hold. It had therefore vested in him before his death. The only disputed right of the seventh party was in the same position. As to the bequest of residue, the intention evidently was to divide equally. The division was three—the "two"-thirds was a clerical error for "one"-third.

At advising—

Lord Justice-Clerk—This case raises some points of nicety. I shall shortly state the opinion at which I have arrived on the different questions.

As to the first question, in regard to the widow's right to the furniture, I am of opinion that she is not restricted to a bare liferent, but that she is restricted, or rather is subjected, to the obligation, in the event of her entering into a second marriage, of renouncing her right thereto. I had not so much doubt on this point of the testator's intention as on the point whether we should look so far into the future as to lead us to determine the question now. Though I had some difficulty on the latter point, I think there is no practical difficulty in giving effect to the clear intention of the testator by holding that the widow shall forfeit both the occupation of the house and the possession of the furniture on her second marriage.

The determination of the second question is one of difficulty from the words used by the testator, but from the consideration that there is no other party in right of this sum, and from the general language of the deed, I think the right there given was intended to be one of fee, and though the testator has indicated some wish or desire that the succession to it should be restricted in a particular way, he has not carried it far enough to limit the right of fee given to the legatee.

On the third question I think that no sum whatever vested in John Smith. I think the words of the deed import solely a discretion in the trustees, and that John Smith has right under them to only so much as the trustees might choose to give him, and to nothing except that.

The fourth question I think was not pressed.

On the fifth question I think the practical and equitable result of a construction of the testator's language is that Charles should take a double share, and that though he speaks of "third" and disposes of four of them, yet his intention was that Charles should take two shares, that is to say, double the share of each of the others, the result of which will be that he will take one-half and the others one-fourth each.

Lord Craighill—I am entirely of the same opinion. I have carefully considered all the questions, and can find no escape from the conclusions at which your Lordship has arrived.

Lord Rutherfurd Clark—I am of the same opinion.

Lord Young was absent.

The Court pronounced the following interlocutor:—

> "The Lords . . . are of opinion and find, *Firstly*, and in answer to the first question therein put, that the right of the third party to the subject of the bequest is a right of fee, subject to forfeiture in the event of said third party entering into a second marriage: *Secondly*, and in answer to the second question, that the fourth party is entitled to require the first parties to pay over, for her own absolute use and disposal, the sum of £1000, and the share of residue bequeathed to her by the testator: *Thirdly*, and in answer to the third question, that the sum of £1000 provided to the late John Smith did not vest in him: *Fourthly*, that it is unnecessary to answer the fourth question, it not being insisted in by the parties: *Fifthly*, and in answer to the fifth question, that the residue falls to be divided in the proportion of two-fourth parts thereof to the party of the second part, and one-fourth part to each of the parties of the fourth and fifth parts," &c.

Counsel for Parties of the First, Second, and Sixth Parts—Mackay—W. Campbell. Agents—J. & A. F. Adam, W.S.

Counsel for Party of the Third Part—Patten. Agents—J. & A. F. Adam, W.S.

Counsel for Party of the Fourth Part—Moody Stuart. Agents—Auld & Macdonald, W.S.

Counsel for Parties of the Fifth and Seventh Parts—J. A. Reid. Agent—R. C. Gray, S.S.C.

Wednesday, July 11.

SECOND DIVISION.

[Sheriff of Fife.

ROBERTSON *v.* THE LOCAL AUTHORITY OF CULTS.

Public Health — Water-Rates — Assessment— "Domestic Use" — "Domestic Animals" — Public Health (Scotland) Act 1867 (30 *and* 31 *Vict. cap.* 101), *sec.* 89.

Held that an inhabitant of a special water supply district who keeps cows and sells their milk is liable to a special assessment for water-rates in respect of them, and is not exempt on the ground that they are domestic animals, and that the water taken for them is for domestic use.

Question, Whether in the event of the inhabitant refusing to pay the additional assessment so imposed, the local authority would be entitled to the remedy of cutting off the water supply from him by disconnecting the private service pipe from the main?

Section 89 of the Public Health Act provides, *inter alia*—(1) "The local authority, if they think it expedient so to do, may acquire and provide or arrange for a supply of water for the domestic use of the inhabitants, and for that purpose may conduct water from any lake, river, or stream; may dig wells; make and maintain reservoirs; may purchase, take upon lease, hire, construct, lay down, and maintain such water-works, pipes, and premises; and do and execute all such works, matters, and things as shall be necessary and proper for the aforesaid purpose." . . . (3) "The local authority, if they have any surplus water after fully supplying what is required for domestic purposes, may supply water from such surplus to any public baths and wash-houses, or for trading or manufacturing purposes, on such terms and

conditions as may be agreed on between the local authority and the persons desirous of being so supplied:" "Provided that when water is thus supplied from such surplus it shall not be lawful for the local authority to charge the parties obtaining the same both with the special water assessment and also for the supply of water so obtained by them; but the local authority may either charge the special water assessment leviable on such premises, or charge for the supply of water furnished to the same, as they shall think fit."

This was an action in the Sheriff Court of Fife at the instance of Thomas Robertson, postmaster at Pitlessie, to interdict the Local Authority of the parish of Cults "from disconnecting the service pipe to the premises belonging to the pursuer, and occupied by him and his tenants, in the village of Pitlessie, from the main pipe of the water supply provided by the said Local Authority for the use of the inhabitants of said village, or from interfering in any way with the supply of water to the pursuer's said premises by his said service pipe."

The admitted facts of the case, as stated on record and in joint minute of admissions of the parties, were the following:—In the year 1880 the Parochial Board of the parish of Cults, as the Local Authority thereof, formed a portion of the parish, including the village of Pitlessie, into a special water supply district under the Public Health Act 1867, and constructed works and laid down pipes to convey the water to the inhabitants. The pursuer was proprietor of certain premises in the village of Pitlessie occupied by himself and his tenants. In June of that year, when the main was brought near his premises in the course of the construction of the water-works, the pursuer at his own expense employed the Local Authority's pipe contractor to connect a service pipe with the main in the street opposite his property, so as to take the water into his premises. He then dismantled and filled up a well in his premises from which he had previously got a supply of water. This operation was performed after an informal conversation with certain leading members of the board, in the course of which the pursuer mentioned his intention of doing so, but without any formal notice to, or permission from, or under any special arrangement with, the Local Authority, to whose knowledge it however came shortly after its completion. The service pipe was not taken into the pursuer's house, but into his yard. When the water-works were resolved upon by the Local Authority, it was not made by them a condition of having service pipes that the water should be taken into dwelling-houses. The pursuer had two cows and sold all the milk he could spare. He had registered his premises and obtained certificate as a cowkeeper and dairyman, under the Dairies, Cowsheds, &c., Privy Council Order of 1878. He also kept a horse and a pig He used the water from the service pipe for his animals when he required it. Besides the pursuer, other inhabitants in the village of Pitlessie and elsewhere within the water district had horses or cows on their premises. The minute of admissions concluded—"The parties renounce probation *quoad ultra*, and crave the Court to decide the action on the record and productions with the admissions herein contained."

For the year 1880-1 the pursuer was charged a water-rate simply assessed on his rent as owner and occupant, but for 1881-2 the Local Authority assessed the pursuer 8s. additional, being 2s. for one horse and 6s. for four cows. The other inhabitants who kept horses and cows had been also assessed upon them and had paid. The pursuer refusing to pay the additional assessment, the Local Authority intimated that they would cause his service pipe to be disconnected from the main, whereupon the pursuer brought this petition for interdict.

He pleaded, *inter alia*—"(1) The service pipe before specified being the property of the pursuer, and having been put in with the knowledge and consent of the Local Authority, and having existed for upwards of two years, the Local Authority is not entitled at its own hands to interfere therewith. (2) The pursuer having paid, and being willing to pay, all the water assessments imposed in respect of the rental of his property is entitled to the use of the water supply of the said special water supply district in which the said property is situated, by means of his said service pipe. (3) The defenders cannot, under the Public Health Act, charge both water assessment on the pursuer's property and also for water supplied him, and the pursuer having paid the assessment on his rental, the Local Authority have no right to cut off his supply of water. (7) The Public Health Act does not empower the Local Authority to enforce payment for the water by depriving an inhabitant of the district of the use of water by his service pipe, but provides by section 94 how assessments, &c., are to be recovered."

The defenders pleaded, *inter alia*—"(1) Pursuer not having obtained defenders' authority to connect his premises with the main by the service pipe in question, and having been required but failed to disconnect his service pipe, is not entitled to have it allowed to remain as at present. (2) Pursuer having neither obtained permission from, nor made arrangements with, defenders for the use of the public water supply for horses, cows, and the like, is not entitled to use of that water for horses, cows, or the like. (4) Pursuer having neither obtained permission nor made arrangements as aforesaid, defenders are entitled to prevent pursuer's use of the public water as aforesaid."

The Sheriff-Substitute (LAMOND), after hearing parties, allowed to both parties a proof of their averments, on the ground that the minute did not contain admissions of facts sufficient to enable him to decide the cause.

Both parties appealed. At the debate which took place before the Sheriff it was stated for the parties that they did not intend to lead evidence, and that they desired the case to be decided as it now stood.

The Sheriff (CRICHTON) refused the interdict.

"*Note.*— . . . The Sheriff concurs with the Sheriff-Substitute in thinking that the case is not in a satisfactory position for disposing of all the pleas stated on record, but as the parties concurred in stating that they had no witnesses to adduce, the Sheriff has recalled the interlocutors by which a proof was allowed and a day fixed for leading it.

"The Sheriff heard the parties on the merits, and he understood that the question upon which they desired a decision was, Whether, looking

to the terms of section 89, sub-sections 1 and 3, of 30 and 31 Vict. cap. 101, the pursuer was using the water for other than domestic purposes without having made an agreement with the Local Authority? Now, the important facts upon which this question is raised are stated in article 8 of the joint minute. That article sets forth that the pursuer has one horse and two cows, and sells all the milk he can spare, and that he has registered his premises, and obtained a certificate as a cowfeeder and dairyman under the Dairies Privy Council Order of 1878. It was maintained on the part of the pursuer that taking the water for his horse and cows was using it for a domestic purpose. The Sheriff is inclined to think that water supplied for a horse kept by a person for private use, or for a cow, the milk of which was to be used for his family, would fall within the words 'domestic use,' but that water supplied for animals kept for the purpose of trade would not fall within these words. It is admitted that the pursuer sells all the milk that he can spare, and that he is licensed as a dairyman. That being so, the water used for his cows was not applied to 'domestic use.' The distinction seems to be between water used by an inhabitant as a private person and water used by him in carrying on a trade or business."

The pursuer appealed to the Court of Session, and argued—The Local Authority derived all their powers from the Public Health Act, and under it no power was given to cut off any inhabitant's water by disconnection from the main supply for non-payment of rates. The question raised by the petitioner was whether they were entitled to do so.

The respondents replied—By the Water-Works Act 1847 the remedy of disconnection was given to water companies. It was not taken away by the Public Health Act; it was not inconsistent with its provisions; and therefore being an apt remedy in the circumstances was to be presumed to be continued. All they were bound to do under the Act was to take the supply "near" the premises. If payment was refused, their only remedy was to stop the water at the limit of their obligation to take it—that was to say, at the beginning of the pursuer's service pipe.

Authority for both parties—Public Health Act, sec. 89.

At advising—

Lord Justice-Clerk—This is a case which in my opinion ought never to have come here. Parties have lodged a joint minute setting forth certain facts on which they are agreed, and *quoad ultra* renouncing probation, and craving a judgment on the record and productions, with the admissions therein contained, and apparently the Sheriff has been satisfied that these facts were sufficient for the decision of the case, for he says that he understands "that the question upon which these parties desired a decision was, Whether, looking to the terms of section 89, sub-sections 1 and 3, of 30 and 31 Vict. cap. 101, the pursuer was using the water for other than domestic purposes without having made an agreement with the Local Authority?" This is the only question which the Sheriff has decided, and his judgment is that the pursuer has used his water supply for other than domestic purposes, and is therefore liable to an additional assessment, and substantially the question for us ought to be whether he was right or wrong in his judgment. I think the Sheriff was clearly right, and I do not think the pursuer seriously disputed that he had used the water for other than domestic purposes, and that he was therefore bound to obey the assessment of the board or make another arrangement. In these circumstances the natural result would be that we should refuse the appeal, having no ground to do otherwise on the only question before us. But we have had argued to us another question, and that is, whether a local authority is entitled in such circumstances to stop the inhabitant's supply by cutting off his service pipe from the main, and it was contended that that was a remedy not given by the statute. On the best view which I can take of the terms of the statute, I am not satisfied that in refusing to allow the connection to subsist without an agreement being made the Local Authority were wrong. The only part of the statute which really bears upon the matter is the third sub-section of section 89. The first sub-section merely gives the local authority power to provide the supply and construct the necessary works, but then the third sub-section says—[*reads*]. If this had been a case where the householder had been left without a proper supply the question might have arisen, but in this case it does not arise. Therefore on the whole matter, without giving any definite opinion on the other matter of the remedy, I think the Sheriff has rightly decided the only matter raised in the case as it came before him, and that there are no grounds on which we can grant the prayer for interdict.

Lords Craighill and Rutherfurd Clark concurred.

Lord Young was absent.

The Court dismissed the appeal.

Counsel for Pursuer (Appellant)—J. A. Reid. Agents—Fyfe, Miller, Fyfe, & Ireland, S.S.C.

Counsel for Defenders (Respondents)—Baxter. Agent—William Black, S.S.C.

Wednesday, July 11.

SECOND DIVISION.

GARDNER AND OTHERS, PETITIONERS.

Public Company—Winding-up under Supervision of Court—Suspension of Diligence of Creditors—Companies Act 1862 (25 *and* 26 *Vict. c.* 89), *secs.* 84, 85, 87, 130, 147, 148, 151 163, *and* 164.

Certain creditors of a limited company, registered under the Companies Acts, raised actions for payment of their debts. About a month afterwards the company, being insolvent, went into voluntary liquidation. Thereafter the creditors having obtained decrees in their favour in their actions against the company, poinded its goods, and obtained warrants of sale. The liquidator of the company then petitioned