such time as intervened between the date of the taking of the milk and that of the suspender's motion. In the remarks made by Lord Young I entirely concur, and I would only add that in order to make out the repeal by implication of the Act of 1860 by the Act of 1872 there must be a clear repugnance in the one to the other; this we have not. The case as now before us does not raise this point, because the Act of 1860 was not merely kept alive by the Act of 1872, but is in the latter Act referred to as being still in force, and part of its provisions are taken on and employed in the Act of 1872.

The Court refused the appeal, granting expenses to the respondent, and modifying the same to three guineas.

Counsel for the Complainer (Bain)—Dean of Faculty (Clark), Q.C., and Guthrie Smith. Agent—D. Milne, S.S.C.

Counsel for Respondent (Mackay)—Solicitor-General (Watson) and R. Johnston. Agent—Chas. Henderson, S.S.C.

The suspension brought by George Langland, farmer, Pitempton was laid on the same grounds, and accordingly ruled by the same judgment.

COURT OF SESSION.

Thursday, June 18.

SECOND DIVISION.

SPECIAL CASE—THE TRUSTEES OF FRASER HOGG AND OTHERS.

Donation—Reserved Power—Implied Revocation.

A made over certain Bank Stock during his lifetime to his sisters, by transferring it to their names, and writing a letter to them in which he reserved the power to draw the dividends and to sell in any emergency. The reserved power was never executed, and A died leaving a will of date posterior to the transfer, by which he revoked all former testamentary writings. *Held* that this did not cover the transferred stock, which was a gift, and the property in which was in the donees.

This was a Special Case, submitted for the opinion and judgment of the Court by the trustees of the late Fraser Hogg, merchant, some time residing at 9 Annandale Street, Edinburgh, of the first part, and by his sisters, Mrs Sarah Scott Hogg or Wentworth, widow, and Misses Margaret, Mary, and Jean Hogg, all residing at 9 Annandale Street, of the second part. Fraser Hogg left a trust-disposition, dated 19th June 1871, conveying his whole estate, heritable and movable, to trustees, for the purpose, *inter alia*, of paying the free annual proceeds of the residue to his said sisters, and recalling "all former testamentary writings of whatever description executed by me." He left besides a holograph pencil-writing, dated 12th October 1871, giving to a Mrs Fraser an annuity of £40, which writing was addressed to "the Misses Hogg;" and there were further found among his repositories after his death similar holograph writings, also addressed to the Misses Hogg, certifying that he had transferred to their name £300 of the capital stock of the Royal Bank of Scotland (of the value of about £550), but reserving to himself the right to draw the dividends and to sell out at any time should there be occasion for it. The truster left securities to the amount of about £13,000, and it was amongst these that the holograph writing in question was found. The trustees maintained that this bank stock belonged to the testator at his death, and formed part of his personal estate, and that his sisters were bound to transfer the stock to them (the trustees); while the sisters maintained that the stock in question belonged to them and was their absolute property.

The following questions were submitted to the Court:—"1. Whether the bank stock in question formed part of the estate of the truster, and was conveyed by him to the parties of the first part, and falls to be transferred to and dealt with by them as part of his estate? Or 2. Whether the bank stock in question belongs to the parties of the second part?"

At advising—

LORD NEAVES—My Lords, in this case the testator placed himself in the position of drawing the dividends on this stock and of having the power to sell it should occasion require. This, however, is merely the external aspect of the transactions which took place, for in the meantime there had been communings between Mr Hogg and his sisters, as the result of which that letter of 10th March 1871 was written. The letter is as follows:—

"To my dear Sisters,—I have purchased £300 Royal Bank stock, and have given cheque for value £555, 10s. in your name for family convenience, but I shall draw the dividend, and reserve to myself liberty to sell out at any time should there be occasion. Subscribe the annexed memorandum to this effect.—I am, my dear Sisters, yrs. very affectly.,—FRASER HOGG. [*Over.*

"In the meantime, in case of severe sickness or death, the £555, 10s. is entirely at your disposal.

"FRASER HOGG."

Then we have their reply of the same date:—

"To our dear brother Fraser Hogg,—Thanks for what is stated in prefixed note. We willingly agree that you draw the dividend for your own advantage, and consent to sign our names when you at any time wish to sell the shares, and to renounce any interest therein.

SARAH S. WENTWORTH.
MARGARET HOGG.
MARY HOGG.
JEAN HOGG."

I take it that upon these documents the ladies became the true owners of this stock, subject only to what is stated in the letter I have read, namely, the power of drawing the dividends and of selling in an emergency. Now, my Lords, that reserved power was never exercised; but it is argued that because in his will Mr Hogg revokes all previous testamentary writings that puts an end to this transfer and destroys the gift. Of this I do not think there is any evidence. Had the testator wished to withdraw the rights he had thus created, it appears to me he would have acted very differently. In conclusion, I can only add that he has not availed himself of that liberty which he

reserved, and that these ladies are, I think, the proprietors of this stock.

LORD ORMIDALE—I concur. From the circumstances in which Mr Hogg was, I think nothing is more natural to suppose than that he should have given this £555 to his sisters during his lifetime. Though he was possessed of much more stock in this and other concerns, it is observable that it is only as regards this small sum that he takes the title to his sisters. Had he not qualified that title by these documents there could have been no difficulty. But what is the amount of these qualifications? They are after all only, as Lord Neaves has said, a certain reserved power kept in his own hands to be exercised by himself, and by himself alone, and with the view that if he died without exercising that reserved power the stock should continue to belong to his sisters.

LORD JUSTICE-CLERK—My Lords, I am entirely of the same opinion. I am not prepared to say that Mr Hogg in these circumstances actually surrendered anything in the way of property in any question as regarded himself. For instance, he could, I think, have tested on this stock, his creditors could have attached it, and so forth, but no question of this character arises. But the real point turns upon the recal of all testamentary writings by the testator in his will, dated 19th June 1871. Is this, then, a testamentary writing? My Lords, I think that it is not. It is not so in form, and looking to the real intention there cannot be a doubt that by his will Mr Hogg did not intend to recal the gift.

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

Counsel for the Trustees—Dean of Faculty (Clark), Q.C. and Mackintosh. Agent—Wm. Saunders, S.S.C.

Counsel for the Testator's Sisters—Solicitor-General (Watson) and Kinnear. Agents—Finlay & Wilson, S.S.C.

Friday, June 4.

FIRST DIVISION.

WEBSTER & CO *v.* CRAMOND IRON CO.

Contract—Breach of Contract—Damages.

If the breach of a contract gives rise to inconvenience and trouble, substantial damages are due, although specific loss is not proved.

Breach of Contract—Damages.

Circumstances in which, in an action of damages for breach of contract, the Court awarded damages to the amount of £10 for inconvenience and trouble occasioned by delay timeously to implement the contract.

This was an action of damages at the instance of Messrs Webster & Company, manufacturers, Eaglesham Cotton Mills, Glasgow, against the Cramond Iron Company, for breach of a contract to supply them with a quantity of iron pipes. Proof was allowed, and the circumstances of the case sufficiently appear from the following Note of the Lord Ordinary:—"In this action John Webster, who carries on business as a cotton-spinner at Eaglesham under the firm of Webster & Company, sues the Cramond Iron Company for the sum of L.300, as damages for loss said to have been sustained by him in his business and in connection with his mill, through undue delay on the part of the defenders in forwarding certain pipes which were purchased from them by the pursuer in September 1873.

"The pursuer's mill appears to be a very small one. It contains about 17,000 spindles, and is driven by water-power. It consists of two parts—viz., the 'main mill,' the machinery in which was driven by a large wheel, 45 feet in diameter, and 'the wing,' which was driven by a smaller wheel, 26 feet in diameter. The water which turned both wheels passed from the 26-feet wheel by means of trows to the 45-feet wheel, in driving which it fell upwards of 40 feet, and it was then carried off by a tail-race. The shafting and gearing of the wing and of the main mill were not connected with each other, nor were the two wheels connected so as to combine their several powers into a common motive power for the whole establishment. 'The wing' might have been at work while the main mill was standing, and *vice versa*. Both wheels, however, were turned by the same stream of water, the smaller or 'wing' wheel being on a considerably higher level than the larger or 'main' wheel; and although there was a bye-wash of small dimensions by which a portion of the water employed in driving the upper or 26-feet wheel could be diverted and carried away without passing over the large wheel, the great bulk of the water required to turn the upper wheel when the spindles in 'the wing' were all at work could not be carried away by that bye-wash, and could escape only by passing over the large lower wheel. I have mentioned this distinction between the two parts of the mill at the outset, because, in the view which I am inclined to take of the case it is a fact of some importance that 'the wing' and the 'main mill' had each its separate motive power, and could be worked irrespective of the other.

"The pursuer, who became tenant of the mill only in June 1873, resolved soon after his entry to replace the 45-feet wheel by a turbine-wheel, which revolves horizontally upon an upright shaft, and is moved by a column of water directed into its centre by means of pipes. The pursuer also contemplated replacing the old shafting and gearing of the 'main mill' by new and improved apparatus, but the shafting and gearing of the 'wing' were to remain as before. It was, however, his intention to keep the mill going with the old wheels and machinery until the turbine-wheel and the new shafting should be ready to be fitted up. With this view, early in September 1873 the pursuer arranged with Messrs Williamson, of Kendal, for the erection of a turbine-wheel, and with Messrs Harvey, of Glasgow, for the furnishing of the new shafting and gearing—that firm having told him that they could fit up the same in about five or six weeks.

"It is proper here to mention that the pursuer and Messrs Harvey seriously misunderstood each other in this matter; the pursuer believing that Messrs Harvey could at any time manufacture, supply, and fit up the new shafting and gearing within five or six weeks after the order was given.