did not reach the Crown Office till the 5th or 6th October. Now, the 3rd section of the Act of 1887 provides that "The Lord Advocate and his deputes shall not demit office on the resignation of the Lord Advocate, but shall continue in office until their successors respectively receive their appointments, and the Lord Advocate shall enter on the duties of his office immediately on receiving his appointment." Taking the latter clause first, I am of opinion that until Her Majesty's warrant reached the Crown Office, at the very earliest Sir Charles Pearson could not enter upon the duties of his office as he had not received his appointment. His predecessor accordingly continued in office, and the indictment at his instance served on the 3rd October was a good indictment.

LORD RUTHERFURD CLARK — I agree. The only question which we have to consider is, what is the meaning of the words "receive his appointment." The words occur twice—[*His Lordship quoted the section*]. These words must therefore mean that something has occurred which will entitle the gentleman appointed to discharge the duties of Lord Advocate. It is suggested that the *Gazette* notice is sufficient. I cannot accept that construction of the statute.

LORD TRAYNER concurred

The Court refused the suspension.

Counsel for the Complainer — Lorimer. Agent—John Latta, S.S.C.

Counsel for the Respondent—Maconochie. Agent—Crown Agent.

COURT OF SESSION.

Wednesday, November 4.

FIRST DIVISION.

[Lord Low, Ordinary.

NICHOLSON AND OTHERS (NICHOLSON'S TRUSTEES) *v.* M'LAUGHLIN AND OTHERS.

Right in Security—Heritable Bond—Assignation of Portion of Bond—Right of the Holders inter se—Whether Common Property—Relevancy.

A, a heritable creditor in a bond and disposition in security for £6000, assigned and disponed it to B to the extent of £2000. The assignation declared that "these presents and the said sum of £2000 . . . shall in all respects rank and be preferred *pari passu* with the said bond and disposition in security and the remainder of the said sum of £6000." A and B having called up the loan, entered into possession of the security subjects under an action of maills and duties, but the free rents of the subjects were not sufficient to pay the interest on the loan. By deed of authority the debtor granted, as regarded two-thirds *pro indiviso* of the security subjects to A and one-third *pro indiviso* to B, full power to realise the subjects as if they were absolute and uncontrolled proprietors, and declared that these powers were in addition to but not in prejudice of the powers and rights of the parties as heritable creditors under the original bond and disposition in security.

B having refused consent to a sale of the security subjects, A sought declarator that B was bound to grant such consent, on the ground that both parties were *pro indiviso* proprietors not only of the original bond for £6000, but also of the security subjects.

Held that although A could sell the property, subject to B's security, or on paying his bond, he had no claim to sell the subjects as common indivisible property, and the action *dismissed.*

In 1878 the deceased James Thomas of Transy granted in favour of Mrs Mary Anne Nicholson and others (Alexander Nicholson's trustees) a bond and disposition in security, whereby he conveyed to them the lands of Pinnacle in security of a loan of £6000.

In 1883 Nicholson's trustees assigned and disponed to Mrs Catherine Kenmore or M'Laughlin and others the bond and disposition in security, and also the lands of Pinnacle, but only to the extent of £2000. The assignation contained, *inter alia*, the following clause—"Declaring always . . . that these presents and the said sum of £2000 . . . shall in all respects rank and be preferred *pari passu* with the said bond and disposition in security and the remainder of the said sum of £6000." . . .

After Mr Thomas' death in June 1883 his trustees granted bonds of corroboration and dispositions in security, whereby they confirmed the original bond and disposition in security to the extent of £4000 as regarded Nicholson's trustees, and of the £2000 as regarded Mrs M'Laughlin, and in further security they conveyed to them the lands of Transy. Each bond of corroboration contained this clause—"Declaring that the foresaid principal sum of £4000, and interest and penalties herein contained, and the said sum of £2000, the balance of the foresaid sum of £6000 contained in the said bond and disposition in security (with interest and penalties), now due to the said Miss Catherine Margaret Kenmore, and secured over the subjects and others before described, conform to bond of corroboration and disposition in security executed by us in her favour of even date herewith, shall be ranked and preferred *pari passu* on the said subjects and others above conveyed, and the rents, feu-duties, and casualties thereof, and also on the prices and proceeds to be realised therefrom, and that irrespective of the order of priority in which these presents and the said bond of corroboration and disposition in security in favour of the said Miss Catherine Margaret Kenmore have been or shall be registered in the register of sasines."

In 1887 Nicholson's trustees and Mrs

M'Laughlin, after having called up the loan, entered into possession of the lands of Pinnacle and Transy under an action of maills and duties. The free rents of Transy were not, however, sufficient to meet the interest upon prior bonds, and the free rents of Pinnacle were not sufficient to pay the interest upon the bond to which Nicholson's trustees and Mrs M'Laughlin had right.

In 1889 an agreement was entered into between these parties and the trustees of Mr Thomas, whereby the latter undertook to convey certain other lands in security, and also to grant a deed of authority containing the fullest powers of management and sale. Accordingly a deed of authority, dated 6th and 9th November 1889, was executed by the trustees, whereby they granted, as regarded two-thirds *pro indiviso* of the security subjects to the pursuers and as regarded one-third *pro indiviso* to the defender, full power to realise the several security subjects as if they were absolute and uncontrolled proprietors, including power in their own names, as proprietors or as heritable creditors, or as factors and commissioners for Mr Thomas' representatives, to sell the security subjects. It was declared that the powers granted in the deed of authority should be in addition to, but should not in any way prejudice or curtail, the powers and rights of the pursuers and the defender as heritable creditors under the original bond and disposition in security. Mr Thomas' trustees were unable to pay the sum contained in the bond, and after the usual requisition the lands of Pinnacle were several times exposed for sale at a price first of £11,500, but without finding a purchaser.

Nicholson's trustees desired again to expose Pinnacle for sale at the price of £10,000, but Mrs M'Laughlin objected to the sale at that price, and refused to concur in a sale, on the ground that she believed that by holding the property for a time a larger price might be got.

The present action was accordingly raised by Nicholson's trustees against Mrs M'Laughlin and others, in which they sought to have it declared, *inter alia*, that they (the pursuers) were entitled, after due advertisement, and otherwise fulfilling the requirements of the Titles to Land Consolidation (Scotland) Act 1868, the Conveyancing (Scotland) Act 1874, and other statutes in reference to sale of lands by a creditor under a heritable security, so far as such requirements had not already been fulfilled by them, "to sell and dispose in whole or in lots of the said lands and estate of Pinnacle by public roup at Edinburgh, or at the place or places pointed out by said statutes; and that the defender Mrs Catherine Margaret M'Laughlin, as creditor in the said bond and disposition in security to the extent of the said principal sum of £2000, interest and consequents, conform to assignation aforesaid, and the defender Henry J. M'Laughlin for his interest, are bound to consent to and concur in such sale or sales, and failing their doing so within fourteen days after the date of the decree to that effect to follow hereon, that the pursuers are entitled to dispense with such consent and concurrence, and to proceed to sell and dispose of said lands and estate as if the same had been granted; and that on a sale being so carried out, or upon each sale so carried out, if the lands are sold in lots, the pursuers, or their assignees or representatives, either alone or with consent and concurrence of the defenders Mrs Catherine Margaret M'Laughlin and Henry J. M'Laughlin, are and shall be entitled to grant in favour of the purchaser or respective purchasers at such sale or sales, or to his or their assignees or representatives, an absolute irredeemable disposition or dispositions of said lands and others, or of the parts thereof so sold, containing all usual and necessary clauses, and all other deeds necessary for completing the right and title or rendering the sale effectual to a purchaser or purchasers;" or otherwise, that they were entitled to bring the lands to a judicial sale, and to divide the proceeds in the proportion of two-thirds to themselves and one-third to the defenders; or otherwise, that the Court should sequestrate the estate conveyed by the bond and disposition in security and appoint a judicial factor thereon.

The pursuers explained that they pressed the sale of the estate as they were anxious to wind up the trust, and also in the belief that the value of the security subjects would fall rather than increase.

The defenders alleged that looking to the original price of Pinnacle, and the sums which had been laid out on it, a much larger price than £10,000 could be obtained for it if it was not forced on the market, and they refused to consent to a sale at that price.

The pursuers pleaded—"(1) The pursuers being in virtue of their bond and disposition in security libelled on, and *separatim* of the deed of authority above mentioned, in the posittion of joint or common holders *pro indiviso* of the said subjects of security, they are entitled to insist in the present action against the defenders. (2) The pursuers, in respect of the defenders Mrs M'Laughlin and Henry J. M'Laughlin refusing to concur in the proposed sale under the bond and disposition in security, are entitled to carry through the sale at their own hands, and grant a complete and unencumbered title to the purchaser upon the footing of accounting to Mrs M'Laughlin for the proportional share of the price effeiring to her assignation in security. (3) The said lands being incapable of division according to the just rights and interests of all concerned, the pursuers are entitled to have decree of sale, as also decree relative to the disposal of the price, as concluded for."

The defenders pleaded—"(1) The statements of the pursuers are not relevant and sufficient to sustain the conclusions of the summons. (2) The action as laid is incompetent both at common law and under the statutes libelled. (3) The pursuers having

assigned to the defender Mrs M'Laughlin a portion of the sum in the said bond, are not entitled either to bring the security subjects to sale at their own hand, or to compel these defenders to concur in bringing them to sale, except upon the footing of providing full payment to these defenders of the portion of the bond so assigned to Mrs M'Laughlin."

On 30th June 1891 the Lord Ordinary (Low) found the pursuers' averments irrelevant and dismissed the action.

"*Opinion.*—[*After stating the circumstances as above*]—The pursuers maintain that this is truly a case of common property, that the ordinary rule of law that no one can be forced to remain *in communione* applies, that as the subject is indivisible it must be sold and the proceeds divided, and that the only way in which that can be accomplished is by a sale of the lands which are the subjects of the security.

"The question is one of novelty, but I have come to the conclusion that this is not a case to which the rules in regard to common property upon which the pursuers found apply.

"The parties are not common proprietors of the lands which the pursuers desire to have sold. They have a joint infeftment in the lands in security, but that infeftment is only a burden upon the right of the granter of the security, and they can never under the bond and disposition in security themselves acquire a right of property in the lands. It is true that they can give an absolute right of property to another, but they can do that only by virtue of the mandate which they hold from the granter. It is therefore difficult to see how the lands, of which the parties are not and never can be proprietors, can be sold on the ground that they are common property, and yet it is these lands and nothing else which the pursuers seek authority to sell.

"The summons contains a variety of alternative conclusions, intended, no doubt, to meet different views which might be taken of the rights of parties; but, as I have pointed out, the pursuers' case was entirely rested upon the argument that the claim was one of the sale of common indivisible property. If I had been of opinion that that view was sound, I should have thought that the proper conclusion to give effect to would have been the second alternative conclusion, viz., that for a judicial sale. The first series of conclusions contemplate the pursuers being authorised to sell under the bond without the defenders consent. Such procedure would not be appropriate to the sale of common property, and it was not maintained that if the argument that there was here common property failed, it was in the power of the Court (at all events in the circumstances disclosed on record) to dispense with the consent of the defender and authorise the pursuers to sell, and to grant a good title to the purchaser without her consent.

"It may be that there is some hardship to the pursuers in not being able to realise the security subjects, but they have themselves to blame, because by the terms of the assignation which they granted to the defender they put her into the position of being joint mandatory with them under the power to sell, and deprived themselves of the right of selling without her consent. There might be a case in which the refusal of a person in the position of the defender to concur in a sale was so manifestly unjust and prejudicial to the other creditors that the Court would, in the exercise of its equitable jurisdiction, be entitled to interfere. But no such case is disclosed here. The property has fallen in value, and the pursuers think that it is better to sell now in case of further depreciation, while the defender is hopeful that by holding the property for a time a better price may be obtained. Both these views are intelligible and reasonable, and as the right of the parties to sell rests upon a joint mandate, I do no think that it is possible for the Court to interfere with what is no more than a reasonable exercise of discretion upon the part of one of the mandatories.

"Under the additional powers given to the parties by the deed of authority, I do not think that the pursuers take any advantage, because although in a question with the granters of that deed the parties to this action are entitled to deal with the lands as if absolute proprietors, they are not in a question *inter se* in a materially different position from that which they occupy under the bond and disposition in security. As under the latter deed they hold a joint mandate to sell, so under the former deed they hold a joint factory and commission to deal with the estate as if they were absolute proprietors. But under neither deed are they actually proprietors, and under both deeds the powers which they possess are joint powers, and must be exercised jointly.

"I shall therefore dismiss the action."

The pursuers reclaimed, and argued—Although a portion of this bond had been assigned, this portion and the remaining part still remained one bond, and in order that a valid title to the security subjects might be given to a purchaser a decree of declarator by the Court was necessary. This was a case of urgency, as there was a pressing necessity for a sale of the security subjects in order that this trust might be wound up. If effect was to be given to the argument on the one side, then the hands of a very large bondholder might be tied by one who had a very small pecuniary interest in the bond. The rights of heritable creditors were statutory, but the Conveyancing Statutes had not provided for a case like the present. The pursuers' right here was to realise the bond and the security subjects, and all that the defenders were entitled to demand was a *pari passu* ranking on the price. The position of the pursuers and defenders was that of joint proprietors of a common subject, and the circumstances that a portion of the bond had been assigned, and a bond of corroboration granted by the trustees of the original debtor to the assignees, did not affect the true relation of the parties to one another.

As the parties were joint proprietors of a common subject, which was indivisible, it could be sold at the instance of either party, and the price divided. The defenders were not entitled from anything contained in the assignation or bond of corroboration to interfere with the pursuers in realising the security subjects—Titles to Land Act 1868 (31 and 32 Vict. cap. 101), secs. 119, 123, and 124; Conveyancing (Scotland) Act 1874 (37 and 38 Vict. cap. 94), sec. 48; Bell's Comm. i. 61-2.

Argued for respondents—The pursuers had taken an erroneous view of their rights over the security subjects. These were held by the bondholders in security only, and no right of property could be acquired by the bondholders in the security lands, nor had they any right to sell them. No doubt if the lands were sold by the bondholders jointly a good title could be given to a purchaser, but if one of the bondholders should refuse to consent to sale the Court could not compel him. A bondholder was not bound to give up his security and take cash against his will. The defenders did not desire to obstruct realisation of the subjects; all they wished was not to be made losers by hasty action. When a portion of this bond was assigned the deed contained a power of sale. Each bondholder possessed this power; it was a concurrent and not an indivisible right, which either bondholder might use apart from the other. But one bondholder could not give premonition for the other; nor could premonition by one affect the security over lands held by the other bondholder. The only course open to the pursuers was to bring a ranking and sale under the Act 1681, cap. 17, as the lands could not be sold without judicial authority. The alternative conclusion in the summons for sequestration of the estate was one which would only be granted by the Court in very exceptional circumstances, and such had not been made out in the present case—Conveyancing Act 1874 (37 and 38 Vict. cap. 94), sec. 48; *Henderson* v. *Wallace*, January 7, 1875, 2 R. 272; *The Scottish Heritable Security Company* v. *Allan, Campbell, & Company*, January 14, 1876, 3 R. 333.

At advising—

LORD M'LAREN—This is an action against certain persons who are assignees in a bond and disposition in security to the extent of £2000, the original creditor remaining infeft in the subjects to the extent of the other £4000 lent. Following upon the deed of assignation a bond of corroboration was granted by the representatives of the original borrower in favour of the pursuers. Another bond of corroboration was granted in the same terms in favour of the other creditors. These bonds embrace other subjects with which we have no concern.

But what we are concerned with is, that in each of these bonds of corroboration there is a clause to the effect of giving equal rights to the two creditors, and the clause runs thus—declaring that they "shall be ranked and preferred *pari passu* on the said subjects and others above conveyed, and the rents, feu-duties, and casualties thereof, and also on the prices and proceeds to be realised therefrom, and that irrespective of the order of priority in which these presents and the said bond of corroboration and disposition in security in favour of the said Miss Catherine Margaret Kenmore, have been or shall be registered in the register of sasines."

The literal and obvious meaning of such a clause is, that first with regard to the rents, if the creditors should enter into possession, they shall divide the subjects between them rateably for the purpose of effecting payment of their interest, and if necessary, of payment of the principal; and if the property comes to be sold for the benefit of the two heritable creditors, they are to be ranked rateably on the proceeds, but *ex figura verborum* nothing is said as to the order in which the creditors may exercise the power of sale, or as to their respective rights in case of disagreement as to the time and mode of exercising the power.

It is contended by the pursuers that under the clause which I have read either of the persons in right of the security is entitled to call upon the other to consent, or (which I think is the same thing) that either is entitled without the consent of the other, to sell just as if the other had given his consent to the sale, the result being that under those conditions this clause of *pari passu* ranking comes into operation.

The question is thus sharply raised, whether under this clause or under the Acts of Parliament one of two creditors in possession of the security subjects is entitled to sell them so as to prejudice the security of the other creditor who has not assented to the sale.

In considering the Acts of Parliament one must remember that the clauses are framed on the principle that all the rights which the parties are to have are given to them by the deed. The Act of 1868, in those clauses which treat of creditors' rights, confers no rights *vi statuti*, but gives forms of abbreviated clauses which are to be inserted in the bond, interpreting them as having the same meaning and effect as the longer clauses. The effect of this is, that all the rights of the creditor in the bond are supposed to flow from the granter, and to be contained in the bond although you may have to go to the statute to find out the meaning of the short clauses thereby authorised. Turning to the 119th section, which is headed "Clauses reserving right of redemption and of obligation to pay expense of assignation or discharge and power of sale," we find that the abbreviated clause is interpreted to mean that on making redemption in presence of a notary-public and witnesses, and after a period of three months is expired, it shall be lawful for the creditor "immediately after the expiration of the said three months, and without any other instruction or process at law, to sell and dispose in whole or in lots of the said lands and others." Passing over the last two sections of the Act, we find that the

122nd and 123rd clauses are not interpretation clauses, but are statutory definitions of the powers consequent on the sale. The 122nd section defines the obligation of the selling creditor to count and reckon for the surplus of the price, and it provides that he shall consign it "after deducting the debt secured with the interest due thereon," and penalties and expenses, and after paying all previous encumbrances and the expense of discharging the same in one or other of the said banks or in a branch of any such bank in the joint names of the seller and purchaser," that is in order that the purchaser may not be involved in any question as to the application of the price. If there is no surplus the 123rd section comes into operation, and under it "the disposition by the creditor to the purchaser shall have the effect of completely disencumbering the lands and others sold of all securities and diligences posterior to the security of such creditor, as well as of the security and diligence of such creditor himself."

Now, in the argument which has been addressed to us, alternative views of the rights of creditors were considered by both parties.

One alternative suggested is that either of the creditors has an independent power of sale, and then the question is, what is the effect of the exercise of the power by one creditor upon the rights of the other?

The second alternative is that there can be a sale only at the instance of the two creditors acting concurrently. If a sale can only take place by the joint authority and consent of both creditors, then I agree with all which has been said by the Lord Ordinary to the effect that the Court has no discretionary power to give a higher right than that which the parties have by agreement. The right of sale is given to the creditor for his own protection, and it is his opinion that must determine the question whether he will concur in the sale, the question for him being whether he is likely to realise the full benefit of his security by the proposed sale. But I am unable to see any good reason for the suggestion which I think the Lord Ordinary has taken from the parties that the consent of a *pari passu* creditor is necessary to a sale.

I think that when a security is assigned to two parties for separate interests, each creditor retains for his own protection all rights arising under clauses which may be considered executorial of the right of security, and in that view I cannot see that either the debtor or the *pari passu* creditor has an interest to prevent the other *pari passu* creditor exercising his power of sale. The debtor has to pay up the debt. The other creditor can have no interest, because the effect of a sale is only to disencumber the lands of postponed securities. The security of a *pari passu* creditor is in no way affected by the sale, because his right does not fall within the description of a security posterior to that of the seller. In this respect there is no difference between the position of a creditor who ranks *pari passu* and that of a preferable creditor. Their securities are unaffected by a sale under the power. The true answer to the argument of the pursuer is that he has an effectual power of sale, but that he can only sell subject to the right of the defender. The pursuer therefore may either arrange with the defender to pay off his bond, or he may sell the lands subject to the defender's security. In either case I should suppose there would be no objection to the title on the part of a purchaser.

On these grounds I think the interlocutor of the Lord Ordinary should be affirmed and the action dismissed.

LORD ADAM—[*After stating the circumstances in which the action was raised as above narrated*]—The object of this action is to determine whether the heritable creditor in the bond for £2000 is bound to consent to a sale of the security subjects at the instance of the original creditor who was holding the bond for £4000. That is the real question and the leading conclusion refers to it, and all the other conclusions are subsidiary to it, and, as I understand, it is not contended by the pursuers that if they fail upon it they can maintain any other conclusion.

Now, it appears to me that this action is founded on a fallacy, namely, that the pursuer and defender are *pro indiviso* proprietors not only of the original bond for £6000, but also of the subjects over which this £6000 was secured. When the assignation of the original debt to the extent of £2000 was granted by the pursuer in favour of the defender, it contained a disposition of the lands in security along with a power of sale in certain circumstances, and the effect of all this, along with the bond of corroboration, was to operate a complete separation of the two debts. I can see nothing of the nature of *communio bonorum* here, but on the contrary two separate and independent debts exist, one of £4000 and one of £2000, with regard to which it is no doubt narrated in the assignation that they are to be entitled to a *pari passu* ranking.

The question therefore comes to be, what are the respective rights of two creditors *inter se* when a portion of a debt has been assigned as in the present case, and when one of the creditors seeks to bring about a sale of the security subjects. It appears to me that the position of matters is just this, that each of the creditors is entitled to exercise the power of sale for payment of his portion of the debt, and that in bringing the security subjects to a sale neither party requires to obtain the consent of his co-creditor.

It is possible that there may be a practical difficulty in finding a purchaser unless the price is sufficient to pay the pursuers' debt and the defenders' debt. If such a price can be obtained, then the claims of the defenders will be fully met; if not, then the pursuer must effect his sale under complete reservation of the defender's rights.

LORD KINNEAR—I am of opinion that the

pursuer and defender are creditors in separate debts, either of which may be discharged or enforced irrespective of the other. It is true that these two creditors hold securities over the same estate, but the securities are just as clearly separate and distinct as the debts, and it follows that either creditor may realise his security independently of the other.

It seems to have been supposed that the pursuer cannot sell without the defender's consent, because a sale by one of these creditors would in some way prejudice the security of the other. But that is a misapprehension. There is indeed one case in which a creditor may sell under a bond and disposition in security to the effect of disencumbering the estate of another creditor's debt without the consent of the latter, and without paying his debt in full—that is the case where lands burdened with prior and postponed bonds are sold by the first bondholder, and do not bring a large enough price to pay the postponed bonds. But that is because the later bondholders have accepted a security with due notice on record that the subject is already burdened, and may therefore be carried away from them for payment of the preferable creditor's debt.

It is very clear that the parties to this case, between whom it is stipulated that their debts are to rank *pari passu*, are in an entirely different position. I am unable therefore to see any reason why the pursuer should require the defender's concurrence in a sale. He cannot compel the defender to realise his security, but he may sell as against the debtor in the exercise of his powers under his own bond, with which the defender has no concern. If he chooses to sell, the purchaser must take the land subject to the defender's security, and that will no doubt affect the amount of the price, but that is a consequence of which the pursuer cannot complain, because the defender derives her right from him, and she can do nothing to prejudice the interest of his assignee. The notion that there is any such partnership or community of interest between the parties as the pursuer's counsel has maintained, or that they are joint mandatories, is in my opinion without foundation.

The LORD PRESIDENT concurred.

The Court adhered.

Counsel for the Pursuers—Rankine—Goudy. Agents—Fraser, Stodart & Ballingall, W.S.

Counsel for the Defenders—H. Johnston—Burnet. Agents—Henderson & Clark, W.S.

Friday, November 6.

FIRST DIVISION.

[Sheriff of Fife and Kinross

CULROSS SPECIAL WATER SUPPLY DISTRICT COMMITTEE *v.* SMITH-SLIGO'S TRUSTEES.

Sheriff—Jurisdiction—Property—Possession—Service.

A Sheriff has jurisdiction over the proprietors of lands lying within his sheriffdom in any competent action relating to the possession of these lands, or of things locally situated within them, although such proprietors reside beyond and are not served with the action within the sheriffdom.

A local authority brought an action in the Sheriff Court of Fife at Dunfermline against the proprietors of certain lands in the county, to have them interdicted from drawing a supply of water for these lands from a pipe belonging to the pursuers, and situated within the county. The defenders were resident beyond, and the action was not served upon them within the sheriffdom.

Held that the Sheriff had jurisdiction to deal with the action, in respect that its subject-matter was the possession of certain heritable property within his sheriffdom, and the defenders were proprietors of lands within it.

In the year 1885 the local authority of Culross being desirous of procuring a suitable supply of water for the district, entered into an agreement with Archibald Vincent Smith-Sligo of Blair and Inzievar, and other proprietors in the district, who were anxious to obtain a supply of water for their respective properties. The local authority agreed to proceed forthwith to obtain the formation of a special water supply district, and the other parties agreed to bear certain proportions of the expense of securing the requisite supply of water. It was part of the agreement that the main pipe of supply should be so laid as to give a constant supply of water to Mr Smith-Sligo's estates of Blair and Inzievar, and it was provided that he should have liberty to lay branch pipes to connect the main pipe with these properties, and should pay at a fixed rate for the water drawn off by him. After the agreement was concluded the special supply district was formed, and the works were constructed.

In May 1891 the Committee of Management of the Special Water Supply District of Culross, appointed under the Local Government (Scotland) Act 1889, brought an action in the Sheriff Court at Dunfermline against Archibald Dominic Smith-Sligo and others, the testamentary trustees of the said Archibald Vincent Smith-Sligo, and as such trustees proprietors of, *inter alia*, the estate of Comrie, in the parish of Culross, praying the Court to interdict the defenders "from taking for the