

The Court, in answer to the second question, found and declared that the liferent was not payable to Mrs Henderson's marriage-contract trustees, and found it unnecessary to answer the remaining questions.

Counsel for the First Parties—Jameson—Younger. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Second Parties—H. Johnston—C. K. Mackenzie. Agents—Bell & Bannerman, W.S.

Counsel for the Third Parties—William C. Smith—Ramsay. Agents—Webster, Will, & Ritchie, S.S.C.

Tuesday, July 20.

SECOND DIVISION.

[Sheriff Court of Lanarkshire  
at Glasgow.

CONNOLLY AND OTHERS v. THE BENT  
COLLIERY COMPANY, LIMITED.

*Minor and Pupil—Factor loco tutoris—Administration of Sum Awarded to Pupils in Action of Damages—Discharge.*

Where a claim is exigible by pupils who have no tutors, their debtor is entitled to have a factor *loco tutoris* appointed to discharge the claim.

In an action of damages which was appealed for jury trial, in which all the pursuers were in pupilarity, and orphans, and which was settled extrajudicially, the pursuers lodged a note craving the Court to ordain the defenders to make payment of the sum agreed to be paid in settlement of their claims to such person in Glasgow as the Court might appoint to receive the same, and to authorise such person to grant a discharge therefor to the defenders.

The defenders objected, on the ground that the course proposed was incompetent, and that the proper course was for the pursuers to obtain the appointment in the Sheriff Court of a factor *loco tutoris*—*Anderson*, 11 R. 870; *Pratt*, 17 D. 1006.

The Court refused the prayer of the note, on the ground that the defenders being entitled to an effectual discharge, a factor *loco tutoris* was the proper party to grant the discharge—*Observed, per Lord Young*, that the appointment craved in the note virtually entailed the creation of a trust.

Counsel for Pursuer—A. S. D. Thomson.  
Agent—George Inglis Low, S.S.C.

Counsel for Defenders—Salvesen. Agent  
—W. G. L. Winchester, W.S.

Saturday, July 10.

FIRST DIVISION.

[Sheriff of Lanarkshire.

ROBERTSON & COMPANY v. BIRD  
& COMPANY.

*Proof—Admission—Relevancy of Qualification of Admission.*

A, who as proprietor of certain subjects had a statutory right to a supply of water from the Glasgow Water Commissioners at a fixed rate, sold part of these subjects to B, together with the right to the proportion of the water supply at the said rate applicable to the part sold. B continued to draw his supply from A for some time, but ultimately made an arrangement directly with the Water Commissioners for a separate supply.

In an action raised by A against B to recover the price of the proportion of the water supply drawn by B from A, who had paid the Commissioners for the whole supply to which he had a statutory right, B admitted liability, but qualified his admission by claiming to deduct from the sum sued for a sum in name of damages for breach of contract, representing a sum paid by him to the Water Commissioners in consideration of the arrangement entered into by them with him. This arrangement he averred had been rendered necessary by A's relinquishing to the Commissioners part of the water supply, and by failing to provide the number of gallons per day appropriated to the subjects disposed to him.

*Held* that the qualification adjoined to B's admission of liability was irrelevant, in respect that he rested his case upon the conveyance to him of the right to the proportion of water supply as part of the subjects conveyed; that the right so constituted could not be affected by A's action; that A's claim had therefore been liquidated by B's admission; and that A was consequently entitled to decree.

Under the Glasgow Corporation Waterworks Amendment Act 1866 (29 and 30 Vict. c. 328), sec. 22, and the Glasgow Corporation Waterworks Amendment Act 1879 (42 Vict. c. 40), sec. 16, John Robertson & Company, Limited, cotton-spinners, Glasgow, were, as proprietors of John Street Mill, entitled to a total supply of water for trade purposes from the Glasgow Corporation at the rate of 260,000 gallons per day at the rate of 5s. 6d. per 100,000, and were bound to pay for that quantity of water, whether used or not, at the said rate for a period of fifteen years, which expired on 1st June 1892.

Robertson & Company sold to Alexander P. Bird & Company a weaving mill forming part of the John Street property, with entry on 15th February 1892. By the dis-