporations.

(2) *On Voting at Corporation Meetings*

(a) *Recognition of Majority Rule*

As indicated above, the Statute 33 Hen. VIII, c.27 of 1541 accepted that 'the Assent and Consent of the more or greater part' of a corporation was as effective in law as if the whole body of membership had agreed.[36] To reinforce the rule which it recognised, the Statute provided that the minority in a corporation should not be able to assert any power of veto over the majority.[37]

The precise effect of the Statute still remains to some extent unclear, despite some subsequent litigation.[38] However, the underlying rule was gradually elucidated by the courts. *Le Case del Deane & Chapter de Fernes*,[39] decided by the

[32] A rule was implicit in *R v. Monday* (1777) 2 Cowp. 530; 98 E.R. 1224; see observations made by Aston, J., between the close of argument and delivery of judgment: 537-538. The point was first fully argued in *R v. Hoyte* (1795) 6 T.R. 430; 101 E.R. 632. See also *Grindley v. Barker* (1798) 1 Bos. & P. 229; 126 E.R. 875; *R v. Morris* (1803) 4 East 17; 102 E.R. 736; and *R v. Devonshire* (1823) 1 B. & C. 609; 107 E.R. 224. These cases all expressed the law in similar terms.

[33] (1823) 1 B. & C. 492; 107 E.R. 182.

[34] *Ibid.* 499. A similar statement had earlier been made by Eyre, Ch.J., in *Grindley v. Barker* (1798) 1 Bos. & P. 229, 236; 126 E.R. 875.

[35] (1823) 1 B. & C. 492, 498. All four judges went on to determine that in the case before them general principle prevailed: 'If it had been intended by the present charter to alter the general rule of law . . . more explicit words would have been used to manifest that intention' (*ibid.* 500, per Bayley, J.).

[36] It has since been treated as authority for that: see Wills, J., in *The Mayor of Merchants etc. of the Staple of England v. The Governor & Co. of the Bank of England* (1887) 21 Q.B.D. 160, 165 (Q.B.D. — upheld in the Court of Appeal without reference to the issues raised in this part of the judgment). The judgment of Wills, J., has subsequently been cited with approval, and was relied upon by the Supreme Court of Canada in *Cardinal v. R.* [1982] 3 W.W.R. 673, 680, a case concerning a band of Indians.

[37] Any provision under which the majority 'should be in anywise hindred [sic] or let by any one or mo [sic], being the lesser Number of such Corporation' was to be 'from henceforth clearly frustrate void and of none Effect'.

[38] See *The Case of New College, Oxford* (1565) 2 Dyer 247a; 73 E.R. 546 where the court took the view that the Statute was to be read as relating only to decisions by the whole body of corporators. But the result in that case may have turned upon the construction of the particular documents.

[39] (1607) Dav. 42; 80 E.R. 529. (hereinafter *The Fernes Case*).

Court of King's Bench in Ireland in 1607, is one of the earliest cases to be found in the reports on this branch of the law. In determining a dispute over a lease in the diocese of Fernes, the Court articulated a number of procedural requirements for an effective act by the members of a corporation, including that a majority of the corporators must assent for their act to bind the corporation.[40] Earlier statements of the common law as well as canon law were referred to by the Court in coming to this conclusion. Those earlier statements had in fact put the principle in a more positive form: '. . . the dean and the major part of the chapter are the corporation, and their act is the act of the corporation, notwithstanding that the rest do not agree';[41] and 'where the majority is, there is the whole'.[42]

One question was not answered clearly: the meaning in that context of the word 'majority'. The Court did not require all the members to be present at the meeting, making it explicit that the presence of a majority was sufficient,[43] but there was no suggestion that a majority of the majority present might act. Reading the report of *The Fernes Case* as a whole, one gets a strong impression that the court thought that a majority of all the members was required for an effective act.

(b) *Rejection of a Requirement for a Majority of all the Members*

Whether or not a majority of all the members was required was considered in 1693 in another ecclesiastical case, *Hascard v. Somany*.[44] There the court said: '. . . acts done by the corporation ought to be done by the consent of the major number, or else they are not valid; and therefore where the corporation consists of thirteen, there ought to be seven to make a chapter: but the act of the major number of those seven is binding to the corporation'.[45] This seems to have required a majority of those present rather than a majority of those voting (the modern notion of a simple majority, permitting abstentions) but it clearly denied any suggestion that a majority of the whole corporation might have been required.

The point arose afresh in the following century in cases involving municipal corporations. The first step was taken in 1716 in *Cotton v. Davies*.[46] The question

[40] "Et que le major part del corporation doent consenter al touts acts queux lieront le corporation, est manifest auxy per les rules del canon & common ley" — *ibid.* 47. The judgment also dealt with other important issues outside the scope of the present paper. For example, it required the act concerned to have been done at a meeting. That word was not used, but the judgment carefully described what must occur: the act must be done by those involved together at one place and at one time. So, separate individual acts did not result in a corporate act. Ancient authorities in the common law were cited in support (ibid. 48). Other characteristics of a meeting were also referred to in the judgment: the availability of proxies (*ibid.* 47), practice in the taking of votes (*ibid.* 48) and quorum requirements (*ibid*; discussed below).

[41] The whole sentence of which this is a part cites earlier authority: "La common ley ad mesme le Rule, 14 Henr. 8.29 ou est dit, que le deane & le major part del chapter sont le corporation, & lour act est le act del corporation, coment que les auters ne agreeont" — *ibid.* 47-48.

[42] Authority is also cited for this: "Issint 21 Edw. 4.27. est dit, *ubi major pars, ibi tota*: 15 Edw. 4.2.a. 9 Henr. 6.32. a mesme le entent" — *ibid.* 48. The Latin tag has probably most often since been cited as the logical basis of majority rule.

[43] 'Uncore il covient que ils se assemblont en ascun certain lieu & que le major part soit present en cest lieu, quant ils donont lour consent al ascun common Act' — *ibid.*

[44] (1693) 1 Freeman 504; 89 E.R. 380. The case involved the Dean and Canons of Windsor.

[45] *Ibid.*

[46] (1716) 1 Str. 53; 93 E.R. 380.

argued was whether the charters there were to be read as requiring the consent of at least one bailiff and one alderman to an election or merely their presence at the election. Lord Parker, C.J., with whom the rest of the Court agreed, said:

> This is like the case of *The City of London*, where the mayor, and common council have power to do acts; and yet the act of the majority of the common council is good, though the mayor dissents. In this case there is nothing required but the presence of one bailiff and one alderman at every election, and they have no negative voices . . .[47]

This confirmed that specifying the body with the capacity to act was not the same as specifying how that body could validly act. It might be logical to infer that in so distinguishing the concepts of quorum and voting (although not in those terms) the Court must also have determined that a majority of the quorum had the power of election. But it seems clear that a majority of the whole corporation had voted for the plaintiff and that the question of whether or not a majority of the quorum might decide did not arise.[48] That point first seems to have been directly the subject of judicial comment in 1741 in *A. - G. v. Davy*.[49] Lord Hardwicke said:

> It cannot be disputed, that wherever a certain number are incorporated, a major part of them may do any corporate act; so if all are summoned, and part appear, a major part of those that appear may do a corporate act, though nothing be mentioned in the charter of the major part.[50]

This statement contained two major propositions. The first was a general rule supporting the effectiveness of any act by the majority of a corporation. For this it has most commonly since been cited.[51] However, it is not clear whether this rule was intended to refer to voting or to quorum. At the very least it must have been to the former, then logically including the latter. In the light of *Cotton v. Davies*[52] and taking the statement as a whole, it may be read as a reference to quorum, perhaps in the form that if the majority were present they might act.

Secondly, the statement asserted that, even where the charter was silent, the majority of those at a meeting convened on proper notice might act for the corporation. This was most significant. It meant that a majority of all the members was not required in order to do a corporate act. Such a principle was not strictly necessary to resolve the issues before the court,[53] but it was stated positively and unequivocally. However, a problem remains: this part of the statement does not mention quorum, and the meaning might thus be that a majority of whoever attended the meeting, however few, could act for the corporation. By way of

[47] *Ibid.* 54. The case of *The City of London* is not otherwise identified in the report.

[48] *Cotton v. Davies* was in fact cited by counsel for the defendant in *Oldknow v. Wainwright (R v. Foxcroft)* (1760) 2 Burr. 1017, 1019; 97 E.R. 683, 684, as authority for the proposition that a majority of the required quorum was sufficient. The judge (Lord Mansfield) did not refer to the point. *Cotton v. Davies* does not seem to have been referred to subsequently.

[49] (1741) 2 Atk. 212; 26 E.R. 531.

[50] *Ibid.*

[51] See for example *Grindley v. Barker* (1798) 1 Bos. & P. 229, 236-237, 240; 126 E.R. 875, 879-880, 881. *McColl v. Horne and Young* (1888) 6 N.Z.L.R. 590, 591, *Atkinson v. Brown* [1963] N.Z.L.R. 755, 765. The first and the last are both significant cases on statutory tribunals. There is a certain ambiguity in the treatment of corporate status in *A.-G. v. Davy*; it may be that this has assisted its application in other contexts. However, it is submitted that Lord Hardwicke saw himself as stating principles of corporation law.

[52] (1716) 1 Str. 53; 93 E.R. 380.

[53] It is possible to argue that this part of the statement did not advert at all to whether or not a majority of all members was required — that the issue had not entered Lord Hardwicke's mind — but the natural meaning of the words is not so.

answer it is suggested that the second part of the statement is to be read in conjunction with the first. This tends to confirm that the first part of the statement was intended to relate to quorum rather than to voting.

Over the next hundred years, in a series of cases, these principles came to be stated with increasing clarity, and the conditions surrounding them refined. See, for example, in 1770, *R v. Grimes*[54], where the court, after deciding that under the particular charter the provisions as to quorum (a majority) had not been satisfied, went on to make what must have been intended as a statement of general principle:

> After the major part of the subsisting number are so assembled together, then indeed the major part of those who are so assembled are to elect and nominate: and the majority amongst those so assembled involves the whole number; who are all bound by the determination of the majority of such a meeting.[55]

Not only did this make clear that general principle did not require a majority of all members, but it also provided an explanation for the rule, in terms reminiscent of the ancient authorities cited many years before in *The Fernes Case*[56]. A similar statement of general principle was made by Lord Mansfield in 1777 in *R v. Monday*:[57]

> When the assembly are duly met, I take it to be clear law, that the corporate act may be done by the majority of those who have once regularly constituted the meeting.[58]

(c) *Rise of the Simple Majority*

In argument and judgment in the cases just discussed, a handful of decisions was almost completely ignored.[59] Related among themselves in a common line of authority, they might also have illuminated the continuing debate about majority rule had they been cited to the courts in that context. They dealt with the effect of abstentions and informal votes and with the circumstances in which an objection to the taking of a vote might be regarded as a vote against an act or decision. In doing so, they effectively further construed the meaning of the word majority.

In *Oldknow v. Wainwright*,[60] decided in 1760, a meeting of twenty-five electors was properly summoned to elect a town clerk. Twenty-one appeared. Seagrave was nominated and nine electors voted for him. The other twelve did not vote. Eleven of them instead protested against the holding of the election, because in their view Foxcroft had already been appointed to the position. The Court held that

[54] (1770) 5 Burr. 2598; 98 E.R. 366.
[55] *Ibid.* 2601; 368.
[56] "*Ubi major pars, ibi tota*": (1607) Dav. 42, 48; 80 E.R. 529, 534-5.
[57] (1777) 2 Cowp. 530; 98 E.R. 1224.
[58] *Ibid.* 538; 1228. The context makes it clear that by 'duly met' Lord Mansfield was referring to the satisfaction of quorum requirements. Lord Mansfield's statement was quoted with approval by Wills, J., in *The Mayor of Merchants etc. of the Staple of England v. The Governor & Co. of the Bank of England* (1887) 21 Q.B.D. 160 (Q.B.D.). Other cases where the same points were confirmed and elaborated include *R v. Miller* (1795) 6 T.R. 268; 101 E.R. 547 and *R v. Bower* (1823) 1 B. & C. 492; 107 E.R. 182.
[59] *Oldknow v. Wainwright* (1760) 2 Burr. 1017; 97 E.R. 683; *R v. Withers*, there referred to, and related decisions discussed below. *Grindley v. Barker* (1798) 1 Bos. & P. 229; 126 E.R. 875 exceptionally, did discuss these decisions in the context of majority rule. However, its subject matter was not a chartered corporation, but a statutory tribunal, although principles governing chartered corporations were there considered and applied (see *supra* n. 51, p. 122).
[60] (1760) 2 Burr. 1017; 97 E.R. 683.

Foxcroft had not been appointed. The issue therefore became whether or not Seagrave had been elected.

Lord Mansfield characterised the situation as one of abstention. The protest against the election at the time of voting was ineffective.[61] In his view, those who chose not to vote could be taken to have decided to leave the matter to be determined by those who chose to vote.[62] The result was that the relevant majority was of those voting. The majority of those voting bound all those present, even if those voting did not constitute a majority of those present. The decision of those present, properly made, in turn bound all those qualified to vote[63] and ultimately, under the terms of the charter, the whole corporation.

The report of *Oldknow v. Wainwright* contains the remarks of one other judge, Wilmot, J. He referred to three earlier cases which he regarded as analogous: *R v. Boscawen*,[64] *R v. Withers*[65] and *Taylor v. The Mayor of Bath*.[66] The first two dealt with informal votes, respectively cast for an unqualified person and in an unauthorised way. In both cases, those voting informally were regarded as not having voted at all. Further, in *R v. Withers* they were held to have 'virtually consented'.[67] In the third case, *Taylor v. The Mayor of Bath*, the Court similarly held that: 'votes given for an unqualified person, under notice of his incapacity, are thrown away'.[68] All this parallels the reasoning of Lord Mansfield in *Oldknow v. Wainwright* in relation to abstentions. Therefore, after *Oldknow v. Wainwright* the same rule can be said to have applied both to informal voting and to abstentions: '. . . the majority of the corporators actually voting constitutes the elective body, whatever may be the number of electors required to be present to constitute a good meeting'.[69]

It is submitted that certain general propositions, still applicable today, emerge from all these decisions.[70] In the meetings of chartered corporations, informal

[61] *Ibid.* 1020; 684-5. However, it seems that Lord Mansfield thought that a proper protest might have been made at an earlier time, or an adjournment sought: *ibid.*

[62] *Ibid.* 1021.

[63] In accordance with the common submissions of counsel. In the words of counsel for the plaintiff, 'the voice of the majority of those who were present, was the voice of the whole twenty-five' (*ibid.* 1018; 683-4, for the similar submission of counsel for the defendant, see *ibid.* 1019; 684).

[64] Cited as P. 13 Anne, B.R. (in Truro) by Wilmot, J. (2 Burr. 1021; 97 E.R. 685). Similarly cited in *R v. Monday* (1777) 2 Cowp. 530; 98 E.R. 1224 by counsel for the defendant (*ibid.* 537). Not, it seems, otherwise reported.

[65] Cited as Pasch. 8 G. 2, B.R., by Wilmot, J. (2 Burr. 1021; 97 E.R. 685). Similarly cited in *R v. Monday* (*loc. cit.*) *arguendo* and in *Gosling v. Veley* (1853) 4 H.L. Cas. 679; 10 E.R. 627 by Lord Truro (*ibid.* 805). Noted by the reporter at 2 Burr. 1021; 97 E.R. 685 but, it seems, not otherwise reported.

[66] Cited as temp. Ld.Ch.J. Lee, B.R. by Wilmot., J. (2 Burr. 1021; 97 E.R. 685). The reporter notes the citation as M. 15 G. 2. Cited as 3 Luder's Election Cas. 324 by Lord Truro in *Gosling v. Veley* (*op. cit.* 802). Further mentioned by Lord Truro (*ibid.* 803) as 'correctly stated in *The King v. Parry*, 14 East 558n'. The last note purports to summarize the note at 3 Luder's 324.

[67] Quoted by Wilmot, J., at 2 Burr. 1021; 97 E.R. 685.

[68] 2 Burr. 1021 n; 97 E.R. 685 n.

[69] *Gosling v. Veley* (*loc. cit.*) per Lord Truro, 803, discussing both *Oldknow v. Wainwright* and *R v. Withers*.

[70] But for *Grindley v. Barker* (*supra* n. 59) these cases have since only once been the subject of judicial consideration — by the House of Lords in *Gosling v. Veley* (*loc. cit.*). That case did not concern a corporation but arose out of the refusal of a majority of ratepayers to raise a rate for the repair of the local parish church. However, all the decisions traversed above were produced in argument before the Court, and Lord Truro carefully considered them in the course of a long judgment, the principal judgment delivered. Nothing said in that judgment contradicts the present analysis of those decisions and much supports it.

votes and abstentions are treated alike. The rule is that those who do not effectively vote consent to the decision of those who do. The result is that the relevant majority is not of those present at a meeting but of those properly voting, even if they constitute only a minority of those present. Further, a protest may be regarded as an abstention where the protesters do no more than protest, permitting the remainder to determine the issue; on the other hand, there is no principle which prevents those who protest from subsequently joining in the voting. The result is like a simple majority: the relevant majority is of those voting effectively at the meeting.[71]

(3) *On Quorum*

(a) *Ecclesiastical Corporations — Rules Emerge*

In *The Fernes Case*[72] there was argument that a valid act by the corporation required the presence of the entire chapter. This was denied by the court, applying what appears as a statement of general principle, although no authority was cited for it; the court held that what was required was the presence of a majority of the members when consent was given to the corporate act.[73]

A statement of who must be present at the taking of votes looks like a statement about quorum. However, it is not clear from the report that the court had that concept separately in mind. It is possible that the court was intending to do no more than assert in another way the principle met elsewhere in the judgment that a majority could not be effective unless those involved acted together at a meeting. Whatever the court intended, commentators later viewed the case as in accordance with general principle insofar as it decided that 'the major part of the whole chapter must be assembled in order to do the corporate act'.[74]

Principles were articulated in a more refined and precise form in 1693 in *Hascard v. Somany*,[75] when it was held that '. . . where the corporation consists of thirteen, there ought to be seven to make a chapter; but the act of the major number

[71] Mention should be made of some other decisions which may appear to contradict or qualify these propositions by requiring a unanimous vote of all voting members for an effective act or decision. See *R v. Strangeways* (1714) Hil. 1 Geo 1 (referred to in *R v. Mayor etc. of Shrewsbury* (1735) Cas. t. Hard. 147, 151; 95 E.R. 94, 96 and in *R v. Theodorick* (1807) 8 East 543, 545; 103 E.R. 451, 452); *Musgrave v. Nevinson* (1723) 1 Str. 584, 2 Ld. Raym. 1358; 93 E.R. 714; *R v. May* (1770) 5 Burr. 2681; 98 E.R. 408, *R v. Wake* (1728) 1 Barn. K.B. 80; 94 E.R. 55; and *R v. Chetwynd* (1828) 7 B. & C. 695; 108 E.R. 883. On analysis these cases all prove to have related to situations where notice of meeting or of business was required and had not been given. In such a situation the law made a majority vote of the usual kind a nullity. These cases established a principle that if all voting members had assembled and unanimously waived the defect in notice the meeting might proceed in the normal way. It appears also that a unanimous vote by all members on a matter of substance was treated as a unanimous waiver of the defect.

[72] (1607) Dav. 42; 80 E.R. 529.

[73] 'Uncore il covient que ils se assemblont en ascun certain lieu, & que le major part soit present en cest lieu, quant ils donont lour consent al ascun common Act'; *ibid.* 48. If this seems to go further than some later authority, it should be remembered that the act concerned was the affixing of the corporate seal.

[74] Editorial comment on *The Fernes Case* in a report of a later case: *Hascard v. Somany* (1693) 1 Freeman 504, 505; 89 E.R. 380. This put the principle more positively than the judgment itself had done.

[75] (1693) 1 Freeman 504; 89 E.R. 380 (See also *supra* n. 44, p. 121 and accompanying text).

of those seven is binding to the corporation'.[76] The first part of this statement seems to have been intended to refer to quorum, inferring a principle that a majority of members would constitute a quorum; the second part, in requiring a distinct majority for effecting an act, confirmed that the reference in the first part was to quorum. The judgment then went on to indicate that, in certain circumstances, at least one of the two principles might not apply:

> But if the antient [sic] usage hath been, that acts have been done from time to time by the major number of those that are present although they are but three or four, it shall be then intended that it was part of their constitution at the beginning . . .[77]

This seems to have been an early recognition of the rule that the constitution of a particular body might provide to the contrary of general princple,[78] here in the matter of quorum. The judgment has since — in quite recent times — been cited as authority for all these principles.[79]

(b) *Municipal Corporations — the Rules are Refined*

The charters of most municipal corporations specified the composition of their decision-making bodies. Commonly, particular individuals or groups were nominated as part of them. Such a provision could cause problems if it were read as referring to voting. It might then create effective veto powers in the individuals or groups nominated. However, the result would be otherwise if the provision referred not to voting but to the constitution of a quorum. Most charters were ambiguous in this respect — they did not distinguish explicitly between quorum and voting requirements. Discussion above has indicated that when the charter failed clearly to make such a distinction the courts showed no reluctance to do so. The discussion which follows will show further that in such cases the courts consistently classified mandatory provisions as quorum requirements and not as voting requirements; that is, they sought where possible to avoid interpretations which would require more than a majority to act or which would introduce powers of veto.

(i) *Corporations with a Voting Body of Defined Size*

One of the earliest cases reported was *Anonymus* [sic],[80] decided in 1731. The charter required that 'the capital burgesses should be chose by the burgesses, or the major part of them'.[81] There were thirty-one. The Court accepted argument that 'the majority of the whole number of the electors must be present at least at an election';[82] only nine had been present and that was not enough. There was no evidence as to, or discussion of, voting. The decision thus seems to have been that the words in the charter referred to quorum. A similar view was taken in 1770 in

[76] *Ibid.*
[77] *Ibid.* 505.
[78] See *supra* n. 33, p. 120 and accompanying text.
[79] See *Cardinal v. The Queen* (1980) 109 D.L.R. (3d) 366 per Urie, J., in the Federal Court of Appeal (*ibid.* 379). The decision of that Court was confirmed in the Supreme Court of Canada but without reference to the particular point: [1982] 3 W.W.R. 673.
[80] (1731) 2 Barn. K.B. 74; 94 E.R. 365.
[81] *Ibid.*
[82] *Ibid.*

R v. Grimes[83] where the charter, perhaps more clearly, directed that 'the mayor and eleven burgesses, *vel major pars eorum*, are to meet, in order to proceed to such election'.[84] A meeting attended by the mayor and three burgesses did not conform to the charter and could not act.[85]

The effect of these decisions was reinforced over the next fifty years in litigation dealing with corporations where the number of qualified voters had been allowed to decline to less than half that specified in the charter. It was eventually decided that such a body could no longer act, as a quorum could not be obtained. In 1792 in *R v. Bellringer*,[86] Lord Kenyon, Ch. J., delivering the unanimous opinion of the court, said that the rule was that:

> where there is a definite body, there must exist at the time when the act is done, a major part of that definite body: it is not necessary indeed that they should all concur in the election, or other act done, but they must be present; and the election at such meeting is in point of law an election by the whole.[87]

The result in the case before the Court was that 'the defendant's was not a legal election, because when it took place there was not a major part of the select body then in existence'.[88] The same judge confirmed these views three years later in *R v. Miller*:[89]

> And this proposition seems to be now clearly established, that where there is a definite body in a corporation, a majority of that definite body must not only exist at the time when any act is to be done by them, but a majority of that body must attend the assembly where such act is done.[90]

So, in corporations where the constitution specifies a particular number for the voting body and requires that they 'or the major part of them' act, a majority of the specified number constitutes a quorum. Such words do not indicate the number of votes needed for effective action at what is otherwise a valid meeting; on the contrary, once the quorum requirement has been satisfied, accepted rules as to majority voting apply.

(ii) *Corporations with a Voting body of Undefined Size*

Discussion so far has examined situations where the charter spelt out the number of voters. This was not invariably so. The first case which dealt with the quorum of

[83] (1770) 5 Burr. 2598; 98 E.R. 366.

[84] *Ibid.* 2601.

[85] *Ibid.* The judgment, like that in *Hascard v. Somany*(*supra* n. 44 and n. 75), clearly distinguished between quorum and voting requirements, going on to say that once the 'major part' have met, a majority of them are competent to act. See *supra* n. 54, p. 123.

[86] (1792) 4 T.R. 810; 100 E.R. 1315.

[87] *Ibid.* 823.

[88] *Ibid.* This decision removed some uncertainty arising from the decision in *R v. Monday* (1777) 2 Cowp. 530; 98 E.R. 1224. There the effect of inability to obtain a quorum due to depletion in the number of members of a corporation had not been argued, and the court, which included Lord Mansfield, while expressing some unease, had been prepared to accept the common submissions of counsel and 'not start a point not agitated at the Bar' (*ibid.* 538).

[89] (1795) 6 T.R. 268; 101 E.R. 547.

[90] *Ibid.* 278. In this case Lord Kenyon, Ch. J., also went further and, with Ashurst, J., applied another, related, principle, that where the number of eligible voters had been allowed to fall below one half of the specified number the corporation was dissolved — see *ibid.* 268, 278. All these principles have not since been controverted. For instances of their subsequent application, see *R v. Bower* (1823) 1 B. & C. 492; 107 E.R. 182; and *R v. Devonshire* (1823) 1 B. & C. 609; 107 E.R. 224. See also *Blacket v. Blizard And Anor* (1829) 9 B. & C. 851, 858-859; 109 E.R. 317.

a voting body of undefined size seems to have been *R v. Varlo*,[91] decided in 1775. The corporation consisted of 'a mayor, twelve aldermen, and an indefinite number of burgesses';[92] the electorate was the same, 'or the greater part of them'.[93] The defendant had the votes of a majority of those who came to the meeting, but it was alleged that those at the meeting did not constitute a majority of the whole corporation. Lord Mansfield said:

> [W]here the power of doing them [corporate acts] is not specially delegated to a particular number, the general mode is, for the members to meet . . . and the major part who are present do the act.[94]

Ashton, J. agreed:

> In the case of an indefinite number of burgesses, as there are in this corporation, I cannot conceive that the charter meant a majority of that indefinite number should be present.[95]

Since the majority of those present at a meeting were competent to act, the implication is that there is no quorum requirement for a body of undefined size.[96] This principle has often since been stated and applied, both in the context of corporations and elsewhere, although its earliest sources have not always been acknowledged.[97]

(iii) *Corporations with a Voting Body Comprised of Different Groups*

Many corporations were not made up of a single group of people, whether defined or undefined in size, but of a number of different groups, sometimes variously defined and undefined in size. Indeed, the corporation in *R v. Varlo*[98] was one such; however, because debate there concentrated upon the effect of the absence of the majority of a group of undefined size, the quorum requirements of corporations made up of a variety of groups were not considered in the judgments. The question came to be argued and was the subject of comment in a number of subsequent cases.[99]

Revelant principle was comprehensively expressed by Abbott, C.J., in 1823 in *R v. Bower*,[1] also making plain the distinction between quorum and voting requirements:

[91] (1775) 1 Cowp. 248; 98 E.R. 1068. This case was decided after two of the leading cases on voting bodies of defined size, *Anonymus* (*supra* n. 80) and *R v. Grimes* (*supra* n. 83).

[92] *Ibid.*

[93] *Ibid.*

[94] *Ibid.* 250.

[95] *Ibid.* 251.

[96] Confirmed, obiter, by Buller, J. in *R v. Amery* (1787) 1 T.R. 575, 588; 99 E.R. 1259. More modern jurisprudence would add that one person alone cannot constitute a meeting: *Sharp v. Dawes* (1876) 2 Q.B.D. 26.

[97] *R v. Bellringer* (1792) 4 T.R. 810 at 822; 100 E.R. 1315, per Lord Kenyon, Ch. J., *R v. Miller* (1795) 6 T.R. 268; 101 E.R. 547, *Withnell v. Gartham* (1795) 6 T.R. 388; 101 E.R. 610, *R v. Bower* (1823) 1 B. & C. 492; 107 E.R. 182, *R v. Justices of Leeds* (1906) 95 L.T. 916 and *Cresswell v. Etobicoke Conservation Authority* [1951] O.R. 197. Exceptionally for a rule developed in relation to chartered corporations, it has expressly been applied in relatively recent times in the context of a registered company: *Montreal Trust Company v. The Oxford Pipeline Company Limited* [1942] O.R. 490.

[98] (1775) 1 Cowp. 248; 98 E.R. 1068.

[99] *R v. Amery* (1787) 1 T.R. 575; 99 E.R. 1258, *R v. Miller* (1795) 6 T.R. 268;101 E.R. 547; and *R v. Morris* (1803) 4 East 17; 102 E.R. 736.

[1] (1823) 1 B. & C. 492; 107 E.R. 182.

> It has now been for many years an established principle in corporation law, that if an election is to be made by a definite body alone, or by a definite together with an indefinite body, a majority of the definite body must be present. In the latter case it is not, indeed, necessary that the party elected should have the voices of the majority of the definite body, but still they must form a part of the mass.[2]

The central principle was perhaps more clearly put in 1829 by Littledale, J., in *Blacket v. Blizard And Anor*,[3] when he said:

> It is a well-established rule, that in order to constitute a good corporate assembly in the case of a corporation consisting of a definite and indefinite body, there must be present a majority of that number of which the definite body consists, although it is not necessary that there should be a majority of the indefinite body.[4]

This means that in corporations with one voting body comprised of different groups the quorum of each group is to be determined separately, according to whether the group is of defined or undefined size. Provided the quorum requirement of each group is satisfied, an effective act or decision is that of a majority of the whole assembly, without advertence to the voting balance in each group.

III. EVALUATION

(1) *Previous Decisions and Knowles v. Zoological Society of London*[5]

The Zoological Society was regarded by the court as a corporation with a voting body of unknown and unascertainable size.[6] Under general principle, there is no quorum requirement for a voting body of undefined size.[7] The only rule is that more than one person must be present to constitute a meeting.[8] Had there been no relevant provision in the charter, a decision could have been made for the society by a majority of those properly voting at the meeting. There would have been no need for a majority of all the members,[9] nor even for an absolute majority of all those present at the meeting.[10] Those abstaining and those voting informally would have been treated as not having voted. The society's new by-laws would have been approved, 1,788 votes to 1,227.[11]

However, the terms of a charter can provide to the contrary of such general principle, so long as that is clearly their meaning.[12] The charter here required the approval of 'the fellows of the said society or any eleven or more of them' to new or amended by-laws.[13] It could be argued that this provision was intended to specify

[2] *Ibid.* 498.
[3] (1829) 9 B. & C. 851; 109 E.R. 317.
[4] *Ibid.* 860. The other judges confined their remarks to definite bodies, the case before the Court.
[5] [1959]1 W.L.R. 823.
[6] *Supra* n. 3, p. 115.
[7] *R v. Varlo* (1775) 1 Cowp. 248; 98 E.R. 1068 and other cases cited *supra* n. 97, p. 128.
[8] *Sharp v. Dawes* (1876) 2 Q.B.D. 26.
[9] *Hascard v. Somany* (1693) 1 Freeman 504; 89 E.R. 380; *A.-G. v. Davy* (1741) 2 Atk. 212; 26 E.R. 531; *R v. Grimes* (1770) 5 Burr. 2598; 98 E.R. 366; *R v. Monday* (1777) 1 Cowp. 530; 98 E.R. 1224 and other cases cited *supra* n. 58, p. 123.
[10] *Oldknow v. Wainwright* (1760) 2 Burr. 1017; 97 E.R. 683, the cases there referred to and *Gosling v. Veley* (1853) 4 H.L. Cas. 679; 10 E.R. 627.
[11] [1959] 1 W.L.R. 823.
[12] *Hascard v. Somany* (1693) 1 Freeman 504; 89 E.R. 380; *R v Bower* (1823) 1 B. & C. 492; 107 E.R. 182 and other cases cited *supra* n. 32, p. 120.
[13] [1959] 1 W.L.R. 823, 825.

the minimum number of votes required in support, but an implication from many of the cases discussed above is that such a provision should be read as a reference not to voting but to quorum.[14] What was therefore required under the society's charter was not the consent of at least eleven, but the presence of at least that number at the meeting. Subject to that, general principle as stated above would have required not a majority of all the members, nor an absolute majority of all those present, but a majority of those properly voting. On this basis again the society's new by-laws would have been regarded as approved by the meeting.[15]

By-laws made under the terms of a charter may equally modify general principle, provided that they are not repugnant to the charter and do not 'restrain and limit'[16] the powers given by the charter.[17] The proposition that words in a charter will modify general principle only if that is clearly their meaning[18] is also relevant here; by logic it applies also to by-laws made under the charter. Examining the society's by-laws as they appear in the report, it can be seen that chapter 8 clearly specified eleven as a quorum.[19] If a contrary conclusion had been drawn on construction of the charter, the by-laws could not disturb it; since the same conclusion has already been drawn they may tend to confirm it. Chapter 13 section 3[20] raises rather more difficulties with its use of the words 'the majority of fellows entitled to vote': those words could require a majority either of all such members or of all such members present at the meeting. In the latter case they could refer either to an absolute majority or to a majority of those properly voting. Since the meaning of the words is not clear, an interpretation in conformity with general principle as modified by any clear words in the charter is in order. This suggests that the required majority was of those members properly voting. The same conclusion is reached if the rule is applied that by-laws may not be repugnant to the charter or 'restrain and limit' the powers which it grants. This all leads to the conclusion that the by-laws were in fact approved by the meeting.

Reasoning in *Knowles v. Zoological Society of London*[21] did not proceed along these lines, because no authority on majority rule in chartered corporations was cited to the court. The case was largely resolved from first principles, using very general rules of construction and logic. Because of this it is suggested that the case

[14] *Anonymus* (1731) 2 Barn, K. B. 74; 94 E.R. 365 *R. v. Grimes* (1770) 5 Burr. 2598; 98 E.R. 366 *R v. Monday* (1777) 2 Cowp. 530; 98 E.R. 1224 *R v. Bellringer* (1792) 4 T.R. 810; 100 E.R. 1315 *R v. Miller* (1795) 6 T.R. 268; 101 E.R. 547 and other cases cited *supra* nn. 58 and 90, pp. 123, 127. It is recognised that this may be to use authority on voting bodies of a defined size in a dispute involving a body of undefined size; however, the writer has found no other chartered corporation cases precisely like the present, where the charter seems to have specified a minimum rather than an absolute number. Lord Evershed, M.R., accepted 'from the language of the charter' that the words referred to quorum ([1959] 1 W.L.R. 823, 829), as did also Romer, L.J. (*ibid.* 833), but no authority was cited to or by the court on this point.

[15] The analysis in this paragraph is given added force by the fact that when the society's original charter was granted in 1829 the principles cited would have been widely known and understood; the charter was presumably drafted with all of them in mind.

[16] *R v. Governors of Darlington Free Grammar School* (1844) 6 Q.B. 682, 717; 115 E.R. 257, 271.

[17] The authority of *R v. Governors of Darlington Free Grammar School* (*ibid.*) is here accepted without argument. But see *supra* n. 22, p. 117.

[18] See *supra* n. 12, p. 129.

[19] [1959] 1 W.L.R. 823, 826.

[20] *Ibid.* 827. Reproduced *supra* in part: see text accompanying n. 12, p. 116.

[21] [1959] 1 W.L.R. 823. The few cases cited to the Court on majority rule dealt with registered companies.

ought to be treated with care; confusion is likely to arise if it is regarded as expounding earlier authority on the point.[22] Nonetheless, the result arrived at by the court was largely in conformity with that suggested above, paralleling earlier experience when decisions in cases involving municipal corporations were made without advertence to older cases involving corporations with other purposes. Where the decision did depart from the above analysis was in rejecting argument that the by-laws referred to a majority of members properly voting[23] and in determining that the by-laws required an absolute majority of the members present at the meeting.[24] It is respectfully suggested that this conclusion, while it may not have done violence to the words used in the by-laws, was incorrect.

(2) *Generally*

It may be thought that chartered corporations are now so few and far between that the above principles do not deserve examination. This is disputed. Those principles were built up laboriously over centuries. It would be unfortunate if they were forgotten simply because of inaccessibility and disuse. An exploration of them has intrinsic interest; in addition, *Knowles v. Zoological Society of London*[25] has demonstrated in relatively recent times that they can still be of importance.

However, the foregoing discussion has deeper significance. It has explored the origin and development of the rules governing majority voting at meetings of chartered corporations — the type of majority required in principle and the proper treatment of informal votes and abstentions — and of the rules as to quorum for such meetings. It has examined the place of provisions in the corporate constitution in seeking to apply those rules in particular cases. It has also inferred that similar analysis is possible of related rules governing the construction of the corporate constitution,[26] the significance of acts by individual members, the use of proxies, practice in the taking of votes,[27] notice of meetings and notice of business.[28] Two further points must be emphasised. First, the reasoning in many of the authorities discussed has been accepted and applied as relevant in other contexts of importance today, for example statutory tribunals[29] and registered companies.[30] Secondly, the authorities discussed have been widely recognised as

[22] See, for example, the judgment of Urie, J., in *Cardinal v. The Queen* (1980) 109 D.L.R. (3d) 366, 382, referred to *supra* n. 6, p. 116.

[23] [1959] 1 W.L.R. 823, 828 per Lord Evershed, M.R., with whom Romer, L. J., and Pearce, L.J., agreed. It is clear that Vaisey, J., at first instance had been of the same opinion (*ibid.*) but his reasons do not appear.

[24] *Ibid.* 830 per Lord Evershed, M.R. Both other judges agreed, Pearce, L.J., in addition expressing the same conclusion in his own words (*ibid.* 834). This interpretation had not been argued before Vaisey, J. (*ibid.* 828).

[25] [1959] 1 W.L.R. 823.

[26] *Supra* n. 22, p. 117.

[27] *Supra* n. 40, p. 121.

[28] *Supra* n. 71, p. 125.

[29] *Supra* n. 51, p. 122.

[30] *Supra* n. 97, p. 128. However, the writer would not wish to imply that the model generally for majority rule in the registered company has been the chartered corporation. The unincorporated joint stock company and the law of partnership seem to have been much more influential.

the source of rules which presently govern meetings generally.[31] Whenever conceptual problems and arguments concerning majority rule arise in any of these situations it is of central importance to consider the rationale upon which relevant principle has been based. That alone is enough to justify the foregoing.

[31] This is to some extent implied in the preceding comments, but for specific examples see *supra* nn. 36 and 70, pp. 120, 124. The point has been commonly made: see *supra* n. 1, p. 115.