trustees, except that his duty is to superintend contracts entered into by other parties, not himself. Now, I cannot say that at common law a servant so employed is responsible for failure of duty by his employer; and if there is failure of duty here it is on the part of the trustees. If the footpath was in a bad condition it is demonstrable that it was the duty of the trustees to repair it, and no one else was entitled to give directions to that effect. At common law, therefore, we are in this position, that there is no evidence of any intention on the part of the trustees to delegate their statutory duties to the surveyor, or that he undertook it, or that he undertook anything else but to keep the road as he found it. It is said that the result of this is that nobody is answerable—that the trustees are not liable, because their funds are not liable to be applied to such a purpose as that of meeting claims of damages. But then, if the trustees have committed a personal delinquency, they are as much liable for that as anybody else; and being trustees does not absolve them from that obligation, except that they cannot take the trust-funds to defray its consequences. But does the Act of Parliament impose any duties upon the surveyor under which he was bound to take any measures in regard to the footpath in which he has failed? I have examined all the clauses in the statute having reference to surveyors, and I cannot find anyone that has a more direct bearing than the 101st section. It is not worth while to go over the other sections, because they all come to this, that what he is directed to do he must do as the servant of the trustees. But something is said in the 101st section. (His Lordship quoted this section, observing that it places contractors, surveyors, day labourers, and every person working on the road, on the same footing. The clause provides for cases of parties laying things on the road without duly removing them, or putting obstructions causelessly, or digging pits without protecting them, and provides a penalty of £5 for each offence, and gives action to any person travelling on the road.) His Lordship resumed—Now I cannot see that in the whole of this section there is any special duty laid on a surveyor in particular. It deals with a general class of neglects which may occur with anybody who is working on the road. The passages of the section chiefly relied upon by both the Sheriff-Substitute and the Sheriff-Depute are—first, that passage which describes the offence of laying matter on the road, or knowingly allowing it to remain there. The Sheriff-Substitute thinks that if anything is suffered to remain on the road, even a hole, the surveyor will be liable. I cannot agree with that. The surveyor is not more answerable than any other person. If the surveyor saw it there he was bound to remove it; but the statute only creates liability when there is knowledge. But then the Sheriff-Depute says that it is the last offence mentioned in the statute—viz., digging a pit and not fencing it—which has been committed in this case. I think this is perfectly extravagant. In the first place, there is no case of digging a pit in the record; and if there were, the trustees would be liable in the first place, and the surveyor only in so far as he was personally concerned in the operation. I should have been very sorry to have been compelled to arrive at a different result, and affirm the judgment of the Sheriff-Depute, because I should then consider the law to be in a very anomalous state indeed. This surveyor has charge of seventy miles of road. His salary, so far as I can see, is small; and yet the duties attaching to his office, according to the contention of the respondents, involved him in responsibility for the safety of every person travelling on the road. I should have hesitated to arrive at that conclusion even on better grounds than any that were submitted to us in argument; but I am happy to say, if I am right in my view of the facts, that there is no doubt of the legal principle. I think, therefore, that the interlocutor of the Sheriff should be recalled and the defender assoilzied.

The other Judges concurred.—Judgment accordnigly recalled.

Wednesday, Nov. 22.

REGISTRATION APPEAL COURT.

APPEALS FROM STIRLINGSHIRE.

GOW *v.* WATSON.

The first case taken up was that of James Gow, farmer, Bankend, Denny, against Alex. Gillespie Watson, clerk, Grangemouth. Mr Watson was by the assessor placed on the list of voters for the present year, as proprietor of houses Nos. 34 and 37 Union Street, Grangemouth, in said county, but objections were lodged thereto by Mr Gow. The value was admitted to be sufficient.

The facts are—1. A society or company exists at Grangemouth called the "Grangemouth Building and Investment Society." It was instituted in 1859, and is duly enrolled under the provisions of the Act 6 and 7 William IV., chapter 32, and has its rules approved of and signed by the registrar of friendly societies in Scotland. The purposes of the society is to raise a fund to enable its members, under the said Act and rules, to acquire heritable property. And its object is by the rules declared to be, by building or otherwise, to put the members in possession of heritable property.

2. In the year 1861 the society or company acquired right, in virtue of a feu-disposition from the Earl of Zetland, to a piece of ground extending to one acre or thereby, situated in or near Grangemouth, the conveyance being taken to certain persons for their own rights and interests respectively as partners of the said company, and also as trustees for behoof of the whole remanent partners or members, both present and future, of the said company and their assignees.

3. The company at different times erected various dwelling-houses on said piece of ground, and the directors, under their powers, when they considered that they had a sufficient property for disposal among the members of the company, under rule 18th, advertised publicly by printed notices, that four self-contained dwellings of three rooms each would be exposed for competition among the members on the 5th of February 1864, of which date, under certain "conditions of sale," two of the said dwellings, which were "put up" at £150 each, were "sold" to the claimant, a member of the company, at £157 and £155 respectively, or altogether £312. The claimant's entry was to be at Whitsunday 1864, and he did then enter to and take possession of the premises, and he has ever since, by himself or his tenants, occupied or possessed the same. He paid at entry £22 in cash to account of the price, and then had twelve shares of £25 each of the company, amounting altogether to £300. He did not pay up that £300, but he was entitled to receive an advance to that amount from the company on the security of the property, of which he availed himself to the extent of £290, which with the £22 paid in cash made up £312, the price of the property. The building or block-account of the company was credited with the £312, and there was placed to the debit of the claimant's share-account the said advance of £290, and his obligation was, under the rules of the company, to pay the same (besides interest) in instalments of 2s. a share, or for his twelve shares, £1, 4s. per month. Besides paying the interest, he has ever since regularly paid these instalments, and there has been credited to him the profits accruing on his shares; and altogether there has, from these instalments and profits, been placed to the credit of his share-account the sum of £30, 5s. 2d. In all he has thus paid £52, 5s, 2d. towards the cumulo price of £312, and there now only stands at the debit of his share-account £259, 14s. 10d., being the balance of the price.

4. No conveyance has yet been granted by the company in favour of the claimant, and his title consists of the conditions of sale and act of preference and the journal and ledger of the company in

which the sale is duly entered—the building or block-account credited with the whole price, and the claimant's share account debited with the £290, and credited with the £30, 5s. 2d.

5. It was maintained for the objector that the claimant was not the true or proper owner of the subjects claimed on in the sense of the 7th section of the Reform Act.

6. But the Sheriff-Substitute is of opinion in law, and has decided, that though the claimant's title is not made up or completed to the subjects, the company only hold the same in security of the balance of the advance to the claimant on his shares, and that he is the true and proper owner or proprietor of the subjects, and that though, if he falls into arrears to the extent of more than three months' subscriptions or six months' interest, which he has not yet done, the directors of the company will have the option of disposing of the security or of entering into possession of the property, yet the claimant is no less the owner thereof, and that the directors are in no other position than heritable creditors, or parties having sold a subject under minute of sale, the whole price of which has not been paid, and to which no conveyance has been granted, and the purchaser's title remains uncompleted.

The agent for the objector considered the decision to be erroneous in point of law.

Mr BLACKBURN supported the appeal, but no appearance was made for the other side.

This case, and two others of the same character, were taken to avizandum.

Wednesday, Nov. 29.

This case was advised to-day.

LORD ORMIDALE said—The defender in this case states that he has the qualification of ownership, and the Sheriff has sustained his claim. But it is alleged on the part of the objector that, according to the rules of the building society in question, the claimant's right of ownership here is not complete, that it stands suspended till the whole instalments of the price are paid up, and till he had got a conveyance from the society; that in fact, in the circumstances of the case, his right was defeasible by the building society. It appears to me that the claimant's right as purchaser having been conferred by public sale, the purchase is completed. It is a mistake to suppose that non-payment of the price is suspensive of the sale. It is trite law that the contract of sale is completed by consent alone; and if it were necessary that the price should be paid what would become of all sales on credit? In regard to the question of title it is clear that it was not necessary that a formal disposition should be delivered to the purchaser in order to give him a sufficient title. It is sufficient if there be writing of some kind; and we have that here in the minute of enactment. The only ground of defeasibility that can be alleged by the objector is the rules of the society, and from these I can see no good ground to hold that the sale is defeasible at the instance of the sellers. Looking at the case in all its bearings, I think it is a very clear case for adhering to the Sheriff's judgment. His Lordship then referred to the argument of the objector founded on the case of Irving, decided in this Court two years ago on an appeal from Selkirkshire. He thought that was the case of a suspensive sale, and could be no precedent in this case.

LORD KINLOCH concurred. He was clear a formal disposition was not necessary. A minute or missive of sale followed by possession was sufficient. He therefore was of opinion that the Sheriff's judgment should be confirmed.

Wednesday, Nov. 22.

APPEALS FROM DUMBARTONSHIRE.

KENNEDY *v.* DONALDSON.

The voter is vested by assignation in certain of subjects in Alexandria, held under sub-lease for 93 years from Whitsunday 1785, of the free yearly value of upwards of £10. The voter is not in the actual occupation of any of the subjects. The question of law is—Whether he is entitled to be retained on the register under the 9th section of the statute, 2d and 3d Will. IV., cap. 65? The Sheriff decided that he was not, and that his name should be deleted from the register accordingly.

LORD ORMIDALE said that he thought that this case came under the proviso in the Act in question, "that no sub-tenant or assignee to any sub-lease for fifty-seven or nineteen years shall be entitled to be registered or to vote in respect of his interest in such lease, unless he shall be in the actual occupation of the premises thereby set." He therefore thought that the Sheriff's decision should be sustained.

LORD KINLOCH concurred. The appeal was therefore dismissed, and the question of expense was reserved.

Thursday, Nov. 23.

YOUNG *v.* LINDSAY.

George Young was tenant and occupant of Belteriro House for the year from Whitsunday 1865 at a rent of £105, and then he became tenant and occupant of the subjects on which he claimed—viz., the mansion-house of Broomley, at a yearly rent of £110. The question of law was whether the claim was legal and valid under the 9th section of the 2d and 3d Will. IV., cap. 65, either *per se* or when read in combination with the statute 24 and 25 Vict. cap. 83, sec. 42? The Sheriff decided that the claim was not valid under either alternative, and rejected it.

LORD ORMIDALE said he thought that successive holding of different subjects was not enough to amount to the statutory qualification of a voter. There was this difference between county and burgh voters, that in burghs it was well known that householders, especially £10 householders, were in the constant practice of holding their premises for a very short period indeed. But this was not common in agricultural districts. It was therefore probably to provide a remedy for this evil that a difference was made in the Act between burgh and county voters. Therefore in regard to the Reform Act of 1832 he could not arrive at any other conclusion than that the successive holding of the qualification of a county voter was not sufficient under the statute; and all the Registration Courts in Scotland had for thirty or forty years concurred in coming to that conclusion. Nor by the County Voters Act of 1861 was any change introduced, or intended to be introduced. The object of section 42 was to provide a remedy for an evil, not to change the essential nature of the qualification. He therefore moved that the appeal be dismissed and the Sheriff's decision sustained.

LORD KINLOCH had come to the same conclusion. There was nothing in the County Voters Act entitling the Court to adopt a different inference from that done by the Sheriff. Neither did he think this decision was affected by anything in that Act when read in combination with the Reform Act of 1832. It was plain that the statute was passed in order to meet the case of persons who had lost the qualification, but who had acquired a new one before they tendered their votes. It had been argued that the term "qualification" might be interpreted to mean *pecuniary amount.* He could not give the word this partial meaning. If we had nothing but sections 7, 9, and 11 of the Reform Act, he would have thought the case one of great difficulty. He agreed with Mr Monro in thinking that sections 7 and 9 might be read so as to import successive occupation in counties. At the same time he was not prepared to say that this was the natural construction of the statute; his own impression was rather the reverse. But all difficulty was removed by connecting section 12 with the previous sections. And where he had that section expressly allowing successive occupancy in burgh subjects, he could not come to any other conclusion than that burgh subjects were meant to be in a different position from other sub-