*Wednesday, October* 20.

## FIRST DIVISION.

### ROBERTSON *v.* THE CONTRIBUTORIES OF THE NORTHERN COUNTIES FIRE OFFICE.

*Company—The Companies Act,* 1862 (25 *&* 26 *Vict. cap.* 89, *section* 138)—*Voluntary Winding-up—Liquidator—Petition—Competency—Jurisdiction.*

Joseph Robertson, sometime manager of the Northern Counties Fire Office, which had its chief and registered office at Inverness, was appointed sole liquidator in a voluntary winding-up of the company. During the course of the liquidation he removed to England, and, while residing there, presented a petition praying the Court "to pronounce forthwith a decree against the several contributories named in the list herewith produced, certified by the petitioner, and here held as repeated *brevitatis causa*, for payment to the petitioner, at the office of the National Bank of Scotland, Inverness, of the sums therein certified to be due by each of said contributories respectively, with interest at the rate of £5 per centum per annum on the said sums from the date therein specified when the same sums became due, till payment, in the same way and to the same effect, as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay such sums and interest, and to grant warrant for extracting said decree immediately; or otherwise to accede wholly or partially to this application, upon such terms, and subject to such conditions as your Lordships think fit; or to make such other order, interlocutor, or decree on this application as your Lordships think just."

The Court, after hearing counsel in reference to the fact that the liquidator had gone to reside in England, and as to the applicability of the 138th section of the Companies Act, 1862, granted the prayer of the petition.

Counsel for petitioner—Mackintosh. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

## HIGH COURT OF JUSTICIARY.

*October* 20.

(Present—Lord Justice-Clerk, Lords Ardmillan and Neaves.)

### JOHN WILSON, PETITIONER.

*Crime—Petition for Liberation—Bail—Capital Offence.*

*Held* that theft committed by a person who has been more than once convicted of theft is still in law a capital offence, and not bailable without the consent of the Lord Advocate.

This was a petition at the instance of John Wilson, who had been committed by the Sheriff of Ayr upon the 27th of September last upon a warrant charging him with the theft of a gold watch, aggravated by previous conviction of theft. An unsuccessful application for bail having been made by him to the Lord Advocate, he now presented this petition to the Court of Justiciary.

Argued for him—The offence charged is not really a capital one. There is no instance on record of on ordinary act of theft, even when aggravated by previous convictions, having been punished with death—at all events theft aggravated by one previous conviction is not a capital offence; and there is nothing in the warrant to show that there is more than one previous conviction charged against the prisoner in this case.

Authorities—Act 1701, c. 6; Hume 2, 89.

Argued for the Crown—*Furtum grave*, as well as theft aggravated by two or more previous convictions, are capital crimes. In this case the act charged amounted to a *furtum grave*, and the Crown was in point of fact prepared to prove two previous convictions. The fact that such a crime was not now punished as a capital offence did not effect the question of bail. The Lord Advocate was entitled to use his discretion, and had in this case used it rightly.

Authorities—Hume i. 96; ii. 88.

LORD ARDMILLAN—My Lords, I have no doubt as to the right of the Court to interfere and allow bail in suitable cases. But at the same time a large discretion rests with the Lord Advocate, and we must believe that he exercises that discretion well. Now, in point of law, the crime of stealing a gold watch from the person, coupled with the aggravation of having been previously convicted, is still a capital offence, and therefore I think we must refuse this application.

LORD NEAVES—I concur. If it appeared that this was not a capital crime, it might be our duty to admit the applicant to his legal right with or without the Lord Advocate's consent. But this is not a case which the prisoner can say falls under the lighter category of crimes. The stealing of a gold watch from the person is an aggravated offence, and under the aggravation which is charged of having been previously convicted, the prosecutor may prove any number of convictions. The quality of the theft, and the previous conviction taken together, leave us no alternative but to refuse the present application.

LORD JUSTICE-CLERK—It is quite true that the legal punishment of many offences is capital, although in the altered state of the law it is not carried out in practice. But it does not follow that the law of bail was to follow the same modification. I have not the slightest doubt that this offence falls under the old category of capital offences.

Counsel for Petitioner—Campbell Smith.

Counsel for the Crown—Burnet, A.-D.

# COURT OF SESSION,

*Thursday, Oct.* 21.

## SECOND DIVISION.

[Lord Shand.

ROBERT YOUNG (STEWART'S TRUSTEE) *v.* STEWART & OTHERS.

*Succession—Vesting—Clause of Survivorship.*

Trustees were directed to make payment to the truster's wife, in the event of her surviving him, of a free annuity, and to hold the whole residue of his estate for the use and behoof of a son and three daughters, equally amongst them. The share of the son was declared to be payable on majority, and that of the daughters on majority or marriage, except in so far as regarded the capital necessary for the security of the annuity to the truster's widow, as to which the shares were only to become payable upon her death, "if she shall survive the respective terms of payment." The trustees were also empowered to advance money to the children for maintenance and education "until the said respective terms of payment." Then followed a clause of survivorship, providing that if any of the children should die "before the terms of payment of their respective provisions," his or her share should go to the survivors or to lawful issue if any.—*Held* that the rights of the children in the whole estate vested on the majority of the son and the majority or marriage of the daughters.

This was an action of multiplepoinding brought by Robert Young, solicitor in Elgin, as surviving trustee of the late Major-General William Stewart. The parties called were the son and the representatives of the deceased daughters of General Stewart. The question arose upon the construction of the trust-disposition and settlement of General Stewart, whereby, after directing payment of his debts and the expense of executing the trust, and the delivery to his wife of his household furniture as her own property, he appointed his trustees to make payment to his wife, in case of her surviving him, of a free yearly annuity of £220, payable half-yearly. His deed then proceeded, "and after answering the above purposes, I hereby direct and appoint my said trustees to hold and retain the whole residue and remainder of my estate and effects, heritable and moveable, for the use and behoof of Thomas, Margaret, Georgina, and Barbara Stewart, the children procreated of my marriage with the said Mrs Mary Brown or Stewart, my spouse, and that equally amongst them, share and share alike, declaring that the share of my said son shall be payable to him on his attaining the years of majority, and the shares of my daughters on their respectively attaining majority or being married, except in so far as regards the capital which it may be necessary to set apart and reserve for securing the foresaid annuity to my said spouse, as to which the shares of the said children shall be payable only upon their mother's death, if she shall survive the respective terms of payment above mentioned." The deed then gave a power of advancement to the children out of the capital or interest of their respective provisions for their maintenance and education, or otherwise, "until the said respective terms of payment."

Then followed a clause of survivorship in the following terms:—"Declaring that in case any of said children should die before the terms of payment of their respective provisions without leaving lawful issue, his or her share shall devolve on and belong to the survivors equally, and the lawful issue of any of them so predeceasing should be entitled to the share or shares of their parents."

The question between the parties was whether this clause of survivorship had the effect of suspending the vesting of right to part of the residue of the estate until the death of the late Mrs Stewart which took place in March 1874, or whether it related only to the majority of the truster's son and the majority or marriage of his daughters respectively, as the time at which the vesting of a complete share of the residue of the estate in each child took place.

General Stewart died in June 1836, and in November 1842 his trustees authorised a division of the trust funds to be made, by which they retained a sum of £6300 to meet the annuity of £220 a-year bequeathed by General Stewart to his wife, and divided the balance of the estate, amounting to £4502, among his children in equal shares. The present action related to this sum of £6300, with accumulations, which brought the fund up to upwards of £7100, as the interest received by the trustees from time to time was more than sufficient to meet Mrs Stewart's annuity.

The claimants averred that Thomas Hyslop Stewart (General Stewart's son) was lost on board a vessel which sailed from Bombay in the year 1843, and that he died without issue, and they were allowed a proof of this averment. He attained majority in 1841. General Stewart's daughters, who were all married, predeceased their mother. Two of them, viz., Mrs Margaret Stewart or Mackenzie, the eldest, and Mrs Barbara King Stewart or Leslie, the youngest, left children of their marriage. The other daughter, Georgina, afterwards Mrs Lyon Fraser, died without issue.

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 12th April* 1875.—Having considered the cause, Finds that according to a sound construction of the provisions of the trust-disposition and settlement of the late Major-General William Stewart, mentioned on record, the rights of his children in the residue of his trust-estate, regulated by that deed, vested in them in equal shares—in the case of the truster's son, Thomas Hyslop Stewart, on his attaining majority in or about the year 1841, and in the case of his daughters Margaret, Georgina, and Barbara Stewart, on their respectively attaining majority or being married, whichever of these events first occurred, and that there was no postponement of the vesting of any part of the residue of the estate in these children, or in the survivors, until the death of their mother, Mrs Mary Brown or Stewart: Appoints one-fourth of the fund *in medio* to be retained until the averments in regard to the alleged death of Thomas Hyslop Stewart shall have been disposed of on the proof now in the course of being taken; and in regard to the remaining three shares, sustains the claim of Miss Mary Stewart Mackenzie to one of said shares; the claim of James Lumsden and others,