

between his widow, Mrs Margaret Johnston, and executrix-nominate or representing him and the surviving children. Mrs Johnston claimed in right of her husband, as their next of kin, the shares of the half of the residue of Mr Welwood's estates, belonging to those of his brothers and sisters who had predeceased him. This was resisted by his brothers and sisters, who survived the liferentrix, who asserted their right to the whole half of the residue, each to one-fifth share thereof, on the ground that it had not vested till the death of the liferentrix. The Lord Ordinary (KINLOCH) held that the fee of this half of the residue vested in Mrs Mary Welwood or Johnston's children as a class on the death of the testator, and in each individual child then existing as at that date, and each child thereafter born at its birth; and found Mrs Margaret Johnston entitled by virtue of her husband's settlement to the right in said residuary estate accruing to her husband as successor to such of his brothers and sisters as predeceased him intestate. The surviving children reclaimed.

YOUNG, GIFFORD, & BIRNIE for reclaimers.

CLARK and GUTHRIE for respondents.

The Court unanimously adhered.

Agent for Pursuers—James Webster, S.S.C.

Agents for Mrs Johnston—Scott, Bruce, & Glover, S.S.C.

Friday, November 13.

BARONY PARISH ROAD TRUSTEES v.

GLASGOW CORPORATION WATER-WORKS.

Property—Assessment—Statute-Labour—8 & 9 Vict., c. 41. Held that a water company were liable for Statute-Labour rates in respect of ground occupied by them by their water pipes.

This action was brought against the defenders to try the question of their liability for Statute-Labour rates, in respect of the ground occupied by their water-pipes, and of the pipes themselves. The Act 8 and 9 Vict., c. 41 (General Statute-Labour Act), authorized the assessment of "all lands, buildings, and other heritable subjects." The defenders argued that the pipes did not fall within this description, and that they were neither owners nor occupiers of the ground in which they were laid. The pursuers did not press their claim as regards the pipes; but as to the land occupied by the pipes, they referred to *Hay v. Edinburgh Water Company*, 12 D., 1240, and 1 Macq., 682. The defenders, on the other hand, contended that that case, which related to poor-rates, depended entirely on clauses in the Poor Act. The Lord Ordinary (BARCAPLE) found the defenders liable.

His Lordship added the following note:—"It is not disputed that if the defenders' works are liable to assessment, they must be assessed under the 13th section of the General Statute-Labour Act, 8 and 9 Vict., c. 41. No question could be raised on that point after the decision in this Court and in the House of Lords in the case of the *Kilmalcom Road Trustees v. Caledonian Railway*, 2 Macph. 335; 4 Macq. 937. Since the passing of the Lands Valuation Act the assessment must be imposed upon the subjects as they are valued under that Statute.

"As to the liability of the subjects, the Lord Ordinary thinks that the question is ruled by the judgment of this Court and the House of Lords in *Hay v. Edinburgh Water Company*, 12 D. 1240, 1 Macph. 682. The only distinction attempted to be taken

between the cases is, that the assessment there in question was for poor-rates under the Poor Law Act. The Lord Ordinary does not think that there is any material difference in the provisions, or even the wording of the Statutes as to this matter. In deciding that the water works were assessable under the Poor Law Amendment Act, an argument was drawn in the House of Lords from English decisions as to the assessment of similar subjects for poor-rates. But the Lord Ordinary does not understand that this was the only ground of judgment, or that the argument was intended to be limited to assessment for poor-rates. On the contrary, he thinks the decision established the principle that such subjects, which, being held by permanent and indefeasible right, produce direct profits to the parties, although they may not be in every sense heritages or heritable subjects, are so according to the intention and meaning of the Legislature in authorising assessments to be imposed on subjects described in these general terms.

"The Lord Ordinary has followed the case of the *Edinburgh Water Company* in not including the water-pipes themselves in the decree of declarator. They were there, as in the present case, expressly mentioned in the conclusion, but were purposely left out of the decree. Any questions that can be raised in regard to them must relate to the proper mode of valuing the subjects.

"The defenders plead that the assessment is excessive. But they have no special statement on that subject, and nothing was said in regard to it at the debate. If they considered the valuation to be too high or improperly made, they should have taken the proper steps to obtain redress under the provisions of the Valuation Act."

The defenders reclaimed.

CLARK and BURNET for them.

Solicitor-General (MILLAR) and N. C. CAMPBELL in answer.

The Court adhered.

Agents for Pursuers—M'Ewen & Carment, W.S.

Agents for Defenders—Campbell & Smith, S.S.C.

Tuesday, November 17.

FERRIER v. BARROWMAN'S TRUSTEES AND OTHERS.

Heir—Title to Sue—Death. The pursuer deduced his title to sue from the heir-at-law of a party whose disposition was challenged on the head of incapacity. The Lord Ordinary held that the title was invalid as flowing *a non habente potestatem*. Between the date of this judgment and the hearing in the Inner-House, the pursuer's alleged author died. *Held* that the action fell in consequence.

This was an action of reduction of the settlement of the late Mrs Barrowman, on the ground of her alleged incapacity, raised at the instance of John Ferrier, gardener, Musselburgh, the assignee of his father, James Ferrier, who was Mrs Barrowman's heir-at-law, against her testamentary trustees and the beneficiaries under her settlement. The defenders lodged preliminary defences, in which they contended that the pursuer had not a valid title to sue; and further, that all interest in him to pursue was excluded by the terms of the titles in virtue of which Mrs Barrowman possessed the heritable properties conveyed by the settlement.