the parties, but the question was, Whether there had not been anything done during the lifetime of the parties which had operated a change? The averment was that Messrs Alison and Renton, of their own motive, without instructions from the ladies, or telling them what they proposed to do, made these investments, as being in conformity with the mutual settlement. Parole evidence to that extent was allowed, and the change has been shown to have been made without any authority whatever.

Lord Ardmillan was absent.

The Court pronounced the following interlocutor:—

"The Lords having resumed consideration of the cause, with the proof for the claimants Robert Alison and others, and heard counsel further on the reclaiming note for them against Lord Young's interlocutor of 10th July 1875, Recal the said interlocutor: Find that the villa of Oakmount, being part of the estate *in medio*, was, by the operation of the conveyance thereof to the now deceased Miss Christina Alison and Mrs Margaret Renton, effectually settled on them in conjunct fee and liferent, and to the longest liver, and to the heirs and assignees of the longest liver, and that the said Mrs Margaret Renton having survived the said Christina Alison, became the absolute fiar of the whole of the said heritable subject: Find that the investment of the funds of the said Christina Alison and Mrs Margaret Renton in the terms mentioned in the record had not the effect of altering the mutual settlement made by these ladies in 1857, or of taking these funds out of the operation of the said mutual settlement, or of affecting the succession to the means and estate of the said Christina Alison, as regulated by the said mutual settlement: Therefore find that the trust-disposition and settlement of Mrs Renton, dated 9th December 1868, and codicil thereto dated 15th April 1874, can receive effect only as a settlement of the villa of Oakmount and of so much of the said invested funds as originally belonged to the said Mrs Margaret Renton, and cannot receive effect as a settlement of that part of the said invested funds which originally belonged to Miss Christina Alison: With these findings, remit to the Lord Ordinary to ascertain and determine the amount of the fund *in medio*, and to proceed further as shall be just; reserving all questions of expenses."

Counsel for Robert Alison and Others (Reclaimers)—Dean of Faculty (Watson)—Low. Agents—J. & J. Turnbull, W.S.

Counsel for William Alison and Others (Respondents)—Balfour—J. A. Reid. Agents—Leburn, Henderson, & Wilson, S.S.C.

Thursday, July 20.

SECOND DIVISION.

[Lord Young, Ordinary.

PULLAR & SONS *v.* POLICE COMMISSIONERS OF PERTH.

Police — Police and Improvement (Scotland) Act 1862, 25 *and* 26 *Vic., cap.* 101, *sec.* 132—*Manufactory.*

Section 132 of the Police and Improvement (Scotland) Act 1862 does not impose upon the Commissioners under the Act the duty of removing the ashes of the fuel consumed in the furnaces of a large manufactory.

This was an action at the instance of J. Pullar & Sons, dyers, North British Dye Works, Perth, against William Macleish, solicitor in Perth, clerk to and as representing the Police Commissioners of Perth. The summons concluded (1) for declarator "that the said Commissioners are bound, in terms of the 'Police and Improvement (Scotland) Act, 1862,' to collect from the pursuers' said works the whole dust, dung, ashes, rubbish, and filth (excepting always stable and byre dung) produced in the pursuers' said works called the North British Dye Works, in the city of Perth, including the ashes of the coal or other fuel consumed in the furnaces of said works, and to remove the same from the said works at such convenient hours and times as the said Commissioners shall think proper;" (2) for decree ordaining the defenders henceforth to collect and remove the whole dust, dung, ashes, rubbish, and filth (except stable and byre dung) produced in the pursuers' works; and (3) for payment of, first, the sum of "£43, 16s. 2d., with interest thereon at the rate of 5 per centum per annum from 31st December 1873 until payment; second, the sum of £68, 11s. 3d., with interest thereon at the foresaid rate from 31st December 1864 until payment; and third, the sum of £31, 15s. 11d., with interest thereon at the foresaid rate from 1st June 1875 until payment, and also of such further sums of money as the pursuers may have expended or may yet expend for removing said ashes on and after said last-mentioned date, as the same may be ascertained in the process to follow hereon, aye and until the said Commissioners shall remove said ashes themselves, or at their expense."

The Police and Improvement (Scotland) Act 1862 was adopted by the inhabitants of Perth in 1865, and the pursuers were assessed by the Commissioners under the Act in respect of their works. By sec. 132 of the Act it is enacted—"The dust, dung, ashes, rubbish, and filth (excepting always stable and byre dung), within the burgh shall be and the same are hereby vested in the Commissioners, who shall have power to sell and dispose of the same as they think proper, and the money arising therefrom shall be applied to the police purposes of this Act; and the Commissioners shall cause all the streets, public or private, together with the foot pavement, from time to time to be properly swept and cleansed, and all the dust, dung, ashes, rubbish, and filth to be collected from such

streets, privies, sewers, cesspools, houses or premises, and to be removed at such convenient hours and times as they shall consider proper."

By sec. 134 the Commissioners are empowered to cause dust-boxes to be placed in such of the public and private streets as they shall judge necessary, and to require the occupiers of premises within such streets to deposit their dust and ashes therein in order that it may be carried away. Sec. 137 enacts that the Commissioners shall appoint scavengers for the purpose of cleansing and watering such streets, and for removing all dust, ashes, rubbish, and filth therefrom. By sec. 142 it is provided "that all private courts, yards, areas, and other places which are not cleansed by scavengers appointed under this Act, shall be kept clean, and shall at least, three times in every week, or when required by the superintendent of police or inspector of cleansing, be cleansed out by or at the expense of the occupiers of such courts, yards, areas, or other places respectively; and if such courts, yards, areas, or other places shall not be so kept and cleansed, the occupiers thereof shall be liable to a penalty not exceeding ten shillings for every such offence."

For some years prior to November 1872 the Commissioners had been in the habit of collecting and removing from the pursuers' works the ashes of the fuel consumed in their furnaces. At that time they discontinued doing so, and since then the pursuers have been obliged to remove the ashes from their furnaces at their own expense. The pursuers averred that in addition to their works they occupy as workshops certain premises opposite, the ashes from which are daily removed by the Commissioners, and that the ashes from woollen manufactories, spinning-mills, breweries, foundries, and other works within the burgh, are also daily removed by them.

The defender stated that within the last ten years the pursuers' works have been greatly enlarged, and the number of furnaces used has been much increased. That in the old works there were common privies for the work-people which were regularly cleaned out by the scavengers appointed by the Commissioners, and that the ashes were used for the purpose of making the removal of the contents of those privies as inoffensive as possible. That in the new works of the pursuers there are water-closets which are connected with and emptied into the common sewer of the town, and that since the erection of the new buildings the commissioners have not removed the dust and ashes. He further stated that the substances which the pursuers call "the ashes of the fuel consumed in the furnaces in operation in their works," are not manurial, and are of no saleable value, and that they are not truly ashes at all. That the principle on which the pursuers' furnaces are constructed is such as to completely exhaust the coal, and leave behind nothing but a flinty substance called "clinkers" or danders, useless for any purpose except the bottoming of roads. And that on a proper construction of the statute the Commissioners are not bound to remove worthless articles produced in the course of the operations necessary in carrying on dye-works, tan-works, stone yards, &c., for the interest of private individuals, and thus to relieve them of an expense connected with their private business in order to lay it upon the public.

Lord Young, after a proof, pronounced an interlocutor assoilzieing the defender, for the reasons stated in the following opinion:—

"I have had considerable difficulty in arriving at a conclusion in this case, as I have been unable to find any precedent or principle or rule of law to guide me. On the whole matter I have come to be of opinion that, subject to the qualifications which I shall state, the defenders' second plea in law is well founded. It is 'that on a true construction of the Act founded on they are not bound to collect and remove ashes or other refuse from within private premises.' That plea, however, must be read as meaning from within the premises now in question, or others of substantially the same character, for I mean my decision to apply to these premises only, and not to lay down any rule larger than this, that in such a manufactory as the present, having regard to its character and size, the Police Commissioners are not under the Act of Parliament bound to lift and remove the refuse clinkers, and ashes produced by the furnaces of the engine houses. I do not mean to lay down any such proposition as this, that they are not bound to remove the cinders from any manufactory whatsoever. There may be manufactories of such a domestic character that the fires therein, and the ashes and cinders falling therefrom, are not, for the purposes of such a question as the present and, so far as regards the duties of the Commissioners, distinguishable from the fires and ashes of ordinary dwelling-houses. But here there is an extensive dye-work, carried on in premises erected for the purpose, and there are no less than twenty-six engine furnaces now going there. My opinion is that such a manufactory, looking to its character and size, is not, for the purposes of collecting and removing the clinkers and ashes falling from these numerous furnaces, within the operation of clause 132 of the Act of Parliament. I cannot in terms sustain the second plea in law as it stands, and it need hardly be altered, for I can simply pronounce absolvitor from the conclusions of the action, without any particular findings, explaining, as I have done sufficiently, that I mean only to decide the particular case, without laying down any larger principle than I have announced as necessary to cover it. Of course, as the defenders are to have absolvitor, that will carry expenses."

At advising—

Lord Justice-Clerk—The question raised in this case is one of very general importance. The action is raised by the pursuers, who are dyers and bleachers in Perth, against the Police Commissioners of Perth, for the purpose of having it found that the Commissioners are bound in terms of the "Police and Improvement (Scotland) Acts, 1862," to collect and remove from the pursuers' works the ashes and refuse of the fuel consumed in the furnaces; and the summons concludes for payment of the sums expended by the pursuers in removing their ashes since the defenders discontinued doing so. It is maintained that the Police Commissioners have this duty imposed on them by the 132d section of the Police Act of 1862, in that part of the Act which applies to the "cleansing of streets." That section imposes on the Police Commis-

sioners without doubt the duty of causing "all the streets, public or private, together with the foot pavements, from time to time to be properly swept and cleansed, and all the dust, dung, ashes, rubbish, and filth to be collected from such streets, privies, sewers, cesspools, houses or premises, and to be removed at such convenient hours and times as they shall consider proper." The defence, as may be supposed, is this—that the clause relates to ashes, refuse, and dung from domestic habitations, and it is not intended to apply to manufactory produce. The pursuers' ashes are produced not in domestic but in manufacturing processes. It is not said that they are injurious to any one. The object is to have the works relieved at the public expense, that is, to convert a statute intended for the public benefit into a subsidy to the owners of these works. I can see no ground for doing this. The word "ashes" includes chemically no doubt the product of furnaces, and of many other processes. But to say that this clause extends to every residue of combustion, is carrying the construction of the clause to an extent which it will not support. It is admitted that the refuse here is not noxious, and the real meaning of "ashes" in the clause is such refuse as becomes injurious to the inhabitants, who are therefore bound to submit to the Police Commissioners taking them away. Besides, it clearly appears from the Act that there is a discretion in the hands of the Commissioners as to what places they shall clean, and other places people are bound to keep clean for themselves. I am clearly of opinion that there is no duty imposed on the Commissioners by the Act to remove the ashes from a huge manufactory, and I am therefore for adhering to the judgment of the Lord Ordinary.

Lord Neaves—I am of the same opinion. This case must not be decided on microscopic views of the words used in the statute, but on general considerations. In the ordinary case of dwelling-houses refuse is the result of inhabitancy, and that is quite the thing contemplated to be removed by the town for its own credit. All the inhabitants get the benefit of that. But it is a different thing when we come to consider a manufactory where the ashes are not from domestic but from artificial processes of profit to the parties, which profit they wish to increase by getting the town to take away their residuum. I cannot conceive that this should be a burden on the general ratepayers, to save the manufacturer the expense of doing so himself. These are ashes no doubt, in one sense, but they are not injurious to the public welfare, and therefore I think there is no duty incumbent on the Commissioners to remove them.

Lord Ormidale concurred.

Lord Gifford—I concur. The clause founded on is very broadly expressed. The dust, dung, ashes, rubbish, and filth (except stable and byre dung) within the burgh are first vested in the Commissioners, and then they are held bound to take them away. If taken in its widest sense this clause would go very far, and therefore we must look to the purpose of the statute. It is not a statute in favour of manufacturers, but a police statute, and there is a distinction between domestic filth and refuse from manufacturing processes. I quite admit the difficulty of distinguishing police rubbish from manufacturing rubbish, but surely there is a broad distinction between ashes from great furnaces, and from houses. There may be a narrower question in the case of manufactories for domestic purposes, but here we are beyond debateable ground.

The Court adhered.

Counsel for Pursuers—Balfour—J. P. B. Robertson. Agent—Robert A. Brown, L.A.

Counsel for Defender—Scott. Agents—Hill & Fergusson, W.S.

Thursday, July 20.

SECOND DIVISION.

M'LAREN AND OTHERS *v.* MENZIES AND OTHERS.

(Before the Judges of the Second Division, with Lords Deas, Mure, and Curriehill.)

Deed—Authentication—Subscription—Witness—Conveyancing and Land Transfer (Scotland) Act 1874, (37 *and* 38 *Vict. c.* 94, § 39.)

A will consisted of two sheets of paper, the one stitched within the other, the thread being sealed by the granter. The name of the granter was written by way of subscription on the fifth page, followed by a docquet which finished on the sixth page with the names, also by way of subscription, of three attesting witnesses, but without their designation.—*Held* that this was a "deed, instrument, or writing subscribed by the granter thereof, and bearing to be attested by two witnesses subscribing" within the meaning of the 39th section of the Act 37 and 38 Vict. c. 94, and that parole proof that it was so attested and subscribed was competent.

This was a petition presented to the Court by John M'Laren, advocate, and Thomas Peacock, merchant, Madeira, executors nominate of the late Hon. Caroline E. C. Norton, and by Mrs Scott Gordon and Miss Johnston, the beneficiaries under her will, under the following circumstances:—The Honourable Caroline Elizabeth Conyers Norton died at Quinta das Maravilhas, in the island of Madeira, on the 20th July 1875. She was a British subject, and her domicile of origin was Scotch. She left a last will, dated 13th July 1875, by which she bequeated certain legacies and annuities, and disponed and bequeathed nearly all her means and estate, consisting of heritable and moveable property in Scotland and elsewhere, to the petitioner Mrs Scott Gordon in liferent, and to the petitioner Miss Caroline Elizabeth Mary Johnstone in fee; and she appointed Mrs Scott Gordon her residuary legatee, and the petitioners John M'Laren and Thomas Peacock to be her executors. The will was in ordinary form according to the practice of conveyancers in Scotland, with the exception of the testing clause. It was written on two sheets of paper, and consisted of five pages, exclusive of